The Los Angeles County

Sheriff's Department

7th Semiannual Report by
Special Counsel Merrick J. Bobb & Staff
April 1997

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Contents

This is the **Seventh Semiannual Report** of Special Counsel Merrick Bobb and staff prepared at the direction of the Los Angeles County Board of Supervisors. As required by the Supervisors, Special Counsel discusses herein the progress of the Sheriff's Department in the implementation of the 1992 Kolts recommendations, the 1993 Joint Statement of agreements between Judge Kolts and Sheriff Block, and the recommendations of Special Counsel in the preceding **Semiannual Reports.** Special Counsel's term currently runs to December 31, 1999.

General Conclusions

Nearly five years ago, in July 1992, we transmitted the **Kolts Report** on the Los Angeles County Sheriff's Department to the Board of Supervisors and Sheriff Block. Much has changed since 1992. As compared to five years ago, the Los Angeles County Sheriff's Department, as a whole, is more tightly-managed, open, questioning, reflective, and cognizant of the value of accurate data about itself and its performance.

Quick and dramatic benefits flowed from implementation of the **Kolts** recommendations for greater analytical vigor, intolerance of excessive force or discrimination, and strict accountability throughout the chain of command and the deputy ranks: a 70% drop in pending LASD police misconduct lawsuits since 1992, lowering the potential bill to Los Angeles County and its taxpayers by an estimated $30 million.

Also in the last five years, the LASD has found itself to be the subject of increasing scrutiny. Before **Kolts**, the few who openly criticized the Los Angeles County Sheriff's Department or the Sheriff were effectively marginalized. Beginning with the **Kolts Report** — and carried forward, we hope, by these **Semiannual Reports** — the LASD has become fair game for wider scrutiny and commentary. The Board of Supervisors has become better focused and pointed in its inquiries. Expanded by white papers from other groups, augmented by broad scale investigations from talented reporters, and amplified by the mainstream press and other media, the open examination of the Sheriff's Department

has become commonplace. Excruciating as it has been at times for the Sheriff and the Department to endure the scrutiny — which has ranged from pointing out the picayune to exposing the tragically serious — it has been good for the Department and for the public at large.

Those who follow the fortunes of the Department know that it has staggering problems, particularly on the custody side of the operations, and hardly a week has gone by in the last year without the Department's latest foul-up or deficiency reported on the front page of the newspapers or made the subject of editorial comment. For Sherman Block, the last five years have been an unprecedented challenge. The next several may also be hard ones. The **Kolts Report** noted that change was possible within the LASD because the Sheriff, unlike many other police executives across the country, was not walled off and rigid. Testy at times, the Sheriff nonetheless seems indomitable and keeps on going, and that is a good thing. Combining the avuncular and the jugular, Sherman Block is nothing if not formidable: daunting, hard to attack, and inspiring respect.

Five years ago, we said that the LASD had too many officers who resorted to unnecessary and excessive force and that the Department had not done an adequate job of disciplining them nor dealing adequately with those who supervised them. Today, it has fewer such officers, but, as Chapter Two demonstrates, the LASD still is not doing an entirely adequate job of discipline and accountability.

Five years ago, we concluded that the Department had not listened enough to what the communities, critics, and constituencies of the Department expected and wanted on the streets and in the jails. Today, the Department, in general, is taking heed.

The **Kolts Report** somberly described a number of brutal incidents, and we concluded that the Department had a long way to go before it became what a law enforcement agency of its national importance should be. Today, despite substantial progress in general, this **Semiannual Report,** particularly in its reporting on discipline and on the state of the jails, still cites far too many instances of careless or inhumane treatment.

Reshaping a large, entrenched agency is slow, and even though the Los Angeles County Sheriff's Department bestirs itself to reform much faster and with greater commitment than perhaps any other police agency, it still has a ways to go.

Five years ago, we stated that the LASD had many bright, able, and well-meaning people whom we had come to respect. The same holds true today, and, in general, the Sheriff has a stronger, more demanding, and accountable team of senior executives than when **Kolts** was written: Undersheriff Jerry Harper recently held nonstop negotiations and crafted a series of agreements and compromises that permitted the long-delayed opening of the Twin Towers jail, an essential step in the Department's efforts to come to grip with problems in custody that have been unravelling faster than they can be fixed.

Assistant Sheriff Michael Graham understood **Kolts** better than anyone, and he has had primary responsibility for overseeing implementation of **Kolts** within the LASD. He founded the Professional Standard and Training Division (PSTD), now headed by Chief Rachel Burgess, which pulled together the bureaus for Internal Affairs, Internal Criminal Investigations, Risk Management, Training, and Advocacy in a single entity with principal responsibility to frame and implement the Department-wide **Kolts** strategy to eliminate excessive force and other sources of liability risk.

Under the direction of Chief Rachel Burgess, after years of work by TRW and the extraordinary efforts of Captain Lee Davenport, Lieutenant Rod Terry, and Data Systems Coordinator Dorothy Kam, the Department in March 1997 introduced the most complete, responsive, well-constructed, and user-friendly relational database for monitoring police officer performance and risk that exists in any police department in the United States today. The database is called the PPI, which stands for Personnel Performance Index.

At the direction of the Assistant Sheriff, Captain Denny Wilson planned and conceived the LASD's community-oriented police program or COPS with the goal of going house-to-house to reclaim threatened neighborhoods. Under the supervision of Natalie Macias-Salazar and Lieutenants John Bowler, Paul Tanaka, and Russ Collins,

police officers go door-to-door in selected vulnerable neighborhoods experiencing a rise in crime, graffiti, abandoned vehicles, boarded-up houses, and drug or gang activity. The officers gather the necessary data to put together a block-by-block plan to stabilize the neighborhood, including organizing neighborhood groups and securing the active participation of city and county agencies responsible for code enforcement and nuisance abatement. They have begun to turn neighborhoods around.

Under the direction of Commander Bill Stonich, the Department has initiated a Domestic Violence Task Force, and Commander Lee Kramer has formed a Hate Crimes Task Force. All of these are hopeful and positive signs. Yet, even with the substantial progress that has been made, we still must temper our optimism for the LASD's prospects with caution, as we demonstrate in the following summary of principal observations made in this **Seventh Semiannual Report.**

The Jails

Our three previous **Semiannual Reports** described serious failings. We deplored:

- the assignment of high-risk inmates to the County jail's work release program despite substantial rates of non-compliance and recidivism
- the LASD's erroneous release of some offenders charged with serious crimes
- the over-detention of inmates
- growing problems of overcrowding and inmate-upon-inmate violence
- serious lapses in the provision of medical care and mental health services
- the absence of an automated and trustworthy inmate tracking and classification system and
- the unreliability of basic data on inmate disturbances and assaults.

In response, the Board of Supervisors and the *Los Angeles Times* focused intense scrutiny on the County's beleaguered jail system.

In turn, the Department was jolted into activity, leading to stop-gap patching of the system in the short run while searching for answers for the medium and long term. Having been roused, the Department is starting to focus its attention on the long-

neglected jails, and the Department's efforts are beginning to show promise.

Chapter One first recommends a strategy to deal with chronic overcrowding. We urge the County and the Department to provide competent and complete assessments of all incoming inmates for purposes of classification, risk of escape, and risk of violence inside or outside the jails. Based upon such assessments, we urge the Department to move greater numbers of low-risk inmates into a variety of community-based, properly monitored custody alternatives whenever prudent and possible.

Chapter One next sets forth a strategy to deal with violence and medical and mental health issues in the jails. Public safety and the public fisc require a functioning automated data system to manage:

- the assignment of inmates to appropriate security levels
- escapes
- violence within the jails and
- failures to recognize and treat mental and medical problems.

We note in Chapter One that the staff at the Inmate Reception Center (IRC) has done a fine job trying to patch a faulty system and instituting quality checks to reduce erroneous releases and faulty assignments to work release. But these are only stop-gaps, and the current paper-driven system, which is nearly defenseless to clerical error, is ultimately doomed to produce over-detentions and mistaken releases.

As we stated to the Board of Supervisors last January, what is needed is a consolidated county-wide justice information system fed by timely and accurate information from the courts, the district attorney, local, state, and federal databases, and data from within the Sheriff's Department itself. In order to perform due diligence on an inmate for all the purposes noted above, it is indispensable to have complete and comprehensive information concerning the individual. We again call on the Board of Supervisors to order a detailed plan for developing that needed automated data system.

Force Investigation and Discipline

During the last six months, we again tested the Department's commitment to investigate and adjudicate wrongdoing and to impose fair discipline on officers who use excessive force. Although the LASD continues to make progress in fairly adjudicating excessive force complaints, the rate of progress appears to have slowed down, as we demonstrate in Chapter Two. On the positive side, the Department generally is taking a more realistic and even-handed approach to force investigations. On the other hand, discipline has become more lax. Although some captains have shown increased willingness to respond to serious misconduct with serious discipline, many have not. The Department, in addition, appears at times to lack the resolve to make discipline stick during the grievance process and often substantially reduces the level of proposed discipline to settle cases.

We reviewed the investigative files for all 69 LASD officers disciplined for force-related misconduct between January 1, 1995 and December 31, 1996. Roughly 67% of the officers disciplined received mild discipline in the form of written reprimands or suspensions of five days or less — a deterioration in the rigor of discipline from our examination of similar data in the two and one-half year period immediately following the **Kolts Report.** Our investigation this time also revealed that the LASD has greatly reduced discipline in cases where the officer had originally been given more than 15 days' suspension. Perhaps what is happening is a variant of plea bargaining calculated to produce an acceptable final result. Nonetheless, we were troubled to find a number of cases where a slap on the wrist was imposed for serious misconduct.

Litigation and Risk Management

The trends for the first half of fiscal year 1996-97 demonstrate continuing progress in reducing the LASD caseload of lawsuits claiming excessive force. As discussed more fully in Chapter Three, in each year since **Kolts,** the number of active police misconduct cases has gone down: by 7% in 1993 over 1992; by 30% in 1994; by 26% in 1995; and by 23% in 1996.

Even so, not all parts of the Department have contributed proportionately to the decline. Efforts to manage liability risk varies from division to division within the Department. Overall, liability management on the patrol side (with the exception of Region II) is more firmly entrenched than in the custody and court services divisions of the Sheriff's operations, which continue to lag behind.

During this investigation, we reviewed the files of all force cases that settled for sums in excess of $20,000. The largest number of cases arose from the Lennox Station. Those five force cases cost the taxpayers of Los Angeles County nearly $500,000 in settlements in the first half of fiscal year 1996-97. Century Station had the next highest bill to the taxpayers. The three Century cases settled for a total of $115,000. Together, Lennox and Century Stations cost the County taxpayers more than double what the rest of the Department cost in force cases settled in the last half of 1996.

The same two stations generated the highest number of deputy-involved shootings for the first quarter of 1997. Century Station had six; Lennox had three. The nine shootings from these two stations exceeded the seven other shootings from all the stations in the rest of the Department combined.

Table One displays overall statistics on shootings for 1991-96. The number of suspects killed in 1996 rose to 14 from 10 in 1995, and the total is high in general. For example, as reported by *The New York Times*, civilian deaths at the hands of the NYPD dropped to 30 deaths for 1996. The NYPD serves about 10 million people. The LASD serves 3 million people. Proportionally, there are substantially more civilians killed by the LASD than the NYPD. This disparity will continue to receive our attention.

Off-Duty Incidents

Chapter Four is our analysis of all 28 off-duty incidents to which the Department's Internal Affairs roll-out team responded during a three-year span from mid-1993 through mid-1996. We conclude that the LASD's off-duty policies, as written and as applied, are unnecessarily weak, especially at the perilous intersection of weapons and alcohol.

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Hit Shooting Incidents*	1991	1992	1993	1994	1995	1996
Number of Incidents (may include multiple suspects)	56	47	29	28	34	26
Number of Suspects Wounded	40	31	12	11	24	12
Number of Suspects Killed	23	18	22	17	10	14

* Incidents during which an LASD officer intentionally fired at and hit a suspect

Non-Hit Shooting Incidents**	Aug / Dec 1993	1994	1995	1996
	14	21	26	19

** Incidents during which an LASD officer intentionally fired at a citizen/suspect but missed

Deputies Shot	1991	1992	1993	1994	1995	1996
Number Wounded by Gunfire	10	6	4	4	2	1
Number Killed by Gunfire	0	2	0	0	2	0

Incidents Resulting in PSTD Rollouts	Aug / Dec 1993	1994	1995	1996
	47	109	131	135

In our view, an off-duty officer should have no greater privilege to carry or use a concealed weapon when intoxicated than any other person: His state of intoxication trumps his status as a police officer. An off-duty officer who has too much to drink and then shoots a gun is acting as an intoxicated individual, not as a peace officer, and he should be dealt with as such.

Promotions

Chapter Five reports on the 5000 deputies, some of whom have been with the LASD for up to 10 years, and who represent more than 70% of the current deputy population, who are eligible for promotion to sergeant but have nonetheless not even had a chance to take a promotional exam since 1990. It has become an intractable morale problem and a deepening legal morass. We make a series of recommendations calculated to get a valid, non-discriminatory sergeants' examination administered at the earliest possible date.

Gender Issues

Chapter Six furthers our efforts to determine to what extent there are clusters of

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Los Angeles County Sheriff's Department Breakdown of Personnel by Sex, Rank, and Ethnicity as of March 24, 1997

Class	Total	Male		Female	
Sheriff, U/C	**1**	1	100%		
Undersheriff, U/C	**1**	1	100%		
Assistant Sheriff, U/C	**2**	2	100%		
Div. Chief, Sheriff, U/C	**8**	6	75.0%	2	25.0%
Commander	**18**	16	88.9%	2	11.1%
Captain	**49**	43	87.8%	6	12.2%
Lieutenant	**282**	258	91.5%	24	8.5%
Sergeant	**895**	801	89.5%	94	10.5%
Deputy Sheriff IV	**60**	57	95.0%	3	5.0%
Deputy Sheriff	**6712**	5729	85.4%	983	14.6%
Dep. Sheriff Trainee	**101**	71	70.3%	30	29.7%
Totals:	**8129**	**6985**		**1144**	
FTO	**159**	**155**	**97.5%**	**4**	**2.5%**

	Caucasian			African-American			Latino		
Class	**Male**	**Female**	**%**	**Male**	**Female**	**%**	**Male**	**Female**	**%**
Sheriff, U/C	1		100.0						
Undersheriff, U/C	1		100.0						
Assistant Sheriff, U/C	2		100.0						
Div. Chief, Sheriff, U/C	5		62.5		2	25.0	1		12.5
Commander	12	2	77.8	1		5.6	2		11.1
Captain	35	6	83.7	2		4.1	6		12.2
Lieutenant	209	15	79.4	20	6	9.2	23	3	9.2
Sergeant	654	69	80.8	45	11	6.3	85	14	11.1
Deputy Sheriff IV	39	1	66.7	9	2	18.3	9		15.0
Deputy Sheriff	3768	512	63.8	503	213	10.7	1240	235	22.0
Dep. Sheriff Trainee	34	16	49.5	6	3	8.9	29	10	38.6
Totals:	**4760**	**621**		**586**	**237**		**1395**	**262**	

	Native American			Asian			Filipino		
Class	**Male**	**Female**	**%**	**Male**	**Female**	**%**	**Male**	**Female**	**%**
Sheriff, U/C									
Undersheriff, U/C									
Assistant Sheriff, U/C									
Div. Chief, Sheriff, U/C									
Commander				1		5.6			
Captain									
Lieutenant				5		1.8	1		.4
Sergeant	1		.1	16		1.8			
Deputy Sheriff IV									
Deputy Sheriff	6	2	.1	169	14	2.7	43		.7
Dep. Sheriff Trainee				1	1	2.0	1	7	1.0
Totals:	**7**	**2**		**192**	**15**		**45**	**7**	

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Los Angeles County Sheriff's Department Breakdown of Sworn Personnel by Division, Sex, and Ethnicity as of March 1, 1997

Division	Total	Male		Female		Caucasian		African-American		Latino		Native American		Asian		Filipino	
Executive	42	31	73.8%	11	26.2%	35	83.3%	3	7.1%	2	4.8%	0	0%	2	4.8%	0	0%
Admin Services	72	58	80.6%	14	19.4%	57	79.2%	7	9.7%	7	9.7%	0	0%	0	0%	1	1.4%
Court Services	1463	1205	82.4%	258	17.6%	820	56.0%	297	20.3%	301	20.6%	1	.1%	34	2.3%	10	.7%
Prof Standards	376	283	75.3%	93	24.7%	239	63.6%	51	13.6%	70	18.6%	0	0%	12	3.2%	4	1.1%
Custody	2292	1904	83.1%	388	16.9%	1413	61.6%	192	8.5%	597	26.0%	3	.1%	65	2.8%	22	1.0%
Detective	505	429	85.0%	76	15.0%	356	70.5%	42	8.3%	101	20.0%	0	0%	5	1.0%	1	.2%
Field Ops Reg I	1199	1092	91.1%	107	8.9%	929	77.5%	41	3.4%	203	16.9%	1	.1%	22	1.8%	3	.3%
Field Ops Reg II	1084	978	90.2%	106	9.8%	716	66.1%	142	13.1%	182	16.8%	0	0%	41	3.8%	3	.3%
Field Ops Reg III	1139	1042	91.5%	97	8.5%	849	74.5%	48	4.2%	202	17.7%	4	.4%	28	2.5%	8	.7%

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Demographics of Recruits Entering and Graduating from Academy Classes 285 (1994) through 294 (1996)

	Males	Females	Total
Caucasian			
Entered (47.3%)	341	104	445
Graduated (47.0%)	308	85	393
Latino			
Entered (34.5%)	233	92	325
Graduated (35.4%)	221	75	296
African-American			
Entered (12.3%)	74	42	116
Graduated (11.4%)	64	32	96
Asian-American			
Entered (3.3%)	32	5	37
Graduated (4.1%)	31	4	35
Filipino			
Entered (1.4%)	11	3	14
Graduated (1.3%)	9	2	11
Native American			
Entered (.5%)	3	2	5
Graduated (.4%)	2	2	4
Total Entered	**694**	**248**	**942**
	73.7%	26.3%	
Total Graduating	**635**	**200**	**835**
	76.0%	24.0%	

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Demographics of Current Academy Class 295

	Males	Females	Total
Caucasian	35	15	50
51.5%			
Latino	26	8	34
35.1%			
African-American	6	3	9
9.3%			
Asian-American	1	2	3
3.1%			
Filipino	1	0	1
1%			
Native American	0	0	0
0%			
Total	**69**	**28**	**97**
	71%	29%	

sexual harassment or gender discrimination complaints within any particular unit or division of the Sheriff's Department and whether the LASD's procedures for dealing with those claims operate as effectively as possible.

