e Los Angeles County

Sheriff's Department

11th Semiannual Report by

Special Counsel Merrick J. Bobb & Staff

October 1999

The Los Angeles County

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Introduction

This is the **Eleventh Semiannual Report** of Special Counsel Merrick Bobb and staff discussing the Los Angeles County Sheriff's Department (LASD). These reports are prepared at the direction of the Los Angeles County Board of Supervisors pursuant to its appointment of Special Counsel to conduct ongoing monitoring and critical review of the LASD's performance. Concerns about police misconduct and its high cost to the County, both in terms of frayed community relationships and the financial burden to taxpayers, led to the **Kolts Report** and the decision of the Supervisors to order full implementation of the Kolts recommendations.

When the **Kolts Report** was published, there was criticism that the report had not recommended a civilian review board which would take over the LASD's power to investigate and discipline police misconduct. Unwilling to take so far-reaching a step, but wishing to respond to a need for active, ongoing monitoring and oversight, the Supervisors, with the concurrence of the Sheriff, created a continuing role for Special Counsel. The Board set aside an annual budget to defray the expenses incurred in monitoring the LASD and preparing the semiannual reports. At the Board's direction, Special Counsel disseminates data about the LASD and comments on its significance. At the request of the Board and the Sheriff, Special Counsel has also participated in the formulation and implementation of risk and liability management strategies with the LASD. This **Eleventh Semiannual Report** contains five special reports.

1. In our chapter on sexual harassment, we report the results of our detailed investigation whether the LASD is strenuously and effectively enforcing its sexual harassment policies. We reviewed in detail eleven different lawsuits alleging sexual harassment brought by women in the LASD. Between 1995 and mid-1999, the

County paid nearly $3 million to settle these lawsuits. We found examples in these settled cases of LASD investigators who had little apparent motivation to eliminate sexual harassment and moved forward sluggishly and unimaginatively in their investigations. There were instances where the LASD charged perpetrators with lesser misconduct than sexual harassment, even though a harassment charge was appropriate. Conversely, we found cases where apparently meritorious charges of harassment were not sustained. Yet even when charges were founded, in some instances only mild discipline was recommended, followed by settlements with the perpetrators that further reduced punishment.

When we turned to examine current practice, however, we found that the LASD in the last few years has started to emerge from the problems described above and has deepened its commitment to eliminate sexual harassment and any tolerance of it. The serious question that remains is whether the LASD will commit resources in promised quantity. The LASD will have to find substantial funds and redeploy personnel to support new programs, including significant fiscal and human resources for the new bureau headed by Commander Nancy Malone which has responsibility for all gender equity issues.

2. In our chapter on retention of data and the LASD's tracking system for employee performance, called the PPI, we set forth concerns that the LASD, in the face of pressure from opponents of strong internal oversight and accountability, is contemplating weakening key elements of the PPI. We discuss on the status of two key Kolts recommendations which were accepted by the LASD following negotiation with Judge Kolts and which were then ordered implemented by the Board of Supervisors:

a. It was agreed and ordered that all investigative files in Internal Affairs would be retained indefinitely and the practice of routinely destroying records of such investigations would stop.

b. The LASD would construct a computerized tracking system on a relational database to record and report data on its employees' use of force, citizen's complaints, administrative investigations, lawsuits, and disciplinary history. The tracking system—known as the Personnel Performance Index or PPI—became fully operational in March 1997.

The PPI, without question, is the most carefully constructed and powerful management tool for risk management and control of police misconduct currently available in the United States. Its database can be queried to produce deep and insightful analyses not only of an individual's performance but the comparative performance of units and groups of individuals, patrol stations, and jail facilities. It permits the tracking and measurement of LASD performance in a broad array of categories, and, when used to its fullest, provides LASD executives with a depth and breadth of information about the Department that, to our knowledge, no other major law enforcement agency has to the same degree or in as easily retrievable a form. Police and Sheriff's Departments from around the country have approached the LASD about purchasing or licensing the PPI, and the Department is seriously exploring how it can be made available to others.

Used imaginatively, the PPI is a repository of powerful data for purposes of research and development, trend analysis, and career development. Used properly, it gives warning about the individuals and circumstances that pose risk. It allows a retrospective review of an officer's entire career to discover why and how problems arose. It permits retrospective comparisons of various officers' careers to determine how they were shaped by different experiences and training. It allows a retrospective examination of any force incident or shooting to figure out what elements are subject to better training, to better strategy, or to different tactics. It allows for comparison of events to determine common elements and disparate ones.

It permits station captains to have data at the ready to manage the station. A captain may wish to know whether deputies on one shift generate fewer citizen's complaints than deputies patrolling the same neighborhood on a different shift. The PPI can tell him. A captain may want to find out each lawsuit involving her station that alleges excessive force. The PPI can tell her. A captain may want to analyze the trend in officer involved shootings at the station over the last 15 years. The PPI can tell him.

We are concerned and alarmed, however, because the LASD is currently considering eroding and backtracking on the PPI and the key Kolts commitments described above. Without a strong basis in fact or compelling rationale, the LASD appears to have accepted as true a myth that the PPI has been misused by lazy managers to deprive deputies of deserved promotions or other opportunities. Unwittingly playing into the hands of those who are uncomfortable with greater internal oversight and accountability, the LASD is proposing to take data off a key PPI report and make data about performance more difficult to access and use. Its as if the PPI were to be given a lobotomy—lowering its IQ, as it were, by cutting circuits that provide data speedily and in highly useable form, squirreling away data in less accessible corners, and leaving managers essentially in the dark about historical performance—good and bad.

It would be ironic and tragic if the LASD, having been far ahead of the rest of law enforcement in embracing modern technology and computers for risk management, capitulated to pressures from persons who fear greater accountability and drained its own version of the PPI of some of its power and usefulness, retreating from its position as the nation's leader in police accountability and good management practice. So too if the LASD resumed routine destruction of administrative files beyond the statutory retention period.

We guess that Sheriff Baca is too well-versed in the merits of accountability

and risk management to let this happen. Indeed, as Chief Baca, he was a vigorous and convincing advocate for accountability both within the LASD and in numerous conversations with Judge Kolts and his staff. He knows that there are ways to address the deputies' fears without hurting the PPI, and we will watch to see if he wisely moves in that direction.

3. Our chapter on training discusses a far-reaching reorganization of the LASD's Training Bureau. Among other things, the reorganization calls for dispersal to different assignments of many of the members of the Force Training Unit, a group of individuals who have been responsible for some of the most innovative and comprehensive use of force training in law enforcement today. We hope that this step does not presage a decline in the comprehensiveness, uniformity, and teaching excellent on use of force that has been the hallmark of the Force Training Unit. We also discuss the current performance of the Field Officers Training Unit. It, too, has done a fine job and the challenge will be to maintain these high standards during the reorganization of the Training Bureau. More pressing, however, is to implement and institutionalize centralized selection of FTOs pursuant to uniform, high standards of proven performance after thorough background checks.

4. Our chapter on the LASD's canine program concludes that the Canine Services Detail continues to be a well-managed and carefully supervised program that consistently achieves a high number of apprehensions using police dogs with a low number of bites to suspects. During 1999 through June, 11.6 percent of apprehensions using dogs resulted in a bite. Although higher that the ratio of 8.6 percent achieved in 1997 and 8.3 percent for 1998, we are not overly concerned given the relatively low number of bites overall in each of those years—ten in 1997, seven in 1998, and five in the first half of 1999. We will follow with interest whether policy changes initiated in April 1999, permitting use of dogs in situations

where for the past few years they had been banned, will produce any untoward consequences.

5. Our chapter on litigation describes continuing progress in reducing the number of excessive force cases and the amounts of judgments and settlements in those cases. We also report good progress in improving the LASD's record on over-detention of inmates. The promising results can be attributed to the fine work of County Counsel and private lawyers engaged by the County, and the performance of the LASD's risk management unit. The excellence of that unit, in turn, can be ascribed in substantial part to the LASD's commitment to the PPI and the use of data proactively to manage potential liability. If the PPI and the attendant accountability mechanisms are downgraded and the overall commitment to manage liability is weakened or made more difficult, these excellent results of recent years are seriously threatened.

In recent years, the excellent results of the risk management unit has been due in part to the dedication and skill of Tom Laing, who, before his recent promotion to Captain, was in charge of litigation for several years. We recall when his predecessor, Dennis Burns, was promoted to Captain and put in charge of Internal Affairs. Dennis Burns had helped put the LASD's litigation house in order, and we admired his accomplishments. It is now time to acknowledge the fine job Tom Laing has done managing litigation.

Our discussion of litigation describes several cases that settled during fiscal 1998-1999 for amounts in excess of $100,000 that raise wider risk management issues. We describe two officer-involved shooting cases from the Century Station that gave us concern. Indeed, of the $1.61 million paid last year by the County in officer-involved shootings, all but $20,000 was paid out in Century Station cases.

Concern about these cases is allayed to some degree by the drop in the number of Century shootings in the first half of 1999. Century had one shooting between

January and June 1999. On the other hand, we continue to receive troubling reports about internal strife at the Century Station, including racial tensions. There have been troublesome incidents involving use of force, including one which raises issues of cover-up, since we last reported on Century in June 1998. We are carefully following the criminal and administrative investigations. Chief Spears, with whom we have had a productive working relationship for several years, assures us that the next six months will see significant change and improvement at Century. We will report whether his prediction proves correct.

The litigation chapter concludes with a somber recitation of several medical malpractice settlements. We are convinced that further deep reflection is necessary with respect to the performance of Medical Services, the doctors and nurses in the LASD's employ who provide medical care in the jails. We are aware that the LASD itself and other County departments have paid attention to the issues in recent years. We are puzzled why more has not happened.

1

LASD Hit Shootings by Station

	1997	1998
Number Of Incidents	**35**	**20**
Carson Station	1	0
Century Station	7	7
Court Services Bureau	1	1
East Los Angeles Station	2	0
Lakewood Station	2	2
Lancaster Station	7	2
Lenox Station	1	2
Mira Loma Facility	0	1
Miscellaneous Units	0	2
Norwalk Station	3	1
Palmdale Station	0	1
Safe Streets Bureau	1	1
Special Enforcement Bureau	2	0
Temple Station	6	0
Walnut Station	1	0
West Hollywood Station	1	0
Number of Suspects Wounded	17	18
Number of Suspects Killed	20	11

LASD Non-Hit Shootings by Station

	1997	1998
Number Of Incidents	**20**	**16**
Carson Station	1	0
Century Station	7	4
Crescenta/Altadena Station	0	1
East Los Angeles Station	0	3
Industry Station	1	2
Inmate Reception Center	1	0
Lakewood Station	1	1
Lancaster Station	1	0
Lennox Station	4	2
Men's Central Jail	1	0
Norwalk Station	0	1
Palmdale Station	1	0
Safe Streets Bureau	0	1
Temple Station	1	0
Special Enforcement Bureau	1	0
Walnut Station	0	1

Incidents Resulting in PSTD Roll-Outs	**126**	**112**

2

LASD Hit Shooting Incidents (Deputy intentionally fired at and hit a suspect)

	1991	1992	1993	1994	1995	1996	1997	1998
Number of Incidents	56	47	29	28	34	26	35*	20**
Number of Suspects Wounded	40	31	12	11	24	11*	17	8
Number of Suspects Killed	23	18	22	17	10	14	20	11

* Reflects the re-classification in 1998 of a 1996 shooting from intentional to accidental

** One of the hit shootings involved a deputy who intentionally fired at a suspect but hit a deputy instead (listed below under Century Station, 09-08-98)

LASD Non-Hit Shooting Incidents
(Deputy intentionally fired at and hit a suspect but missed)

	Aug-Dec 1993	1994	1995	1996	1997	1998
	14	21	26	19	20	16

Deputies Shot (Does not include accidental discharges)

	1991	1992	1993	1994	1995	1996	1997	1998
Number Wounded by Gunfire	10	6	4	4	2	2	8	4
Number Killed by Gunfire	0	2	0	0	2	0	2	0

Incidents in Which a Deputy(s) was Shot

1994	
18-94	Carson
09-10-94	Carson
11-29-94	Safe Streets Bureau
12-10-94	Walnut
1995	
05-12-95	Safe Streets Bureau
07-18-95	Court Services / Central
11-24-95	Norwalk
12-26-95	Carson
1996	
08-02-96	Lancaster
11-30-96	Lakewood
1997*	
01-05-97	Lennox
05-14-97	Lancaster
06-10-97	Special Enforcement Bureau**
08-14-97	Pitchess East
09-03-97	Lakewood
10-30-97	Century
12-09-97	East Los Angeles***
1998	
01-15-98	Safe Streets Bureau
04-12-98	Industry
04-25-98	Palmdale
09-08-98	Century

* 08-13-97 MCJ deputy stabbed in head (#SH1121382)

* 06-01-98 CSE-court deputy stabbed in chest with knife (#SH1121382)

** 3 deputies

*** 2 deputies

Note: Source for 1991-1993 figures is Homicide Bureau.
Source for 1994-1998 figures is Force Review Committee database, Internal Affairs Bureau and Homicide Bureau.

Introduction

Between 1995 and mid-1999, the County paid nearly $3 million to settle eleven different lawsuits and claims alleging sexual harassment brought by women in the Sheriff's Department, as shown on Table One. The number and dollar amount of these settlements have led some observers to conclude that the LASD tolerated sexual harassment, mishandled employee's complaints, and, even where misconduct was found, meted out inappropriately light discipline, if any at all. In the wake of these settlements, and in response to some harshly anti-female sentiments on a web site presumably posted by LASD deputies last spring, the Board of Supervisors expressed great concern and asked us to evaluate whether: (i) the LASD currently is ensuring that its sexual harassment policies are strenuously enforced and (ii) the LASD can reduce its exposure to civil liability. The Board also called upon the expertise and resources of Dennis Tafoya and the Office of Affirmative Action Compliance which he directs.

To examine these questions posed by the Board, we studied the eleven cases leading to the large payouts for sexual harassment (" Settled Cases").[1] Our study did not belie the beliefs of some observers that in the past, there had been tolerance

1 We exhaustively reviewed the Settled Cases by looking at both the lawsuit files and the files pertaining to the Internal Affairs investigations arising from the same factual background as the Settled Cases. We interviewed selected LASD and County Counsel personnel. We interviewed an attorney adverse to the LASD as well as a number of female deputies who were plaintiffs in the Settled Cases. We also reviewed LASD policies and other written materials. This research gave us a historical perspective on the Department's response to complaints of sexual harassment. We then looked to see what changes have been made by the Department in the handling of complaints of sexual harassment. We reviewed files from the Ombudsperson/Career Resources Center ("OCRC") relating to more recent claims of harassment that have not yet resulted in any civil litigation settlement. Additionally, we attended an Executive Risk Review Committee hearing at which commanders reviewed the results of Internal Affairs investigations, determined whether charges of sexual harassment were founded, and, in those cases where the charges were founded, recommended discipline in conjunction with the appropriate unit commander. We also participated in several meetings with Dennis Tafoya, Director of the Office of Affirmative Action Compliance, and we presented findings to the Board of Supervisors on several matters. A copy of those findings is set forth in the sidebar.

1

Los Angeles County Sheriff's Department
Settled Sexual Harassment Claims and Lawsuits
Fiscal Years 1995/1996 through 1998/1999

During fiscal years 1995/1996 through 198/1999, the Sheriff's Department settled eleven workplace sexual harassment lawsuits and claims. The following is a summary of these cases:

Fiscal Year 1995 – 1996

1. Lawsuit Received: October 1991

Allegation: The plaintiff alleges that from September 1990 through February 1991, she was subjected to sexual harassment by sworn personnel while working as a station clerk at a Sheriff's Station.

Lawsuit settlement: $375,000.00, December 1, 1995.

2. Lawsuit Received: August 1991

Allegation: The plaintiff alleged that from June 1990 through November 1990, while assigned as a deputy trainee at a custody facility, she was subjected to physical and emotional harassment, abuse and discrimination, violating her civil rights and rights to privacy.

Lawsuit settlement: $500,000.00, August 8, 1995.

Fiscal Year 1996–1997

3. Lawsuit Received: November 1993

Allegation: The Plaintiff alleges that from June of 1991 through July 10, 1992,she was a deputy sheriff who was sexually harassed and discriminated against and intentionally exposed to a life threatening work environment for failure to acquiesce to her supervisor's advances. The plaintiff also alleges that her husband's position as a deputy sheriff was threatened.

Lawsuit settlement: $750,000.00, July 23, 1996.

4. Lawsuit Received: November 1994

Allegation: The Plaintiff was a civilian employee of the Sheriff's Department who alleged that between January 1993 and October 1994, she was sexually harassed and discriminated against by her supervisor after a failed relationship. Plaintiff further alleged that the department failed to handle her complaint properly.

Lawsuit settlement: $20,000.00, September 9, 1996.

Fiscal Year 1997 –1998

5. **Lawsuit Received: September 1993**

Allegation: The Plaintiff alleged that she was sexually harassed by deputies at a Sheriff's Station and that her supervisors failed to take proper action after notification.

Lawsuit settlement: $195,000.00, October 20, 1997.

6. **Lawsuit Received: September 1995**

Allegation: The plaintiff was a deputy sheriff who alleged that another deputy assaulted and battered her in June 1994 during roll call in the briefing room at a Sheriff's Bureau. She alleged that the act was racially motivated. She further alleged numerous acts of racial and sexual discrimination by other deputies, in which supervisors were aware but failed to take action.

Lawsuit settlement: $160,000.00, June 29, 1998.

Fiscal Year 1998 –1999

7. **Civil Service Claim Received: April 1998**

Allegation: The plaintiff was a deputy sheriff who resigned from the Department. She filed an appeal with Civil Service to be reinstated, alleging sexual harassment along with other allegations.

