Report to the City of Fullerton: Systemic Review of the Fullerton Police Department August 2012



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Foreword

This report constitutes the conclusion of OIR Group's systemic review of the Fullerton Police Department. The July 5, 2011 incident that resulted in the tragic death of Kelly Thomas resulted in a criminal prosecution that has yet to be concluded, an administrative investigation and this systemic review. Since that time, FPD has received much criticism about the way in which its officers acted that night and the Department's response, much of it well-deserved, as further explained in these pages. That being said, the FPD that existed on July 5, 2011 is not the FPD of more than a year later -- changed leadership, introspection, and reform has placed the Department in an upward trajectory. The recommendations here are intended to continue to assist the Department on that forward path and should not overshadow what the Department and the City have already accomplished on their own.

In our view, it is important to consider this report with the recognition that police departments are organic organizations; each day facing a potential crisis. Potential critical events such as the Occupy Fullerton movement and the regular protests following the Kelly Thomas incident have been handled without significant controversy or concern while other police departments have not fared as well in dealing with similar issues. Moreover, the vast majority of the thousands of regular citizen contacts that have taken place in Fullerton since the Kelly Thomas incident have occurred without significant incident or concern.

With that said, as with any similarly situated police agency and as detailed below, more can and should be done in reforming the way in which FPD hires and trains its officers, investigates and reviews uses of force, learns from those force incidents, holds its officers accountable and considers improvements in policy. Our recommendations are intended to spark continued reform in each of these areas to continue to move the Department forward in a positive way.

Introduction

On July 5, 2011, Fullerton police officers responded to a call for service at the City's transit center. Minutes later, Kelly Thomas lay grievously injured and unconscious. Several days later, Mr. Thomas died as a result of the injuries suffered that night. The injuries that eventually led to the death of Mr. Thomas were inflicted by Fullerton police officers. The tragic outcome and the manner in which his death occurred disturbed the City of Fullerton and its citizenry and sent shock waves of concern about the police officers' actions throughout the nation and beyond. Photographs of the horrific injuries suffered by Mr. Thomas were published, traumatizing the public's consciousness while contributing to the keen interest in learning how this encounter transpired. The public soon learned that a city security video camera had recorded much of the incident, further fueling the desire to know how the death of Mr. Thomas had occurred. Months later, after the video was released to the public by the District Attorney's Office, widespread review of the event caused further concern about the actions taken by the police that night.

As a result of an investigation commenced by the Fullerton Police Department ("FPD") and concluded by the Orange County District Attorney's office, two Fullerton officers were eventually charged with crimes as a result of their participation in the incident. At the time of this writing, the criminal proceedings continue. Should the case proceed to trial, a jury will eventually determine whether the force those two officers used on Mr. Thomas violated the Penal Code of the State of California.

At the conclusion of the criminal investigation, and as a result of a request from the City of Fullerton, OIR Group commenced an administrative investigation into the conduct of all of the officers who were involved in the Kelly Thomas incident. That investigation considered whether any of the officers violated FPD policy by their actions on July 5, 2011. OIR Group conducted numerous interviews of witnesses and subject officers and delivered a fifty-page report with three volumes of exhibits and transcripts to the Acting Chief of Police. In addition to collecting investigative facts, OIR Group made independent recommendations to the Acting

Chief as to whether the results of the investigation established violations of Departmental policy. The potential discipline that was considered ranged from a written reprimand to termination. Because state law prohibits disclosure of administrative proceedings involving police officers, there are limitations about what can be disclosed regarding their outcome.

The City also requested OIR Group to conduct a systemic review of the Fullerton Police Department. This report documents that review and includes an examination of current policies, practices, procedures, and training of the Department with an eye toward making recommendations for any observed need for reform. While this review was informed by what was learned about the Kelly Thomas incident as a result of the administrative investigation, it was not limited to those events. In addition to a broad inquiry into the way in which the Department handled the Kelly Thomas incident, our review was also designed to look at other critical incidents and force reviews to gather a more global perspective into the way in which FPD handles such issues.

As a result, in addition to reviewing the several volumes of materials that were produced during the administrative investigation, OIR Group's systems review process led us to conduct numerous additional interviews of current and former officers and command staff, review policies and procedures, and review documents relating to FPD's handling of other force incidents and Internal Affairs investigations. In addition, OIR Group spoke with other stakeholders, including community and civic leaders.

While our review was still underway, OIR Group was clearly cognizant of the continued interest by the community in the Kelly Thomas incident and related issues of concern. To begin to provide transparency and information about some of those issues, OIR Group prepared an interim report in February of this year addressing some of those issues and made several recommendations intended to help the City and the Department avoid such problems in the future. This report continues the observations and conclusions made in that interim report and is the culmination of our systemic review.

Our work on this report would not have been possible without the complete cooperation of the City, the Police Department and the Orange County District Attorney's Office. During our review, we were afforded complete and unfettered access to Department documents and personnel. Current and former FPD police members and command staff welcomed us and spoke with us freely and candidly. We appreciate the spirit in which our review was facilitated and are hopeful that this report and its recommendations will be received in the same manner.