As background for that Chapter, Table Two displays the LASD's breakdown of personnel by sex, rank, and ethnicity as of March 24, 1997. Table Three displays a breakdown of sworn personnel by division, sex, and ethnicity as of March 1, 1997. Table Four breaks down the demographics of recruits entering and graduating from the Sheriff's Academy between 1994 and the end of 1996, the most intense period of recruiting during the last five years. Table Five sets forth the demographics of the current Academy class. As we have noted before, progress for women and some minorities has been slow.

Headstrikes

Chapter Seven re-examines the Department's efforts to control blows to the head of suspects with batons, flashlights, and other impact weapons. The record is mixed.

Data Integrity

Chapter Eight revisits the issue of the reliability of the data produced by the Department and describes the excellent recent efforts of the LASD Data Management task force.

We now proceed to a detailed discussion of the topics summarized above.

1. The County Jail System

Two questions predominate the running of the jails: (i) given chronic overcrowding and an insufficient number of beds —particularly in cells as opposed to dormitories — how can the LASD best identify those inmates who can safely be placed in monitored release programs? (ii) given the County's more dangerous and more frequently sick inmate population, how can the LASD better classify and track inmates? In the last six months, better answers to the questions are beginning to emerge, particularly with respect to the first question posed, concerning release of inmates.

In short, the answer is to do a competent and complete assessment of all incoming inmates and move greater numbers of sentenced inmates into community-based, properly monitored custody alternatives, if possible — be it electronic monitoring, work release, work furlough, or weekender programs. Similarly, based on a complete risk assessment, the Sheriff's Department should release greater numbers of pre-sentenced inmates out on their own recognizance into monitored programs, if prudent.

The County's Probation Department has developed a system to assess whether an inmate will comply as required in a monitored release program. It has proved to be reliable in assessing candidates for electronic monitoring. Whether or not the Probation Department's model — with its 14-factor test combined with interviews of the candidates and research into criminal history — is the ultimate system for use by the Sheriff's Department to assess risk of flight, non-compliance, the commission of future offenses, or security risk, it clearly is superior to the primitive methodology currently employed by the LASD.

Accordingly, as will be developed in our discussion below, our key recommendation on the question of whom to let out is that resources be provided to the Sheriff's and Probation Departments to permit a full assessment, interview, and criminal history search for every incoming inmate to the Los Angeles County jail system.

Whom to Let Out

On any given day in recent months at the County jails, a fluctuating population of 1000 to 3000 inmates cannot be accommodated in the available bed space in a manner consistent with federal minimum Title 15 requirements. Prior **Semiannual Reports** set forth reasons for the chronic overcrowding in some of the County's jails, including three strikes legislation, sentenced prisoners in County jail awaiting transfer to the state prisons, and the shift in jail demographics from a preponderance of sentenced misdemeanants to the current 60% majority of accused felons awaiting trial.[1]

Because of these trends, there has been a growing shortage of jail beds in hard lock environments — cells with one to four inmates — as contrasted to beds in less secure environments — open jail dormitories and barracks. The mismatch has led to exacerbated overcrowding problems at two facilities in particular, Men's Central Jail (MCJ) in downtown Los Angeles and the North County Correctional Facility (NCCF) near Magic Mountain. It has also led to increased jail rioting, unrest, and claimed failures adequately to protect inmates: Dangerous, violent, or unruly individuals can wreak more havoc in a large open dorm than in a cell.

Under applicable federal caps, the County jail system currently can hold 22,000 inmates. Under the more rigorous standards promulgated of California's Board of Corrections, the Los Angeles County jail system should house only 12,000 inmates. But the average daily population in the Los Angeles County jails today would approach 39,000 if, along with jailed defendants awaiting trial, every inmate sentenced to County jail served the full sentence given by the judge.

[1] In order better to understand the hard choices facing the Sheriff's Department, it is useful to place the LASD's dilemmas in the wider context of Los Angeles County's overburdened criminal justice system as a whole, which currently is responsible for managing more than 120,000 offenders. According to June 1996 statistics, there were about 100,000 adult offenders and 23,000 juvenile offenders under local criminal justice sanctions. Of these, approximately 75,000 of the adults were on probation; the balance were cited out or in jail or on work release. Similarly, nearly 17,000 of the juveniles were on probation; the balance were in juvenile halls and Probation Department camps.

Given these numbers — that 39,000 individuals on any given day could be in jail but the jail can only house 22,000 — the iron law in the last few years has been that offenders must either (i) be turned away at the front door, (ii) be released after serving only part of a sentence, or (iii) serve part of their sentences outside the jail in work release or similar programs. All those alternatives have been employed, and each, with the possible exception of the first, has generated recent controversy.

Turning Accused Misdemeanants Away

As noted in the **Sixth Semiannual Report,** the Los Angeles County jails do not accept all alleged offenders. For pre-trial defendants to be accepted into the jail, they must have either a felony arrest or remand charge, or be accused of one of fourteen particularly serious or high-profile misdemeanor charges. Otherwise, the defendant will be issued a citation and released on a written promise to appear, regardless of the bail amount set by the judge. Currently there is no formal monitoring to track the where-abouts of these individuals.

In practical terms, the vast majority of alleged misdemeanants in jail under these rules are defendants accused of domestic violence. Those accused of lesser misdemeanors are turned away at the jailhouse door.

Currently, the LASD claims it has insufficient resources to conduct full risk assessments, interviews, and criminal history checks on all pre-trial inmates as they flow into the system. If those resources could be mustered, one could identify more pre-trial defendants who safely qualify for release on their promise to re-appear. Preliminary studies by the Probation Department of individuals released on their own recognizance show a low non-compliance rate without any monitoring whatsoever. **If adequate monitoring of these individuals were instituted, which we advocate and believe is prudent, particularly defendants accused of domestic abuse, then the numbers of monitored pre-trial defendants awaiting trial outside of jail could safely be expanded. We strongly so recommend.**

Early Release of Sentenced Misdemeanants

To create more room for pre-trial defendants, particularly second- and third-strikers whose pre-trial stays in jail are far longer than others, the Sheriff's Department is currently releasing sentenced misdemeanants who have served 35% of the judge's sentence after deduction of state-mandated credits. For females currently housed in Sybil Brand, the percentage of the sentence served is even less. A release at 35% as calculated by the LASD means that in fact an inmate serves only about 25% of the original sentence imposed by the judge. Stated another way, a one-year jail sentence equates to 83 days in jail.[2]

This early release at 35% generates controversy because individuals are actually in jail for far less time than they were sentenced by the judge. Although the 35% rule is relatively easy to administer because it is a bright-line test, it necessarily fails to distinguish between inmates on the basis of risk to the community or recidivism. A much better program has ben proposed that scraps the 35% rule and focuses instead on risk to the community. The proposal is called house arrest.

All candidates for house arrest would undergo a complete risk assessment based upon the Probation Department's superior methodology. Those who test out at an acceptably low level of danger to the community, risk of escape, and recidivism would be placed in house arrest to serve the sentence at home while being actively monitored for compliance. Again, the keys to a successful program are to perform thorough assessments, interviews, and criminal history searches for all incoming inmates and to provide adequate follow-up and monitoring.

[2] The principal reason necessitating the early release of sentenced misdemeanants has to do with the shifting percentages of the jail population representing sentenced misdemeanants, sentenced felons awaiting transfer to state prison, and accused defendants awaiting trial. The average length of stay for inmates as a whole has been creeping up because of the very long stays of second and third strikers awaiting trial. As reported in the last Semiannual Report, second strikers as of December 1995 had an average length of stay of 132 days; third strikers, 239 days. The more space occupied for longer periods by accused defendants, the less room for sentenced misdemeanants. If the sentenced misdemeanants serve a smaller percentage of their sentences behind bars, then there is more room for others to occupy jail beds.

We strongly recommend implementation of a well-monitored house arrest program in lieu of the current 35% release rule. We recommend that Lt. Mike Bornman, who is currently in charge of classification at IRC and has been doing an excellent job studying the question of who can safely be released, be encouraged further to develop a house arrest program.

Work Release and Related Programs

In addition to early release, County parole and probation, and certain court-administered programs such as Drug Court, there are four other programs currently providing alternatives for sentenced inmates to serve their time outside of the jail: (a) the Electronic Monitoring Program administered by the County's Probation Department; (b) the Work Release Program administered by the LASD; (c) the Work Furlough Program administered by the Probation Department; and (d) the Weekender Program, administered by the LASD and the Probation Department. Together, these programs go by the acronym CBACs — community-based alternatives to custody. These programs are models for new ideas like house arrest. The Electronic Monitoring and weekender programs have been the most successful.

a. Electronic Monitoring

Since October 1992, the Probation Department has operated the Electronic Monitoring or EM Program. The EM program include a mix of varying monitoring components based upon a risk assessment of the particular candidate. The monitoring devices include electronic bracelets that disclose the defendant's whereabouts.

Between October 1992 and December 1996, approximately 10,000 sentenced defendants have been in EM. The compliance rate, particularly for defendants assessed as low-risk, is impressive: During the period October 1992 through December 1996, there were 2277 persons deemed low risk (0-6 on the risk scale) in the program. Of these, there were 11 who absconded and remain at large, 12 who absconded and were later

remanded to custody, and 20 who failed to enroll. The failure rate for these causes overall was an impressively low 1.9%.

An additional 96 individuals were terminated from the EM program for other failures to comply with the conditions, including the alleged commission of another crime while on EM. Since September 1996, the Probation Department has started separately to track the numbers of EM participants who are arrested for the alleged commission of another crime while on EM. Impressively, the percentage to date is small — about 1%. Overall, then, the total non-compliance rate for all causes was 6.1% for the low-risk inmates.

Until recently, the only form of monitoring was a radio frequency electronic bracelet attached to the inmate's arm that transmits through a device attached to the inmate's home telephone. The Board of Supervisors has before it a pilot program for the Sheriff's Department and the Probation Department to test new monitoring devices that will permit greater latitude and flexibility.

An example is a voice verification device. A unique voice print, like a fingerprint, will be made of the inmate to be monitored. The inmate then will receive random calls placed to his home which he must then answer to demonstrate compliance. Additionally or alternatively, the inmate may be required to call in from pre-approved telephone numbers at home or work during the day. Another monitoring technique will be to require the inmate to show up for meetings with the LASD or Probations Department on a pre-determined schedule.

Participants in EM are generally allowed to work. Interestingly, defendants participating in the program pay for the monitoring by fees based upon the offender's ability to pay, with provisions for indigent defendants. The average daily population of EM is 800 offenders.

Under the CBAC pilot program referred to above, there will be flexibility to customize a monitoring program to the inmate. Using the results of a thorough risk

assessment, a low risk inmate who is going to work daily would be a candidate for voice verification. An inmate presenting a somewhat higher risk might be more safely placed under the more restrictive electronic bracelet.

From 1992 until July 1995, the courts supplied all the candidates for the EM program. In July 1995, it was expanded to include candidates proposed by the Sheriff's Department. Currently, about half of the participants in the EM program come from the jails. The largest group of offenders in the court component of EM — approximately 44% — are persons convicted of driving under the influence (DUI) or driving with a suspended license following a DUI conviction. The next largest group — 18% — are offenders convicted of drug charges. The largest group of offenders in the jail component of the program — 32% — are drug offenders; the next largest group — 31% — are DUI or traffic offenders.

The Probation Department uses the risk assessment model described above to determine eligibility for EM and to rate candidates on a risk scale of 0 to 20+. The results of the risk assessment are given to the referring agency, be it the court or the Sheriff's Department, which makes the final decision regarding program participation. Once accepted into the program, the differing risk levels result in differing amounts of monitoring and supervision.

As noted throughout, we urge for the time being that the risk assessment system used by the Probation Department be applied to all incoming inmates. It would be a substantial improvement over the LASD's current criteria and, if combined with additional resources for EM, could safely expand the numbers of sentenced inmates serving time outside the jail.

b. Work Release

Inmates on work release sign a contract and are assigned to a work site near their homes. The **Sixth Semiannual Report** focused attention on the failings of the work release program, demonstrating that the eligibility requirements were inadequate and

inappropriately lenient, that the non-compliance rate was too high, and that the recidivism rate (the percentage who of inmates who were arrested for a new offense while on work release) was unreasonably large. The media followed with a detailed examination of the faulty work release system.

In response, the LASD quickly brought the program to a halt and re-assessed the criteria for release into the program. In recent months, there has been a campaign in the LASD to track down and re-arrest non-complying inmates, and about 1000 non-compliers have been found. In our last **Semiannual Report,** we noted that the numbers of inmates on work release seemed to vary from 2000 to 5000. What we did not know then is that those numbers included non-compliers.

Indeed, as of December 1996, there were over 2000 non-compliers in the program. Between December 1966 and the end of February 1977, however, that number has dropped by nearly half, and the non-compliance rate has been brought down from 33% to approximately 11%. Putting aside the large accumulation of non-compliers, the number of individuals actually out on work release is surprisingly small — as of March 6, 1997, for example, there were only 394 inmates on work release.

The CBAC pilot project, in which we were asked by the Board of Supervisors to give input, calls for the Probation Department to complete thorough risk assessments on all inmates to be considered for work release. **Although we strongly support the pilot project, we believe that it would be even better to expand the risk assessments immediately to all incoming inmates.**

We commend the County task force for quickly coming up with a reasonable plan to deal with the weaknesses in the Sheriff's work release program. The reductions in the numbers and percentages of non-compliers by the LASD to date is impressive. We also commend the LASD for the greater care that is evident in the selection of candidates for work release in recent months.

We also commend the Inmate Reception Center (IRC) staff for quickly assembling

non-compliance teams to round up persons who fail to report at their work release sites. The non-compliance teams should be expanded, and a special effort should be made to keep the teams in place after IRC's move to Twin Towers.

Currently, there is a day non-compliance team of eight deputies and one sergeant and a PM shift of six deputies, one senior deputy, and a sergeant. It is possible that the PM shift could be lost after the move to Twin Towers; this would be a mistake. Indeed, in order to provide the ability to visit work sites during the day, the day shift team should be expanded by three more deputies and a senior.

These teams should become the County's primary vehicle for enforcement of failures to comply or appear in a wide variety of programs for both pre-sentenced and post-sentenced defendants. Already, the non-compliance team is monitoring the 140 different work sites for Work Release inmates. The program should be expanded as needed to meet the growing need for monitoring work sites, visiting inmates' homes to check compliance, and keeping track of the whereabouts of pre-trial defendants out on their own recognizance.

The non-compliance teams are a morale booster within the Custody Division, and particularly at IRC, because the teams get **younger deputies outside the jails to function like patrol officers part of the time. Any program that helps relieve the monotony of long custody rotations for deputies squares nicely with the Kolts recommendations, and this program in particular shows great promise.**

c. Work Furlough

Work furlough is currently administered by the Probation Department to allow selected jail inmates to maintain their full-time employment or attend full-time educational or vocational training programs while serving a county jail sentence. The "work" in work furlough is thus sometimes misleading: There is no requirement that the inmates work.

There are 227 beds available (although incomprehensibly only about 90 are being used currently on a daily basis) at a facility called Scapular House which can be used for

work furlough and weekender programs. There is an additional facility which is being renovated that will ultimately provide an additional 440 beds.

A proposal circulating within the LASD suggests using work furlough to provide counseling and training to inmates charged or convicted of domestic violence offenses. The concept of using Scapular House to do so enjoys widespread support among community organizations involved in the prevention of domestic violence. We give the proposal our strong support. **We also urge speedy processing of current proposals to house greater numbers of inmates at Scapular House and the facility undergoing renovation.**

d. Weekender Programs

Two weekender programs are currently in operation. One, managed by the Probation Department, puts inmates sentenced to weekends in custody in Scapular House. The second program, run by the LASD, puts approximately 500 inmates to work during the weekend in assignments ranging from beach cleanup to work at Cal Trans job sites. The compliance rate is nearly 100%. **It would make great sense for appropriate inmates currently assigned by Probation to weekends at Scapular House to be turned over to the LASD weekender program for work, thus freeing up beds on the weekends at Scapular House for other inmates.** The IRC's noncompliance team could then monitor the work sites to make sure the assigned inmates actually show up.

In sum, given the chronic overcrowding of the jails and the availability of apparently successful tools like the Probation Department's risk assessment program, we strongly recommend greater use of CBACs. The number of individuals currently in CBACs is painfully small in contrast to the 20,000 behind bars in county jails on any given day: Approximately 800 in EM, 400 in work release, 500 or so in weekender programs, less than 200 in work furlough.

Risk assessment for all inmates, a well-managed House Arrest program, elimination of the 35% time-served rule, and expansion of traditional CBACs

would reduce the jail population below the federal cap by the release of carefully selected low-risk individuals. Any higher risk inmate who belongs in a cell rather than a dorm would have an available cell.