Claim settlement: $24,918.00, July 8, 1998.

8. **Civil Service Claim Received: January 1998**

Allegation: The plaintiff, a security assistant, alleged that she was subjected to sexual and racial harassment in the workplace by co-workers. She also alleged disparate treatment by her supervisor.

Claim settlement: $40,000.00, December 8, 1998.

9. **Lawsuit Received: August 1996**

Allegation: The plaintiff alleged continual acts of sexual harassment, by her supervisors, as a deputy in a Department Bureau from November 1992 to April 1995. She also alleged gender discrimination and creation of hostile work environment due to the employer's failing to remedy the situation after she filed numerous complaints.

Lawsuit settlement: $350,000.00, December 21, 1998.

10. **Lawsuit Received: September 1997**

Allegation: The plaintiff alleged that she was sexually harassed by co-workers. She also alleged discriminatory treatment and abuse based on her gender and her Latino ethnicity. The plaintiff alleged that when she returned to work, additional harassment took place in retaliation for the plaintiff having complained of the treatment.

Lawsuit settlement: $200,000.00, December 21, 1998.

11. **Lawsuit Received: February 1996**

Allegation: The plaintiff alleged that from September 1990, she was subjected to sexual harassment and discrimination based on gender, sexual orientation and ethnicity.

Lawsuit Settlement: $275,000.00, June 1, 1999.

Remarks of Merrick J. Bobb Regarding Gender and Race Issues
Board of Supervisors, June 29, 1999

In April, this Board asked me to investigate the posting of sexist comments on a web site and to examine whether racist cliques exist with the Sheriff's Department. You asked for recommendations and a plan of action. since then, my staff and I have conducted a full-scale investigation, including review of internal LASD files and investigations and many interviews. Although there are serious issues which require time, resources, and effort to resolve the Sheriff and the Department as a whole responded quickly and cooperated fully with the investigation and formulation of action plans.

I will first address the possibility of racially-motivated deputy gangs in the LASD. Few topics generate as much heat and as little light. I have followed this issue closely since the investigation leading to the 1992 Kolts Report, and there still are no definitive answers. I do know, however, what does not advance a reasoned inquiry. First, it is not helpful to repeat outdated claims about deputy gangs in Lynwood from the late 1980's. The rumors seem to have a life of their own and surface from time to time, most recently in a report by the U.S. Civil Rights Commission. Second, it is not helpful to blow things out of proportion by drawing unwarranted inferences from admittedly disturbing incidents that continue to occur. As troubling as these incidents are and despite

of sexual harassment.[2] These past cases involved various supervisors who could not recognize, or did not choose to recognize, sexual harassment.

We found examples in the Settled Cases of Internal Affairs investigators who had little apparent motivation to eliminate sexual harassment; who moved forward sluggishly and unimaginatively and failed to broaden investigations when additional allegations of sexual harassment came to light. There were several instances where the LASD charged perpetrators with lesser misconduct than sexual harassment, even though a harassment charge was appropriate. Conversely, we found cases where apparently meritorious charges of harassment were somehow not sustained for reasons we could not figure out. Yet even when charges were founded, in many instances only mild discipline was recommended, followed by "settlements" with the perpetrators that further reduced punishment for serious misconduct. Indifference to sexual harassment causes victims to be victimized over and over again, and there were cases where LASD investigations seemed more stigmatizing to the victims than to their harassers. Although the Department spoke of "zero tolerance," there was instead, in the eyes of many, substantial tolerance of sexual harassment.

2 We focused on the Settled Cases for several reasons. First, the files were complete and both the litigation and any related internal investigation had concluded, thereby providing us with an adequate historical basis for investigation. Second, by focusing on the Settled Cases, we could—and explicitly do— restrict our conclusions and generalizations to those cases alone and explicitly disavow the applicability of them to pending or future cases, hypothetical or actual cases arising from the same time period, or pending disciplinary matters. Nor should our conclusions and generalizations about the Settled Cases be read to describe current policy or to apply necessarily to current practice within the LASD.

Beginning under Sheriff Block and continuing under Sheriff Baca, the LASD has started to emerge from past practices found in the Settled Cases and has deepened its commitment, at least on paper, to eliminating sexual harassment and any tolerance of it. Sheriff Baca has clearly made it one of his highest priorities. The Block administration took a number of important steps generally to inculcate more rigorous standards of accountability and to centralize otherwise diffuse responsibility for identifying and dealing with at-risk employees. These steps laid a strong foundation upon which progress in attacking sexual harassment could be built. Recently, the Baca administration created a new bureau headed by Commander Nancy Malone to provide greater visibility and centralized responsibility for gender equity issues. Likewise, the LASD has instituted changes in the system for processing complaints of sexual harassment and, with the help of the Office of Affirmative Action Compliance, Special Counsel, and others, has begun to train LASD personnel more effectively in issues of sexual harassment.

We do not doubt a sincere desire for change by the Baca administration. But sincere words must be backed by sincere action. The serious questions that remain are whether resources will be committed in promised quantity and whether the new program will succeed. The LASD must be willing to commit substantial funds and redeploy personnel to support the new programs. In the heady days of every new administration, there are heartfelt but easily-given pledges of money and personnel to a variety of good ends that can be quickly canceled when grim

their occasional overtly racial overtones, I have seen no convincing proof or credible evidence of Klux Klan Klaques or Aryan Brotherhood gangs or the like terrorizing Black or Latino neighborhoods or the County's inmate population. That's not to deny the existence of groups or individuals in the LASD who hold reprehensible opinions of persons of different races, ethnicities, gender, or sexual orientation.

Nor do I suggest that there is nothing to worry about when cliques of deputies band together and get tattoos. I am utterly revolted by the notion that certain deputies might set themselves apart, act as if they are special or exempt from the rules, or have earned the right to overrule Department policy and core values, and express it by forming secret societies identified by ankle tattoos. The Sheriff is similarly revolted and has spoken forthrightly on the issue. I am nonetheless unwilling to take an inferential leap from tattoos to a conclusion that there are racist gangs in the LASD. In the absence of convincing evidence to the contrary, which I have not seen to date, it is best to avoid over reading the situation.

Nonetheless, within the last few years, within some of the jails and Sheriff's stations, there have been instances where groups or cliques of deputies seem to have resisted or refused to adhere to policy, or have receive substandard or misguided supervision, or have misused force, uttered racial epithets, or otherwise acted inappropriately.

fiscal reality sets in and individuals must compete for resources. If the LASD does not put its money, as well as its rhetoric, behind the effort to deal with gender equity issues in general and sexual harassment specifically, an uncomfortable status quo will likely persist. Indeed, even if the Department commits substantial resources to eradicating sexual harassment, it is easy to underestimate how difficult it is to change longstanding cultural attitudes in large bureaucracies.

Lessons To Be Learned from the Settled Cases

Departmental Culture

We were struck frequently in the Settled Cases by a tacit assumption by some LASD supervisors or investigators that the Complainant betrayed weakness by raising issues of harassment and should have been able to "just take it." We asked various LASD personnel if we were correct and, if so, why the assumption seemed to be made. In response, the speculation of the LASD personnel focused on ingrained law enforcement culture.

Throughout the United States, rookie officers, generally male, have always been subject to hazing and testing to see if they are tough enough and hence reliable under dangerous conditions. The rookies generally have acceded, fatalistically, to these tests to prove their toughness and trustworthiness in order to win acceptance from their peers and their seniors. We have strongly criticized such hazing in the LASD in the **Kolts Report** and in past **Semiannual Reports** because it inculcates the Code of Silence, is demeaning in the extreme, and perpetuates a culture of "we"

I've alluded to some of these incidents in my semiannual reports, and I will continue to monitor how LASD deals with excessive force and instances where deputies thwart authority or attempt a cover-up. This Board has asked me to track and comment upon the status and integrity of internal Departmental investigations. Although the law precludes me from describing in this public setting the specifics of current investigations, I do and will keep this Board current and informed. Similarly, I will quickly forward to this Board any new evidence I come across possibly indicating the existence of racially-motivated cliques. And if appropriate action is not taken with respect to those who misuse force or engage in other misconduct, including persons who actively or passively participated in a cover-up, I will be the first to inform this Board. So too will I let this Board know if the Department lacks courage to mete out appropriate discipline or assign blame up the chain of command for failures to supervise and anticipate problems.

I will now turn to the postings on a web site linked to the deputy's union, ALADS. Some of the postings were offensive sexist remarks, presumable by some LASD deputies. The Department initiated an Internal Affairs ("IA") investigation to determine if any violations of LASD policies had occurred. The nub of the inquiry was to determine if LASD employees had used Department computers on County time to transmit offensive messages and, if so, whether the individuals could be identified. IA ascertained that 500 or so "hits" were made via LASD

versus "them," with "we" being line law enforcement personnel and "them" variously being department supervisors and managers or the community being policed, particularly racial and ethnic minorities and young people.

We speculate that the same culture that tests male rookies by hazing and calls for demonstration of macho behavior likewise expects female rookies (as well as openly gay rookies) to demonstrate their toughness by "just taking it" as regards sexual harassment or homophobic commentary. The underlying assumption seems to be that if the female is too sensitive to deal with sexual harassment, she will be unable to handle an abusive arrestee, or inmate, or the general rigors of the law enforcement job.

Although neither hazing nor harassment is in any way to be tolerated, it is important to recognize how sexual harassment is particularly insidious and stigmatizing: Hazing rituals test in a perverse way "Are you one of us? Do you share our values? Will you be loyal?" Harassment of female and gay law enforcement officers, however, tends to convey the opposite: "Don't you see you are not one of us? Don't you see you'll never belong? Don't you see that your being a female or gay means you can never be fully trusted or relied upon?"

In our review of the Settled Cases, it was apparent that, in several of the cases, the LASD supervisor fell into the trap of seeing the harassment as "mere" hazing and minimized the harassing conduct with the explanations like: "That's just the way [the harasser] is." In another instance, a male supervisor thanked a female employee for sharing her "concerns" and noted that she

computers to the web site in the month following the Sheriff's March 26 announcement of proposed new transfer policies for women to patrol. The greatest number of hits occurred on May 31, the day the news hit the press about the ALADS link to the website.

Although IA could trace passwords to identify individuals who used Department computers to gain access to web site, IA could not determine who transmitted a message to the site. To further investigate who sent messages, IA contacted AOL Digital City, where the messages had been initially posted. AOL told IA that it had no way to identify those who sent *messages because they did not* have to identify themselves to AOL or provide an e-mail or other address. Although IA could ask LASD employees who accessed the site if they also sent messages, the process would be cumbersome and the policy violation—using a Department computer on Department time to access the Internet and transmit a message - would, in the final analysis, be trivial. IA has thus recommended closing the investigation, and the avenue indeed does not seem fruitful to pursue. As I leave the subject of the website, I want to note that ALADS and its executive director cooperated with this inquiry and wrote the membership that ALADS will not tolerate cowardly, anonymous attacks on female deputies.

But merely because IA cannot identify the authors of offensive comments does not mean that possible illegal conduct toward women in the LASD should not be pursued further.

As with many issues I have investigated in the LASD, the first requirement is accurate and reliable data. Our action plan contemplates gathering timely data in connection with pending litigation to see whether and to what extend there are intolerant attitudes or unlawful conduct based upon a persons; gender, race, ethnicity, or sexual orientation.

The recommendations and action plan, however, do not stop with data gathering. In the interim, there is much that can be one to improve how the Department responds to difficulties experienced by women. Previous Internal Affairs investigations, including many which let to lawsuits for which this Board has paid substantial sums in settlement, were not exemplary. Speaking now only of IA investigations arising from facts alleged in closed lawsuits, they took too long and evidence an unsophisticated or incomplete understanding of the applicable law. At times. the scope of the IA investigation was too narrowly drawn, and too often they were inconclusive or reached results that led to trivial discipline, if discipline was meted out at all.

This Sheriff has said that he is committed to improvement and has begun to take action. The recent organization of a well-staffed, specialized discrimination and sexual harassment unit with IA should lead to improving the timeliness and quality of investigations, and I will cover the subject thoroughly in my semiannual reports.

had handled the sexual harassment well by not blowing the complaint "out of proportion." The supervisor may have unwittingly trivialized the complaint or caused the Complainant to feel somewhat patronized; at least it would seem so in light of the ultimate $350,000 paid to settle the case.

Inadequate Supervisor Responses to Complaints

In many of the Settled Cases, the failure of management to appropriately respond to the Complainant's grievances, even more than the underlying conduct, was the most significant factor motivating the Complainant to pursue litigation. Because of this key factor, one could readily conclude that the inadequacy of the initial supervisory response was the single most significant reason for the large size of some of the settlements.[3]

Many of the Settled Cases were brought by female deputies who had been with the LASD for several years. Some had experienced discrimination or harassment as rookies or early in their careers but decided against complaining; perhaps because they were trying to show that they were able to "just take it." Thus, harassing conduct was not brought to the attention of the supervisor until the Complainant's resilience was depleted and the situation became unbearable. Often in the Settled Cases (and quite ironically) the incident that was the last straw was much

3 See *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257 (1998) and *Farasher v. City of Boca Raton*, 118 S. Ct. 2275 (1998) holding that the exercise by an employer of reasonable care to prevent and correct promptly any harassing behavior is an element of an affirmative defense to charges of sexual harassment.

less severe than prior instances that the Complainant had let go by. This unfortunate situation may, in some odd and again ironic way, account for the reaction of the supervisor: Unaware that the incident complained of was simply the last straw in a series of instances, the supervisor may have been perplexed by the vehemence of the Complainant in light of the apparent triviality of the incident complained of in isolation. Tragically, this may have leaded the supervisor to judge the Complainant as weak or inappropriately sensitive, thereby generating misplaced sympathy by the supervisor for the harasser.

Law enforcement managers therefore could benefit from an awareness that many Complainants will stifle themselves until they no longer can take it. So sensitized, they could then modulate their responses and, by responding appropriately, nip in the bud a significant number of cases. The quality of the supervisor's response will often determine whether the Complainant feels the Department is living up to its duty to protect her, or whether she feels the Department is deserting her.

At the time of initial complaints to supervisors, some Complainants in the Settled Cases said that their goal had been simply to have the harassing conduct end. They were reluctant to commence a formal Internal Affairs investigation or litigation because they were pursuing otherwise rewarding careers and did not want to be stigmatized or lose their careers. Indeed, a fear that filing litigation against the LASD would be the end of the employee's career would not have been misplaced: All of the sworn personnel whose complaints were included in the Settled

In the interim, County Counsel and I jointly set up a training session for the Internal Affairs unit and various commanders, and two other training sessions are contemplated.
But even when the Internal Affairs investigations are brought up to par, serious problems may remain. The inadequacy of the line supervisors' response to complaints of discrimination or harassment, we found, was often more troubling than the events that were the subject of the complaint. We have seen instances in the past, in cases which are now closed, where the mishandling by supervisors caused the complainants further unnecessary problems, leading the complainants ultimately to resort to the courts our of frustration. Those lawsuits ended up costing the County unnecessary sums and resulted in the loss of valuable women who retired, often with disabilities, rather than continue their careers in the Department.

It simply cannot be that the price a woman must pay for making a complaint is loss of her chosen career. But by the same token, reckless and unfounded allegations against men cannot be permitted to cast a permanent cloud over their careers. Front line supervisors—sergeants, lieutenants, and captains—must be carefully schooled how to meet legal obligations and Departmental responsibilities to both the complainant and the person complained against.

Cases wound up leaving the LASD. Thus, sadly, some Complainants may not file suit until the inadequacy of the Department's response leaves them feeling that they have no other options and nothing to lose—in other words, that the LASD has deserted them. This is yet another reason why the initial supervisory response is crucial: Both as a matter of law and as a matter of good policy, an appropriate initial response may eliminate or minimize the County's liability and save the careers of valuable employees.

Lackadaisical Investigations

We observed instances in the Settled Cases where Internal Affairs investigators did not expand pending investigations beyond the specific misconduct by the specific individual alleged in the four corners of the initial complaint, even when they uncovered additional misconduct by the harasser or by others. Most troublesome were cases where the investigation revealed that supervisors had ignored complaints of sexual harassment. Internal Affairs investigators in such instances did not take the initiative to add these additional potential violations of LASD policy to the investigation. This behavior may simply be commonplace bureaucratic behavior: why create more work for oneself and risk alienating more people, particularly supervisors? Yet even if understandable from the bureaucratic perspective, the reluctance to expand investigations easily could cause Complainants to infer at best a tepid and grudging commitment to eliminate sexual harassment.

Although supervisors on the whole are responding better when confronted with a complaint of a racial or ethnic epithet, we need to make sure that they follow best practices when they investigate and decide whether to impose appropriate discipline for founded allegations of misconduct based upon gender or sexual orientation.

Without implying that the current LASD discipline is inadequate or training incomplete, I nonetheless strongly recommend further training specifically for sergeants, lieutenants, and captains. With your concurrence, I will monitor whether proper training promptly occurs and whether captains appreciate that it is imperative to institute corrective action and impose discipline when appropriate.

On a more positive note, its good to report to you that the Department's internal ombudsperson is competently handling harassment complaints. As you are aware, a complainant has a wide array of options in pursuing her claim. She can go to her immediate supervisors. She can go to the internal ombudsperson to attempt to consensual resolution. She can go to the Internal Affairs or she can go to the state and federal authorities. The ombudsperson appears to adequately represent the complainant's interests while also attempting to manage risk and provide guidance for the rest of the Department. We found the ombudsperson's advice in general to be accurate and timely, but we also saw that the ombudsperson's office is severely over-burdened, and, perhaps as a result, cannot involve

Of similar concern are instances where there was indefensible delay in examining claims of supervisorial misconduct. For example, in one Settled Case, at the outset of the Internal Affairs investigation, the Complainant mentioned to OCRC, and OCRC mentioned to Internal Affairs, that the she felt her supervisors had failed to respond appropriately to sexual harassment. These claims are well documented in OCRC's reports: Internal Affairs was informed of this potential supervisorial misconduct in August 1995, before any litigation was commenced. Despite this, Internal Affairs did not start an investigation of the supervisors' conduct until late in the litigation, in June 1998. When the litigation settled in December 1998, the investigation of the supervisors was still not complete, and discipline was not imposed until April 1999. Indeed, the Corrective Action Report erroneously stated that the information about the supervisors' misconduct did not come to light until the litigation.