One final word on overcrowding: As was noted in previous **Semiannual Reports,** too many sentenced inmates awaiting transfer to state prison take up space in the County jails; currently, about 1200 inmates in LA County on any given day should instead be in state prison. The courts are in part to blame: the paperwork and commitment orders are not being transmitted in a timely fashion to the Sheriff's Department. The state of California is the other part of the problem: the Department of Corrections is not getting the state prisoners out of LA County jail fast enough, although there have been modest efforts of late by the state to speed things up. **The state of California should help relieve the pressure on the Los Angeles County jails by getting all state prisoners out of the jails in a timely manner. If the state will not fulfill its obligation to pick them up, then the LASD should transport the inmates itself to the state prison receiving facilities.**

Identification, Classification and Tracking of Those Who Stay In

Our **Sixth Semiannual Report** concluded that the LASD lacked solid, well-researched information in order to properly manage violence, risk, and liability in its custody operations. It was and remains our frank view that the Sheriff's Department currently lacks and is unlikely to have at any reasonable time in the near future a comprehensive inmate identification and classification system adequate for the risks and dangers in the jails.

The best estimates are that it will take at least five to six years and upwards of $6 million to construct what will be at best a re-write and update of the current automated jail information system. It does not even include an up-to-date medical tracking system. The County cannot afford to wait five or six years.

There is too great a risk of erroneous releases, over-detentions, misclassifications, and grim failures to provide medical and mental health care. We cannot stress enough to the Board of Supervisors and the LASD how critically deficient is the current system for medical and mental health care.

The goal of classification is to know as much about a given inmate as possible in the shortest amount of time. Based upon the classification decision, an inmate is assigned a level of security risk, placed in housing presumably appropriate to the risk, given special protection if necessary to avoid being victimized or the target of violence, put on an appropriate schedule for receipt of medication if necessary, and tracked for purposes of court appearances, release date, medical appointments, and the like. In LA County, the sheer number of incoming inmates every day dictates that the classification process per inmate perforce must be completed in minutes.

In state and federal prisons, the classification process can take place at a more leisurely pace; there are generally adequate holding facilities so that dangers of inmate-on-inmate or inmate-on-staff violence can be appropriately controlled pending final classification. Not so in LA County, where on occasion there are large numbers of inmates awaiting classification in inadequate holding facilities. The current holding areas for pre-classified inmates — the large, open 9000 dorms at Central Jail— currently are breeding grounds for inmate-on-inmate violence, inmate-on-inmate thefts, and worse.

Under current circumstances, it may take inmates 18 hours or more to get from the front door of the IRC to the 9000 floor for classification. Some inmates on occasion are culled from the pre-classified population if, for example, they are readily identified as mentally ill or as being particularly young or old or vulnerable ("softs") and requiring special housing. Certain other inmates (such as "celebrities" or "high powers" or "keep-aways") are walked through the IRC up through classification, and thus do not spend any time in the 9000 dorms. Otherwise, there is no systematic procedure to segregate inmates on the basis of dangerousness or security risk as they wend their way through IRC to the 9000 dorms.

There are five dorms on the 9000 floor, and each houses between 160 and 350 inmates, who may be held in the dorms for eight to 12 hours or more before being taken to the classification room. One sergeant graphically described the 9000 dorms as a "beast" and as "insane" because "three-strikers were thrown together with check forgers."

The 9000 dorms are scheduled to close — hopefully in the next few months — as IRC completes its move to the new Twin Towers facility. We are told that there is more space with greater security for pre-classified inmates at Twin Towers, and that classification will occur earlier in the inmate receiving process. The LASD believes that it will take eight to ten hours to complete processing a given inmate. But even so, the ability of the LASD to cull out the mentally ill or others in need of special protection or special security in the pre-classified population is and will remain a serious issue.

In order to perform due diligence in identifying a given inmate, the jailer ideally should be able to (i) identify the individual positively, including all aliases; (ii) review the individual's complete prior criminal history; (iii) review the individual's prior disciplinary history in the LA County jails or in other jails or prisons; (iv) check for any outstanding warrants or holds on the individual from any other jurisdiction and to know that the system has been updated in a timely manner; (v) call up the individual's medical history as a prior LA County jail inmate, including his prior mental health history and medications; and (v) quickly and competently identify inmates who arrive with medical or mental problems.

We urge the Board of Supervisors to take note that **none of these due diligence tasks can currently be performed today with adequate completeness or within a reasonable time frame.** As a direct result, liability risk rises, along with the potential for mistaken releases, over-detentions, medical and mental health lapses, and inappropriate assignment or mixing of inmates with the attendant possibilities of inmate-on-inmate

and inmate-on-staff violence, as well as heightened potential for escapes, rioting, or disturbances. The instance described below dramatically illustrates the consequences

of these lapses.

In 1993, Inmate X, a man accused of spousal assault, passed through the classification procedures at the Inmate Reception Center. According to the criteria then in effect — which focused mainly on the current charge — Inmate X was deemed a low security risk and was assigned to the Pitchess honor ranch, a minimum security facility, currently shut down, where inmates were housed in open barracks and given substantial freedom of movement. Indeed, Inmate X was considered so low a security risk that he was assigned to a fire suppression team, a desirable assignment which permits inmates to work outside the jail helping to clear brush on the hillsides.

One day in November, Inmate X accused Inmate Y of having stolen some family photos and a meal card that allowed the holder an extra portion. Y denied the charge and some time passed, during which X told others he was "going to get" Y. A day or so later, X caught Y in the barracks, savagely beat him, stomped repeatedly on his head causing permanent brain damage, and left Y in what became a chronic vegetative state.

As part of our investigation, we asked the classification section at IRC how Inmate X would be classified if he came through today with exactly the same charges and record as he had in 1993 and without regard to the beating of Inmate Y. The answer came back from one of the classifiers that he would likely be classified exactly the same; another thought perhaps he might be classified as a medium risk. We then had the Probation Department, using its risk assessment scale, classify Inmate Y on the same facts and charges as the LASD had before it in 1993. Noting that Inmate Y had served two years in state prison in 1990 for spousal assault and had additionally served time for battery in recent years — facts available to the LASD at the time it classified Inmate Y but not given much weight, if any — Probation classified Inmate Y as extremely high risk for violence.

The story of Inmate X and Inmate Y demonstrates our point that the system for identifying and classifying inmates in the LA County jails has serious flaws. So does

the recent example of a convicted rapist facing a life sentence who was assigned special privileges as a jail trusty (now called “inmate workers”) and then attempted to escape. But the consequences of systemic failures in identification and classification are not limited to increased risks behind the jail walls; they also impact upon who is released into the community. The subject of erroneous releases has also recently garnered substantial media attention.

a. Erroneous Releases

The occasional erroneous release of an accused murderer understandably undermines public confidence and peace of mind; the release of lesser offenders to a smaller degree. The systemic failures, however, that lead to the erroneous release of a murderer are the same ones that cause the mistaken release of an accused minor offender. The dimension of the problem, at least until very recently, was substantial: In 1996, there were 32 erroneous releases, including individuals in major offender categories, and, on at least one occasion, there were as many as four erroneous releases in a single day.

In stark contrast, the staff at IRC under newly-promoted Captain David Betkey, who was assigned to IRC at the first of the year, has made substantial inroads. During the month of March, there were no erroneous releases. For the first quarter of the year, there were five erroneous releases, all of misdemeanor suspects who were found and returned to custody within hours. Achieving this reduction is even more impressive given that it was not aided by any additional automation — it resulted from tighter quality control and redundant checks to identify and specially handle instances where an accused major offender might be involved. Captain Betkey and his staff deserve commendation for excellent performance.

It does nothing to detract from the high quality of the performance by IRC staff to note that it involved stop-gap interim steps to hold the fort pending greater automation. A theme that runs through all the jail operations and systemic failures is how difficult it is in the absence of a functioning database to know what one needs to know about a

given inmate.

b. Identification Problems

At first blush, it would appear simple to positively identify an inmate and pull up his criminal history or determine whether he has outstanding warrants: If a jailer has the man's name, date of birth, and possibly a social security number, one would suppose that the jailer could easily figure out if the man is wanted by another jurisdiction, or has outstanding warrants in Los Angeles County, or has previously served time for a crime in another state. Surprisingly, that is not so; and it will not be so until there are national systems for identification with adequate databases, which are currently do not exist.

Two different problems in the creation of such databases impede rapid positive identification of inmates. First, any given individual may have a proliferation of aliases and different dates of birth (DOBs) associated with the different aliases. The best national databases, such as the one maintained by the National Criminal Information Center (NCIC), will not necessarily link an individual to all his different aliases and DOBs unless the individual has been positively identified by a fingerprint system and linkages forged to collect all aliases and DOBs grouped around the given fingerprint. Agencies in LA County have such a fingerprint system; it is called Live Scan. But many, if not most, jurisdictions lack such a sophisticated system.

Second, even if one has all the aliases and DOBs, to do an adequate warrant and criminal history check and in Los Angeles County currently requires polling **at least five different databases,** a time-consuming process at best. Even then, one cannot be certain. There could be delays, errors, and lapses in updating the databases by the LA County courts or the DA's office, for example.

But even under these imperfect conditions in LA County, the chances of error can be reduced. Part of the solution is to enforce cooperation between all police agencies in LA County that place defendants into the County jail system. **First, all agencies should be required to utilize the LA County Sheriff's booking system.** Most of

the large agencies, like the LAPD and Long Beach, are already doing so; there nonetheless are a number of smaller agencies who are not and who, frankly, should be forced to do so. When those smaller agencies present a defendant for booking at the jail, it is as if the paperwork were in a foreign language. Unless the LASD deputies or clerks in the booking sections have the skills to interpret the different paperwork, there is delay and the potential for incomplete identification in any event. Far better all the paperwork arrive in a common language.

Second, the allocation of responsibility for a complete warrant check, at least on arriving inmates, should be shifted away from the LASD and toward the agency bringing in the inmate. All agencies bringing inmates to the LA County jails (including stations within the Sheriff's Department) should be required to do a Live Scan on the inmate and a complete warrant check before presenting the inmate to IRC.

Doing so serves at least three important goals: (i) it eases and facilitates the booking process; (ii) it provides better and more complete information for classification purposes; and (iii) it operates as a double-check in case warrants are missed at the back end when the inmate is ready to be released. That is not to say that the LASD should not do its own check on the warrant status and criminal history of arriving inmates; but if both the arresting police agency or station and the jails run a check, there is reduced chance of inadvertent error.

As noted above, the staff at IRC has done a fine job patching a faulty system and instituting quality checks to reduce erroneous releases. But these are only stop-gaps. **As we stated to the Board of Supervisors last January, what is needed is a consolidated information system fed by timely and accurate information from the courts, the district attorney, local, state, and federal databases, and from data within the Sheriff's Department itself. In order to perform due diligence on an inmate for purposes of identification, classification, assignment to a CBAC, provision of adequate medical and mental health care while in jail, or**

release,

it is necessary to be able to access complete and comprehensive data. We call on the Board of Supervisors to order a detailed plan for developing the needed automated data system described above.

Use of Force at IRC

Our last report alerted the Sheriff's Department to our serious concerns about apparent increases in uses of force on inmates at IRC as well as inmate assaults on staff at IRC. We noted that in future reports, we intended to delve into these matters deeper.

Our analysis of trends for the first three months of 1997, as compared to the first three months of 1996, show an overall reduction in use of force within the IRC measured three different ways: by location within the IRC facility, by amount of force deployed, and by deployment by shift working at IRC.

Within the Inmate Reception Center, force is most often deployed when groups of inmates congregate for substantial periods of time: the booking areas, the clinics, the transfer lines, and the courtlines. In each of these areas within IRC, there were somewhat fewer force incidents in the first three months of 1997 as compared to 1996. In the booking front area, force incidents went from 13 to 9; in the clinic, from 8 to 2; in the transfer or custody line, from 7 to 5; and in the courtline from 14 to 6. In general, there are fewer significant force incidents in the first three months of 1997 compared to 1996. There is thus movement in the right direction at IRC and, as noted earlier, the new captain and his lieutenants are to be commended.

Risk Management Unit in Custody

In light of the seriousness of liability risks we encountered in the Custody Division, we recommended in our **Sixth Semiannual Report** that the LASD create a risk management unit devoted specifically to custody liability issues. We further recommended that the planning and research unit in the Custody Division be phased out and appropriate

personnel transferred to the new risk management unit. The recommendations are being implemented.

A Custody Support Services Risk Management Unit, located at Twin Towers, has been formed under the leadership of Commander Carole Freeman, and the former planning and research unit is now incorporated into this new unit. There are three teams within the unit: the standards and compliance team; the risk analysis team; and the data and analysis team. Given increased liability risks in Court Services, as described in Chapter 3, the charter of the unit should be expanded to include the buses and court lockups.

The standards and compliance team will be responsible principally for Title 15 compliance auditing: ascertaining whether the jails are functioning at minimum federal constitutional and statutory standards as fixed by Congress. The data team will be responsible for analysis of newly-collected information about risk. The risk team will principally be responsible for analysis of factual patterns that give rise to potential liability. It's about time. A recently-settled case, described below, illustrates the importance of this team's function.

Each time we do our investigation, we run across a handful of very disturbing cases; and we debate among ourselves whether to describe them in the report. We know they will garner attention, be cited by members of the Board of Supervisors, and be picked up by the press. The telling of one horrible story leaves a more profound and persistent impression than a hundred stories of bravery, compassion, and courage. We know that for each mistreated inmate or suspect, there are far more who have been dealt with professionally. Nonetheless, to recount a tragedy is a reminder that until the intolerable is made impossible, the system remains flawed.

On April 19, 1994, a man arrested by the Pasadena Police on accusations of rape was transferred to Men's Central Jail where he attempted suicide by wrapping sheets from his bed around his neck. As a result of the attempt, he was placed on suicide watch and lashed to a bed: All four of his arms and legs were placed in leather restraints, a practice known as "four point restraints."

Somewhat later, although the man was still lashed to the bed, one of his arms had been freed. He used his free hand to place bed sheets around his neck and attempted suicide. As a result of the second suicide attempt, he was put on medication and placed in a cell monitored by a television camera in the jail's forensic-in-patient unit, a psychiatric facility within the jail staffed by physicians and nurses.

On May 18, he was taken off suicide watch and the restraints were removed. He was transferred to a one-person jail cell where, three hours later, he made a third suicide attempt by wrapping a bed sheet around his neck. He was then transferred to the jail ward at County/USC Medical Center, where he stayed until May 20, when he was returned to the jail. He was again put in restraints. The next day, May 21, the restraints were discontinued. He was to remain under close observation by the medical and jail staff and be monitored by a television camera in the cell.

On May 26, the psychiatrist noted that the man was severely suicidal and was requesting more medication. The psychiatrist ordered the man's immediate transfer to the forensic-in-patient ward. He was nonetheless not transferred, assertedly because of lack of bed space, and at 6:04 pm he was found hanging by his bed sheets. He was pronounced dead at 6:25. It was later discovered that the television monitor in his cell was inoperable. The County has agreed to settle this case for a substantial sum.

This is precisely the kind of case that calls out for a minute-by-minute analysis of what went wrong and how. It calls out for close scrutiny of the performance of the Department of Mental Health and LASD personnel at the jail. It is hard to understand how a man who three times has attempted suicide by hanging himself with bed sheets is time and again left in cells with bed sheets. The Justice Department recently investigated the Los Angeles County jails and, according to newspaper reports, received from its experts a scathing denunciation of the quality of care provided by the Department of Mental Health and the LASD.

Immediate improvement must be ordered regarding the inadequate staffing and service

provided the jails by the County's Department of Mental Health Services. As a first step, Mental Health Services should immediately provide the jails with:

- sufficient qualified mental health staff specifically trained and willing to work in a custody setting to prevent deterioration of newly-incarcerated mentally disturbed inmates and to quickly identify, evaluate, and treat mental illness arising during detention
- 24 hour, 7 day competent staffing at each critical facility and 24 hour availability of a psychiatrist
- timely response to psychiatric referrals from the Sheriff's custody and medical staff
- proper management of drug prescription and delivery, including the use of psychotropic drugs only as part of an overall therapeutic program
- constant advice and an opinion to the jail staff on the mental status of inmates confined to safety or suicide watch or disciplinary cells or placed restraints.

We will report next time on whether these recommendations have been considered. We will also investigate methods for holding both the LASD and Mental Health Services more accountable.

Conclusion

In our **First Semiannual Report** in October 1993, we stated that we were guardedly optimistic; that the Department had made significant progress on the road to implementation of many of the Kolts recommendations on the patrol side. In each subsequent report, though, we expressed deepening reservations and worries about the absence of progress on the custody side.

The situation has changed in the last review period, but despite the progress made in the last six months, it is too early even for guarded optimism. All we can say is that there finally is movement, and some individuals in whom we have trust and confidence are applying themselves to the problems. The jails will continue to receive our intense scrutiny.

2. Force Investigation & Discipline

A driving force behind the Kolts Report was the public perception that the LASD "protected its own" when it came to complaints of excessive force. To test that perception, we reviewed approximately 1000 investigative files and found that during the two and one-half year period preceding the Kolts Report, the LASD sustained only 9.3% of all force allegations. Despite sustaining 27% of force allegations when they were made by Department members, the LASD sustained only 6% of those made by citizens. The LASD claimed that citizens had an incentive to over-report the use of force. Police watch groups thought LASD officers had an incentive to underreport it. We looked beyond the numbers to the files themselves seeking an answer to this disparity.

Most force-related allegations were investigated by the accused officer's supervisor at the unit level rather than by the Internal Affairs Bureau, or IAB. Unit-level investigations were distinctly inferior, marked by incomplete evidence-collecting, scanty documentation, and a palpable bias favoring the accused officer. Those few officers with founded excessive force cases often received light discipline despite having violated policy and having caused serious or fatal injuries.