On the other hand, there are laudable instances in the Settled Cases where Internal Affairs moved swiftly to pursue evidence of additional wrongdoing. One investigation commenced in 1997 was rapidly expanded to include an investigation of the supervisor after interviews revealed that the supervisor may have failed to respond appropriately to the alleged harassment. This investigation is particularly noteworthy because the investigators asked probing questions calculated to reveal any additional wrongdoing, if it existed. This occurred in one of the last of the Settled Cases, leading us to note, as mentioned earlier, that improvement had begun during the latter Block years.

itself as usefully in matters of racial, ethnic, or sexual orientation discrimination as it does with gender issues. Moreover, the ombusperson's other responsibility for providing career counseling and training is suffering. We have noted this in our semiannual reports, and we have urged splitting up the ombudsperson's functions and assignment of more staff. The Sheriff agrees.

We have long-standing recommendation that the Department centralize its efforts to widen opportunities for all fight discrimination by putting them under a Department executive. The Sheriff saw it the same way and appointed Commander Nancy Malone to do so. The ombudsperson will report to Commander Malone. Also in response to our prior recommendations, the ombudsperson will move out of the headquarters building so that person can consultthe office with greater privacy.

There are two sides of the coin regarding discrimination issues in the LASD: The first is to make certain that complainants have a full panoply of effective remedies. The other is to eliminate impediments to promotion, advancement, and opportunity. This includes learning why the overall percentage of women in the Department seems stuck at less than 15% and why there are too few women in high-profile or coveted positions or in patrol assignments or at certain stations. In connection with my monitoring duties, with this Board's approval, I will from hereon out make the same focused effort to review Department progress on discrimination and harassment issues as I continue to do regarding excessive force. I will audit harass-

ment and discrimination investigations by Internal Affairs and compare their results to litigation arising from the same set of facts. I will point out to this Board when there are marked disparities between litigation results, internal investigation, and discipline. I will report to this Board when it appears that Internal Affairs investigations are sloppy or cannot be concluded in time to provide meaningful protection to all involved parties. I will look at discipline and report whether it is consistent and appropriate, and I will note whether corrective action is effective. In closing, I want again to note that the Sheriff is personally committed to improving the lot of women in the Department. Implementation of the Kolts recommendations and the monitoring thereof have sharply reduced County exposure in force cases. I am confident that similar progress can be made on the issues discussed here today.

Special Counsel
Merrick J. Bobb and staff
June 29, 1999

Undercharging

In some instances, the Settled Cases revealed that LASD personnel at times failed to acknowledge that certain conduct in fact constituted sexual harassment or tended in other ways to minimize it. For example, some supervisors and Internal Affairs investigators in the Settled Cases expressed the view that sexual harassment requires conduct that is "sexual" and that mere harassment because of a person's gender, without sexual overtones, is not actionable. Besides being legally incorrect under state and federal law which includes conduct that is not "sexual in nature," this erroneous view directly contravenes the LASD's written sexual harassment policy which provides that harassment based on gender "is a form of sexual harassment" and need not necessarily be "sexual in nature." The policy points out explicitly that such "gender harassment" may include "practical jokes . . . because of gender." (Policy Manual 3-01/030.72 at p. 4-5.)

During the period covered by the Settled Cases, once Internal Affairs completed its investigation, the file was sent to the LASD Advocacy Unit which in turn created a Disposition Worksheet theoretically encompassing all potential violations of LASD policy raised by the facts uncovered in the investigation. We nonetheless observed in some of the Settled Cases that the individual charged with wrongdoing (the "Subject") was charged with violating the less serious policy regarding "conduct toward others" rather than the sexual harassment policy. "Conduct toward others" is a milder offense than violation of the LASD's sexual harassment policy because the LASD's Guidelines For Discipline recommends

lesser minimum discipline for its violation than for sexual harassment: The minimum discipline for a violation of the policy governing conduct toward others is a written reprimand, whereas minimum recommended discipline for sexual harassment is a suspension for 15 days.

In addition to possible reluctance to take sexual harassment adequately seriously, there are at least three other explanations for this apparent preference for milder discipline. First, LASD personnel may have been trained inadequately and thus did not recognize sexual harassment in some of its less obvious forms. Second, to the extent that the Subjects or possible Subjects were supervisory personnel of higher rank, there may have been a bureaucrat's reluctance to investigate persons who may someday become the bureaucrat's own supervisors. Third, as is discussed in detail below, there may be have been an incentive to undercharge because the County Civil Service Commission more readily affirmed violation of the milder "conduct toward others" policy than sexual harassment.

Curiously, the Settled Cases revealed that an incomplete understanding of sexual harassment was particularly acute for the ranks of captain and above. Before the LASD adopted its current sexual harassment policy, it trained the upper ranks in a very generic way about sexual harassment. After adoption of current policy, the LASD has provided more comprehensive and specific training that includes numerous useful examples. Although this revised training has been given to many sworn personnel, it still has not been systematically provided to captains and the other higher ranks, leading to the result that subordinates are more knowledgeable about sexual harassment than their superiors. In theory, a lieutenant who had the more comprehensive training may come upon a situation paralleling one of the examples given in the training only to find that the captain is behind the learning curve and responds inappropriately, saying, as in an example cited earlier, that a Subject's conduct was excusable because "that's just the way he is."

Obviously, such statements by high-ranking personnel about sexual harassment are extremely destructive, leading subordinates who hear such things to conclude that the brass is not really interested in eliminating sexual harassment and the written policies are mere window dressing.

Reluctance to make Credibility Determinations

In the Settled Cases, disinclination by unit commanders to make credibility determinations compounded the difficulty of establishing a sexual harassment charge. Sexual harassment generally occurs without witnesses other than the Subject and the Complainant, thereby pitting the Complainant's uncorroborated word against the Subject's uncorroborated word.

Under previous practice (the procedure currently followed is discussed below), after Internal Affairs completed its investigation and the Advocacy Unit outlined the potential charges, the file was sent to the unit commander for findings. The unit commander's decision therefore was made based on the Internal Affairs record of its investigation, which included a summary of the investigation and transcripts of all interviews taken during the course of the investigation. Although audiotapes of the interviews were available, few, if any, unit commanders would request the tapes in the normal course and thus did not actually hear the Complainant or Subject giving their versions of the facts.

Internal Affairs normally did not render opinions on the credibility of the various witnesses, the idea being that Internal Affairs should neutrally lay out the case and not usurp the unit commander's prerogative to decide the case. In practice, this made little sense. The Internal Affairs investigators had interviewed the witnesses and saw them live. Like a jury in a jury trial or like the judge in a court trial, they were in the best position to judge credibility. The unit commander did not see live testimony, generally did not request the audiotapes, and, having only

the cold record to review, was poorly equipped to assess credibility in a "he said/ she said" situation. It is therefore perhaps understandable that in such situations, the unit commanders' usual approach was either to find the matter could not be resolved one way or the other or that the complaint was unfounded. It was extremely rare for a unit commander to uphold an uncorroborated sexual harassment claim. This state of affairs thus likely added to the disincentive for Complainants to come forward out of fear that making an "unresolved" complaint would be a poor career move.

A system that effectively eliminates determinations of credibility in sexual harassment cases is out of touch with reality and with common practice. For instance, EEOC materials distributed by County Counsel to LASD personnel emphasize the critical role that credibility determinations play in sexual harassment cases. In the EEOC document entitled Enforcement Guidance: Vicarious Employer Liability for Unlawful Sexual Harassment by Supervisors (6-18-99) available at http://www.aele.org/, the EEOC recognizes that employers must weigh credibility in sexual harassment cases:

"If there are conflicting versions of relevant events, the employer will have to weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassment in fact occurred."

In some of the Settled Cases, the reluctance to make credibility determinations led to apparent abdications of responsibility: Saying that a complaint was unresolved was an easy out for unit commanders who, as discussed above, had not received the best contemporary training in the first place on what constitutes sexual harassment policy. Thus, we observed the somewhat ironic pattern in the Settled Cases where the same charges that were unresolved or unfounded at the administrative level led to hefty settlements after litigation. But even where unit commanders might have ultimately sustained a complaint, delays in investigation and adjudication

rendered their decisions virtually meaningless in some of the Settled Cases, as we next discuss.

Delays in Investigation and Adjudication of Complaints

Many of the investigations in the Settled Cases were not completed in a timely manner. Department policy has required for many years that investigations be completed in 90 days. While some sexual harassment investigations were completed within that time frame, it was not uncommon for them to take double that amount of time: Some took nearly a year to complete; and two took more than a year and half. The LASD has conceded publicly that it took on average between 9 and 18 months to complete a sexual harassment investigation.[4]

Further substantial delays occurred post-investigation while waiting for the Advocacy Unit to complete its review listing the potential charges on the Disposition Worksheet. In one instance, Advocacy took more than four months to write up the charges. Further time passed while the unit commander was making findings. In the event charges were founded, more time slipped by before the unit commander ultimately issued the initial letter of intent to impose discipline. In the Settled Cases, the time ranged from one to 12 months (averaging 5 months) between the completion of the investigation and the unit commander's issuance of an initial letter of intent to impose discipline.

These delays left the Complainant in limbo, not knowing if the LASD intended to take her claim seriously. This led to frustration, and Complainants decided they had to hire lawyers to initiate litigation in order to find out if the LASD was

4 Currently, investigations are taking, on average, three and a half months to complete. Although this is a great improvement, it is still just slightly outside LASD guidelines mandating completion in 90 days. We are encouraged by the progress to date and on the LASD's current emphasis on timely investigations. Internal Affairs has also cleared most of its backlog. In 1997, however, there was a backlog of 72 pending harassment cases, some as many as 2 years old; many more in excess of one year old.

listening to the allegations of harassment and responding to them.

The delays left the Subject in limbo as well. In some instances, transfers and promotions were postponed for almost two years pending resolution of investigations, leading to patent prejudice to Subjects who were later exonerated. On the other hand, Subjects of "founded" investigations went unpunished for months or years. Prompt punishment is the most effective to change behavior. Moreover, the deterrent effect on would-be Subjects is watered down substantially without prompt punishment for the guilty: In the absence of speedy punishment, there is no deterrent or, worse yet, would-be Subjects might even conclude that the Department did not intend to punish the Subject at all.

The delays also increased County exposure in the Settled Cases. As noted above, a prompt, thorough and impartial investigation followed by an appropriate response is a defense in litigation. The delays made the County's lawyers' ability to defend the LASD harder, if not impossible.

The drawn-out process gave plaintiffs in the Settled Cases additional arguments to make to the jury that they otherwise would not have had. A plaintiff could argue that the LASD was not taking sexual harassment claims seriously when its own policy required that an investigation be completed within 90 days but the actual investigation took months or years.[5]

Lenient Discipline

We traced the discipline ultimately meted out in the Settled Cases, which, in the main was lenient. To be sure, there was one case in which several officers were discharged and another where an officer served a 30-day suspension. There were

5 A newly enacted section of the Government Code, Section 3304(c), which became effective January 1, 1999, prohibits disciplinary action unless the investigation is completed within one year of a public agency's discovery of misconduct by a person authorized to conduct investigations. This hopefully will be yet another incentive for prompt investigations.

other cases where individuals appeared to retire in lieu of discharge or where investigations did not come to a conclusion (intentionally on the part of the LASD or not) before a Subject officer was able to retire. Otherwise, little meaningful discipline was imposed, even in cases where County taxpayers expended hundreds of thousands of dollars. Discipline in the eleven Settled Cases was as follows:

- In one case that resulted in a six-figure payment by the County, the deputy originally was to be given a six-day suspension for three separate incidents resulting in violations of "conduct toward others." By settlement, the six-day suspension was removed. In lieu thereof, on one of the three incidents, the deputy was required to undergo counseling with an LASD Chief, and the remaining two counts were settled by substituting a finding of "unresolved" for the prior findings that the allegations had been "founded." In the same matter, a sergeant was originally given a one-day suspension. The suspension was never served because in settlement of the matter, the underlying charge was changed from a "founded" allegation to an "unresolved" allegation. In the same matter, a lieutenant received a written reprimand. In a related matter, charges against a Captain were held to be unfounded, a Lieutenant received a written reprimand under policy sections governing general behavior and conduct toward others, and charges against a deputy were held "unresolved."

- In a Settled Case where the County paid in the high six figures, the allegations against the Subject, a supervisor, were held initially to be unfounded and later held to be unfounded and unresolved.

- In another settled case that settled in the mid six figures, a suspension was reduced from six to four days and then placed in abeyance.

- In a case with a low five-figure settlement, no discipline was imposed and the investigation was terminated.

- In a case with a mid five-figure settlement, one Subject received a 30 day suspension (reduced from a discharge); another Subject received no discipline (reduced from a ten day suspension with all the charges changed to unfounded); and a third Subject also received no discipline (unresolved charges were changed to unfounded in settlement).

- In a case with a low six-figure settlement, the Subject was allowed to resign in lieu of discharge.

- In another case with a low six-figure settlement, the Subject retired before intended discipline was decided.

- In a case with a low five-figure settlement, the Subject received a two-day suspension.

- In case with a mid six-figure settlement, several Subjects were discharged. The facts in the case were particularly egregious in that the Subjects had incited jail inmates to join in the harassment.

- In a case with a mid six-figure settlement, a Subject retired before serving a five day suspension and another Subject received a written reprimand that was later rescinded.

- In a case with a low six-figure settlement, the Subject bargained a ten-day suspension down to two days.

In many of the Settled Cases, unit commanders exercised their broad discretion in a way that resulted in lenient discipline based upon the less serious charges of "conduct toward others" rather than sexual harassment. After unit commanders determined that charges were founded, they recommended the amount and kind of

discipline to be imposed and sent the Subject a letter of intent to impose discipline. In cases where the unit commander recommended substantial discipline, generally a suspension of more than 15 days, the recommendation had to be accepted by senior management in a process entitled Case Review before the Subject received a letter of intent.

Once informed of the intent to impose discipline, the Subject has several avenues to argue against the discipline and, if the Subject loses, to appeal the findings and discipline. If a discharge or a suspension of more than five days is recommended, the Subject can have a "Skelly" hearing, at which a hearing officer, almost always an LASD Division Chief, decides the case and discipline, if any. The Skelly hearing officer has wide discretion to affirm or reverse the intended discipline set by the unit commander or to settle the matter in exchange for reduced discipline or different findings or both. Alternatively, the Subject may waive a Skelly hearing and grieve the discipline to his supervisor, his captain, and then to his Division Chief. In practice, Subjects in grievances generally waive the hearing before the supervisor but avail themselves of the hearings before the captain and Chief. As in a Skelly hearing, the captain and Chief can reverse the findings and discipline or settle the case to avoid an appeal of the grievance. If the matter does not settle, the Subject can appeal denial of the grievance or the result of the Skelly hearing. Depending upon the severity of the discipline, the Subject takes the appeal either to County's employee relations grievance committee, ERCOM, or to the County Civil Service Commission.

At any stage of the appeals process, the LASD may settle the matter with an agreement by the Subject to end his appeal in exchange for a lesser discipline. Pursuant to agreements with the union in place during the time of the Settled Cases, there were no limits on how far discipline could be reduced to achieve a "settlement." Thus, despite minimum LASD guidelines for appropriate discipline, when settling

with an employee, there is unlimited freedom to reduce the discipline far below the recommended minimum suspensions.

The LASD rationalized these settlements by complaining that Civil Service hearing officers too often and too capriciously overturned or reduced discipline imposed by the LASD, a topic we take up later in this Chapter. Hence, if the LASD wanted any discipline imposed at all, it argued that it had to wheel and deal with Subjects. Indeed, the LASD was quite successful in avoiding appeals to Civil Service: Only one of the Settled Cases appears to have been appealed. That is hardly an enviable result, however. The LASD had obviously so watered down discipline with what are arguably sweetheart deals that a Subject had no reason to appeal.[6]

These "settlements" not only resulted in lenient discipline, but also in tardy imposition of the discipline because of the passage of time between the initial complaint and the settlement of the matter. Ironically, the delay in itself increased the likelihood that the discipline would be made even more lenient. As time passes, the desire to exact an appropriate penalty wanes. In other instances, the Subject may have acted irreproachably in the interim, leading a seemingly compassionate unit commander to conclude the Subject has learned his lesson and discipline is unnecessary. Whether or not such a determination is a just result in a given case, the failure to impose timely and appropriate discipline vitiates any effort to deter others, to make an example, or to show Complainants that sexual harassment will not go unpunished.

6 The **Kolts Report** and various **Semiannual Reports** looked at the disciplinary system within the LASD and viewed with a skeptical eye the protestation by the LASD that sweetheart deals had to be struck for fear of aggressive union representation and prejudiced Civil Service hearing officers. We advocated that the LASD use lawyers rather than lay people to represent it during Civil Service hearings and better select and prepare cases with an eye toward eventual Civil Service hearings. We held in abeyance conclusions about the alleged biases of hearing officers pending improvement in the LASD's advocacy before Civil Service hearing officers. At the same time, we reported results in Civil Service cases in several **Semiannual Reports**. We saw improvements in LASD advocacy as our recommendations were adopted. To hear the LASD make the same shopworn excuses today about aggressive union lawyers and prejudiced Civil Service hearing officers, seven years after **Kolts**, is dispiriting. We intend a thorough general review of the disciplinary system in one of our upcoming reports in which we will examine whether patterns in the Settled Cases concerning watered down discipline extend to other disciplinary matters.

A quirk of County law in addition makes it difficult to impose substantial discipline because it forbids the LASD from suspending an employee for more than 30 days. If the LASD wants to punish further, it cannot impose longer suspensions but rather must either reduce the employee in rank or terminate him. (We note parenthetically that the City of Los Angeles has no such limitation on suspensions and that the LAPD in appropriate circumstances can and does imposes suspensions for more than 30 days.) Because of the County 30-day limit, the LASD Department de facto reserves a 30-day suspension for the worst violations. Because 30 days is therefore draconian, a 15-day suspension may seem to be a relatively major punishment. Yet in comparison with possible punishment for the same offense just over the City line, 15 days may seem very light indeed. Although there is much to be said for demotion or termination if the misconduct merits more than a 30-day suspension, perhaps the overall impact of the County's 30-day limitation on suspensions should be studied further.

The Civil Service Commission Appeal Process

As noted earlier, the LASD rationalized settlements of intended discipline in the Settled Cases on the grounds that the settlements were necessary to avoid the biases, vagaries, and reversals inherent in the Civil Service process. A brief overview of how that process works is helpful in understanding the situation. As mentioned above, after exhausting internal reviews and appeals, the Subject of intended discipline may, in certain situations, request a hearing before a Civil Service Commission hearing officer at which the Subject is normally represented by a union lawyer and the LASD is represented by a member of the Advocacy Unit, who may or may not be a lawyer.

There are approximately thirty Civil Service Commission hearing officers with varying views and levels of expertise. The names of three potential hearing officers

are drawn at random. The Subject eliminates one name and the LASD eliminates another. Names are stricken by both sides based upon the past performance of the hearing officer. Thus, a hearing officer who rules frequently for the LASD is likely to be stricken by the Subject and the LASD is likely to strike hearing officers who often reverse its disciplinary determinations. The hearing officer is paid for presiding at hearings, creating in the mind of the LASD a financial incentive for hearing officers to "split the baby." Against this backdrop, the LASD thought it wiser to avoid the hearings altogether on the grounds that it was bad for morale to have discipline reduced or overturned by the Civil Service hearing officer in a large number of cases.

Fear of Civil Service hearings officers also influenced how policy violations in the Settled Cases were charged, particularly with respect to charging violations of the "conduct toward others" policy rather than as sexual harassment. The LASD's worries in that regard were not without basis. Indeed, in the Advocacy Overview for Calendar Year 1997, after describing a Civil Service Commission decision in which the Commission accepted the deputy's defense that one-time comments did not violate the Department's sexual harassment policy, it was noted that, "The Commission and arbitrators are very reluctant to uphold penalties for 'Sexual Harassment.' Generally, charges relating to such allegations are better stated as violations of rules pertaining to 'Conduct Towards Others' or to 'Performance to Standards.'"

It is easier to prove "conduct toward others" than to prove sexual harassment because there is no need in the case of "conduct toward others" to prove that gender was involved. In some of the Settled Cases, the LASD apparently thought that it was more important to obtain a finding that a complaint was founded, even if the finding had to be based on "conduct toward others," than to have the Civil Service Commission hearing officer reject a charge of sexual harassment because

the hearing officer rightly or wrongly concluded that the burden of proof for sexual harassment had not been met. The Civil Service hearing process does not allow the hearing officer to reduce a charge from sexual harassment to a violation of the "conduct toward others" policy. Therefore, in defense of the LASD's disciplinary settlements, the LASD has argued that undercharging was a pragmatic if cynical way to assure at least some minimal discipline was imposed in lieu of a complete reversal in a Civil Service hearing or appeal.

But there are other ways to scale down the risk that the Civil Service hearing will go astray. One way might be for the LASD to bait a trap: The LASD could charge both harassment and conduct toward others and track which hearing examiners or Civil Service Commissioners invariably go for the lesser charge even when both are proven. As a last resort, the LASD could ask the Board of Supervisors to change of the system. The Los Angeles Police Department uses two high-ranking police officers and a civilian as a three-judge hearing panel, rather than using the one-judge Civil Service Commission format.

We cannot currently say whether the LASD's jaundiced views of the Civil Service Commission are accurate or not. We nonetheless disagree with LASD's strategy based on these views in the Settled Cases. Its better to fight the good fight and lose rather than be cowed into accepting watered down settlements that fail in any meaningful way to punish wrongdoing or create a deterrent. As we discuss later in the Chapter, further strengthening of the Advocacy Unit would be a wise step so that more cases can be successfully prosecuted to acceptable resolutions.

Current LASD Initiatives

The Settled Cases are now over and belong to the past. We turn now to assess whether current LASD performance on sexual harassment and gender issues has

improved. Although there have been many changes for the better, some areas of concern remain.

Tension between Men and Women in the LASD

In recent years, the tension between men and women in the LASD has increased, and some men seem quicker to think themselves victims of reverse discrimination. The *Bouman* consent decree currently requires 25% of the assignments to "coveted positions" and 25% of sergeant promotions go to women. Yet women comprise just above 14% of all deputies. There are good arguments having to do with overcoming past discrimination and curing past ills in a reasonable time frame which demonstrate convincingly that the 25% figure makes sense. Nonetheless, those arguments do not assuage the sting felt by a man who rightly or wrongly perceives himself shunted aside for a desired assignment or a promotion to benefit whom he thinks is a less qualified woman. At the extreme, these feelings give rise to rage which gets expressed in virulent anti-female sentiments or acted out in sexual harassment. The web site comments referred to earlier in this Chapter may be evidence of such sentiment in the LASD. How widespread such sentiments are is currently unknown. For that reason, we strongly advocated before the Board of Supervisors that the LASD commission an independent expert to survey and probe the extent of such attitudes and sentiments. To our disappointment, there seems to be no measurable progress toward such a survey.

Commitment at the Executive Level

Against the backdrop of the tensions described above, the elimination of sexual harassment is a difficult undertaking. Building on our earlier discussion of the nexus between hazing and harassment, men may be acting out their rage at rules that seemingly favor less qualified women by generally harassing women sexually or by subjecting them to endless testing and humiliation. To counter such acting

out, the LASD must at the same time address the anxieties and anger of males while making it absolutely clear that it will not tolerate expression of such anger in sexual harassment or other illegal and offensive conduct. For that reason, it is imperative that the LASD leadership not unwittingly validates the improper conduct by treating the prohibitions against sexual harassment as tantamount to unnecessary evils or "political correctness" foisted on the LASD by liberals and the courts to bedevil law enforcement. Persons at all ranks who are well-respected must get the word out that sexual harassment hurts the Department and everyone in it and will not be tolerated.

Sheriff Baca is doing so and expresses himself with energy on the topic of zero tolerance for discrimination and harassment. But his administration, on foundations laid by the prior administration—through the risk management process, SCIF, and the strict enforcement of accountability policies—can eradicate sexual harassment forcefully and quickly if it wishes to do so. The techniques used by the Block administration to reduce excessive force are available to attack sexual harassment. Those mechanisms, in our view, are currently seriously under-utilized. Nonetheless, there is clear progress to note.

A new bureau was created in summer 1999 under the leadership of Commander Nancy Malone. Commander Malone's job is to promote gender equity and insure compliance with the *Bouman* consent decree. Consistent with our recommendations in several prior **Semiannual Reports**, this new bureau centralizes most of the Department's efforts to achieve gender equity and to eliminate sexual harassment. Commander Malone reports directly to the Undersheriff, an important symbolic step that at least suggests commitment at the highest levels of the LASD to gender equity. Also in summer 1999, the Sheriff began visibly to track the progress of sexual harassment investigations by Internal Affairs and posting the results in the Executive Planning Council conference room and on the LASD intranet. There has

been measurable progress, as noted earlier, in reducing the backlog of Title VII investigations and in completing investigations in a more timely and thorough manner.

The LASD was required in connection with the *Bouman* litigation to hire an outside consultant to review and revise the Department's sexual harassment policy and procedures.[7] We have been told that this consultant will design new training to improve supervisor's responsiveness to complaints. The County's Office of Affirmative Action Compliance has also reviewed the Department's training program and made recommendations.

The LASD recently has stepped up its efforts to train certain key personnel. With the assistance and participation of Julio Thompson, a key member of our team, and Senior Deputy County Counsel Dalila Corral, a training was given in June to Internal Affairs investigators working on sexual harassment complaints, OCRC personnel, and several interested Commanders concerning the proper approach to investigating workplace harassment. On August 16, 1999, a continuation of the program was given as a mandatory training to all LASD Commanders. In addition, on July 22, 1999, Internal Affairs investigators and three Commanders were given an update concerning recent developments in the law.

This recent training has, in general, been excellent. Nonetheless, it remains the case, as described earlier, that captains and above have not all received the comprehensive training that their subordinates have. The LASD should make sure it happens quickly.

7 This report does not discuss the status of the *Bouman* consent decree at length. We note in passing that through vigorous and welcome efforts by County Counsel, including Mary Wickham and Dalila Corral, there has been a focused reexamination of Bowman issues and a commitment to address them in a fresh and aggressive way. In addition, the County has hired a highly regarded law firm to represent it in the *Bouman* proceedings. One of the first steps will be to remedy the LASD's written sexual harassment policy which Judge Takasugi ruled did not comply with the law.

Supervisor Responses to Complaints

It is difficult to assess at this early stage whether supervisors have become more responsive to complaints of sexual harassment. Early evidence from current OCRC files we reviewed suggest that the supervisors are acting appropriately and are properly utilizing the resources of OCRC at an early stage. Our assessment cannot be complete, however, because it is too early to determine how many complaints of sexual harassment have arisen since the Settled Cases that might have been ignored by supervisors. That will not be known until the Complainants report them to OCRC or Internal Affairs or files a lawsuit. We will continue to audit the complaint files on a regular basis to monitor the Department's progress.

The Internal Affairs special team

Under Sheriff Block, a special Internal Affairs team dedicated to discrimination and harassment cases was created in October 1998. Headed by Lt. Willa Glover, the team has seven sergeants and one deputy. That team, as noted earlier, has done a very good job speeding up investigations and eliminating the backlog. Given the quality and dedication of this group of investigators, we are hopeful that this new team, which has received special training, will speedily cause the quality of the investigations to improve. It is too early to tell whether the new team will be more aggressive in expanding investigations to include Subjects and misconduct uncovered during the course of a pending investigation. We intend to continue to audit investigations to determine whether they are properly expanded when evidence of further misconduct comes to light.

Undercharging and Lenient Discipline

Our discussion of the Settled Cases pointed out serious problems of undercharging and lenient discipline in harassment cases. Recent reforms in how cases are adjudicated and reviewed may begin to address these concerns. As part of its

overall program to tighten accountability and manage risk, Sheriff Block's team, in 1997, reduced the plenary authority of unit commanders to decide whether charges were founded and what discipline should be imposed. An entity called the Executive Risk Review Committee was empowered to review investigations of sexual harassment and other misconduct and make findings.

The Executive Risk Review Committee consists of one commander who serves regularly, and two commanders who serve on a rotating basis. Once an Internal Affairs investigation is completed, the Committee receives and reviews the Internal Affairs file and schedules a hearing at which the Internal Affairs investigator describes the investigation and answers questions. Representatives of OCRC, the Advocacy Unit, and County Counsel are also present. The Complainant and Subject and their respective counsel are not present.

In March 1999, the procedures were amended to provide that the unit commander would attend the Executive Risk Review hearing and would determine in consultation with the Executive Risk Review Committee what the intended level of discipline would be in founded cases. This change should have positive effects: first, it should lead to greater consistency in decision making and in the level of discipline and second, it should act as a restraint on unit commanders' setting inappropriately low levels of discipline and then later bargaining away even that in "settlements." It remains to be seen whether these positive effects will be realized.

The Executive Risk Review Committee has the additional power to change what it believes to be an undercharge. If the Committee believes that sexual harassment rather than "conduct toward others" should be charged, and the representative of the Advocacy Unit confirms that there is a proper and sustainable legal basis for it, the Committee can modify the Disposition Worksheet on the spot or send it back to Internal Affairs for rewriting. The Committee is also empowered to order an expanded or new investigation when evidence of fresh misconduct appears during

the primary investigation. It is too early to say whether the Committee is exercising these powers with adequate vigor. Nor are we in a position at this early stage to evaluate whether the Advocacy Unit is being more appropriately aggressive in recommending more serious charges despite fears of Civil Service.

Further changes in the procedures of the Committee are planned. Starting in October 1999, Commander Nancy Malone will chair all sessions of the Executive Risk Review Committee. Rather than drawing from all the commanders in the LASD, a group of three to four commanders and alternates will be assigned to serve for fixed terms on the Committee. These changes are intended to increase consistency of adjudicatory and disciplinary decisions. We look forward to auditing the Committee and seeing whether salutary change is indeed occurring. We also note that these changes do not address the problems discussed earlier concerning a reluctance to make credibility determinations when there is uncorroborated opposing testimony from the Complainant and the Subject.

One solution to that latter problem would be to convert the Executive Risk Review Committee to a trial board which hears live testimony and the Complainant and Subject are present and represented by counsel. This would raise a host of other problems and we do not recommend it at this time. Another solution would be to ask Internal Affairs investigators, who did hear the live testimony, to openly opine as to the credibility of the witnesses, and we so recommend. At the same time, the members of the Executive Risk Review Committee must step up to its duty to decide credibility, difficult as that may be at times.

We also strongly recommend that the Committee be required to listen to the audiotapes of interviews in instances where the Committee is otherwise hesitant to make a credibility determination on the cold record, even when there is an Internal Affairs recommendation on credibility. Even better, Internal Affairs should videotape interviews so that the credibility of witnesses can be more carefully evaluated in

close cases. The videotaping of depositions in court cases is now a commonplace practice to enhance the ability of a factfinder, be it judge or jury, to make credibility determinations. We recommend these steps as alternatives to more drastic changes to assure that proper credibility determinations are made. We will follow up to see if they are adopted and lead to more credibility determinations and fewer unresolved complaints of sexual harassment.

Bargaining Down Discipline

In our discussion of the Settled Cases, we noted with distaste that even lenient levels of discipline got watered down in "settlements." The LASD has not presented us with any program to eliminate inappropriate reductions in discipline. One place, in particular, where discipline tends to get reduced is during the Skelly or grievance hearings. It has been suggested that the responsibility for such hearings, for sexual harassment cases at minimum, should be centralized rather than automatically assigned them to the Chief in whose division the misconduct occurred. This may make sense and could bring about greater uniformity. But the burden on the Chief to whom all the hearings would be assigned would be a particularly heavy one.

Better yet would be to use already existing accountability policies and mechanisms to call onto the carpet any Chief who inappropriately bargains down discipline. Under Sheritf Block, the Advocacy Unit began keeping track of wno bargained down discipline and by how much. Advocacy is continuing to do so, and those records should be used by LASD executives to bring Chiefs who are too lenient or too harsh into line. The Department has taken sensible steps to see to it that the adjudication of charges and initial imposition of discipline benefit from the guidance of the Executive Risk Review Committee to provide uniformity. These efforts should not be allowed to be dissipated by inappropriate "settlements" at later stages in the disciplinary process.

Finally, and no less importantly, we recommend further strengthening of the Advocacy Unit. We have been informed that County Counsel has promised three more attorneys for the unit, and we strongly support this excellent idea and will follow its implementation with interest. We also recommend curing an anomaly: Because the Advocacy Unit is headed by an attorney from the County Counsel's Office, the head of the unit appropriately reports directly to the Undersheriff. The unit as an entity, however, reports up through the chain of command through a Commander, Chief, and Assistant Sheriff before getting to the Undersheriff. Because the Undersheriff, in conjunction with the County Counsel Attorney who heads the Advocacy Unit, are in the best position to oversee and assure uniformity and adequacy of discipline by the Chiefs, we recommend that the unit as a whole have a direct reporting relationship to the Undersheriff.

We also note that in the last year, there has been a rapid turnover of Chiefs. The new Chiefs urgently need training on Skelly in general and on the exercise of discretion with respect to discipline in particular. We recommend that Advocacy provide that training and do so quickly.

Changes at OCRC

Our review of recent OCRC files confirms that it is providing a valuable resource to the Department. Supervisors are now relying on OCRC as their primary resource for guidance on LASD policies and their legal duties with regard to sexual harassment. OCRC consults with legal advisors from County Counsel only when it determines there is a particularly complex issue involved. This means that OCRC is, in effect, providing legal advice.

This places a great burden on OCRC staff to understand and remain up-to-date in a rapidly changing area of law. OCRC personnel have recently participated in several intensive advanced trainings on the law of sexual harassment. Nonetheless,

the burden of advising supervisors on the law should not be placed on individuals with no formal legal training. The LASD and the County might be better served by assigning an attorney to advise supervisors in how to handle complaints involving sexual harassment (and probably all other forms of harassment as well). That attorney would have a full plate right away. Although attorneys from the office of County Counsel are available to fulfill this role, it is our sense that they are over-burdened and do not have sufficient time to devote to it.

Currently, OCRC is responsible for several important functions. In addition to providing intake and other services on complaints of sexual harassment and discrimination, it provides career counseling, responds to complaints filed with the EEOC and DFEH, receives reports from and participates in the Department's S.T.O.P. Family Violence Task Force, handles the Educational Reimbursement Program and handles other tasks as well. These diverse responsibilities may affect OCRC's ability to perform in accordance with its highest potential.