Over the past five years, we have continued to monitor the statistics and to review the investigative files. In our **Fourth Semiannual Report** (June, 1995), we observed that the LASD had by then sustained nearly twice as many force-related allegations (from 9.8% to 18.4%). Sustained allegations by citizens increased by 63% (from 6.7% to 9.3%). From our review of the files, it appeared that: (1) more complaints were fully and fairly investigated; (2) fewer incidents involved multiple uses of force or the use of impact weapons; and (3) more incidents involved credible admissions by citizens that they had struck the first blow or had attempted to escape.

But there were also problems. First, there were too many cases of physical force in response to verbal taunts or challenges. Second, troublesome cases rose from the jails even as such cases in patrol had begun to abate. Third, there were too many cases in which the "decision to exonerate the officer at times "simply defie[d] explanation."

1

Dispositions of Investigations for Force-Related Misconduct,[1] January 1, 1995 - December 31, 1996

Excluding Pending Cases

	Citizen Complaints		LASD Complaints		Outside Agency Complaints	Total	
Total Officers Investigated	44		220		1	265	
Allegations Founded	9	20.4%	60	27.3%	0	69	26.0%
Allegations Unresolved[2]	23	52.3%	56	25.5%	1	80	30.2%
Allegations Unfounded[3]	6	13.6%	68	30.9%	0	74	27.9%
File Closed / Other[4]	6	13.6%	36	16.4%	0	42	15.8%

[1] "Force-Related Misconduct" comprises violations of the following LASD policies: (1) Use of Force; (2) Assault Under Color of Authority; (3) Use of Force / Canine; (4) Unnecessary Force; (5) Unreasonable Force; (6) Failure to Report Force; (7) Use of Firearms; and (8) Use of Firearms / Shots Fired.

[2] Officers who have no Founded force allegations and at least one Unresolved force allegation.

[3] Officers who have no Founded or Unresolved force-related allegations. Note: Some officers investigated for one incident may have some allegations deemed Unfounded and others Unsubstantiated.

[4] "Other" refers to other changes in circumstances (e.g., inability to identify the subject officer, officer deaths, retirements and resignations before final imposition of discipline).

We have not found any misuses of the "Closed" designation previously identified in the Kolts Report.

2

Changes in Disposition Rates from Kolts Report* through 1996

	Citizen	LASD	Outside Agency	Total
Founded				
Kolts Report	6.0%	27.0%	0%	9.3%
1/1/93 - 5/1/95	9.8%	26.5%	0%	18.4%
1/1/95 - 12/31/96	20.4%	27.3%	0%	26.0%
Unresolved				
Kolts Report	35.0%	45.0%	0%	28.6%
1/1/93 - 5/1/95	44.0%	27.0%	100%	35.6%
1/1/95 - 12/31/96	52.3%	25.5%	0%	30.2%
Unfounded				
Kolts Report	46.0%	26.0%	100%	33.6%
1/1/93 - 5/1/95	39.1%	37.0%	0%	38.0%
1/1/95 - 12/31/96	13.6%	30.9%	0%	27.9%
Closed / Other				
Kolts Report	14.0%	2.0%	0%	2.4%
1/1/93 - 5/1/95	7.1%	10.0%	0%	8.0%
1/1/95 - 12/31/96	13.6%	16.4%	0%	15.8%

* Kolts Report covers January 1, 1990 through April 9, 1992.

(**Fourth Semiannual Report at 21**). Finally, discipline continued to be too lax for founded instances of excessive force.

During the past two years, progress continues to be made. As Table One demonstrates, in 1995-96, the Department sustained 26% percent of force-related allegations — nearly a 41% increase from 1993-94 and a nearly 300% increase from before **Kolts.** Citizen-generated allegations were sustained 20.4% of the time — an increase of roughly 100% from 1993-94, and more than 300% from before **Kolts.** The percentage of Department-generated force allegations that were sustained remained nearly the same. See Table Two.

These numbers should be read with of caution, however, because the LASD's data is confusing with respect to force allegations generated by citizen complaints. For reasons that are not entirely clear, we observed that the reported number of citizen-generated allegations had decreased over the past two years. From January 1993 to May 1995, 184 force-related allegations were reported to have been made by citizens. Over the last two years, January 1995 - December 1996, the number of allegations dropped to 44 — a decrease of roughly 75%.

LASD personnel confirmed that these numbers are likely to be incorrect and thought it possible that certain units made erroneous reports to IAB, as discussed further in the sidebar.

Adjudication of Force Investigations

Deciding whether an officer's use of force is unnecessary or excessive is not a simple question. Many cases turn on whether to believe the citizen or the officer. Both may have an incentive to be self-serving: the citizen may be trying to avoid criminal liability

Tracking Investigations of Force

The statistics problems noted in this chapter appear to stem from units' failure to provide IAB with correctly classified information regarding the source of investigations. If the LASD first learns of alleged misconduct from a citizen, any ensuing administrative investigation is classified as "citizen-generated." If the original source of information is an LASD officer, the investigation is classified as "internally-generated."

Since late 1991, IAB made this classification according to the information it received from the units which asked IAB to open a new administrative investigation file. Although there are no complete written guidelines on the subject, the practice has been as follows: When citizens have complained at stations, the on-duty watch commanders (typically lieutenants) have recorded the complaint in a Service Comment Report, or SCR, and conducted a preliminary inquiry into the matter. In those cases where further scrutiny was warranted, the unit captain would ask his watch commander to contact IAB and request the opening of an administrative investigation. The watch commander was then required to notify IAB via electronic e-mail that a citizen-generated investigation had been requested and was required to provide the name and address of the concerned citizen. If, on the other hand, an LASD officer first alleged misconduct, the watch commander was required to notify IAB

alleged misconduct, the watch commander was required to notify IAB via e-mail that the complainant was an LASD officer (typically the captain of the concerned unit).

The LASD currently lacks procedures to ensure that this information is reported and recorded accurately. IAB's longstanding practice has been to verify the data only where IAB itself is conducting the investigation. However, for those investigations conducted at the unit level, IAB has simply relied upon the concerned unit to provide accurate information in the first instance.

Perhaps because the source of complaint giving rise to unit level investigations is not audited, stations have not uniformly providing IAB with an accurate picture of the source of investigations. One knowledgeable Department member observed, "I think some lieutenants are simply putting their captain's name down as the 'complainant' when there really is some civilian out there who started it all . . . This has really become a problem . . . because now the number of [citizen-generated] investigations has really fallen off over the last few years."

Because of a statutory obligation to provide the California Criminal Justice Statistics Center with an accurate count of citizen-generated investigations, the LASD should conduct an audit of the drop in reported citizen-generated complaints and, if there has been inappropriate reporting, the LASD should obviously correct it.

or is thinking about filing a lawsuit; the officer may be fearful of losing his job or a losing a lawsuit. Second, even where the facts are undisputed, decision-makers have to consider the circumstances which gave rise to the use of force. Even when use of force is captured on audio- or videotape, the whole chain of events unfolds in seconds. Although the incident on tape can be replayed in slow motion, the officer's perceptions and actions occurred in real time and in situations of real or honestly perceived danger.

Our **Fourth Semiannual Report** noted progress in the three years following the **Kolts Report,** noting fewer "Unfounded" or "Unresolved" force cases despite damning physical evidence of misconduct.

Over the last two years, we have reviewed nearly 200 investigative files to determine whether the LASD has maintained that positive trend. **Although the LASD continues to make progress in fairly adjudicating excessive force complaints, the rate of progress appears to have slowed down.** On the positive side, LASD executives somewhat more often accept the word of non-LASD personnel over that of their own officers. The LASD is noticeably more willing to listen to inmates who claim to have witnessed officers' use of force. In the past, LASD managers would routinely focus on minor inconsistencies between inmate accounts in order to deem the case "Unresolved," overlooking that truthful people nonetheless see and recall events differently. Indeed, the absence of inconsistency among witnesses is cause for suspicion. As one IAB investigator put it, "The minute the witnesses are in total synch, you start looking for a song sheet, [because] nobody whistles the same tune."

Today, there is evidence of a more realistic and even-handed

approach to force investigations. For example, in deciding to discipline a deputy for excessive force, one LASD captain wrote:

[T]he Subject [Deputy] has consistently maintained that his version of the incident is truthful and correct. However, there are four inmates who, while their overall accounts of the incident vary slightly, all agree (independently) on one area — that the Subject entered the booking cell and initiated the altercation with inmate [A], apparently in response to [inmate A's] verbal taunting of the Subject.

. . . .

Although the credibility of inmates will be challenged as naturally antagonistic toward deputy personnel, the inmates' accounts were obtained impartially and independent of one another. . . . [I]t is apparent that the version of the incident offered by the Subject is highly unrealistic.

This is the sort of sober, even-handed decision-making the public should expect from its law enforcement officials.

On the other hand, there are occasional cases where an officer is not subject to discipline despite strong evidence of misconduct. In one such case, a deputy was moving a known recalcitrant inmate from a dormitory to a discipline module because the inmate had repeatedly used profanity. Rather than asking for backup as required by policy, the deputy acted alone. A minor scuffle between the inmate and deputy led to an excessive force investigation. The investigative file contained a color photograph showing a large, red lump over the inmate's left eye. Nonetheless, the deputy denied punching the inmate or otherwise striking him.

In addition to the incriminating photograph, there was collateral evidence in the file from which credibility should have been resolved against the officer. First, the deputy had refused to accept responsibility for other, undisputed misconduct. Second, the deputy had recently been suspended for making false statements during the course of a previous

investigation. Despite this additional evidence and the photo, the Department decided nonetheless that the matter could not be resolved one way or the other.

Discipline

The LASD has continued to lag in the area of discipline. In June 1995, we reported substantial variations in the discipline imposed both between stations and within a given station itself. We also found that captains remain disinclined to impose substantial penalties for serious misconduct.

The situation remains much the same today. Although some captains have shown increased willingness to respond to serious misconduct with serious discipline, many have not. Moreover, the Department appears to lack the resolve to make the discipline stick during the grievance process. As a result, the Department often substantially reduces the level of discipline as part of a plea-bargain with the deputy, even when its has strong evidence.

We reviewed all of the available investigative files on those officers disciplined for force-related misconduct between January 1, 1995 and December 31, 1996. Table 3 sets forth the range of sanctions imposed. Roughly 67% of the officers disciplined in 1995- 96 for force-related misconduct received mild written reprimands or mild suspensions of five days or less. Table 4 shows that this trend is

3

LASD Discipline for Force-Related Misconduct

Discipline	1995-96
No Discipline	0
Counseling	0
Written Reprimand	11
1 - 5 Day Suspension	35
6 - 15 Day Suspension	16
16 - 30 Day Suspension	6
Reduction in Rank	0
Discharge / Resignation	1 (resigned)

4

Changes in LASD Discipline from Fourth Semiannual Report

Discipline	Jan 1, 1993- May 1, 1995	Jan 1, 1995- Jan 1, 1996
No Discipline	1	0
Counseling	0	0
Written Reprimand	15	11
1 - 5 Day Suspension	24	35
6 - 15 Day Suspension	8	16
16 - 30 Day Suspension	8	6
Reduction in Rank	1	0
Discharge / Resignation	6	(resigned) 1

slightly worse than during the two one-half years immediately following the **Kolts Report.** There are significantly fewer long suspensions of 15 days or more.

Although many cases involved appropriate discipline, there were several slaps on the wrist for serious misconduct.

Vulnerable Victims

- A paraplegic inmate paused briefly in his wheelchair after purchasing personal hygiene items from the Central Jail store. A deputy approached and announced that the inmate's time for purchases was up. When the inmate asked whether he could purchase a plastic bag, the deputy kicked the wheelchair without warning, causing the inmate to spill his newly-purchased items onto the floor. According to numerous inmate eyewitnesses, when the prisoner bent over to pick up his fallen goods, the deputy kicked the chair again, causing the prisoner to fall on his face and the wheelchair to fall on top of him. (The deputy asserted the inmate was solely responsible for the fall; the female store clerk, with whom the deputy had been chatting, claimed the paraplegic inmate actually "jumped out of the chair" in order to make trouble for the deputy.)

  As the inmate lay on his face screaming for help, the deputy refused to help the inmate up. He instead yelled at the inmate, "Get the fuck out of here!" When the prisoner did not move, the deputy ordered other inmates to lift the prisoner; the deputy did not remain at the scene to ensure that the paraplegic inmate received prompt assistance. The Department properly determined that the deputy's actions were "both unwarranted and inappropriate given the circumstances and the physical condition of the inmate." It nonetheless suspended the deputy for just **one day.**

- Two deputies struggled with an inmate in the upper shower area of the Men's Central Jail. During the struggle, the inmate's head struck the metal shower bar and sustained an injury to his forehead. The two officers then led the now-handcuffed inmate out of the module. As the three men walked down a corridor, one of the deputies stepped in front of

the inmate. Walking backwards, he grabbed the inmate's head, forced the inmate downward, and kneed him three times in the head. The deputies did not report the use of force. Only after the onset of an IAB investigation did they acknowledge the kneeing incident. The District Attorney's office declined to prosecute the deputy who admitted kneeing the inmate in the face despite finding that the act constituted an assault under cover of authority because "no apparent injuries were suffered." The DA so decided despite the deputy's prior record of inappropriate force. The conclusion of "no apparent injuries" is difficult to square with a color photograph in the IAB file showing the inmate's face covered with blood flowing from a large gash above his right eye.

Rather than sticking by its initial decision to discharge the deputy, who admitted conduct tantamount to a criminal assault, the LASD ultimately suspended the Deputy for 30 days.

- A deputy responded to a shopping mall in connection with a claim that two young girls had stolen merchandise from a department store. One deputy, a training officer, referred to one of the girls as a "bitch" in the presence of his trainee and department store personnel. When the other girl, a 12 year-old, responded rudely to him, he told her that he would "beat her ass" if her parents would not. He also assured the girl that he could "beat her ass" better than her parents could. He then lifted the girl, who was already handcuffed, carried her toward an office, and accidentally bumped her head on the wall. The station captain properly analyzed the case: "The [training officer's] actions in this incident undoubtedly constitute unnecessary force and demonstrates extremely poor judgment. Here, the offense was aggravated because the use was against a 12 year-old female who was handcuffed. Additionally, the evidence indicates that the [deputy's] actions caused a significant degree of embarrassment to the department. The . . . harsh treatment of two young female shoplifting suspects *caused such great concern to the security personnel of a major department store, that the deputy was asked to terminate his handling of the call and leave the store immediately.*" (Emphasis added.)

Although the captain praised the deputy for his candor in accepting responsibility, the tape of the investigating officer's interview of the deputy showed that the deputy refused to acknowledge that he had lost his temper during the episode. He also claimed that he did not consider picking up and carrying a handcuffed girl to be a use of force. Nonetheless, the deputy received only a **three-day suspension.**

Retaliation

- A deputy working at the Mens's Central Jail became involved in a fight with an inmate under mental observation. During the fracas, the inmate struck the Deputy in the face, wrapped his arms around her neck, and choked her after they both fell to the floor. After the inmate was fully restrained by other deputies, the involved Deputy gave the inmate a hard kick to the upper body. During the ensuing investigation, the deputy freely admitted that she kicked the inmate and that the kick was wholly unnecessary. Her only explanation was that she was probably still caught up in the adrenalin inflow.

  The letter imposing discipline portrayed the kick as a the result of a snap judgment in the heat of battle. In so doing, it overlooks the deputy's admission that, after the inmate was restrained, the deputy entered a nearby restroom to clean some blood from her face and gather her composure. Only after doing so did she return to the scene, approach the inmate, and kick him as he lay handcuffed on the floor. Although the Deputy committed what appears to be assault under color of authority, the LASD initially recommended that the deputy be suspended for five days. However, pursuant to a 1995 settlement agreement, the discipline was reduced to a **written reprimand.**

- Deputies pursued a car theft suspect who abandoned his vehicle and fled on foot. Assisting officers tackled the suspect and wrestled him to the ground. One deputy at the scene struck the suspect several times on the upper back with a flashlight and kicked him twice on the right side. The deputy claimed that such force was necessary to "distract" him from the other deputies. When questioned why he chose to carry his flashlight with

him in broad daylight, the deputy claimed, "You never know if you will have to go under a house or somewhere where it is dark, or if it is still light." Although the Department rejected both explanations, it suspended the deputy for only **two days.**

- Two deputies were sitting in a courtroom that was out of session. Several yards away sat three African-American men who were joking among themselves and muttering disparaging comments about police officers, including an LASD deputy killed in the line of duty. Although the courtroom was nearly empty, the deputies ordered the individuals to leave the courtroom, saying "Get the fuck out of the courtroom!" When the individuals did not comply, the deputies grabbed them and shoved them out of the courtroom, down the hallway, and out of the building. Building security officers reported that the three citizens did not resist at any point on the way out.

  A security guard watched the deputies frisk the individuals in the parking lot. The guard saw one deputy kick one suspect hard in the foot while searching him. He saw another deputy place another suspect in a chokehold. According to the three black men, one of the deputies directed racially derogatory remarks toward them. According to the deputies, one of the suspects threatened to return with a gun to shoot the deputies. The deputies eventually arrested all three men for violation of Penal Code § 69 (obstructing, resisting, or threatening an officer). The Department determined that both deputies had no reason to confront the three individuals in the first place, much less expel them from the courthouse or arrest them. Although the Department originally recommended a 10-day suspension, it subsequently reduced the suspension to a mere **two days.**

  Curiously, the Department viewed the deputies' loss of composure as a *mitigating* factor: "The suspects' remarks, whether spoken or loudly whispered, were emotionally charged remarks which triggered an emotional response in Deputy [A]. The suspects knowingly taunted the deputies and kept their contemptuous statements low in order to cause the deputies to react. [The LASD deputy to whom the suspects referred had been killed] slightly one more than one month prior to this incident, and although Deputy [A]

is completely culpable for the actions in the two charges, his judgment was impacted emotionally by the suspects callous and obviously intentional remarks."