The LASD has announced plans to split OCRC into three components, the Ombudsperson function, the Career Resources Center, and the Affirmative Action Compliance function. All of these will be placed in the bureau headed by Commander Malone with additional support personnel. Certain functions that appear not to be essential to the purposes OCRC was designed to fulfill, and which may have drained OCRC resources in the past, will be eliminated from OCRC's scope of responsibility. The Affirmative Action Compliance portion of the new organization will receive advice from the County's Office of Affirmative Action Compliance, and the Career Resources portion of the new organization will be moved away from Department headquarters to avoid any intimidating effect that the current location may have. The Department hopes that these steps will help all of the three component organizations reach their fullest potential. We share that hope.

2. Retention of Data and the PPI

Introduction

The **Kolts Report** was highly critical of the LASD's failure to collect and maintain data on how its personnel had performed in the past. Blinded to information about officers who repeatedly generated citizen's complaints, administrative investigations, or lawsuits, or who repeatedly used unnecessary force, the LASD prior to **Kolts** did not gather the facts to avert risks of misconduct. Worse yet, the LASD routinely erased the paltry records that were kept on investigations, destroying investigative files more than five years old unless there was litigation pending over the incident in question. Once the files were destroyed, the LASD's information about a given incident was so cryptic that it was useless—for all but founded investigations, all that was remained was a 3 x 5 index card indicating the general Policy Manual sections implicated. If founded, all that might be located was a letter in the officer's personnel file adverting to misconduct and imposing discipline. Even more mystifying, the LASD had a practice of "uncarding" officers—throwing away the 3 x 5 cards, thereby entirely destroying any evidence that the officer was ever investigated or that a citizen's complaint had been made. Although the practice of "uncarding" was in theory limited to a small subset of meritless complaints, we found that in reality, the standards for "uncarding" were loose and the practice of "uncarding" was rife with abuse.

Accordingly, the **Kolts Report** made two key recommendations, both of which were accepted by the LASD following negotiation with Judge Kolts and then ordered implemented by the Board of Supervisors:

1. All investigative files would be retained indefinitely and the practice of "uncarding" would stop.
2. The LASD would construct a computerized tracking system on a relational database to record and report data regarding an officer's use of force, citizen's

complaints, administrative investigations, lawsuits, and disciplinary history. The data would be retained indefinitely. The LASD committed to complete the system by 1993, but delays pushed it back to March 1997, when the tracking system—now known as the Personnel Performance Index or PPI—was fully operational.

As the balance of this Chapter will demonstrate, we are concerned that the LASD is considering eroding and backtracking on some of these bedrock **Kolts** commitments. It should be a sufficient response that the LASD has no power to do so: The LASD agreed to accept the **Kolts** recommendations after vigorous negotiation with Judge Kolts. In reliance on the promises and assurances the LASD made in the negotiations, the Board of Supervisors ordered that the negotiated resolution of each of the **Kolts** recommendations be implemented, and Special Counsel was appointed to monitor and report regularly on the pace and extent of implementation. Despite this clear history, it is nonetheless useful to review each of these areas to understand why the **Kolts** recommendation was made in the first place and whether it still is necessary.

Data Retention

Law enforcement in general, and the LASD in pre-Kolts years in particular, failed to identify and then to control individuals who had engaged in misconduct in the past or whose present conduct posed a risk of serious problems in the future.

Among other topics, the **Kolts Report** focused on excessive force, corruption, discriminatory law enforcement, and prejudice against community residents or fellow officers based upon race, ethnicity, gender, sexual orientation, or other proscribed factors. Judge Kolts and his staff were struck that the LASD conducted no regular or meaningful analysis of lawsuits and administrative investigations in order to glean lessons from cases that had cost the County's taxpayers tens of

millions of dollars in adverse judgments and out-of-court settlements. The concept of "risk management" was largely unknown and unpracticed in the LASD. Apart from whatever ad hoc community or political pressure was generated after a controversial shooting or force incident, the LASD had no financial or other incentive to scale down risk. Indeed, it was only after the *Los Angeles Times* focused on the cost and extensiveness of excessive force litigation, and four controversial shootings occurred during the post-Rodney King summer of 1991, that sufficient pressure built and the Supervisors commissioned the **Kolts Report**. Judge Kolts and his staff quickly discovered that the basic facts and information necessary for identification and management of risk was routinely destroyed.

In its defense, the LASD claimed that good captains knew, or could easily find out from lieutenants and sergeants, who the officers were in any given command who employed force unnecessarily and excessively. Hence, the argument went, there was no need to retain data or set up computerized systems to do the job. But as the **Kolts Report** convincingly demonstrated, captains, commanders, and chiefs did not have the grasp on all the relevant facts as they might have supposed. Often there were significant gaps, particularly with respect to the complete disciplinary history of officers, litigation involving officers, and claims made against officers. In truth, law enforcement managers and executives knew remarkably little about the officers and patterns of conduct that posed risk. Fewer still focused attention on risk and attempted to forestall it.

The LASD was not by any means unique: As every blue ribbon report in the last ten years on policing demonstrated—from the Christopher Commission report on the LAPD to the **Kolts Report** on the LASD to the Mollen Commission report on the NYPD—many large law enforcement agencies had the same failings. The recommendations in each of the blue ribbon reports were the same: There had to be a Department-wide commitment to hold persons at all levels of the

organization accountable and responsible for management and control of individuals, circumstances, and risks of misconduct.

Necessarily, then, it was critical that complete and accurate data relevant to the task be maintained, put in an easily manipulated form, and utilized. This in turn led to recommendations that crucial data on officer performance be maintained indefinitely. Among the most important were files concerning internal investigations, whether prompted by citizen's complaints or by the Department itself. As noted above, the **Kolts Report** recommended that administrative files be retained indefinitely. The LASD negotiated the point with Judge Kolts and so agreed. Since that time, the LASD has carefully lived up to its commitments.

Nonetheless, the issue of whether some administrative files should be retained indefinitely has arisen recently as a result of an asserted lack of storage space. We do not mean to suggest that the LASD is proposing to destroy important files merely because storage space is tight: Rather, tightness of storage space has prompted reflection on whether it is necessary to keep administrative investigations past the statutory minimum of five years on officers who have left the LASD or retired. We were asked for our views, and learned that the LASD routinely retains all other personnel information on retired or resigned employees and considered it to be best management practice to do so. At least one outside consultant to the LASD on risk management practices concurred. Because of the continuing importance of the files to litigation and to risk management, we strongly recommended that such files be kept indefinitely.

Among other uses, these records are a goldmine of extremely valuable information about officer performance in general. When used with other relevant records, they facilitate a review of careers to determine why, when, and how problems arose. They permit longitudinal and comparative studies of the long-term impact of differing selection criteria, training, assignments, and work

histories. They permit retrospective examination of any force incident or shooting or instance of corrupt behavior to determine which elements are subject to control, to better training, to better strategy, to different tactics, and the like. The files permit a sophisticated examination of why and how things go awry, thereby facilitating efforts to prevent future repetitions. Accordingly, these files must not and should not be destroyed.

If storage is a problem, the files could be microfilmed or stored electronically and the bulky hard files destroyed. Even audio and videotapes in the files could be stored electronically if their quality has not seriously degraded over the years. Although the issue has not been resolved, we are hopeful that the LASD will continue to abide by its agreements with Judge Kolts and the Board of Supervisors and continue the policy that has been in effect since 1992 not to destroy administrative files. We nonetheless will continue to watch this area carefully.

The PPI

Once it is determined that data will be retained, it must be stored in a way that facilitates risk management, internal and external oversight, and assessment of employee performance. Again, the blue ribbon reports—Christopher, Kolts, and Mollen—all recommended construction of relational databases. In 1992, the LASD agreed to create what has become the most sophisticated computer tracking system of its kind. The LASD said that it would be operational in 1993, but the date kept slipping.

As part of the settlement of *Darren Thomas v. County of Los Angeles*, and as a strong incentive to the LASD to push the PPI to completion, the County agreed to pay an additional $500,000 in settlement if the PPI was not "fully operating" by March 31, 1997. As March 1997 approached, the question arose how to determine if the PPI was indeed fully operational. The County and the *Darren Thomas*

plaintiffs agreed that we would serve as neutral arbitrators to make that determination. We asked for and were given unlimited access to the PPI and adequate time to test whether the LASD had "complete[d] and fully implement[ed] an early warning and tracking system that records, integrates, and reports data regarding use of force, citizen's complaints, administrative investigations, criminal investigations or prosecutions, civil claims, civil lawsuits, and disciplinary history."

Following our testing, we declared that the PPI was fully operational. Our determination was based, in relevant part, upon the following observations and conclusions:

1. The dispositions of all administrative investigations—whether founded, unfounded, unresolved, or exonerated—were readily available and accessible on any given officer's profile report, among other ways to gain access to the information. The data reached back as far as it was reasonably available at the time and was maintained indefinitely. No data had been purged or removed from any officer's profile report or from the database. No hard copies or electronic copies of the key source documentation had been or would be destroyed.

2. All reportable uses of force—lethal or non-lethal, in policy or out of policy—were readily available and accessible on any given officer's profile report, among other ways to access the data. The information was loaded onto PPI from as far back as it was reasonable at the time and was maintained indefinitely. No data had been purged or removed from any officer's profile report or from the database. No hard copies or electronic copies of the key source documentation had been or would be destroyed.

3. All citizen's complaints alleging misconduct—whether deemed credible or not and whether or not resolved by mutual consent—were readily available and accessible on any given officer's profile report, among other ways to access the data. The data was loaded onto the PPI from as far back as it was reasonably available at the time and was maintained indefinitely. No data had been purged or removed from any officer's profile report or from the database. No hard copies or electronic copies of key source documentation had been or would be destroyed.

In the fall of 1998, Sheriff Sherman Block appointed a PPI Review Committee headed by former Assistant Sheriff Richard Foreman to gather input from across the LASD about the operation of the PPI with the goal of perfecting the PPI and correcting any serious problems that had arisen. We were asked to become part of the PPI Review Committee. The Committee had substantially completed its research by November 1998, having held hearings throughout the Department on different dates to permit any Department member who so desired to express views on the PPI. Following the election of Sheriff Lee Baca, Assistant Sheriff Larry Waldie replaced Richard Foreman as chair of the Committee.

The new Assistant Sheriff made recommended changes in the operation of the PPI to the Sheriff in March 1999. There were recommended changes with which we disagreed. The most crucial had to do with administrative investigations. Whereas prior practice required that all investigations—founded or not—be reflected on the officer's profile report, it was recommended that administrative investigations leading to unfounded and exonerated dispositions be removed. The rationale was that supervisors would not take the time to distinguish between founded and unfounded investigations and would look only to the number of investigations shown, to the prejudice of deputies who amassed substantial numbers of unfounded investigations.

We suggested by way of compromise that the unfounded and exonerated investigations be displayed separately from the others so that the supervisor would not be misled and necessarily would have to distinguish between investigations that led to positive or negative results. The compromise was rejected.

Currently, procedures are being drafted to remove unfounded and exonerated investigations from current profile reports and not to so record them in the future. Although the underlying data will not be purged entirely from the database and will remain available through specific query mechanisms if desired, it is an open question whether this change is consistent with our prior determinations that the PPI is fully operational. We look forward to opportunities to discuss this issue further with the Department before drafts of procedures are finalized.

There is, however, an even more worrisome issue. Although the issue was not resolved when we took part in the PPI Review Committee, the LASD is currently considering a general limitation that would restrict the PPI profile sheet to data accumulated within the last five years. On a yearly basis, older data would be removed from the profile sheet. Whether the PPI would remain fully operational if such a step were taken is, again, an open question.

It is a step that need not and should not be taken. Sensible rules and procedures can be devised that would protect against misuse of irrelevant and stale data but would permit crucial data to be maintained indefinitely on the profile report. In any event, evidence pointing to a lack of integrity or misuse of force must never be taken off the profile report. We are confident that the Sheriff understands these issue well. We will follow the matter carefully and look forward to discussing the matter further with the LASD.

The pressure to change the PPI is based in substantial part on misconceptions and superstitions. It is ironic and frustrating that in the seven years since the PPI was first announced, the LASD has done so poor a job in quelling confusion and

fear among deputies concerning how the information on the PPI is used. In October 1993, in our **First Semiannual Report** at pages 31-2, we reported that we had found "widespread ignorance among deputies about the basic concepts behind the PPI as well as fear that the PPI will invariably be used punitively whenever a deputy crosses an unspecified threshold of force reports, citizen complaints, or lawsuits. Supervisors and managers also had little understanding of what the Department expected them to do with the PPI." We then described how Special Counsel and the LASD's top executives had agreed that the PPI was primarily "a tool for inquiry, investigation, and, if necessary, for intervention; not for punishment per se, although patterns of abusive conduct should influence selection for coveted assignments, promotion, personnel evaluation, and augmentation of discipline in appropriate circumstances." LASD management is largely leaving unaddressed and unchallenged the forebodings among deputies about the misuse of the PPI.

Over the last seven years, we have observed how the PPI was being used and have commented on its merits and its occasional failings. The last time we commented at length on the PPI was in the June 1998 **Ninth Semiannual Report**. Our investigation of the Century Station demonstrated that the PPI was still being demonized by many deputies there to such a degree that it was "being used as a bogeyman of sorts." The biggest fear was still that deputies would lose out on promotion or transfer opportunities because the captain deciding their fate would simply count the "tick marks" on the PPI without regard either for the legitimacy of the complaints or the circumstances under which they were accumulated. It boiled down to an abiding distrust by deputies of their supervisors; an expectation that their superiors would not be conscientious and look behind the raw numbers. In our investigation, we ran to ground every instance cited to us of a deputy who had been wronged by misuse of the PPI. We found in each such case

that the problem was not the PPI but rather such reasons as the glacial speed of the disciplinary process.

We nonetheless expressed concern that some captains did not routinely review the backup documentation that supported and explained the various PPI entries for a particular deputy. We believed, however, that the problem would be alleviated as more backup information was inputted in to the PPI itself so that captains would be able to review it at their desks with a click of the mouse. In order to allay the rampant fears about the PPI, we proposed an audit to determine whether supervisors were complying with Sheriff's Manual Section 3092/085.30 which states that "managers and executives shall not use the numbers of incidents [on the PPI] as the basis for the evaluation of or for personnel decisions affecting an employee." We believed it was only fair to take a close look at whether supervisors were using the PPI appropriately: "Simply put, if the deputies' conduct is to be scrutinized and tracked, the unit commanders' use of that tracking system must be scrutinized as well. With the PPI, the Department is well on its way to having the most sophisticated personnel tracking system in the country. By and large, it appears that the PPI is working very well, but it is important that the Department not lose sight of the need to address the fears and concerns of the deputies." **Ninth Semiannual Report**, p. 34.

There is a big difference between addressing fears and capitulating to them. Proposals to take information off the PPI or to limit how long data is retained smack of capitulation because the question posed is not "how can we keep the information and at the same time insure that it is not misused?" but rather is "how much data can we lop off?" In this and many other areas of law enforcement, fear of information seems to lead to suppressing it rather than confronting it. Like ostriches, law enforcement personnel at times seem to believe that if you do not know about something, it cannot strike and hurt you.

Or, put more cynically, if the information is negative or controversial or subject to misinterpretation, then better to suppress it than worry about explaining it or educating people about it. Law enforcement, however, cannot control excessive force, corruption, or other police misconduct without the data. Hence, whatever changes to the PPI are proposed, the question should always be "how can we prevent unintended and inappropriate use of the information?" rather than "how can we eliminate information that is vulnerable to misuse?"

It is important that the LASD move carefully and cautiously in this period where the growing pains associated with the PPI are most acutely felt. It is important that the new administration not encourage enemies of strict accountability and risk management to test the waters and press their luck. The PPI is, without question, the most carefully constructed and powerful management tool for control of police misconduct currently available in the United States. Although other law enforcement agencies have early warning or tracking systems, they are, with the possible exception of Pittsburgh, far less useful, detailed, and powerful. There is no commercially available tracking system that is a match for the PPI. Whereas small police and sheriff's departments may not need all the power and features of the PPI and could make do with commercially available software, there is no question but that any law enforcement agency with 1000 or more sworn officers would be well-served by having the PPI. Police and sheriff's departments from around the country have approached the LASD about purchasing or licensing the PPI, and the Department is seriously exploring how it can be made available to others. It would be ironic and tragic if the LASD, having been far ahead of the rest of law enforcement in embracing modern technology and computers for risk management, capitulated to fears and worries, drained its own version of the PPI of some of its power and usefulness, and retreated from its position as the nation's leader in police accountability and good management practice.

We rather guess that Sheriff Baca is too well-versed in the merits of the accountability and risk management to let that happen. Indeed, as Chief Lee Baca, he was a vigorous and convincing advocate for accountability both within the LASD and in conversations with Judge Kolts and his staff. After the Board of Supervisors ordered implementation of the **Kolts** reforms, he was the first to require quality service plans from his captains as a way for management to put **Kolts** into practice. Our April 1994 **Second Semiannual Report** at page 5 specifically remarked how "Chief Baca has initiated a process of planning and goal-setting... which is very promising in terms of accountability." At the same time, the Sheriff is cognizant of deputy concerns and is committed to the proposition that the PPI be used fairly. There are ways to address deputies' fears without hurting the PPI, and we will watch to see if the LASD wisely will move in that direction.

3. Use of Force Training

Introduction

The LASD is in the midst of a far-reaching reorganization of its Training Bureau. Among other things, the reorganization calls for the dispersal to different assignments of most of the members of the Force Training Unit ("Force Unit"), a group of dedicated individuals who have been responsible for some of the most innovative and comprehensive use of force training in law enforcement today. Members of the Force Unit argue with vigor that instead of building upon the Unit's accomplishments and hard work of the last seven years, there is some danger that the LASD will lose, in the current shuffling of programs and personnel, what has been dauntingly difficult to assemble and perfect. We have been assured by the LASD that this will not be so, and for now we take the LASD at its word.

We are aware that the reorganization of the Training Bureau has been a keenly disappointing blow to the members of the Force Unit. We also understand, from the perspective of the last seven years on **Kolts,** that significant institutional change, good or bad, is hard for the LASD rank and file to accept. Individuals loathe losing jobs in which they have great personal investment of time and energy, and they dislike when a unit with great esprit de corps is dismantled and all must go their separate ways. Nor are changes in policies, priorities, and longstanding practices easily understood and accepted. Accordingly, we try to guard ourselves against empathizing so much with the stinging blow felt by individual members of the Force Unit that we lose sight of the overall merits of the reorganization that is taking place. There is no question but that the current administration of the LASD has reasonable arguments, at least at first blush, why this reorganization makes sense. As we say, we readily believe the Department when it assures us that force training will not suffer by virtue of this reorganization.

But if, despite these honestly and sincerely given assurances, the quality, comprehensiveness, uniformity, and teaching excellence on use of force that has been the hallmark of the Force Unit declines in any significant way, the LASD will be find itself out of compliance with its commitments to the Board of Supervisors in the wake of the **Kolts Report;** commitments by the LASD upon which the Board of Supervisors specifically relied in fashioning appropriate relief in the wake of the **Kolts Report.** It is useful, therefore, to revisit the **Kolts Report** and the subsequent **Semiannual Reports** to trace the history of progress in use of force training.

Use of Force Training between 1992 and 1998

The **Kolts Report** strongly criticized the use of force training the LASD was providing its deputies. The 1992 Kolts investigation first looked at recruit training at the Academy. As we monitored recruit courses on use of force, we encountered inconsistency and confusion. Although some instructors taught from updated materials and discussed changes over time to the LASD's force policy and practice and why those changes were necessary, other instructors taught from outdated materials, and still others reverted to telling "war stories" drawn from their early days in the LASD. The stories failed to distinguish between what may have been tolerated in the 1970s and then-current expectations. Force training was not well integrated: Policy issues, defensive tactics, and weapons training were taught as stand-alone topics, and inadequate attention was paid to the legal and ethical issues surrounding use of force.

As we moved from the academy to patrol stations, we discovered that station cultures were the dominant determinant of what was necessary and legitimate force; thus, Department-wide rules governing force which were taught at the Academy were dissipated by divergent interpretations at different stations. At some stations,

the captain attempted to ensure the station's training staff was briefed regularly regarding policy changes and the problematic incidents which had prompted them. In these exemplary stations, the information was quickly disseminated to deputies during station training days and at briefings. Yet even at these stations, briefings and training went by the wayside when staff had to scramble to find enough deputies to fill patrol cars. At other stations, however, staff not only failed to pay even lip service to then-current LASD policy and practice, but actually rejected the demands and expectations of the Department in favor of their station's own self-defined standards.

In the wake of the **Kolts Report,** the LASD moved rapidly to address the problems raised, and then-Chief Lee Baca was involved in this project in its earliest stages. Indeed, he was instrumental in selecting Lt. Mike Grossman to assume overall responsibility for developing and institutionalizing a integrated, centralized force training and evaluation program which would address the problem throughout the LASD.

As our **Semiannual Reports** reflected, from the beginning, we were impressed with the quality of thought, research, and planning that went into the development and implementation of this important project. In January, 1993, the following candid and perceptive diagnosis of the "force problem" was developed and circulated for consideration by the Command Staff in an impressive working paper:

"Seldom do we successfully integrate the various elements of training in the use of force spectrum in a meaningful manner, that is easily understood and retained by the members of our Department. Although cognitive (academic) and manipulative (physical) skills are taught in existing programs, often the majority of our training is primarily focused on the physical techniques only. Cognitive skills can be further developed and emphasized throughout our programs. These skills can positively

impact decisions made regarding the degree of force that may be appropriate and the subsequent justification for application of such force."

The working paper then proposed solutions which were both innovative and ambitious:

"An integrated use of force training program which brings together all the elements of defensive tactics is needed to develop personnel skill and judgement in applying appropriate force measures in a wide variety of situations. Consistent, verifiable, realistic training and evaluation can serve to enhance a deputy's knowledge and confidence in the application of force, while developing a deputy's ability to articulate, explain, and justify actions taken.

A comprehensive use of force training and evaluation program should encompass all elements of the use of force spectrum including physical presence, verbal communication, weaponless defense techniques, chemical sprays, electronic devices, intermediate weapons, and lethal force options. Deputies must comprehend and understand the use of force options available in their training sessions to assure that they will give proper attention and considerations to the same options when they are confronted with use of force decisions in the course of their duties."

In a subsequent document, training staff expanded their model to propose "training which will encompass the philosophical, legal, moral, procedural, and tactical elements of the use of force."

Members of a newly created "Force Training Unit" were given the task of forecasting and coming up with plans to overcome any obstacles to successful implementation. In their subsequent "Implementation Plan," they described the various shoals upon which the new training program might founder and proposed ways in which they might be successfully circumnavigated. For example, they recognized that their efforts could be fatally undermined while the pilot program

was still on the drawing board if no preemptive efforts were made to control rumors and counter negative word of mouth interpretations of the program and its intent. They proposed, therefore, to:

"inform all levels of Department personnel about the upcoming training program in order to avoid any rumors as to the actual purpose and content of the course. This is aimed at establishing a preliminary general acceptance of the training by emphasizing the positive aspects of the program to be implemented and to ensure a successful pilot program."

After consultations with the LASD's Training Committee and its executives, the force training staff developed an explanatory video and attended meetings to introduce the program to all the Chiefs, Commanders and Captains. They made presentations at quarterly Training Lieutenants meeting and at FTO schools and at Defensive Tactics Committee meetings. The objective of this effort was both to build support for and neutralize resistance to the new force training program.

Despite this careful planning, the planners nonetheless anticipated insurmountable resistance at the patrol station level if new force training was perceived as a unilateral attempt by the central command to impose rules on use of force mandated by outsiders who were suspected (erroneously) to be willing to compromise officer safety in order to quell civilian complaints. They believed therefore that it was inevitable that unit level Defensive Tactics (DT) instructors would play a critical role in the informal dissemination of opinions about the new training program that could assist or hinder their efforts to win the support of sworn personnel. Unit level DT instructors, therefore, were selected as the first sworn staff to whom the pilot curriculum was offered. By presenting the pilot curriculum to this audience and eliciting suggestions for the final curriculum, planners sought both to update the unit level DT Trainers on current Department

policy and practice and to win over an anticipated source of resistance to the new force-training program.

Although primarily a vehicle for providing standardized and integrated force training, it is important to note that the goal of the program was far broader: the establishment of centralized control of standardized force training and evaluation (and accountability) throughout the Department. The "Force Unit," as the Force Training Unit would come to be called by everyone in the Department, was designed to penetrate the Department's everyday operations and "get everyone on the same page" regarding use of force. The Force Training Unit would therefore become a centralized institutional repository for information about law enforcement use of force. It would additionally serve as a force hotline and or clearinghouse, available to supervisors as well as the rank and file in need of clarification or interpretation of LASD force policy and practice. At the same time, when Force Unit found flaws, contradictions, or ambiguities in Department policy, it could bring them to the attention of the LASD executives for clarification or revision. The Unit also assumed responsibility for notifying all LASD units of the changes in policy via bulletins.

The Force Unit also created a feedback loop to connect training with the changing legal and social realities of policing and their implications for risk management. This was accomplished by assigning a central role for the Force Unit in the force rollout team implemented by the LASD in response to the **Kolts Report.** A sergeant or lieutenant from the Advance Training Bureau would participate in force rollouts and prepare a training analysis that would determine (i) whether the deputies had used force as they were trained to do and (ii) whether force policy, tactics, strategy, or training needed to be modified in light of the particular incident. The Force Unit would also be involved in use of force reviews by panels of Commanders and in shooting reviews by LASD executives. Force Unit staff would

also be available to provide expert testimony regarding force and force training in court.

By assuming responsibility for force training throughout the Department, the Force Unit could repair damage that may have been done by earlier outdated or flawed training and "retrofit" seasoned deputies with up-to-date training in the mechanics of use of force and current policy. The Unit would also be involved in evaluating proposed lethal and non-lethal equipment being considered by the LASD. As experts, the Force Unit staff would be able to explain the rationale and merits behind departmentally approved techniques or equipment. They would also be able to lobby for changes in techniques or tools when they deemed it appropriate.

In July 1993, the Force Training Unit implemented their 24-hour (3-day) pilot training program. We monitored some of the initial training sessions. We described them and commented on them favorably in October 1993 in our **First Semiannual Report.** We found the program effective and efficient in addressing prior inconsistent and uneven force training in the Department. We had some recommendations for fine-tuning, but overall we strongly approved: The new force-training program was at the heart of a risk management strategy and thus also squarely at the heart of the Kolts recommendations.

Our **Second Semiannual Report** in April 1994 had a mixed assessment. Although we remained quite favorably impressed with quality of the training the Unit was providing, our enthusiasm was tempered by the slow pace of its dissemination to sworn member of the Department. Budgetary constraints had delayed long-planned expansion of the Force Unit, and some thinly staffed patrol stations were balking at releasing their sworn personnel for scheduled force training.

When we revisited force training program in our **Fifth Semiannual Report** in February 1996, we again presented a mixed picture. The Force Unit had worked hard to develop and refine a model core curriculum that effectively transmitted

technical knowledge and practical skills in the appropriate use of force, as well as imparting knowledge about the legal and social constraints surrounding use of force by police in a democratic society. The classroom curriculum was designed to complement and supplement exercises and testing in force techniques at the gymnasium.

We noted with particular approval that the staff had been broadly cross-trained in search and seizure law, citizen contacts, tactical communication, practical applications of force, Constitutional law, Miranda issues, LASD force policy and reporting, general report writing and documentation, and an array of less-than-lethal options and technologies, including Taser, batons, rubber bullets, and chemical weapons.

On the other hand, we deplored the very slow pace at which the LASD was being trained pursuant to this exemplary curriculum. To our disappointment, we found that the new training program had been completely shut down from May to August 1995, as the LASD shuffled priorities in response to a general budgetary shortfall. Another factor slowing progress was that force training was competing with equally critical cultural diversity and sexual harassment training. And patrol captains continued to resist releasing sworn personnel for training. The Force Training Unit, as a result, encountered chronic problems with "no shows" and last minute cancellations.

In our **Sixth Semiannual Report** in September 1996, we again criticized the slow progress in reaching all sworn personnel in the Department. We expressed frustration at the chronically unreliable and overly optimistic predictions about how many sworn personnel would in fact receive the training in given time periods. At the same time, we lauded a role-playing scenario test for deputies completing patrol school. The Force Training Unit was providing patrol school deputies with training and testing which was unparalleled in its realism and comprehensiveness.

Indeed, we continue to believe that those training scenarios are models for law enforcement training and testing in use of force which and should be widely emulated by other law enforcement.

Recent Changes in Use of Force Training

Our **Ninth Semiannual Report** in June 1998 discussed a substantial change that had occurred in the Department's approach to force training. We reported that the LASD had, in effect, rejected the conception of standardized force training for all sworn LASD personnel in favor a model where separate, newly-formed training units would provide specialized force training for sworn personnel in Custody and Court Services assignments. The existing Force Unit would limit its training to personnel in patrol and detective assignments. Although we could appreciate the arguments in favor of specialized force training for sworn personnel in differing assignments, we were concerned that the separate training could undermine the advantages of standardized, comprehensive training which interrelated all aspects of the use of force by law enforcement. We cautioned that a move away from comprehensive training by one duly constituted Force Unit could prove to be regressive, reopening the door to the fragmented and inconsistent force training described in the **Kolts Report.**

An incipient erosion of commitment to standardized integrated force training was evidenced by instructions from above that the Force Unit expand the curriculum to cover additional topics, some of which were at best tangentially related to force. The Force Unit responded with a new five-day block of training, incorporating some of the new topics, while lobbying hard to keep their primary focus on integrated-force issues. At the end of the day, the Force Unit managed to keep force training at the core of the five-day curriculum, now known as the CPT

(Continuing Professional Training) program. Under the leadership of Lt. Mike McDermott, who replaced Lt. Grossman, the Force Unit, working closely with the LASD fiscal experts, developed a financial incentive for patrol captains to release their personnel for the five days of training while, at the same time, holding them more accountable for "no shows" and cancellations. An intricate scheduling system was developed that, if adhered to, would complete the training of the audience targeted for the training within two years.

Subsequent to the **Ninth Semiannual Report,** and in preparation for this Report, we met in 1998 and 1999 with staff and management of the Force Unit to audit their activities and update ourselves on the Unit's accomplishments. We continued to be impressed by the professionalism of the Force Unit and the quality of its work product. We also attended selected segments of the new 5-day training (CPT) program and continued to be impressed with the content as well as the quality of the training being provided. The five-day curriculum updated tactical training in many critical areas related directly to officer safety and risk management, including training on tactics to be employed in foot pursuits. Attention was focused on the critical areas of off-duty incidents, basic ground defense, batons and other personal weapons, night shooting, and less-than-lethal tactics. It also includes POST-certified courses on Elder Abuse and Domestic Violence. We continued to be impressed with the integration of classroom presentations with defensive tactics in the gym. The scenario testing continued to be challenging, realistic, and comprehensive. The thorough and candid debriefing and criticism provided to deputies completing the scenarios were especially impressive. The best news of all, however, was that the training was being accomplished virtually "on schedule." We reviewed the statistics and found that the Unit was nearly on target for training a projected 1,900 sworn personnel per year.

As we discussed our findings among ourselves, we hoped we might finally in a position to announce that a key Kolts recommendation had been implemented and was being adequately institutionalized. Instead, we found that we needed to come to grips with the massive reorganization of the Training Bureau taking place.

Architects of the reorganization point to the urgent necessity they faced to gear up for the major, if temporary, Summer 1999 expansion in recruit training. In anticipation of this training bulge, seven members of the Force Unit were transferred to Recruit Training and others were transferred to other duties. The two Force Unit members who remained almost exclusively assigned to continue the CPT training were moved to the Field Officer Training Unit office and put under the direction of a Lieutenant responsible both for Department force training and the LASD's field training officer (FTO) program. The eclipse of the Force Unit was further evidenced when Custody Division force trainers were brought in to teach defensive tactics training at the most recent Patrol School. In a recent puzzling assignment, the two surviving members of the Force Unit were asked to examine LASD force training and to report on what other agencies are doing in the realm of force training. The job they were given seemed identical to the one given years ago to develop a model for standardized, integrated force training and become the repository for state-of-the-art materials collected from throughout the United States on force training. Perhaps because this point was repeatedly driven home by the Force Unit members, the assignment was ultimately cancelled.

Conclusions

We empathize with the members of the Force Unit who are witnessing the dissolution of a great unit that has accomplished much with wonderful esprit de corps. But our job of monitoring the implementation of the Kolts recommenda-

tions does not encompass advocacy to save individual jobs or units. Rather, our task is to evaluate whether the current reorganization enhances or detracts from the LASD's bedrock commitment to implement uniform, excellent use of force training. We have expressed our concerns in that regard, and we commit to very careful scrutiny of use of force training in future **Semiannual Reports.**

Field Training

Like Force Training, the LASD's Field Training program has undergone substantial improvement and greater professionalism since the **Kolts Report.** Despite this progress, however, some key reforms for centralized selection, training, and evaluation of FTOs has never been institutionalized. Those reforms, which are necessary to implement the Kolts recommendations, were proposed as long ago as September 1996. A brief experimental implementation of these reforms was tried in 1997 and abandoned, we were told, pursuant to union pressure in 1998. As with force training, the LASD made a bedrock commitment to substantial overhaul of its Field Training program, and we look forward to progress on fulfilling these key commitments under the new administration of the Sheriff's Department. Despite our frustration that this key element is not in place, we generally appreciate the professionalism demonstrated by the Field Officer Training Unit.

As noted in our discussion of force training, the Training Bureau is undergoing a major reorganization which also impacts the Field Officer Training Unit. Given its record of service, and the critical importance of their mission, we are concerned about the impact of these changes on the field training program. As noted before, our job is not to advocate for job security and the preservation of units or duties. Rather, we test the merits of organizational change to see whether it enhances or detracts from implementation of the Kolts recommendations as ordered by the Board of Supervisors in 1993 as the relief the Board fashioned in

the wake of the **Kolts Report.** It is instructive, therefore, to review the history of attempts in recent years, mostly successful, to reform the field training program.

Field Training between 1992 and 1998

The investigation leading to the **Kolts Report** found serious weaknesses in all aspects of the LASD's field training system. We faulted the curriculum of the LASD Patrol School (attended by all deputies moving from Custody to Patrol assignments) and the procedures by which Field Training Officers (FTOs) were selected, trained, and deselected. We conducted a field study of Field Training at selected patrol stations and concluded that the training being provided to novice patrol deputies was unacceptably uneven. At some stations, we encountered well-selected and supervised FTOs providing trainees with field training that ranged from satisfactory to exceptional.

At the majority of stations we investigated, however, we found evidence of supervisors and FTOs who were not taking their training responsibilities seriously. There were no Department-wide standards for selection of FTOs, and the procedures varied from station to station. The only common denominator we could find was that the FTOs were chosen by the station captain on the basis of the number of arrests they had produced and the favor they had curried as hard-charging, aggressive deputies. Deputies were rewarded with the job without regard to their teaching skills or adherence to LASD policies. As the first step in the promotional ladder, and as a bonus position generating extra pay, the job was a plum to be handed out to the captain's favorites.

No serious consideration was given to the candidates' use of force history, principally because at that time, the LASD did not require use of force to be systematically reported, evaluated, and tracked on a deputy-by-deputy basis.

Nor serious consideration was given to whether the candidates had cost the taxpayers of the County substantial sums in judgments and settlements of cases against them because, again, there was no tracking of litigation. We were dismayed by the results. We came across FTOs who were openly contemptuous of the LASD's published core values and commitment to community-oriented policing.