At one point, the Department seemed almost to apologize for imposing any discipline at all: "While Deputy [A] did not know Deputy [C] prior his death [sic], the fact that suspects spoke the way they did, made [Deputy A] furious, which resulted in him taking action. While what he did was inappropriate, his anger is understandable."

The above two examples reflect deeply-flawed judgment by the Department. It is inappropriate — indeed, illegal — for an officer to take revenge upon a recalcitrant inmates or a disrespectful citizens. Deputies do, of course, feel anger, and the anger may be justified. But peace officers may not inflict punishment on individuals no matter how justified or reasonable the anger. Police professionals have to learn to manage anger.

Light punishment for officers who use force to retaliate is wrong as a matter of policy. It also heightens the Department's exposure to punitive damages claims in excessive force litigation.

Refusal to Accept Responsibility

- A deputy lifted an arrestee by grabbing the back of his shirt collar with one hand and then grasping the suspect between the legs. He then lifted the suspect up and laid him down on the booking counter. Eventually the deputy lowered the suspect to the floor where he was handcuffed. The deputy never reported the force, even though it was witnessed by a member of the California Highway Patrol. During the course of an investigation the deputy refused to acknowledge his duty to report such force. The investigator noted that the deputy "believed the contact with [the citizen] was that of 'attitude adjustment' and that [the deputy] only 'manhandled him.'" The deputy was suspended for only five days.

- During a struggle with a suspect, a patrol deputy accidentally struck the suspect in the head with his flashlight and heard the suspect complain of pain. Nonetheless, the deputy failed to report the blow promptly to his supervisor. In a memorandum recommending

discipline, the Department observed, "During the investigation, [Deputy A] steadily and steadfastly refused to acknowledge the fact that his action constituted force. [He] also refused to recognize because of his delay reporting his use to the field sergeant, Sgt. [B] was unable to conduct the thorough and timely investigation . . . an investigation that may have totally exonerated him of misconduct. Also, during this investigation, while it was obvious that there was never any intent to do any harm to [the complainant], [Deputy A] was less than totally candid in his attempt to paint his actions with the brush of jargon and trite expressions, i.e., 'departmentally-approved control hold,' [and] 'based upon my training and experience.'" The Deputy received a **two-day suspension,** with one day held in abeyance for one year.

Abuse of Power

- An off-duty deputy entered a fast food restaurant with an automatic handgun not approved by the Department concealed in his waistband. While standing in line, the deputy apparently thought he saw one of the grill cooks eating while preparing food. He then loudly demanded that the cook wash his hands and asked the manager to give him the cook's last name. When the manager replied that under company policy, he could not release the employee's name, the deputy identified himself as a deputy sheriff. The deputy then loudly threatened to handcuff the doors to the restaurant shut until he obtained satisfaction. When the manager still would not comply, the deputy threatened to handcuff the cook and drive him to the LASD station in the deputy's private car. When the manager *still* would not comply, the exasperated deputy asked, "Hey, are we going to have to do this the hard way or the easy way?" When the manager still refused to release the information, the deputy leaped over the counter and headed for the timecard machine, evidently to ascertain the cook's name for himself. As the deputy leaped over the counter, the automatic handgun slipped from his waistband and fell to the floor. Seeing this, a customer in line rushed outside and attempted to call 911. The deputy picked up his handgun, placed it in his waistband, and walked towards the rear of kitchen area,

evidently still looking for the telltale timecard. The deputy eventually left through the rear door without making an arrest. The customers and employees described the deputy as "totally out of control."

The LASD noted that the deputy exposed civilians to a risk of serious injury for an alleged violation of health codes which deputies do not normally enforce, and suspended him for 30 days. Such discipline may have been adequate had this been the deputy's first serious offense. Unfortunately, it was not, and the Department was well aware of it. Less than four years earlier, the deputy had been suspended for 30 days for another "extremely embarrassing and potentially dangerous" off-duty incident in which the deputy displayed "a total lack of judgment."

- An off-duty deputy driving to work noticed a Latino walking by while staring at the deputy. The deputy pulled over, and a testy verbal exchange followed. At some point the deputy pointed his gun at the civilian — who happened to be an off-duty guard from a nearby federal prison — and asked him "What the fuck he was looking at." When the deputy recognized the uniform of a federal prison guard, he exclaimed, "Fuck you guys," and returned to his truck. The officer was not prosecuted for his conduct with the gun because the prison guard failed to show up at his appointments with the District Attorney's office. The LASD merely suspended the deputy **for five days.**

Treatment of Inmates

Many of the foregoing examples arise from deputy's excessive use of force in the jails. In the **Fourth Semiannual Report,** we noted that the problem of discipline appeared to be particularly marked in the jails. We found "many investigations wherein deputies respond to talkative or uncooperative inmates with a slap to the face or a shove to the wall." This trend has continued. We found many cases in which jail deputies either over-reacted to slight provocations or started fights over imagined jailhouse "violations," such as speaking in the chow hall.

Lenient Treatment of LASD Managers

It is not often that officers at or above the rank of lieutenant are required to use force, let alone become the subject of an excessive force investigation. In the rare instances in which higher-ranking officials use excessive force, they should receive no less than the same discipline a deputy might receive under the circumstances.

In this light, we were disturbed by a 1995 decision involving a patrol lieutenant who used unreasonable force. While serving as a watch commander, the lieutenant rolled out to the scene where deputies had reportedly used force on several suspects. The lieutenant focused his attentions on a man sitting on a curb who loudly complained that his detention was a violation of his constitutional rights.

According to the deputies at the scene, the lieutenant "went crazy" and began to argue with citizen. He then walked over to the citizen, grabbed him by collar, and lifted him off the ground. After offering the citizen more angry words, the lieutenant "threw" the citizen down, having "lost control of himself." Deputies further reported that although the lieutenant's actions were "the talk of the station," the lieutenant did not document his own use of force, even as deputies were required to document theirs.

When an investigator later questioned the lieutenant about his actions, the lieutenant launched into an angry "tirade" and demanded to know why his actions were under scrutiny. Worse, the lieutenant initially denied using any force at all. Later, the lieutenant admitted to the force and to instructing a deputy not to mention it in the deputy's report.

Although the LASD found the lieutenant had improperly used force and subsequently tried to cover it up, it gave the lieutenant a mere written reprimand. One deputy had lamented during the course of the investigation that if deputies had acted as the lieutenant had, they would no doubt have been suspended. The deputy was probably right. The clear implication from this file is that the lieutenant was given extra latitude because of his higher rank. A demotion would have been in order.

Department Reforms

The LASD recognized in the summer of 1996 that although Discipline Guidelines had been in place for several years, substantial disparities in discipline persisted, particularly in cases involving traffic violations.

An internal LASD poll showed that captains were ignoring the Discipline Guidelines on the grounds that they were unworkable. The LASD accordingly revised the Discipline Guidelines in the summer of 1996 and strengthened the role of PSTD in the discipline process. Other changes were:

- The mechanistic use of "aggravating" and "mitigating" standards was dropped because they had provided executives with an "escape hatch" from the recommended discipline;
- The range for discipline was substantially narrowed;
- The decision for imposing a particular level of discipline must now be accompanied by a detailed explanation by the concerned executive;
- The discipline for sexual harassment was increased;
- Managers must now give special attention to misconduct that occurs off-duty;
- IAB must now review all recommended discipline;
- IAB must now review the disposition (e.g., Founded, Unfounded, etc.) in all cases for which it conducted the underlying investigation; and
- PSTD has been empowered to require the involved captain to:
  (1) reconsider the recommended discipline; or (2) better explain the reasons underlying the recommendation.

These changes are sound and well-considered; the proof, however, will be in the LASD's willingness to live by the standards it articulates. **The LASD must monitor the quality of its investigations and stiffen the resolve of its executives to mete out appropriate discipline.**

The 70% drop over the last five years in the number of pending LASD police misconduct lawsuits, from 811 active cases on January 1, 1992 to 243 on January 1, 1997, has lowered the potential bill to Los Angeles County taxpayers by an estimated $30 million.

The drop in caseload and potential exposure proves the power of the **Kolts** recommendations rapidly to shrink police misconduct litigation when combined with vigorous effort on the Department's part to implement them. Even taking into account that potential exposure is calculated on relatively pessimistic assumptions, and even though the estimated outside exposure on the current LASD caseload is by no means a small amount of money, the accomplishments of the last five years are substantial. In each year since **Kolts,** the number of active police misconduct cases has gone down: by 7% in 1993 over 1992; by 30% in 1994; by 26% in 1995; and by 23% in 1996.

Even so, not all parts of the Department have contributed proportionately to the decline. Efforts to manage liability risk varies from division to division within the Department. Overall, liability management on the patrol side (with the exception of Region II) is more firmly entrenched than in the custody and court services divisions of the Sheriff's operations, which continue to lag behind.

Litigation

1. Newly-Filed Force Cases

1

LASD Litigation Activity, Fiscal Years 1992-96

	FY 92-93	FY 93-94	FY 94-95	FY 95-96	6/96 - 12/96
New Force Related Suits Served	88	55	79	83	31
Total Docket of Excessive Force Suits	381	222	190	132	123
Lawsuits Terminated					
Lawsuits Dismissed	79	90	60	42	22
Verdicts Won	22	9	10	6	2
Verdicts Against LASD	3	7	3	5	0
Settlements	70	81	103	82	19

The trends for the first half of fiscal year 1996-97 demonstrate that overall progress continues to be made in reducing the caseload of lawsuits claiming excessive force. A total of 31 new cases with allegations of excessive force was received between July 1 and December 31, 1996. If the same number of new cases is received between January and June, it will mean that 1997 will continue the general downward trend in number of new force cases per year. As of December 31, 1996, of the 243 police misconduct cases, there was a docket of 123 cases in which excessive force was the main allegation; as of the prior June 30, there had been 132.

2. Settlements

We reviewed the files of all force cases that settled for sums in excess of $20,000. The largest number of cases arose from the Lennox Station. Those five force cases cost the taxpayers of Los Angeles County nearly $500,000 in settlements in the first half of fiscal year 1996-97. Century Station had the next highest bill to the taxpayers. The three Century cases settled for a total of $115,000. Three dog bite cases from the Special Enforcement Bureau's Canine unit, arising from incidents before the Canine Unit overhauled its procedures in early 1996, cost the taxpayers $85,000 in settlements, with another $100,000 settlement for a pre-1996 case pending. Together, Lennox, Century, and the Canine unit cost the County about $700,000 in force cases settled in the last half of 1996. All the other stations and bureaus combined had a total of approximately $300,000 in settled force cases, including a settlement of one East LA station shooting for approximately $162,000.

3. Century and Lennox Stations

As noted above, two stations in Region II — Century and Lennox — together accounted for 60% of the entire bill for settlements of force cases. It might be argued that the particular six-month period under scrutiny is atypical, but the argument would be incorrect: The Lennox Station and the Century Station — which resulted from the

merger of the Lynwood and Firestone stations — have been historically problematical. It might also be argued that Century and Lennox are in particularly dangerous, high crime areas. But similar stations in equally tough neighborhoods have a much better record on controlling shootings, force, and litigation.

As of early April 1997, 41 of the 70 lawsuits arising from Region II involved claims of police misconduct. Of the 41, 17 involved the Century Station and 11 involved Lennox. The two stations, then, accounted for nearly 70% of the police misconduct litigation in the Region.

Century and Lennox also accounted for a disproportionate share of significant force incidents (SFI) and roll-outs in 1995 and 1996. Region II in general had the highest number of SFIs and roll-outs in 1995 and 1996. Table Two compares Region II to the other two regions.

2

Region I		Region II		Region III	
1995 SFIs	116	1995 SFIs	143	1995 SFIs	131
1995 Rollouts	22	1995 Rollouts	46	1995 Rollouts	44
1996 SFIs	106	1996 SFIs	138	1996 SFIs	114
1996 Rollouts	28	1996 Rollouts	47	1996 Rollouts	26

Within Region II, Lennox and Century combined accounted for 58% of the Region's 143 significant force incidents in 1995 and 75% of the 1996 SFIs. In no other region, did any two stations account for as large a percentage of the Region's SFI notifications in either year. Century Station reported 57 force incidents in 1996, up from 36 in 1995. In 1995, there were 18 shootings reported; the same number was reported for 1996.

Thus, for 1995 and 1996, Century Station had 93 significant force incidents and 36 shootings. Lennox had 95 SFIs and 12 shootings. As regards significant force, both Lennox and Century were far ahead of the next highest station, which had a third fewer SFIs than either Lennox or Century. Century, with 36 shootings, had triple the rate of Lennox's, 12 shootings. The next highest station was one with 11 shootings.

The first quarter of 1997 shows similar trends. Of the 17 significant force incidents in Region II, Lennox and Century have 6 each, or more than 70% of the SFIs. Century

Station accounts for 6 of the 9 shootings in Region II so far this year; Lennox accounts for the other three. It also appears that Century is experiencing a sharp rise in citizen's complaints. This may be a result of personnel in Region II having been permitted in the recent past to flout the rules for reporting each citizen complaint received, and getting caught by persons outside of Region II. Whoever (if anyone) gave personnel in Region II a green light to not report citizen's complaints ought to be disciplined.

Century and Lennox have been problem stations at least since the Kolts Report. The buck stops with the Chiefs commanding Region II over the years and the captains in charge of Lennox and Century. We recommend that they be held strictly to account. We take note that Lennox Station has its first new captain in many years, newly-promoted Captain Rudy Jefferson. He has a fine reputation and we hope that he will turn the situation at Lennox around. We will watch what happens over the next six months at Lennox and Century with particular interest.

4. Other Worrisome Trends

Our analysis of recently-filed cases and other documents bearing on liability risk points to other possible trends that may require urgent attention. We note that these areas are ones which have already come to the attention of the Civil Litigation Unit. They are: (a) the increasingly worrisome performance of the Court Services Division, and (b) the frequency of out-of-policy pursuits across the Department generally.

a. Court Services

A review of current claims and litigation makes clear that the Court Services Division of the LASD is facing increasing risks from problems associated with the Division's management of court lockups and transportation buses. There are increasing numbers of foul-ups when inmates who should be segregated from each other are placed in the same court lockup or next to each other on a bus.

In one lawsuit we reviewed, an individual alleged that he was identified with a special red wristband that meant that he was to be in protective custody and specifically kept

away from other inmates because he was a known “jailhouse snitch.” He claimed that despite his protest that he should be kept away from others, he was put in a court holding cell with other inmates and severely beaten. In response, personnel from court services denied the man was beaten, but asserted in any event that it was the policy at the lockup to specifically ask inmates in protective custody if they minded being put in a cell with general population inmates.

Putting aside the issues of whom to believe, the fact remains that court services personnel in their own defense said it was their policy to give the inmate in protective custody the choice whether to be put in a holding cell with others. Clearly, from the perspective of liability management — to say nothing of common sense — the inmate should never have been asked in the first place, and under no circumstances should he have been put in a holding cell with others. Nor is it any excuse that there are too few holding cells at a particular lockup or there was no other place easily to put him.

In a similar case, a female inmate was placed in a holding cell at a courthouse awaiting a scheduled appearance and attacked by another inmate for whom a special handling card had been filled out stating that she was mentally disturbed and was not suitable for general population housing. The mentally disturbed inmate was dressed in an LASD-issued orange jumpsuit, used by the LASD for inmates with mental problems; nonetheless, she apparently was placed in a general population courthouse lockup.

There are also increasing numbers of cases raising questions of training and procedure by court services personnel with regard to searches: We reviewed cases where inmates were found on a bus or in a court lockup with a metal shank or other weapon. The question naturally arises why the individual was not thoroughly searched before and after getting on the bus and again before and after being placed in the lockup.

Other claims or cases arose where female inmates were held in proximity to males on court lockups or on the buses, or where members of one gang were placed in holding cells with enemy gangs or where one race or ethnic group was put in with another in

circumstances where racial or ethnic friction was predictable. In one such case, three or four Black inmates stated that they protested being put at the back of a bus with a large group of Hispanic gang members. The protests of the African-American inmates was assertedly ignored, and they were pummeled when the Hispanic inmates slipped out of their handcuffs. We strongly recommend a thorough re-examination of the procedures employed by Court Services to provide adequate levels of protection to inmates.

b. Pursuits

The LASD is currently experiencing problems with the application of its new pursuit policies. There is a high failure rate by watch commanders to submit required paperwork on pursuits, leading to a possible undercount of the number of pursuits that are taking place. Moreover, a high percentage of the pursuits that are reported are ultimately found to be out of policy, and watch commanders and deputies are failing to cancel substantial numbers of out of policy pursuits after they have been initiated. Similarly, pursuits have been allowed to continue for longer than is prudent or at speeds that are faster than is reasonable, and in some cases the reasons given for commencing the pursuit were either insufficiently developed or flimsy (i.e., the pursued vehicle is "possibly" wanted for some felony.)

We recommend examining whether training in the new pursuit policies has been adequate, and we further recommend special auditing of pursuit record-keeping and compliance with new pursuit standards.

Risk Management

The work performed by the Risk Management Bureau and its constituent units has consistently improved, and the Civil Litigation Unit under the direction of Lt. Tom Laing has contributed in particular to more effective and improved monitoring of litigation and high risk incidents that present a potential for liability. The unit now processes all civil claims. It maintains a computer database for litigation and claim tracking. It is conducting better trend analysis.

In recent years, the Unit has become appropriately aggressive with respect to the lawyers and law firms working on lawsuits involving the LASD. The Unit has intervened at times with County Counsel to make certain that litigation has been directed to the most competent and experienced counsel. It has reduced the number of law firms handling auto liability lawsuits from 27 to six, and reduced the number of firms handling medical malpractice litigation from 27 to four.