Some FTOs had no serious interest in training rookies, admitting that they had become an FTO as a necessary way station on the road to an assignment they truly desired. Other FTOs, although sincerely interested in training, lacked teaching skills. The curriculum at the FTO School during the Kolts investigation focused on the "nuts and bolts" of police work, paying little attention to teaching methods and techniques, the critical status of the FTO as mentor and role model, Departmental expectations of the FTO, and the values and ethics of professional law enforcement.

Little attention was paid to an even distribution of the training load to the various patrol stations. The principal factor was the presence at a given station of enough two-person patrol cars. This manner of distributing the load eroded the quality of field training in at least two ways. First, the influx of a large number of trainees would force a unit commander to select deputies with inadequate experience or with marginal qualifications to serve as FTOs. Second, the planning was so poor that the trainees often descended on the station before the FTOs had even attended FTO School.

We were also troubled by the lack of uniform LASD standards and procedures by which FTOs who did not meet performance expectations were "deselected or removed from the list of deputies qualified to serve as FTOs. Because the Department did not track deselections, we were often unable to determine the causes for specific deselections. Although the documentation and training records at some stations were carefully organized and maintained, at others they were so incomplete and disorganized as to be virtually useless.

We were nonetheless nonplussed to discover that the most common way to get rid of an incompetent or unsatisfactory FTO, even one who had broken the law or committed a serious breach of ethics, was to quietly and informally halt their training responsibilities. This was accomplished by transferring their trainee to another FTO (if one was available) and not assigning the unsatisfactory FTO another trainee until their status as an active FTO expired, perhaps months later. We thus found people drawing FTO bonus pay who were not trusted with trainees. Their failings did not, as a rule, make it into their performance reviews, so that they ultimately accrued the benefit of having been an FTO in the race for promotions and other desirable assignments even though they had, in fact, blown the race at an early stage. Worse yet, their failure at one station would not prevent them from becoming FTOs at a later time at another station because there was no comprehensive system for tracking performance and passing vital information from station to station.

The **Kolts Report** therefore called for major reforms and restructuring of field training in the LASD. We advocated the centralization and standardization of field training with Department-wide standards for the selection and deselection of FTOs that would be enforced at all patrol stations.

In our **Second Semiannual Report** in April 1994, we noted with approval that that Department had formed an FTO Task Force which had developed proposed standardized selection and deselection criteria. The criteria were perfectly adequate, but we were puzzled why, a full twenty months after the **Kolts Report,** they were still being fine-tuned and had not been adopted by the LASD.

A new FTO Curriculum Committee had made more concrete progress. By the time of our **Second Semiannual Report,** they had thoroughly and candidly critiqued the existing FTO School and its curriculum. They found that deputies graduating from the school not only lacked teaching skills but "were also generally

unaware of what the Department expects from FTOs." The Committee concluded that the curriculum had degenerated over the years and agreed that major changes were necessary.

The revised curriculum was ready for implementation in November 1993. We very much liked what we saw and noted with particular approval that the FTO Curriculum Committee and FTO School Coordinator had, among other things, reshaped the curriculum to include units on Cultural Diversity and Trainee Reactions to Stress. They also began experimenting with performance testing in addition to the existing written tests given to deputies at the end of the School.

As time continued to pass, however, we were puzzled why the proposals put forth by the FTO Task Force never seemed to be adopted. At each turn, there was a new excuse, and we expressed increasingly concern that the LASD's commitment to a major revision of the selection criteria was flagging in the face of strong resistance on the part of patrol captains, rank and file personnel, and the deputies' labor union. Perhaps we failed to appreciate the degree to which the proposals dislodged ingrained practices: Captains did not want to give up the patronage prerogative to award bonus pay and a plum to their favorites; deputies and their union representatives did not want to raise the bar by agreeing to tougher selection standards.

The stalemate had not been broken by the time we released the **Fifth Semiannual Report** in February 1996. We were able, however, to seize upon a scandal that had erupted at Century station where an FTO had pressured a trainee to falsify evidence and submit faked reports. The FTO in question was arrested and later pled no contest to charges of criminal misconduct. At the time, Century Station was still attempting train more than 30 trainees.

We were able to use the Century scandal to underscore our view that major restructuring of the FTO program could not longer be delayed. We noted that that

the necessity to have as many as thirty FTOs at a patrol station, even one as large as Century, would invariably mean that marginal or even unacceptable persons would be chosen as FTOs. We continued to advocate centralization of the selection process, reduction of the number of trainees at any one station, and the rotation of trainees through different stations with different FTOs so that the trainee would be exposed to different policing styles and have the chance to work at progressively more challenging assignments and stations.

In October 1996, the FTO Task Force and Advance Training Bureau produced their completed proposal entitled *Centralization of the Field Training Program.* It was an ambitious document which synthesized the best thinking in the country about how a first-rate FTO program should be structured. It was built around creating a Field Training Unit assigned to the Advance Training Bureau would assume complete responsibility for standardizing and managing all functions related to Field Training.

The LASD responded by creating a Field Officer Training Unit in April 1977. The Unit was far more thinly staffed than proposed. But it was instructed to devote its initial attention almost exclusively to the development of a standardized and partially centralized FTO selection process. In September 1997, under the supervision of the Unit, the first standardized selection process was held.

We were disheartened, however, to learn a year later that the standardized selection process was discontinued in September 1998, at the request, we were told, of ALADS, the deputies' union. Discontinuance of the centralized selection procedures made little sense to us, particularly because our audits and investigations showed the program was a success: The feedback from patrol captains, training staff, and deputies who had applied for selection was positive. Even some deputies who did not "make the cut" appreciated that they had been informed of the specific reasons that they were not selected and were encouraged to come up with a

specific plan in collaboration with a Mentor Supervisor to address the reasons why they had not been chosen so that they would fare better in the next round of selections for FTO positions.

Current Achievements

In general, the Field Training Unit continues to demonstrate dedication, commitment, and leadership. The Unit has measurably improved the quality and coherence of LASD field training. Among the recent noteworthy accomplishments of the Unit is a system for tracking each FTO and Trainee and for capturing relevant data about the field training program. The Unit is capable now of sfunctioning as a clearinghouse for valuable information about Field Training. It is promptly able to provide up-to-date information on training rates, remediation, and selection results, among other data. In years past, we frequently had to wait for days or even weeks for answers to questions; and, at times, the data to respond to relatively commonplace queries we would pose was simply unavailable. The Unit currently is working with the Data Systems Bureau to computerize elements of the system.

The unit recently completed a thoroughgoing update of the LASD's Field Training Guide, which had fallen badly out of date. During this project, which lasted one and one-half years, we were given the opportunity to review and comment on drafts as they became available. The final product is a major improvement over the old guide, and during this investigation, we heard positive feedback on it from some station level personnel who are now using the new manual.

The Unit has additionally made itself available for consultations with the 18 patrol stations on remediation plans to correct deficiencies observed in trainees. The Unit is reviewing all remediation plans to ensure Department-wide consistency.

Unit staff members are also involved as mentors for individuals who have failed to demonstrate the skills necessary to come off training and become a fully qualified patrol deputy. The Unit is organizing a reference library of remediation exemplars and teaching exercises to be made available to patrol station training staff in search of effective methods for "getting through" to trainees encountering difficulties.

Observing that the skill proving most difficult for trainees to master was report writing, the Unit revised the "Report Writing Manual" used in field training. Additionally, the Unit recently submitted a proposal to Assistant Sheriff Stonich and the Field Operations Commanders recommending the organization of a small cadre of centralized FTOs to provide remediation to trainees in need and to assistance to trainees complaining of hazing, harassment, or other improper training.

Conclusions

The LASD has been well-served by the Field Officers Training Unit since it was created in 1997. They have worked hard to enhance the professionalism of FTOs and to upgrade and standardize the quality of field training in the Department. The challenge ahead is two-fold: first, to maintain these higher standards and performance through the reorganization of the Training Bureau, and second, to implement and institutionalize centralized selection of FTOs pursuant to high standards of proven performance after thorough background checks.

The LASD's Canine Services Detail, with its ten active handlers and ten dogs, continues to be a well-managed and carefully supervised program. It is part of the LASD's Special Enforcement Bureau (SEB), which is now under the command of Captain Cathy Taylor, who took over from Captain Mike Bauer. During Captain Bauer's administration of SEB, the Canine Detail underwent a substantial overhaul, and the bite ratio—the number of dog bites divided by the number of instances in which a canine played a significant role in apprehension of the suspect—dropped for the first time below ten percent. Also under Captain Bauer, the numbers of instances in which the dogs were deployed dropped substantially, reflecting, overall, a more judicious approach to use of the dogs. These trends are continuing.

Performance of the Canine Services Detail for the first six months of 1999

Table One sets forth relevant data on the performance of the Canine Services Detail for the first six months of 1999 and for the past several years. Through June 30, 1999, there were 260 deployments, 43 finds, and five bites, producing a bite ratio of 11.6 percent and a find ratio of 16.5 percent. The bite ratio currently exceeds the ratios of 8.6 percent for 1997 and 8.3 percent for 1998; however, the relatively low number of bites in each of those years—ten in 1997, seven in 1998, and five to date in 1999—means that very small variations in bites produces large variances in bite ratios. One fewer bite in 1999 would have dropped the ratio from 11.6 to 9.3 percent. Accordingly, although it would have been more reassuring to continue to see bite ratios under ten percent, the rise to 11.6 percent thus far in 1999 is hardly cause for alarm. There have been five bites thus far in the first half of 1999. In 1998, there were only seven bites for the entire year. Although the pace of bites in 1999 might otherwise be a source of concern, the deployments themselves all were justified.

1

Year	Deployments	Finds	Bites	Ratio	Ethnicity	
1991	1228	213	58	27%	African-American	23
					Latino	24
					Anglo	9
					Other	2
1992	1030	225	51	22%	African-American	13
					Latino	30
					Anglo	6
					Other	2
1993	940	179	42	23%	African-American	22
					Latino	13
					Anglo	6
					Other	1
1994	921	183	45	24%	African-American	19
					Latino	18
					Anglo	7
					Other	1
1995	840	151	31	20%	African-American	14
					Latino	12
					Anglo	3
					Other	2
1996	708	121	15	12%	African-American	5
					Latino	9
					Anglo	0
					Other	1
1997	734	115	10	8.7%	African-American	3
					Latino	6
					Anglo	1
					Other	0
1998	626	84	7	8.3%	African-American	1
					Latino	5
					Anglo	1
					Other	0
1-1 / 6-30 1999	260	43	5	11.6%	African-American	2
					Latino	3
					Anglo	0
					Other	0

This is especially so when each of the bites in considered in turn. First, each of the bites occurred in connection with an apprehension for a serious felony. Three murder suspects received bites, one burglary suspect was bit, and one car jacking suspect was bit. Although the Search and Force Policy was revised in April 1999 to liberalize the circumstances in which the dogs could be deployed, through June 30, at least, the dogs were not deployed on suspects involved in less than serious felonies. The circumstances of each of the bites were as follows:

January 6, 1999. An African-American man aged 25 was arrested early in the afternoon in the Century area and booked on murder charges. He was apprehended while hiding inside a residential detached garage and received scratches from the dog on his lower left leg. He was examined and treated at a medical center and released for booking. The suspect conceded that he had heard the canine announcements. The suspect had prior arrests for violent felonies and is a "three strikes" candidate. A sergeant was on the scene at the time of the search, and the search was held in policy by the LASD's force review committee within a little over 90 days from the incident.

February 10, 1999. A 20 year old Latino was arrested at 3:30 in the afternoon in the Pico Rivera area and booked on charges of burglary. He was found by the canine while hiding between some pallets loaded with large boxes and covered by a large plastic tarp. He received six abrasions to his right lower calf. He was examined at a local hospital and released for booking. He conceded hearing the canine announcements, and a sergeant was present at the time of the search. The search was held in policy by the force review committee in less than 60 days from the incident.

May 9, 1999. A 65 year old Latino was arrested shortly before midnight in the Walnut area following an armed standoff with a SWAT team. The canine found him hiding inside a motor home, and the suspect received scratches and rakes on his

lower left leg. He was examined and treated at a local hospital and released for booking. A Commander on the scene authorized deployment of the canine without an announcement.[1] As of July 26, the force review committee had not reviewed the bite. In addition to the Commander, a sergeant was also on the scene.

May 17, 1999. A 24 year old Latino was arrested at 9:30 in the evening in Palmdale on murder and car jacking charges, as well as assault with a semiautomatic firearm. He was found hiding under a mobile home and received scratches to both legs. He was examined and treated at a local hospital and released for booking. He denied hearing the canine announcements. A sergeant was on the scene. The force review committee held the search in policy a little over 30 days from the incident.

June 20, 1999. A 32 year old African-American male was arrested in the Century area shortly after midnight on car jacking charges. The dog found him hiding under a piece of plywood next to an apartment building. He received a puncture wound and scratch to the top of his left forearm. He was examined and treated at a local hospital and released for booking. He denied hearing the canine announcements which were broadcast from a helicopter deployed to the scene. He had several prior arrests for violent felonies and was a "three strikes" candidate. A sergeant was present during the search. As of July 26, the force review committee had not had an opportunity to rule on the bite.

None of the bites described above required overnight hospitalization of the suspect for the bite injury. Pursuant to LASD policy, each suspect was taken to a local hospital for examination and treatment prior to booking. In addition, the Canine Service Detail meets on a weekly basis to review and critique all incidents.

1 In the past, we have expressed concern about waiving announcements except in the exigent circumstance where there is demonstrable knowledge, prior to deployment, that the suspect at the moment has a gun in his possession and has used it during the events leading up to the deployment of the dog. These circumstances appear to have been met here.

Changes in 1999 to the LASD's Canine Search and Deployment Policy

The revision to the Search and Force Policy alluded to above reversed an earlier decision that the LASD Canine Services Detail would not be used to conduct searches for suspects wanted for Grand Theft Auto. The rationale for the prohibition was that because those searches often occurred when juveniles bailed out of a stolen car, deployments of canines for this crime resulted in many controversial bites of young persons, very often African-American and Latino young men. During the time the prohibition was in effect, the LASD's find ratio drifted downward, leading some observers to wonder whether the Canine Detail's performance was slackening. The prohibition was seen by other observers as anomalous—the other large law enforcement agency in Los Angeles County, the LAPD, did employ canines for Grand Theft Auto searches, and therefore whether a given suspect was pursued by a dog turned on which side of the seemingly arbitrary City-County line the suspect was on.

Additionally, under Captain Bauer, there had been a turnover in dog handlers. Some handlers, whose bite ratios over time were substantially greater than others, decided, after respectful discussions with the Captain and others, to seek new challenges elsewhere in the LASD. Captain Bauer, the division commanders, and the division chief believed that the Canine unit was in the best shape it had ever been and that their combined efforts had achieved the goal of substantial reductions in the LASD's overall bite ratio. Against that backdrop, the policy regarding canine deployments was amended to permit:

Searches for felony suspects, or armed misdemeanor suspects, who are wanted for SERIOUS crimes and the circumstances of the situation present a clear danger to deputy personnel who would otherwise conduct a search without a canine.

Searches for suspects wanted for Grand Theft Auto shall be limited to those who are reasonably believed to be adults, and are reasonably believed to be the driver of a confirmed stolen vehicle. Known passengers, absent extenuating circumstances, should not be searched for with the use of a police service dog. Field Operations Directive 86-37, paragraph C, p. 2 (April 20, 1999)(emphasis in original).

The policy change creates somewhat greater risks than existed before it. Although the policy attempts as best as it can to limit canine deployments to adult drivers, we wonder whether it is really possible when pursuing a stolen car to tell whether the driver is 17 or 19. We also wonder when both the driver and passengers bail from a stolen car, how the handler and the dogs will be able to distinguish driver from passenger, particularly if both seek shelter together under the same house. There is a further risk that there will be more bites of minorities.

The LASD does not target minorities for canine searches. Nonetheless, it is the case that African-Americans and Latinos are more often the subject of dog searches than are Anglos or Asian-Americans and hence, as Table One shows, they receive more bites than the two latter groups. In 1999, as noted earlier, searches were conducted of three murder suspects, one car jacker, and one burglar. Unquestionably, the murder suspects and the car jacking suspect, at least, were believed to have committed serious, violent offenses and the happenstance of their race or ethnicity, most would agree, is beside the point. Moreover, thankfully, murderers and car jackers account for a very small percentage of all crimes that occur. On the other hand, if canines are deployed routinely on suspects of less serious, non-violent crimes that occur with some greater frequency, the racial and ethnic breakdown of suspects is more salient an issue: The officer has greater discretion concerning which laws to enforce and a greater awareness, perhaps, of the likely racial or ethnic breakdown of suspects.

Accordingly, we will monitor whether the policy changes initiated in April 1999 produce untoward consequences and report on them. But for now, we would like to congratulate Captain Mike Bauer for his excellent work with the Canine Services Detail and Cathy Taylor for her skillful management as well.

Beginning with the **Kolts Report,** and continuing in these **Semiannual Reports,** we have given particular emphasis and attention to litigation involving the LASD because it is a powerful measurement of the Department's progress in controlling police misconduct and other costly risks the LASD faces. The last fiscal year, 1998-99, demonstrated continuing progress in reducing the number of force-related lawsuits filed against the LASD. There has also been some progress to report on over-detention cases. On the other hand, as demonstrated below in our discussion of recent medical malpractice cases, there were some alarming instances of medical failures in 1995 and 1996 that resulted in substantial settlements. The events in those cases at least raise the questions about possible systemic failures that go beyond an isolated misdiagnosis or lapse in the provision of prescribed medication. We specifically disavow any wider conclusions at this point. We nonetheless will carefully monitor litigation in the medical malpractice area.