In 1995, again in response to our recommendations, the Unit initiated monthly meetings with County Counsel and contract attorneys to review all active lawsuits, to push for early settlement where appropriate on both cost/benefit and policies grounds, and to de-brief the attorneys on risk issues and lessons to be learned from litigation. In 1996, the Unit began to monitor trials on a more consistent basis and greatly increased the flow of accurate and comprehensive information to unit commanders and divisional staff.

The Civil Litigation Unit does, however, need a lawyer on staff, and we strongly recommend that one be assigned from County Counsel or hired directly. The Department has aggressively sought to better manage its own litigation docket by paying more timely attention to how best to defend itself.

Management of the Department's litigation docket is not a simple matter. As of early March 1997, there were 389 total lawsuits pending against the Department. Besides the 243 police misconduct cases, there were more than 80 traffic-related lawsuits and a smattering of general negligence, medical malpractice, and miscellaneous other cases. A caseload of that dimension demands the regular input of a lawyer for purposes of management, supervision of outside counsel, and review of bills.

It is no answer to the foregoing to say that County Counsel already performs those services. We appreciate that County Counsel has the overall responsibility for the management of litigation involving the County and its departments. We do not suggest that the LASD usurp County Counsel's powers. Nor do we level criticism at County Counsel by suggesting that the LASD needs more lawyers in-house.

In direct response to the Board of Supervisors' directive to implement the **Kolts** recommendations, the LASD has been attempting to hold itself and its counsel accountable for litigation costs, attorneys' fees, judgments, and settlements. This proactive and aggressive approach should be welcomed by the County as a whole and by County Counsel in particular and thus supported by the willing assignment of more lawyers to the LASD. It should redound to the credit of both of County Counsel and the Department if by virtue of cooperation and flexibility, the end result is better management of litigation.

In our **Fifth Semiannual Report,** we criticized the inadequate analysis of litigation for risk management and liability avoidance purposes, particularly custody-related litigation. By contrast, in the course of our investigation for this report, we came across several examples of useful analysis, and the quality of individual talent within the Unit has improved. Moreover, the Civil Litigation Unit is becoming curious about wider trends and is performing broader and more interesting analyses, and the staff performing the work seemed genuinely interested in the subject matter. Recently, for example, the Unit was studying why Field Operations Region II has twice the number of traffic accidents than the other two field operations divisions combined.

In October 1996, the Risk Management Bureau sponsored a Department-wide Risk Management Conference to assist Department executives in the identification of source areas of litigation and risk trends. Each unit within the Department was required to identify and organize risk-related information by importance and seriousness. The Conference focused on the policy, training, and procedural issues raised by the major areas of risk. We attended the Conference, and the high level of its work product deserves commendation.

Similarly, the Risk Management Bureau has done a good job in collecting data and evaluating the performance of units toward fulfillment of risk management plans and goals. The Bureau as a whole, and the Civil Litigation Unit in particular, is performing

useful and somewhat more sophisticated analytical and practical work.

The next step is to introduce more rigor in the process. At this time, individual units have too much flexibility to identify their own risk areas and to set their own goals for reductions. Inevitably, this self-assessment process runs the risk of manipulation by individual units in order to present impressive gains. It also means that some units or divisions are failing to identify and attack their biggest areas of weakness.

Now that the Risk Management Bureau is off the ground and has a couple years of experience under its belt, it should establish baseline statistics for all units. Moreover, it should act boldly to impose goals or solutions on units based upon Risk Management's perception of vulnerability.

When such patterns appear, the Risk Management Bureau should have the ability through the Chief of the Professional Standards and Training Division and the Assistant Sheriff to bypass the bureaucracy and immediately impose a quick solution, conduct audits, or order additional training. The Risk Management Bureau and the Civil Litigation Unit, among other units in the Bureau, are functioning with greater confidence and acumen. We therefore encourage boldness on their part when they see trouble brewing, and we encourage the Department quickly to heed their warnings.

A recent $750,000 federal court jury verdict against the Department from an off-duty shooting by an intoxicated deputy during a bar fight prompted us to assess whether the LASD's policies regarding off-duty activities need revision, particularly policies permitting officers to carry weapons off-duty in clearly inappropriate circumstances, such as when they are drinking. To that end, we analyzed all 28 incidents involving off-duty officers to which the Department's Internal Affairs roll-out team responded during a three-year span — mid-1993 through mid-1996. We conclude that the LASD's policies, as written and as applied, are unnecessarily weak.

Six of the 28 off-duty incidents involved officers who had been drinking, and three of those six arose from bar fights. In the fourth such incident, an intoxicated off-duty officer unholstered his gun and apparently used it to strike a suspect on the side of the head. In the fifth and sixth incidents, the intoxicated off-duty officers wound up shooting themselves in the hand and the foot respectively.

The recent verdict involved a bar fight between a civilian and an off-duty officer. According to a newspaper report, the civilian, apparently not knowing that he was confronting a peace officer, challenged the off-duty deputy to a fight. On his way out of the bar to fight, the off-duty officer took his gun from his boot and put it behind his belt, according to plaintiff's counsel. The shooting occurred when the two men stepped outside. The off-duty officer killed the civilian with a single gunshot wound to the chest. The off-duty officer claimed the gun went off accidentally; the jury apparently believed otherwise.

Two hours after the events in question, the intoxicated deputy was tested and had a blood-alcohol level after four or five drinks that registered 0.21, more than twice the legal limit for driving; the man shot by the deputy had a blood alcohol level of 0.18 and had a trace of cocaine in his bloodstream, according to a newspaper report. No discipline had been imposed on the deputy prior to the jury verdict.

As plainly demonstrated by this case, **the LASD's off-duty policy needs**

tightening, especially at the perilous intersection of weapons and alcohol: An off-duty officer should be required at minimum to lock the gun in the trunk of the car before clouding his judgment with alcohol.

An intoxicated man is an intoxicated man, peace officer or not. He should have no greater privilege to carry or use a concealed weapon when intoxicated than any other person: his status as a drinker trumps his status as a peace officer. An officer who has too much to drink and then shoots, in our view, has waived or forfeited any right to hide behind his badge and claim he was acting as a peace officer. He was acting as an intoxicated person, not a peace officer, and he should be dealt with as such.

The intoxicated officer is not the only case where the Department fails adequately to deal with off-duty conduct. There are other cases in which the application of better common sense by off-duty officers and stricter and more intelligent enforcement of existing LASD off-duty policy might well have prevented serious injury.

In several instances, off-duty officers became involved in confrontations or fights that they should have avoided altogether. In one case, an off-duty deputy and his wife went to the movies with an off-duty reserve deputy. During the previews, the three were bothered by a man and woman sitting in front of them who were speaking loudly. The deputy asked the couple to quiet down. After receiving a negative response to this request, the off-duty deputy went to get the theater manager.

As the off-duty officer was returning with the manager, the reserve deputy, employing questionable judgment, got up and approached the woman, who continued to talk loudly. As the reserve deputy neared the woman, he assertedly saw one of her arms come up toward him. Claiming that he was attempting to block her swing, the reserve deputy hit the woman on the left side of her face with his hand. The man accompanying her then confronted the reserve deputy, and a fight ensued.

The theater employee broke up the fight and demanded all parties involved to leave the theater. Rather than simply walking away, the deputies waited outside the theater

entrance. Two minutes later, the couple with whom the reserve deputy had fought reappeared. The woman said she wanted to continue the fight. (At this point, the reserve deputy would have been wise to identify himself as a peace officer.) The reserve deputy refused to continue the fight and began to walk away, but the man accompanying the woman followed him closely. When the man got within two feet of the reserve deputy, the reserve deputy pushed him away. The male suspect then produced a knife and cut the reserve deputy.

In the meantime, the other off-duty deputy had drawn a weapon he was not certified to carry from a leg holster. The off-duty deputy apparently did not fire the weapon during the knife attack because the reserve deputy was in the line of fire. He then informed the man and the woman that he was a deputy sheriff. The man dropped the knife and, shortly thereafter, on-duty deputies arrived at the scene and took charge.

At the end of the day, the reserve officer had a four-inch laceration on the top of his head; the off-duty deputy had injured his left foot, right hand, and received scratches on the side of his face. The woman complained of pain in her eye, and the man had a broken right jaw and left ankle. If the reserve deputy had not chosen to confront the couple in the theater, it seems likely the situation would not have escalated, and if both officers had not waited around outside the theater entrance, the knifing might have been avoided. There were other similar incidents that clustered around the common element of a traffic argument or confrontation that escalated into a shooting.

We also reviewed incidents in which off-duty officers had ample opportunity to notify on-duty law enforcement authorities, but nonetheless decided to deal with the problem themselves. The conduct in question, although well-intentioned, tended to compromise the welfare of the off-duty officer and the public, thus exposing the Department to possible liability.

In one incident, an off-duty deputy and his passenger were driving in the deputy's own car when the deputy observed a felony hit and run. Without checking on the injured

pedestrian, the off-duty deputy, in his own unmarked car, began a high-speed pursuit of the suspect through residential streets. Mid-pursuit, the passenger in the deputy's car used her cellular phone to apprise the local police authorities of the situation, omitting, however, that a pedestrian had been hit by a car and was in need of immediate medical attention.

Although his passenger identified the suspect's license plate number and location to the local authorities, the deputy did not stop the chase. Ultimately, the suspect stopped his car at a major intersection due to heavy traffic. The deputy pulled up next to the suspect's car and fired a round at the suspect's right rear tire, striking the wheel. Soon thereafter, the suspect surrendered at gunpoint to the local authorities.

The LASD's basic traffic accident policies provide that the principal duty of the first responders to the scene of a traffic accident is to attend to the injured. Here, the deputy ignored the injured pedestrian and initiated an unauthorized high-speed chase in an unmarked car through a residential area. Incomprehensibly, the deputy was neither disciplined nor reprimanded for his reckless off-duty behavior, including failure to attend to the pedestrian whose injuries could have been exacerbated by the failure to call for prompt medical attention.

In another similar case, an off-duty officer drove up to his house after work and observed two suspects stealing his neighbor's truck. Rather than calling the police, he decided to give chase, fired one round with his weak hand from his moving vehicle at the suspects, and then fired yet another round with his right hand, claiming that the second round was an accidental discharge. The chase continued, more shots were fired, and the denouement only came after the deputy had exited his car and fired another five rounds or so at the suspect's truck, which came to a halt when it rammed into a lamp post in a residential neighborhood. A local resident, who happened to be an off-duty San Bernardino County sheriff's deputy, alerted local law enforcement. The judgment by the off-duty officer in question to give chase was abysmal, to say nothing of the judgment

involved in firing his weapon. In sharp contrast, the off-duty San Bernardino deputy knew exactly what to do — call the cops.

We also reviewed cases where an off-duty officer fired a weapon in circumstances where the motivation seemed to be retaliation. In one such incident, four off-duty deputies, not in uniform, were leaving a restaurant in the early morning hours when they became involved in a shouting match with three men, one of whom then hit one of the deputies with a metal bar used to lock steering wheels. The file was silent with respect to whether the officers had been drinking. The off-duty deputy who was hit with the metal bar then drew his gun and chased the man. When the deputy got within a few feet of the man, he fired one round and missed, assertedly as a result of losing his balance.

According to LASD policy, "firearms shall be regarded as defensive weapons and used only when the individual deputy is compelled to do so by existing circumstances." Here, it appeared that the off-duty deputy acted contrary to the policy. Indeed, it looked like the off-deputy, angered (not surprisingly) at being hit by the metal bar, pursued the man who hit him, and ultimately shot at him with a retaliatory motive. Surprisingly, the LASD did not believe that this case merited discipline.

Other cases underscore the general danger of having a gun available. In one such case, a reserve deputy wound up shooting his own son in the thigh following an argument. Had the deputy not had a gun on his hip, the incident would not have ended that way.

We also came across cases in which off-duty officers fired unauthorized weapons or ones for which they were not currently certified. In one incident, an officer fired an unauthorized weapon and two rounds hit the suspect. Without explanation, the officer was not reprimanded. We reviewed several other incidents in which the shooting officer failed to maintain current range qualification or was otherwise not certified with his firearm. One obvious way to minimize litigation exposure is to strictly enforce a policy that off-duty officers may only use authorized weapons for which they are currently certified.

Deputies are currently trained that a tactical assessment is necessary in order to determine whether to become actively involved in an off-duty incident. This assessment should include: (a) the officer's personal safety and the safety of his or her family; (b) the presence of cover/concealment; (c) whether the threat is immediate and genuine; (d) the officer's proficiency with his or her off-duty weapon; (e) the danger to citizens from stray rounds; (f) the number of suspects; (g) the officer's ability to detain the suspect and control the situation; and (h) the availability of support equipment, such as extra ammunition, handcuffs and radio. Each of the incidents described above would seem to violate these training policies.

Peace officers in California are exempted by state law from the general prohibition from carrying concealed weapons. California Penal Code §§ 12025; 12027. Peace officers also have statutory authority to take action whether on- or off-duty with respect to crimes committed in their presence. California Penal Code § 830.1. The combination of those two statutory provisions are used by some to argue that police agencies are powerless to forbid their officers from carrying or using their weapons off-duty even in clearly outrageous circumstances — as when they are too intoxicated to drive, much less shoot straight, or are otherwise acting irresponsibly by initiating chases or shooting their guns with their weak hand out of car windows at high speed. Even more shockingly, the LASD seems at times to put on blinders when it comes to shootings and alcohol: it is as if the presence of alcohol is ignored, and the only question asked is whether the shooting was justified.

In our view, the Department is simply weak-willed: it beggars belief that any responsible court would interpret the statutes to prevent a law enforcement agency from telling an officer that if he is drinking, the gun has to be put away. It is time that the Sheriff's Department take serious steps to deal with misuse of weapons off-duty.

5. Promotions to Sergeant

Five thousand deputies, some of whom have been with the LASD for up to 10 years — or 5 out of every 6.7 deputies currently in the LASD — are eligible for promotion but nonetheless have had no chance even to take a promotional exam since 1990. The promotion bottleneck has become an intractable morale problem and a deepening legal morass for the LASD. The last sergeants' examination was administered and scored in 1990 and 1991 (the "1990 Exam"). The bottleneck has a downward ripple effect: deputies who want to move into desirable positions are blocked by deputies who could promote to sergeant.

Disagreements between the Plaintiffs and Defendants concerning the Court's orders and the Third Amended Consent Decree (the "Consent Decree") in Bouman, et al. v. Block, et al., CV-80-1341-RMT (C.D. Cal.), have perpetuated the bottleneck in that they prohibit the Department from simply preparing and administering an examination. In 1980, the Bouman plaintiffs, a class of female deputies, successfully sued the Department for gender discrimination in its promotion policies. The Consent Decree in the lawsuit prohibits the Department from administering an examination until it is determined to be "valid" (i.e., job-related and nondiscriminatory). The Consent Decree requires the exam to be fair to everyone — not just women. It also requires the Bouman Plaintiffs and their experts (the "Plaintiffs") to agree to the "validity" of a proposed exam before it may be adjudged valid.

The Department's recent efforts to develop a new examination have met with objections from the Plaintiffs, who argue, among other things, that a written exam will discriminate against certain ethnic groups and that, consequently, the next sergeants' examination should not contain a written component. Plaintiffs also argue that, to promote greater diversity, the exam should be open to applicants from law enforcement agencies other than the Department. The Department strongly opposes both of these proposals. The impasse which has developed threatens to prevent the Department from obtaining the "validation" from the Plaintiffs which is required by the Consent Decree and the Court's orders.

The Department has hired Jeanneret & Associates ("Jeanneret"), an independent promotional testing consultant, to develop a new written sergeants' examination (the "Proposed Exam") and to assess its validity under the standards established by the Bouman Court's orders and the Consent Decree. The Proposed Exam has been completed and recently was delivered to the Department.

Last month, the Department asked the District Court to allow it to administer the Proposed Exam without going through the validation process required by the Consent Decree. It has asked the Court to rely on Jeanneret's assessment of the exam's validity. In a separate motion, the Department has asked the Court to appoint a permanent independent testing consultant to resolve any differences of opinion between Plaintiffs' testing expert and the Department's expert about the validity of any proposed exam. The Plaintiffs have opposed the first motion and are expected to oppose the second.

We believe that a valid, non-discriminatory sergeants' examination should be administered at the earliest possible date. What follows is a more detailed discussion of the impediments to the administration of the sergeants' examination and our recommendations as to how they might be overcome.

The "Validation" Process: Effects of the Bouman Litigation

In 1988, the District Court entered judgment for the Bouman Plaintiffs, finding, among other things, that the Department had used discriminatory sergeants' examinations in 1975 and 1977, which had a disparate impact on women applicants. That finding was affirmed on appeal. Bouman v. Block, 940 F.2d 1211, 1227 (9th Cir. 1991). The Court enjoined the Department from administering any future sergeants' examination not found to be fully in compliance with the requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq., the Fair Employment and Housing Act, Cal. Govt. Code § 12900, et seq., and any other equal employment opportunity or civil rights law.

With the parties' assistance, the Court developed a procedure for validating a proposed sergeants' examination that places heavy emphasis on cooperation between the parties and the voluntary resolution of disputes. Essentially, the procedure consists of discussions between promotional testing experts retained by the Plaintiffs and the Department.

Under the procedure, at least 90 days before administering a sergeants' examination, the Department must present the Plaintiffs' testing expert with the examination itself and specific and detailed information that is sufficient to allow the expert to advise Plaintiffs' counsel whether the examination is both job-related and valid, as those terms are defined in various orders of the Court. If Plaintiffs' expert finds that the examination is valid, it may be submitted to the Court for final approval.