Turning first to cases alleging excessive force, it is satisfying to note that only 41 new cases were filed in 1998-99, the lowest number of new force cases since we began tracking in fiscal year 1992-93, as reflected on the following tables. The total number of force cases on the LASD's docket also declined to the lowest since fiscal 1992-93: At the end of fiscal 1998-99, the total caseload of force cases stood at 70 cases. Judgments and settlements in such cases continued a stabilizing trend. Although the dollar amount was up from $1.6 million in fiscal 1997-98 to $2.3 million, the pattern of very large amounts of money broke between 1995-96, when $17.1 million was expended, and 1996-97, when the figure dropped to $3.7 million.[1] Although 1998-99 is $700,000 more than 1997-98, it is nonetheless $1.4

1 Our figures for 1998-99 do not include the large Talamaivao judgment which was paid during that period. The case arose in 1989 and wound its way for the next ten years through the trial court and the appellate courts until the judgment became final last year. The money expended by the County in that case more properly reflects the LASD in the years before **Kolts** and bears no real relationship to current cases or current performance by the LASD. It would therefore distort the record to include the payment of that judgment in assessing trends in judgments and settlements in the last five years.

1

LASD Litigation Activity, Fiscal Years 1992-98

	FY 92-93	FY 93-94	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99
New Force Related Suits Served	88	55	79	83	61	54	41
Total Docket of Excessive Force Suits	381	222	190	132	108	84	70
Lawsuits Terminated							
Lawsuits Dismissed	79	90	60	42	39	27	20
Verdicts Won	22	9	10	6	3	6	1
Verdicts Against LASD	3	7	3	5	2	1	2
Settlements	70	81	103	82	41	45	32

Lawsuits Terminated FY 98/99

	Dismissed	Settled	Verdicts Won	Verdicts Against	Totals
Police Malpractice	83	76	5	1	165
Medical Malpractice	4	10			14
Traffic	13	35			48
General Negligence	5	1			6
Personnel	5	6			11
Writ	5	2			7
Total	**115**	**128**	**5**	**1**	**249**

Active Lawsuits by Category

	7/1/98	7/1/99
Police Malpractice	224	247
Traffic	47	43
General Negligence	7	8
Personnel	19	22
Medical Malpractice	22	28
Writs	8	6
Total	**327**	**354**

million less that 1996-97. Since 1997-98 was an election year, we suspect that some effort was made to keep the figures as low as possible for that year. Accordingly, we do not read much into the rise between 1997-98 and 1998-99. We will nonetheless will continue to watch the numbers carefully.

The settlements of force cases in 1998-99, however, do reflect payments for two shootings involving the Century Station. Our concerns about the number and reasonableness of shootings involving Century Station are set forth at length in prior **Semiannual Reports.** Specific shootings we found worrisome and possibly symptomatic of wider problems at Century have proven to be costly to the County.

For example, last year, the County paid $1,250,000 to settle *Brandon v. County of Los Angeles.* In that case, the widow and four young children of Gregory Brandon, age 34, sued the County after Mr. Brandon was shot and killed in 1997 by Century deputies who, over the course of a foot pursuit, fired 32 shots, eight of which struck Mr. Brandon. Other bullets were discharged in a manner that put third-parties at risk. Mr. Brandon was unarmed and had not committed any crime when he was approached by the deputies at about 9:45 pm on the evening of March 21. The deputies asserted that they were attempting to stop Mr. Brandon, who was on foot, because his behavior made them believe that Mr. Brandon was armed and may have just committed a robbery. But the deputies had not received any reports of a burglary or robbery in the area. Mr. Brandon was holding a clear plastic coin box which one of the deputies apparently mistook for a gun. The District Attorney's office declined prosecution in the case. The deputy who had initially perceived the asserted threat and yelled to the other involved deputy that Mr. Brandon had a gun resigned from the Department during the course of the investigation, and his conduct was not passed upon by the LASD. The LASD's Force Review Committee did review the actions of the other deputy, however. They concluded that based upon the information provided him by his partner, coupled with his own observations,

that the deputy's actions were within LASD policy and accordingly no disciplinary action was taken.

In a second Century case, *Vargas v. County of Los Angeles*, Jesus Vargas was shot and killed by Century deputies in July 1995 following a foot pursuit initiated after the deputies suspected that Mr. Vargas may have had a gun. The plaintiffs in the case, Vargas's two minor children, produced eyewitnesses who claimed that Vargas was shot in the back while on the ground and unarmed. The deputies claimed that Mr. Vargas had his hands on one of the deputy's gun. Although the autopsy results may have contradicted the plaintiffs' witnesses in part and the deputies in part, it nonetheless was the case that Mr. Vargas had been shot from the back, suffering a single gunshot wound that had entered at his right rear shoulder, travelled down, and ultimately lodged in his front left chest area. The County agreed to a $300,000 settlement. The District Attorney's Office declined prosecution. The LASD's Executive Force Review Committee concluded that the involved deputy had not violated any Department policy. Nonetheless, they recommended that the deputy be counseled by his captain regarding foot pursuit tactics and weapon control and receive additional firearms training.

There was another noteworthy settlement that arose from a force incident. In *Holt v. County of Los Angeles*, Jim Holt, a 54 year old plumber, was housed in September 1996 in the psychiatric ward of the jail. Following an altercation apparently initiated by Mr. Holt when a trustee entered his cell to give him his dinner tray, two deputies, at the request of a nurse, entered Mr. Holt's cell to remove him and place him on a bench outside the cell until he could be seen by a psychiatrist. A struggle began when the deputies attempted to bring Mr. Holt outside the cell. Mr. Holt ultimately was taken to a bench outside his cell where he was looked at by a nurse. The only reported injuries were some discolorations that appeared on his body.

Mr. Holt was released later that evening and taken by his family to the emergency room of a local hospital. There, the treating physicians found that Mr. Holt had suffered six broken ribs, a collapsed lung, and an exacerbation of a back injury. The LASD explained the discrepancies in the injuries to the Board of Supervisors this way:

As required by Department policy, supervisory management personnel assigned to Men's Central Jail immediately conducted a review of the reported use of force. That review included interviewing the involved inmate, any potential witnesses to the incident, medical personnel who treated the inmate and the involved deputies' documentation of the incident. The watch commander determined that based upon the information available to him, the force used by the deputies was reasonable. There was no further review of the incident.

However, during the course of litigating this matter, information was provided to the Department that indicated the injuries sustained by the inmate plaintiff were substantially more serious than they initially appeared and that the Department's medical staff may not have conducted a proper medical examination of the inmate.

Furthermore, a medical expert retained by the County in defense of this lawsuit concluded that the force reportedly used was inconsistent with the injuries incurred by the plaintiff. Therefore, the Undersheriff requested that the original investigation be re-opened and that an administrative investigation be conducted.

The County authorized a $300,000 settlement in the matter.

In addition to Holt case described above, the County spent substantial sums to settle other cases related to the jails. The other jail cases involved over-detentions and medical issues. As set forth in prior **Semiannual Reports,** over-detention of inmates beyond their release date has been a significant problem for the LASD. Although cases of over-detention are still being brought and have probably not

yet crested,[2] the LASD's performance in 1998 on over-detentions represented a significant improvement over 1997, which was the worst year since 1989 in terms of numbers of over-detentions. Even more promising, 1999 is shaping up to be a better year than 1998 based upon performance through July 1999. Both the absolute number of over-detentions and the average length of over-detentions appear to be dropping significantly.

On the other hand, medical malpractice is an area of increasing concern. The number of active malpractice cases jumped about 27 percent from July 1, 1998 to July 1, 1999. There were also significant settlements in 1998-99 in malpractice cases. In *Warren v. County of Los Angeles*, the LASD determined that orders for continuing medication were not transferred along with a patient when he went from the Forensic In-Patient Unit at Men's Central Jail to housing under the control of the custody staff and Medical Services. The inmate, who had twice attempted suicide while in jail, had been receiving psychotropic medications. When his medication was interrupted for four days because of the failure to transfer orders for medication, he hung himself in his cell and was found dead. The County paid $150,000 to settle the case. The case arose in 1996. Since that time, the LASD has told the Board of Supervisors that procedures for the transfer of medical charts and orders for medications have been tightened.

Roberts v. County of Los Angeles involved a $615,000 settlement. The facts of the case are exceedingly disturbing. The plaintiff inmate, Alfred Roberts, 36 years old at the time, had a history of treatment for Valley Fever in his right ankle.

2 The number of claims filed for over-detentions, both in absolute numbers and as a percentage of all claims, is beginning to drop. In fiscal 1997-98, 1493 claims were filed against the LASD, of which 556, or 37 percent, were for over-detentions. In fiscal 1998-99, there were 1143 claims filed, of which 299, or 26 percent, were for over-detentions. The number of lawsuits received by the Department in fiscal 1997-98 was 264. In fiscal 1998-99, a total of 276 lawsuits were received. The LASD ascribes the increase to a significant rise in over-detention litigation. Thus, the claims may have crested in 1997-98 although the litigation is still rising. This is not surprising: claims precede litigation. In order to figure out whether the overall problem seems to be diminishing, a more accurate current trend can be derived in this instance from the pattern of claims.

Valley Fever is a severe infection that if left untreated can cause serious injury. Its presence is confirmed by a X-ray and the course of treatment is antibiotics. On April 27, 1996, Mr. Roberts complained of a swollen right ankle, saying that his ankle was "as big as a softball." On April 29, he was examined at Men's Central Jail by a doctor in the employ of the LASD who, although noting a history of Valley Fever in the right ankle, did not order an X-ray but rather instructed a nurse to give Mr. Roberts an ace bandage. Mr. Roberts was transferred from Men's Central Jail (MCJ) to the North County Correctional Facility (NCCF) and apparently received no further medical treatment between April 29 and June 16.

On June 16, the plaintiff complained to the NCCF medical staff about his ankle. He was sent to MCJ for an X-ray, which was taken the next day and read by a radiologist who noted that the findings most likely suggested a bone infection. On June 18, he was examined by another doctor at NCCF who ordered an ace bandage and requested that the inmate be transferred to MCJ to see yet another doctor.

Mr. Roberts was transferred back to MCJ on June 19, and a nurse noted that he complained of right ankle pain and that the ankle appeared swollen and deformed. A doctor saw him later in the day and prescribed a painkiller. He was then seen by another doctor later that day who prescribed Motrin for 30 days and referred Mr. Roberts for an appointment at County/USC Medical Center.

On July 2, Mr. Roberts was transferred back to NCCF. He still had not received an appointment at County/USC. He complained to a nurse that pus was draining from his ankle which was confirmed. A doctor ordered a culture. Mr. Roberts went back to MCJ.

On July 3, at MCJ, Mr. Roberts complained of an infected ankle and asked to be put on an IV. Mr. Roberts chart noted that he had an infected, open wound on his right ankle with swelling from the calf to the foot. The wound was draining a yellow fluid. On July 5, Mr. Roberts was seen again by the doctor who had

prescribed Motrin and referred Mr. Roberts to County/USC Medical Center. The doctor did not prescribe antibiotics but ordered that the ankle receive medicated soakings. He received the soakings until July 19.

On July 23, Mr. Roberts was seen by a nurse at MCJ who noted right ankle swelling and an open sore. Mr. Roberts complained that his ankle had been swollen for three months and that the open sore had been there for a month. Mr. Roberts was not seen by a doctor.

On July 30, he was seen again by the doctor who had ordered the medical soakings. The doctor ordered an X-ray which supported the same findings that had been made by the radiologist from the June X-ray. He ordered that Mr. Roberts be transferred to County/USC. At County/USC, he finally began receiving antibiotics. Ultimately, however, Mr. Roberts' right leg had to be amputated below the knee.

The LASD's internal investigation of the incident concluded that an initial failure to properly diagnose Mr. Roberts'medical condition, coupled with a significant delay in treatment, contributed to the patient's condition worsening to a point where the amputation was necessary.

With regard to corrective action, the doctor who had initially treated Mr. Roberts was "relieved of his responsibilities for an unrelated incident" and "will not be returning as an employee with the Sheriff's Department." Correction Action Report, p. 1. Given the cascade of errors and neglect by several doctors and nurses who saw Mr. Roberts between April and August, we wonder whether the corrective action taken against the medical staff and its supervisors was anywhere near adequate.

Ramirez v. County of Los Angeles is no less disturbing. Mario Ramirez was a 46 year old man who was arrested for drunk driving and booked into MCJ on August 1, 1996. On August 7, which on an LASD bus returning from a court appearance, Mr. Ramirez slashed both wrists. He was referred by LASD Medical Services to mental health staff at the jail. He was treated, evaluated by a psychiatric

response team, and housed ultimately in a multi-man cell.

During the evening of August 8, he took off his jail pants, tied one leg around his neck, and attached the other pants leg to the upper cell bars and hung himself. He was found by another inmate who called for help. Deputies responded and untied Mr. Ramirez who was conscious and alert. He was given medical treatment and transferred to a mental health module, the Forensic Inpatient Unit, for close observation. During his first five days there, he was on suicide watch and placed in leather restraints. He frequently refused meals and water and entirely refused all medication. Despite the refusal, a "Reise" hearing, wherein he could be compelled to take medication, was never conducted.

On August 13, Mr. Ramirez apparently asked staff several times to kill him. During the afternoon of the 13th, he was found hallucinating. Despite this conduct on the 13th, Mr. Ramirez was taken off restraints and discharged from the Forensic In-Patient Unit and transferred to a suicide watch cell under the control of the Medical Services and custody staff. Less than an hour after the transfer, a Deputy saw Mr. Ramirez climb the bars of his cell and jump a distance of 10 or so feet, landing head first. He was taken to the clinic where a large hole on the top of Mr. Ramirez's head was observed, along with spinal cord injury. On his release in September 1996, Mr. Ramirez was a quadriplegic.

The County agreed to a settlement of $675,000. We are unaware whether the Department of Mental Health investigated to determine why a man who had twice attempted suicide, who was refusing to take medication, and who the day before was hallucinating was somehow discharged. Nor are we aware whether any corrective action was taken against mental health staff in light of the failure to conduct a Reise hearing. The LASD did conduct an investigation of the Medical Services and custody personnel involved and provided additional training.

Bias v. County of Los Angeles is yet another extremely troubling malpractice case that resulted in a substantial settlement in fiscal 1998-99. On June 2, 1995, Sheldon Bias, 35 years old, was arrested on burglary charges and transported to jail. During the intake process, he reported that he had diabetes, a medical disorder that put him at an elevated risk of blood clots. On June 3, he was transferred from the intake unit to the medical unit within the jail for treatment of his underlying condition. There, medical personnel observed swelling of his right foot.

On June 4, Mr. Bias complained of swelling in his right foot, and medical personnel observed that the swelling had increased from the 3rd to the 4th. On June 5, he complained of feeling weak, dizzy, and nauseated, and an examination revealed continued swelling of the right foot. He was given medication to relieve dizziness.

On June 6, he repeated his complaints of June 5 and added that his ears were stopped up, that he had shortness of breath, and pain in his chest when walking. Following an exam, it was thought that he had an inflammation of the ear resulting in dizziness. Later that day, he was put on a regimen of fluids and given medication for an upset stomach.

On June 7, an examination in the morning revealed that now Mr. Bias's right thigh was swollen and painful. No further diagnosis was attempted to determine the cause of the swelling.

On June 8, he continued to have right thigh pain. Medical staff gave him a crutch.

At 6:45 pm, he was found "non-responsive" in his cell. After resuscitation efforts failed, he was pronounced dead. An autopsy showed that he died of a blood clot that blocked the arteries leading from the heart to the lung. The usual source of such a clot is from a deposit of clotted blood attached to the walls of the veins in the legs which is characterized by pain and swelling.

The County paid $222,500 to settle the case. In its corrective action report, the LASD stated that its internal investigation concluded that the LASD medical doctors had "failed to properly diagnose the inmate's condition" and failed to "prescribe a course of treatment that may have prevented his condition from worsening to the point where it became a contributing factor to his death." The LASD represented to the supervisors that a detailed series of corrective reforms had been made to identify and better treat all diabetic inmates.

Apparently, the lessons did not take. In *Jenkins v. Block*, Jeffrey Jenkins was seen by a doctor at MCJ on November 18, 1998. The doctor noted that Mr. Jenkins was diabetic, had an ulcer on his left foot, and that his left first toe had been amputated in 1997. A nurse noted that there was a foul order emanating from plaintiff's foot. Mr. Jenkins was neither X-rayed nor prescribed antibiotics, although other medical treatment was ordered.

Mr. Jenkins was next seen by another doctor on December 1. The physician duly noted that Mr. Jenkins was a diabetic and had an ulcer on his left foot. He ordered a daily acetic acid dressing be placed on Mr. Jenkin's foot. The foot was not X-rayed; nor were antibiotics prescribed.

Mr. Jenkins was discharged from the jail on December 9. He was admitted to Riverside General Hospital on December 10 and given treatment. He nonetheless had to have the fourth toe on his left foot amputated on December 18.

The County paid $150,000. The corrective action report noted that an independent medical specialist had concluded that "the treating physician's treatment program should have been more aggressive and have included antibiotics and X-rays." As to specific corrective action against the doctor, all the corrective action reports notes is that "the doctor involved has been made aware of the incident" and that Medical Services will conduct further training of all doctors and nurses in the "complications of diabetics and the importance of initiating an

aggressive treatment program." We do not know what is meant by "the doctor involved has been made aware of the incident." The phrase lends itself to an inference that the doctor was told that his treatment of Mr. Jenkins was substandard. If that's all that happened to the doctor, and we do not know one way or the other, it would be astonishing in its leniency.

Our review of the malpractice cases settled in 1998-99 convince us that further deep reflection is necessary with respect to the performance of Medical Services. We are aware that the LASD and other County departments have paid some attention to the issues in recent years. We are puzzled why more has not happened by way of complete overhaul of Medical Services.