If Plaintiffs' expert and the Department's expert disagree with respect to the validity of any portion of a proposed examination and cannot settle their differences voluntarily, the dispute must be resolved by an independent, third-party testing consultant. The parties must either stipulate to a particular independent consultant, or, if they cannot agree, submit the names and resumes of two proposed experts for the Court's selection. Once the experts, with or without the assistance of a third-party consultant, have determined that a particular examination is valid, it must be submitted to the Court for a second review. The examination may only be administered upon the final approval of the Court or its designee. Both the Court's injunction requiring any proposed examination to be validated and the mandatory validation procedure were incorporated in the Consent Decree, which was adopted on August 2, 1993 and still governs the case.

The validation process appears to contemplate that the Department's expert and plaintiffs' expert will work together in creating a sergeants' examination. The 1990 Exam was prepared in exactly that manner.

The Slow Pace of Appointments from the 1992 List

With the Court's permission, the Department created an eligibility list for the rank of sergeant based on the results of the 1990 Exam. Promotions from that list began on March 1, 1992. At that time, the Department had approximately 170 vacancies at the rank of sergeant and it committed to making 250 promotions from the list. The Department stipulated with the plaintiffs that the Department could satisfy its obligation to the Bouman Plaintiffs by appointing female sergeants in equal proportion to their percentage of the deputy population. Thus, by making sure that the promotions from the 1992 list were 14% female, the Department could defer the difficult process of preparing a new exam and having it validated.

The parties anticipated that the target of 250 promotions would be reached by the end of 1993. Due to unexpected budgetary constraints over the next several years, however, the Department did not approach the promised 250 promotions until early 1996. Around that time, it commenced negotiations with Plaintiffs about the next sergeants' exam.

Disputes with the Plaintiffs About a Proposed New Exam

Negotiations with the Plaintiffs about the possibility of developing a new exam did not progress smoothly. There were two major sticking points. First, Plaintiffs argued that the next sergeants' examination should not contain a written component because written tests have an adverse impact on African-American and Hispanic applicants. Second, they argued that the sergeants' exam should be open to members of law enforcement agencies other than the Department, in order to increase the number of eligible female and minority candidates. To support this second argument, Plaintiffs cited data that they contend demonstrates that the Department's deputy population is underrepresentative of both women and minorities, when compared with those people in either Los Angeles County or the Los Angeles Consolidated Metropolitan Statistical Area (which includes Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties)

who identified themselves as “Police and Detectives, Public Service” or “Sheriffs, Bailiffs, and Other Law Enforcement Officers” in response to the 1990 United States Census.

The Department took the position that a written test is a necessary part of the sergeants’ examination because it assures that applicants have essential job knowledge and consequently serves as a valuable screening tool, eliminating candidates with insufficient job knowledge. The Department also strongly favors a “closed” examination given only to eligible Department deputies. In the Department’s view, a closed examination is preferable because it furthers the Department’s principle of promotion from within, promotes candidates with Department training and Department-specific job knowledge, and maintains the morale of Department deputies, who see their chances for advancement diminished by open examinations. Importantly, a closed examination would also put a cap on the number of applicants for the sergeants’ position by limiting the pool to Department deputies. As noted earlier, that pool alone may exceed 5000 applicants.

In response to Plaintiffs’ statistical argument, the Department argued that the Census data does not reflect the qualified labor market for the sergeant’s position. In the Department’s view, a more appropriate comparison would be between the demographics of the Department’s deputy population and those who hold Peace Officers Standard Training Commission (“POST”) certificates in the Los Angeles Consolidated Metropolitan Statistical Area. The Department views POST data as a better basis of comparison both because Department deputies and sergeants are required to be POST certificate holders and because POST data does not include individuals at or above the rank of lieutenant in another law enforcement agency, who seem unlikely to pursue a lower rank in the Department.

Ultimately, the Department hired Jeanneret & Associates, Inc. to prepare the new examination, without input from the Plaintiffs. Jeanneret created a plan for the development of a sergeants’ examination in July 1996, and a job analysis for the sergeants’

position in late December 1996. Both of these documents were filed with the Court and served on the Plaintiffs. The Proposed Examination consists of three parts: (1) a written test of job knowledge; (2) a written test requiring the applicant to respond to hypotheticals simulating relevant work situations (the "Simulation"); and (3) an appraisal of promotability, in which an applicant's supervisors rate his or her potential to perform in the sergeants' position. On February 26, 1997, Jeanneret delivered the job knowledge portion of the sergeants' examination. The Department informs us that Jeanneret can prepare the Simulation portion of the examination within two months of being asked to do so.

In February 1997, the Department filed a motion asking the District Court to allow it to administer the job knowledge portion of the 1997 sergeants' examination without going through the validation process outlined above. Jeanneret was then reviewing the job knowledge portion for content validity, and indicated that it was likely to find the test both job-related and valid, as the Bouman judgment defined those terms. In light of its need to administer an examination and create a new list from which to promote additional sergeants, the Department asked the Court to allow the written portion of the exam to go forward on the strength of Jeanneret's preliminary findings with respect to its validity.

Plaintiffs vigorously opposed the idea of circumventing the procedures imposed by the Court and agreed to by the parties for validating a proposed sergeants' examination. They have asked the Court to require any proposed exam to be validated in accordance with the Court's judgment and the Third Amended Consent Decree. The Court has taken the motion under consideration and has not yet issued a decision.

In March, the Department filed another motion in the District Court, seeking the permanent appointment of a third-party testing expert who can resolve disputes between the parties about the validity of the proposed 1997 sergeants' examination. Plaintiffs are expected to oppose this motion, as well.

We urge the administration of a non-discriminatory and valid sergeants' examination

at the earliest possible date. The preparation of the written job knowledge component of the Proposed Exam represents an important first step toward that end. The Department should immediately ask Jeanneret to prepare the Simulation and validity reports on both components of the Proposed Exam as soon as possible.

It is up to the Court to decide whether to require compliance with the validation procedure established in the Consent Decree and its orders. But even if the Court chooses to enforce the validation procedures, the administration of the Proposed Exam can still be expedited: The parties should ask the Court to enforce the 90 day timetable contemplated by the judgment and the Consent Decree for the completion of the validation process. The Court could require validation to be completed 90 days after the Department delivers the written and Simulation components of the Proposed Exam to the Plaintiffs' expert.

We agree with the Department's decision to seek the appointment of a permanent, independent, third-party testing consultant to resolve disputes between the parties concerning the validity of the proposed exam. The cooperative process originally envisioned by the Court appears unlikely to yield agreement on a valid sergeants' examination in the near future. Validity is a topic which requires expert opinion from a neutral, third-party, tie-breaking expert in order to move beyond existing and anticipated future deadlocks. The consultant's services will be essential if the Court requires the Proposed Exam to be validated pursuant to the procedures in the Consent Decree.

We also believe that the applicant pool for the new sergeants' exam is sufficiently diverse to allow the Department to limit applicants to Department personnel only at this time. Of the approximate 6684 deputies in the Department, 14.3% are female, 10.5% are African-American, 21.2% are Latino, 2.5% are Asian, 0.7% are Filipino, and 0.1% are American Indian. These numbers are representative of the demographics of POST certificate holders in the Los Angeles Consolidated Metropolitan Statistical Area.

We recognize that the parties propose using different sets of data to determine whether the pool of applicants in a closed sergeants' examination would adequately

represent the demographics of the relevant labor market. The POST data, used by the Department's expert, is a more appropriate basis of comparison than the Census data used by Plaintiffs' expert. The Census data that Plaintiffs rely upon includes many individuals who would not be eligible to take the Department's sergeant's examination, even if it were held on an "open" basis.

Moreover, the strong arguments made by the Department for limiting the present examination to Department personnel seem at this time to outweigh any marginal increase in the diversity of the pool which might result from an open exam. In addition, the Department's resources will already be heavily burdened by administering a sergeant's examination to 5000 applicants. If the Department nonetheless fails to improve its results in recruiting women and minorities, other solutions might have to be sought in the future to improve the diversity of the candidate pool.

A written component of a substantive non-discriminatory exam is needed to assure that applicants have essential job knowledge. A written examination is not, itself, discriminatory. Accordingly, we strongly recommend that the Department press forward as quickly as possible.

This chapter begins to examine two areas of concern relating to the Department's sexual harassment and gender discrimination policies. First, whether there are any clusters of sexual harassment or gender discrimination complaints within any particular unit or division of the Sheriff's Department. Second, whether the Department's procedures for handling claims of sexual harassment and gender discrimination operate as effectively as possible.

Both the Internal Affairs Bureau ("IAB") and the Ombudsperson/Career Resources Center ("OCRC") maintain statistics relating to sexual harassment and gender discrimination allegations and investigations. Initial review of statistics maintained by IAB show that certain divisions have more founded investigations of sexual harassment per capita than others. OCRC's statistics, on the other hand, show a more even distribution of complaints of sexual harassment throughout the Department. However, there are still certain divisions with more than their share of complaints of sexual harassment and gender discrimination.

While certain idiosyncracies in the statistics make it difficult to draw conclusions from the statistics alone, these clusters of complaints and founded investigations within certain units deserves further attention. In looking at potential explanations for any clusters of complaints and founded investigations, it is important to understand how the Department's procedures for handling allegations of sexual harassment and gender discrimination operate in practice and how this may affect the statistics.

Divisions and Units Experiencing Disproportionate Numbers of Complaints of Sexual Harassment and Gender Discrimination

In this report, we have begun to analyze whether there is a concentration of sexual harassment and/or gender discrimination complaints within any particular division or unit of the Department. To determine whether there was a disproportionate number of

complaints, we compared statistics maintained by IAB and by OCRC with the number of employees in the various divisions and units. As always, we were cognizant that these statistics, when reviewed in a vacuum, are of limited usefulness. We have attempted to examine these statistics with some background information. However, because of our inability to control for all of the factors other than the level of misconduct which may affect the number of allegations within a given unit or division, no conclusion can be reached from these statistics alone that there is a systemic problem in any particular division or unit. Additional investigation should be conducted into those units and divisions with clusters of allegations and founded investigations of sexual harassment and gender discrimination.

IAB maintains statistics which track the outcome of its investigations. Thus, they list the number of founded investigations, unfounded investigations, unresolved and unsubstantiated investigations, and inactivated investigations. These statistics are gathered at the close of the IAB investigation. They do not take into account any alteration of the findings in the context of settlement of civil service proceedings. OCRC maintains statistics tracking the number of sexual harassment and gender discrimination allegations in its case load. OCRC's statistics track the types of allegations of sexual harassment which are made in each case: hostile environment, retaliation, verbal conduct, visual conduct, physical, threats/demands, and quid pro quo. They also track whether each case is resolved through IAB, a unit level investigation, or informal resolution.

Getting an accurate count of the number of complaints is hindered slightly by the manner in which IAB and OCRC gather and maintain their statistics. There are several factors which affect the statistics. These factors must be understood to avoid drawing unsubstantiated conclusions from the information.

The first and most important factor is the definition of sexual harassment used to classify allegations. OCRC and IAB do not use one standard definition. OCRC classifies the allegations based on its initial interview with the employee making the allegations.

OCRC relies significantly on the employee's characterization of the substance of his/her allegations. If the employee describes the allegations in terms of sexual harassment, that is how OCRC treats it (provided some minimal facts support the allegations). IAB, on the other hand, makes its determination of the nature of the allegations after its investigation. IAB classifies an investigation as involving sexual harassment if the facts uncovered in the investigation could support a finding of a violation of the Department's sexual harassment policy and are sufficient to present an allegation of sexual harassment to the review panel for final determination.

IAB has recognized that the category of conduct which falls within its definition of sexual harassment expanded between 1995 and 1996. It appears that in some instances, conduct which could, potentially, be considered to be sexual harassment, might also be classified as violating other Department policies. Thus, in its Administrative Investigations Report for the period January 1, 1995 through June 30, 1996, IAB noted that "A preliminary review of several 1995 cases, which included allegations of Discrimination or Sexual Harassment, revealed that the final adjudication of these cases fell into the following categories: General Behavior, Conduct Toward Others, or Rude or Derogatory Language." In its 1996 report, IAB again noted that the final adjudication of several 1996 cases which included initial allegations of sexual harassment resulted in findings not of sexual harassment, but of the same categories as in 1995. These definitional differences make it difficult to compare the numbers of sexual harassment complaints handled by OCRC and IAB, and to look at trends in allegations over time.

A second major factor affecting the statistics is how each complaint of sexual harassment is counted: by complainant, by individual engaging in misconduct, by number of incidents, or by file number. IAB keeps its statistics by counting IAB file numbers. However, an IAB file may contain a complaint about one incident made by one employee against one employee; or, an IAB file could include several incidents over time, involving several different employees. In either instance, as long as only one IAB file number is

assigned to the investigation, it will only be counted as one sexual harassment incident.

Thus, for example, IAB investigated claims of sexual harassment in the Scientific Services Bureau. This investigation involved several incidents and several different employees. In its report covering the period January 1, 1995 to June 30, 1996, IAB counted this investigation as two different findings of sexual harassment. In its 1996 report, IAB revised that count to conform to the fact that there was only one IAB file number assigned to the investigation and therefore counted it as only one finding of sexual harassment. This suggests a severe bias towards understating the amount of sexually harassing behavior.

IAB's statistics may be more helpful if they counted based on the number of employees who were found to have engaged in sexual harassment. For instance, IAB could report that there were X number of founded investigations of sexual harassment, and Y number of employees who were found to have engaged in sexual harassment. This would provide a more accurate picture of the prevalence of improper conduct. This new counting method should not be too difficult for IAB to implement. At present, for certain founded investigations the back-up detail which IAB provides in its reports indicates how many employees were found to have engaged in improper conduct for that file. Thus, the information is apparently readily available to IAB, it would just be a matter of altering the report format slightly to include the information.

In order to avoid double counting files which contain founded investigations of several different types of misconduct, IAB has created a hierarchy of wrongful conduct and, for its statistics, counts the file only once under the founded allegation which is highest on that hierarchy. Thus, although the IAB report for 1995 states that there were no founded allegations of sexual harassment, in fact there was one. As the background information included in the report reveals, on January 23, 1995, a particular investigation was concluded with founded allegations of both Supervisor's Misconduct and Sexual Harassment. For purposes of the IAB report, the supervisor's misconduct allegation

was deemed to be higher on the hierarchy and therefore the investigation was counted as a founded investigation under that misconduct rather than under sexual harassment. Any potential bias in the statistics caused by this methodology can be avoided by examining the supporting information provided in the report. This was the only incident we found where the detailed information revealed a founded investigation of sexual harassment that was not counted because of other founded allegations. However, in examining IAB's statistics it is important to be alert to the possibility of other such incidents.

OCRC maintains its statistics in a manner similar to IAB, but with one important distinction. Like IAB, which counts investigations by file, OCRC counts allegations by case. However, whereas IAB creates a hierarchy so that it counts each file containing founded investigations only once (even if there are multiple types of misconduct), OCRC counts each different type of misconduct alleged in a given case separately. Thus, OCRC keeps statistics on a monthly basis that track the number of allegations of quid pro quo conduct, hostile environment, retaliation, and other sexual harassment. To calculate these statistics, OCRC looks at each of its cases and determines which of these types of sexual harassment are alleged in the case. OCRC then counts the case once for each type of alleged misconduct. Multiple allegations of the same type of misconduct are only counted once per case. As with the IAB files, a single OCRC case could have multiple complaining employees, multiple incidents, and multiple offending employees; or it could have one employee, making allegations against one employee, involving one incident. In either instance it is not the employees or incidents involved which is counted, but rather the different types of sexual harassment alleged. OCRC also maintains annual statistics of the sexual harassment complaints in each division. For these statistics, OCRC uses the same procedures but more refined classifications of the allegations: hostile environment, retaliation, verbal conduct, visual conduct, physical, threats/demands, and quid pro quo.

Another factor affecting comparisons of the number of allegations of sexual harassment in a given time period from different divisions or units is the date which is assigned to the allegation. IAB dates its investigations based upon the date the investigation is either adjudicated or closed. OCRC maintains its statistics based on the date it conducts its initial interview of the employee bringing forward the allegations of misconduct.

The assignment of a date can be important for several reasons. For instance, a unit may have had two allegations of sexual harassment in two different years. However, the findings of sexual harassment at the close of the investigations may have occurred in the same year. This would lead to IAB statistics showing two founded investigations of sexual harassment for that unit in a single year suggesting a more concentrated problem than if the statistics reflected one incident per year for a two-year period.

Additionally, because of the manner in which IAB assigns dates, in analyzing IAB statistics, it is important to know the history of the division and units involved. For example, the recent reorganization of divisions within the Department has caused a shifting of units from one division to another. Depending upon the manner used to assign dates to allegations of sexual harassment and the timing of such reorganizations, the number of allegations attributed to a given division could change significantly. Thus, for example, IAB's statistics indicate that in 1996 there were two IAB files which contained founded allegations of sexual harassment in the Detective Division. However, the background information reveals that one of these files related to conduct in the Scientific Services unit which had occurred prior to Scientific Services' becoming a part of the Detective Division.

With these caveats in mind, the statistics provided by IAB and OCRC can still provide useful information to be used as a starting point for determining whether any unit or division is experiencing a disproportionate amount of sexual harassment and/or gender discrimination.

IAB had fifteen founded investigations of sexual harassment in 1996. The IAB

statistics show that some divisions had more founded investigations per employee than the Department average. For example, five of the fifteen founded investigations were in units within Custody Division South: two in Men's Central Jail, and one each in Inmate Services, Medical Services, and Inmate Reception Center. While Custody Division South had 33% of the founded investigations of sexual harassment in 1996, it had approximately 22% of the Department's employees. This number of founded allegations clustered in one division causes some concern.

Looking at these numbers in conjunction with the numbers for Custody Division North suggests that the custody divisions, when compared with other Divisions, have a disproportionate share of the founded investigations of sexual harassment. Custody Division North had two founded investigations of sexual harassment, one each at Pitchess Detention Center South Facility and at Pitchess Detention Center Ranch Facility. Again, the number of founded investigations in Custody Division North is disproportionately large when compared with the number of sworn and civilian employees in the division in 1996. (One caveat applies to these statistics specifically: while the investigation into the sexual harassment at the Ranch Facility was concluded in 1996, at that time the Ranch Facility had no employees.)

In contrast to the custody units, the Field Operating Regions, as a whole, had fewer founded IAB investigations of sexual harassment. Field Operating Region II had no founded investigations of sexual harassment in 1996 and Field Operating Region I had only one founded investigation. Field Operating Region III, on the other hand, had two founded investigations (more than average). Even more troubling is the fact that both founded investigations were at Industry Station. Further investigation should be done to ensure that Industry Station does not have a systemic problem.

Facilities Management Bureau is the only other single unit with two founded investigations of sexual harassment in 1996. Further attention should also be focused on this unit to determine the explanation for this cluster of founded investigations.

The following units had one founded investigation of sexual harassment each: Court Services - Central Bureau; Scientific Services Bureau; and Homicide Bureau. The remaining units had no founded investigations of sexual harassment. As a general rule, these numbers are too small to determine whether they are significant. However, we will continue to monitor these units to make sure no trends appear that suggest prevalent misconduct.

While there was only the one investigation which resulted in a founded allegation of sexual harassment in 1995, there were several investigations which included allegations of sexual harassment which were either Unfounded, Unresolved or Unsubstantiated, or Inactivated. At present, we are not aware of any facts, which would cause us to be concerned by this. Indeed, it appears that IAB has adopted at least some procedures, including the use of a review committee, to ensure the integrity of their findings.

Drawing any definitive conclusions from these statistics is difficult because even if the concentrations are statistically significant, they do not reveal whether the existence of more founded investigations of sexual harassment means more harassment is occurring. It is also possible that the same amount of harassment is occurring, but because of other factors which these statistics do not track, the employees involved are more prone to report the misconduct and to use IAB in the resolution of the problem.

OCRC's statistics for 1995 and 1996 reveal a more even distribution of allegations of types of sexually harassing behavior and of gender discrimination. However, there are still some clusters of allegations of misconduct. The OCRC statistics, like the IAB statistics, show that the custody divisions have more than their share of allegations of sexual harassment and gender discrimination. In particular, in 1996 Custody Division had far more allegations of sexual harassment per employee than average. Additionally, in 1995 Custody Division North had five of twenty-three allegations of gender discrimination.

Also noteworthy in the OCRC statistics is that the Field Operating Regions, which had relatively few founded IAB investigations of sexual harassment, had significantly more

allegations of sexual harassment recorded by OCRC. In 1995, Field Operating Region I had slightly more allegations of sexual harassment per employee than average. In 1996, while Field Operating Region I's allegations of sexual harassment dropped below average, the allegations of gender discrimination shot above average. Field Operating Region II had about average numbers of allegations of sexual harassment in 1995 and 1996. While the allegations of gender discrimination in 1995 were double the average, the allegations of gender discrimination in 1996 dropped slightly below average. Meanwhile, Field Operating Region III, which had the most founded IAB investigations of the three field operating units, had the fewest allegations of sexual harassment and gender discrimination over the two-year period.

These statistics point to units that potentially are having greater problems with sexual harassment, but they do not provide explanations for the disparities. In addition to the idiosyncracies in the statistics, there are several other factors which may affect the number of complaints of sexual harassment and gender discrimination in particular units or divisions and not relate directly to the level of misconduct occurring in the division or unit. These include: the dates for receipt of training (it was noted on a Department-wide basis that once sexual harassment and gender equity training began, there was an increase in the number of allegations of misconduct); the atmosphere within the unit (how use of IAB and other formal procedures to resolve issues of sexual harassment, rather than informal means, is viewed); employee's perceptions of the Department's procedures; and employees' personal definitions of misconduct.

It must be kept in mind that a high number of complaints may not necessarily be the sign of a bad environment with a low number the sign of a good one. A unit may have no complaints of sexual harassment because employees feel (based on the unit's atmosphere) that if they complain, their careers will be adversely affected. Alternately, a relatively high number of complaints may be a sign of good management which has made its employees feel comfortable raising their concerns. The timing of allegations may also be

affected by positive changes in the command at a unit. For example, a unit may see a sharp increase in allegations of sexual harassment after a new commander is placed in charge because employees feel able to bring forward allegations about past conduct. Thus, there should be no presumption that merely because there were a large number of allegations of sexual harassment in a given time period that the current commander's performance in this area is deficient. More information is needed before such conclusions can be reached.

The Effectiveness of the Department's Procedures

Because these statistics only track those incidents where the allegation of sexual harassment is handled through the Department's procedures, in order to understand the relevance of these statistics, we need a better understanding of when the Department's formal procedures are used, how they operate in practice, and how they are perceived by the Department's employees.

We recognize that not every situation involving sexual harassment or gender discrimination will be handled through the Department's procedures. Discussions with individual employees of the Department suggest that many situations are likely handled in one-on-one conversations between the two employees involved, rather than through any formal or informal Department procedure. In some situations, this may prove to be the best resolution for the individuals involved. However, we do think it is important to make sure that the Department's procedures for handling claims of sexual harassment and gender discrimination are as effective as possible so that employees will prefer to use them.

As detailed in previous reports, once an allegation of sexual harassment has been made, the Department's procedures allow for either formal or informal resolution of the allegation. A formal resolution can involve an investigation by either IAB or the involved unit. OCRC's statistics reveal that in 1995 and 1996 almost half of the allegations of sexual harassment counted were referred to IAB. Just under 30% of the

allegations during those years were resolved informally.

In previous reports we have noted that the procedures established by the Department provide, in theory, adequate procedures for reporting, investigating, and resolving sexual harassment complaints. However, questions still remain about whether Department members, in practice, feel comfortable implementing the Department's procedures by reporting incidents to OCRC or supervisors. For example, some Department employees have expressed concerns about the investigations of sexual harassment that they have either witnessed or been involved in. Other Department employees have indicated that they would rather handle incidents where they experience sexual harassment themselves than utilize the Department's formal mechanisms. It has also been suggested that employees have a perception that the investigations cause subtle negative effects on the unit as a whole, the attitudes of the members of the unit, and the complainant.

There will always be individual employees and specific situations where the Department's procedures will not be utilized. While there are benefits to individuals being able to resolve problems relating to interpersonal relationships themselves, we believe there are several reasons why it is important that the Department's procedures are used as much as possible, even if only to facilitate informal resolutions. The use of Department procedures allows better tracking of the number of allegations of sexual harassment and gender discrimination within a given unit and by a particular employee. This information, if properly gathered and monitored, can be used to intervene in units before more serious situations develop. It also can be used to identify any individual employees needing remedial training or counseling before they engage in misconduct requiring severe punishment or termination. Additionally, the use of the procedures allows the Department to monitor more effectively for retaliation.

The concerns expressed about the manner in which investigations are handled are too anecdotal to determine whether they are the majority viewpoint. Indeed, contrary to the expressed concerns, OCRC believes that the individuals that deal with OCRC appear

to be pleased with the service they receive from OCRC. OCRC often has employees referred to it by employees who OCRC has helped in the past. Because the perception of OCRC within the Department is key to the successful enforcement of the Department's harassment and discrimination policies, if possible, more information should be gathered about this. We are informed that in the past OCRC has conducted surveys of the individuals it has served. This questionnaire may provide a starting point for gathering information about employees' perceptions of OCRC's and IAB's performance handling sexual harassment and gender discrimination allegations and investigations. The questionnaire should be reexamined to determine whether it appropriately solicits the information desired and then should be reinstituted and provided to every individual receiving assistance from OCRC. IAB may also consider implementing such a questionnaire to be completed after the close of the IAB investigation.

In addition, it would be helpful to poll Department employees on a broader basis to determine their perceptions of OCRC, IAB, and the Department's procedures for enforcing its sexual harassment and gender discrimination policies. In this survey, it may be useful to question employees as to whether they would consider using the Department's procedures for resolving issues of potential sexual harassment and gender discrimination in given factual scenarios. Such questions would provide information about both the perception the employees have of those procedures and the definitions of misconduct adopted, in practice, by employees of the Department.

As far as the concerns of negative reactions within the unit to investigations of allegations of sexual harassment or gender discrimination and any effect on the individual making the allegation, OCRC does maintain contact with its clients for 90 days after any investigation is closed. One reason for this contact is to prevent retaliation. However, it appears that there may be subtle changes in the atmosphere at a unit that do not amount to retaliation that may go undetected by OCRC because it is a relative outsider to the unit. If this does occur, it will not only affect the individual who made the allegation of sexual

harassment or gender discrimination, but also the willingness of other employees to use Department procedures to resolve incidents involving themselves. OCRC should also be alert to subtle changes in the environment at a unit after an investigation, that, while not rising to the level of retaliation, may, nonetheless discourage others from utilizing the Department's procedures for handling sexual harassment and gender discrimination complaints. Where such changes in environment are detected, intervention and education by OCRC may help to minimize any negative perception of the Department's procedures.

The Department has invested significant resources to implement its sexual harassment and gender discrimination policies. We continue to be impressed by the commitment of OCRC to providing a valuable resource to individuals experiencing discrimination and harassment. However, much more information gathering is needed to determine whether the Department's procedures are working as well as possible and whether any improvements can be made. Even though the Department may never reach a point where all employees feel comfortable using the procedures made available — and maybe that is not the Department's goal — it is important that the Department have appropriate procedures available for those who do want to utilize them and that those procedures are as effective as possible so that the greatest number of employees do want to use them.

In future reports, we will continue to monitor the allegations and investigations of sexual harassment and gender discrimination for any clusters of misconduct. Additionally, we will begin to look beyond the numbers to identify any potential trouble-spots. Finally, we will continue to focus on the Department's procedures to ensure they are as effective as possible.

In the **Kolts Report,** at Chapter 11, we discussed a disturbing number of cases where deputies resorted to headstrikes with flashlights or batons on suspects not posing a serious threat or even attempting to flee. The LASD had no clear guidelines on how to assess the legitimacy of headstrikes. Because headstrikes can cause substantial permanent impairment or death, we recommended that the LASD should treat headstrikes with impact weapons as it should deal with any other kind of deadly force.

Sheriff Block was quick to agree with this recommendation. On July 28, 1992, the LASD revised its Manual and Policy and Procedures to state, "Intentional head strikes with any impact weapon are specifically prohibited unless circumstances justify the use of deadly force." The policy is a sound one, and should be easy to enforce. Once it is determined that a headstrike was intentional, the analysis is simple and straightforward: Would the officer have been entitled to shoot the suspect under the circumstances? If the answer is no, then discipline is warranted.

At times, including during the last six months, the Department has performed this analysis carefully and correctly. One case before a recent commanders' force review panel involved a deputy who had struck a suspect once in the head with a flashlight as the deputy observed the suspect attempt to pull a gun out of his waistband. The suspect was in fact armed. Both the deputy, at the time of the incident, and the Commanders Panel, in hindsight, analyzed the case from the appropriate perspective, asking themselves if, under the circumstances, deadly force was warranted. Finding it was, the headstrike was deemed appropriate. The deputy in question and the commanders clearly understood that for purposes of policy, there should be no distinction between intentionally striking a suspect in the head with an impact weapon and pulling the trigger of a gun.

Nonetheless, in other instances, the Department in the last five years has shown itself to be uneasy treating headstrikes as deadly force. For example, in our **Third Semiannual Report** we criticized the Commanders Panel for failing to discipline a deputy who struck an unarmed suspect several times in the head. We were particularly

disturbed that deputy had used a similarly questionable headstrike nine months earlier.

During the last six months, we disheartened by a different headstrike case. The case arose when two deputies responded to a shots fired call. At the conclusion of a brief high-speed car chase, the two deputies approached the suspect. Cornered near a pile of scrap metal, the suspect grabbed a slender metal pipe and swung it at one of the deputies, striking him in the thigh. Given the confined space, the deputies chose not to use pepper spray, and a fight broke out. During the ensuing struggle, the suspect was struck seven times in the head with a flashlight. He was also struck once in the shoulder area after he was handcuffed but was still kicking at the deputies.

Although the Commanders Panel expressed concern, it determined that the force was within policy, but in a roundabout way and without confronting the main issue: Was the deputy entitled to shoot the suspect under the circumstances? We do not mean to suggest that this was a case where the deputy entirely lacked justification or clearly was acting out of policy. Nonetheless, we believe if the panel had begun by considering if deadly force was justified, its analysis would have been sharper and it would have had a more difficult time determining that deadly force was warranted.

What particularly disturbed us about this case, however, was that the Panel gave little apparent consideration to the fact that the flashlight-swinging deputy had a history of force-related misconduct. In our **Fourth Semiannual Report,** we had expressed grave concern over this same deputy's use of force on an unarmed civilian whom the deputy had thrown to the ground in the presence of other deputies and civilians while calling the man a "nigger." The deputy compounded the misconduct by failing to report the force and by initially denying it when confronted by his sergeant. We regarded the deputy's five-day suspension as a "slap on the wrist" and expressed our disappointment that the LASD "brushed off" the deputy's misconduct so easily. We were therefore dismayed that the Commanders Panel, which knew of the prior incident, apparently dismissed the deputy's troubled history, perhaps on the unsupported allegation by the deputy's captain

who opined that the deputy had “mellowed” over the years.

In sum, we continue to have reservations about the rigor with which the headstrike policy is applied and discomfort at the Department’s apparent slack response in the face of possible evidence of a problem officer. **We recommend that the Chief of PSTD conduct regular audits to assure consistency in approach among the Commander’s Panel.**

Our **Sixth Semiannual Report** concluded that the LASD lacked enough accurate data for thorough management of violence, risk, and liability in its custody operations. The absence of clear and reliable data on jail riots and disturbances, inmate attacks on other inmates, and inmate attacks on sworn and civilian staff, among other data, precluded the Department from performing accurate trend analysis. The Department was not in a position to judge whether the jails were demonstrably more violent and dangerous in recent years or whether the number of inmate riots and other disturbances had increased or decreased.

The criticisms in the **Sixth Semiannual Report** directed to the custody operations built upon criticisms in prior Semiannual Reports and the **Kolts Report** about the general inconsistency and unreliability of certain data generated within the Department. Accordingly, our key recommendation in our last report was that the LASD convene a task force to review how data is collected throughout the Department and to provide uniform definitions and reporting rules. The recommendation was implemented.

A Data Management Committee was formed with representatives from the custody divisions, court services, the three field operations regions, the Professional Standards and Training Division, the office of the Undersheriff, and the Office of Administrative Services. The Committee reviewed and defined all categories of data which in its view yielded significant law enforcement management information. It further established standardized procedures for collecting and processing the data with the intention that the resulting management information would be valid for making measurements and consistent for purposes of evaluating aspects of police management over time.

Finally, the Committee created a series of ratios to standardize the basis for comparisons of performance between units and over time. We were invited to provide input to the Committee and we did so. The Committee did an excellent job.

The data that will be collected pursuant to the new definitions and rules will help feed a new management database called CARS, which stands for Command Accountability

Reporting System. CARS represents a significant advance in the LASD's thinking about management of risk and potential liability.

As noted in our discussion of the PPI, the Department has a first-rate system by which to monitor trends in personnel performance on an individual-by-individual basis or by groupings of individuals. The Department heretofore lacked a similar system by which to compare stations, field operating regions, divisions, and units within the Department. CARS responds to that need, and the definitions and ratios defined by the Data Management Committee will contribute directly to the reliability of CARS.

For example, as regards use of force in patrol and detective units, the most significant ratio by which to compare units was deemed to be the number of arrests divided by the number of force incidents. Thus, if a station made 200 arrests in January and the station experienced ten force incidents, the frequency of force incidents would be 20; one force incident for every 20 arrests. Similarly, stations will be required to report arrests per officer divided by uses of force per officer and total arrests divided by the total number of suspects on whom force was used.

Mandatory reporting is required of similar ratios by the custody divisions: average daily inmate population divided by number of force incidents, average daily inmate population divided by the number of individual uses of force, and average daily inmate population divided by the number of inmates on whom force was used. Other ratios will be mandatorily reported to permit station by station comparisons of citizen's complaints and occupational injuries and illness claims. If data is reported uniformly and entered accurately, CARS will be a powerful management tool.

As we note elsewhere in this Report, however, data integrity and data input problems and pressures to skew the data continue to plague the Department, and new ones crop up each time a new system for recording data is introduced. The PPI, for example, is a vehicle for analyzing and comparing the performance of individuals. Accordingly, there has been increased concern by deputies about how data is reported and in particular with

respect to baseless citizen's complaints. Proposals then are generated internally (or, even worse, legislation is introduced in Sacramento) to eliminate recording certain data. The result of such efforts would be to compromise the integrity and usefulness of the system as a whole in response to the competitive concerns of deputies with respect to how they will appear as against their peers. So far, the Department and Governor Wilson have resisted efforts to gut or compromise systems that track the performance of police officers, but we have no doubt that such efforts will continue both within the Department and externally. No ground should be yielded to such efforts. In return, management's responsibility is to hold itself accountable for making sure the data is used properly.

Similarly, when one station is compared to another on the basis of investigations generated by citizen's complaints, there is an understandable but inappropriate tendency for a given station to report data in ways that will put it in a good light compared to others regardless whether reporting in this way compromises the overall integrity and usefulness of the system. We discovered this particular data integrity issue when we could not square the number of investigations generated from citizen's complaints from the number generated by the Department internally.

Frequent and careful auditing is necessary to control the problem. So is education. Executives and supervisors must understand for what purposes the data is being reported. Additionally, honesty and care in the handling of data should be rewarded and dishonesty and carelessness should be the subject of discipline. If a given supervisor is "cooking the books" or providing sloppy or misleading data, Department policy has been violated and appropriate discipline should be meted out.