Issues Directly Relating to the Kelly Thomas Incident

Initial Interaction with Kelly Thomas

On July 5, 2011, two FPD officers responded to a call for service from an employee of a downtown business. The caller reported that a homeless man was "trying" car doors in a parking lot near the business and the transit station. Two FPD officers responded to the call and encountered Mr. Thomas near the transit center. During the initial encounter, the officers' "investigation" into the incident is better characterized as banter between Mr. Thomas and the primary officer dealing with him that devolves to non-productive and unprofessional discussions. For example, an attempt to learn Mr. Thomas' name became an officer-fueled inquiry into whether Mr. Thomas spoke English and whether he spoke other languages, during which at one point, the officer sarcastically stated that his partner spoke ten languages. The initial dialogue between the primary officer and Mr. Thomas was mostly initiated by the officer and evidenced mutual disdain. This dialogue eliminated the officers' ability to develop or maintain a professional and cooperative relationship with Mr. Thomas.

The second officer communicated more professionally while obtaining Mr. Thomas' consent to search the backpack, but then he moved away from the discussion to begin the search, leaving the primary officer to deal exclusively with Mr. Thomas. After ordering Mr. Thomas to sit on the curb, Mr. Thomas eventually complied and remained there for several seconds without controversy or conflict. Rather than being satisfied with this level of compliance, the primary officer demanded Mr. Thomas to position his hands and legs in a certain way. Mr. Thomas appears at first to attempt to comply but then grew frustrated and possibly confused about what the officer wanted him to do and responded plaintively that he could not do all that the officer wanted. Because he apparently detected Mr. Thomas' slowness to respond as a disregard for his orders, the officer's mood grew hostile and he eventually threatened Mr. Thomas with physical violence if he continued to fail to listen to the officer's instructions. Mr. Thomas did not respond well to the threat and after a few more seconds of dialogue, the officer put his hands on Mr. Thomas and the force incident that resulted in Mr. Thomas' death unfolded.

The officers' initial interaction with Mr. Thomas unnecessarily escalated a situation that, if handled professionally, could have been resolved without significant force. When officers arrived on scene, they were investigating a person who was suspected of trying to enter doors of vehicles, a non-violent offense in which there was no evidence that any crime had actually been

achieved. Mr. Thomas presented as a shirtless and shoeless homeless individual with whom one of the officers had some familiarity. During their initial encounter with Mr. Thomas, the officers' approach and conversation did not suggest any significant concern that the person they were dealing with might be armed or violent.

However, the officers dealing with Mr. Thomas found a way to transform a casual encounter into an incident resulting in death. Every patrol officer in America should know that there is a correlation between being homeless and the existence of mental illness. Yet in this case, the attitude adopted by the primary officer was one of disdain and impatience that was aggravated when Mr. Thomas declined to politely and deferentially answer his questions. From its inception, the conversation did not go well. The primary officer did not recognize or reinforce any preliminary interest that Mr. Thomas may have had in cooperating, and his attitude impacted the way in which Mr. Thomas related to the officers.

Perhaps the most troubling aspect of this episode that led to Mr. Thomas' eventual demise is that it all could well have been avoided had the responding officers handled the initial interaction with Mr. Thomas in a more professional and intelligent way. Not uncommon among the homeless population and/or those suffering from mental illness, Mr. Thomas had repeated prior interactions with the police, including FPD. During our review, we listened to an audio tape of one of those interactions when FPD responded to a call for service complaining about Mr. Thomas, and, in that case, the responding officer dealt calmly and professionally with Mr. Thomas, resulting in an arrest without the use of force. In fact, none of any earlier interactions between Mr. Thomas and the police came close to spiraling to the situation caught on camera on July 5, 2011. On that date, the way in which the primary officer dealt with Mr. Thomas helped set into action a chain of events that resulted in a major use of force and Mr. Thomas' eventual death.

Those who might say that Mr. Thomas' lack of complete cooperation, his profanity, or his unprofessional response to the officers dictated the eventual use of force fail to understand the dynamic or expectations of modern day policing. Professional police officers are trained that not everyone who comes in contact with them will be deferential, professional, rational or delighted to see them. Moreover, those who may be suffering from mental illness may not have the wherewithal to perform exactly how a police officer might want them to. While officers cannot control every outcome, principles of progressive policing teach that it is the peace officer who is expected to use verbal skills and an approach designed to deescalate the situation so that force is not used. It is incumbent upon police executives to provide and reinforce this perspective throughout their agencies through continual training and modeling of officer

behavior.

To its credit, even before the Kelly Thomas incident, FPD had provided crisis intervention training to fourteen of its patrol officers. The sixteen hour training focused on having officers gain an understanding of mental illnesses suffered by those on the street and included presentations by mental health professionals. One goal of the class was to improve the officers' crisis intervention skills and communication techniques. Additionally, in 2010 and 2011, training involving issues pertaining to the homeless was provided at briefings twice prior to the Kelly Thomas incident and was discussed regularly at other briefings that occurred throughout that time.

That being said, almost immediately after the Kelly Thomas incident, FPD executives recognized the need to provide additional training to all of its officers in strategies on how to deal with the mentally ill. We applaud the Department for its past initiatives and more recent ones in this regard. As detailed below, we also understand that FPD has recently enlisted the assistance of Orange County's Mental Health Services to have one of their Outreach Clinicians regularly ride with FPD patrol officers. Moreover, recently and on its own initiative, FPD is undertaking a "census" of its homeless population in which information about the population will be inputted into a data base and available to all FPD officers in the field.

In addition, prior to the Kelly Thomas incident, FPD had designated officers to liaison with the City's homeless population, but by the time of the incident, resource constraints had caused the FPD to reduce to one the number of officers who were devoted to this work. Since the Kelly Thomas incident, FPD has reinstated an additional officer to liaison with the homeless. The additional officer has begun his work, a corporal that was personally selected by the Chief of Police and at the recommendation of the corporal who has performed the work as FPD's homeless liaison officer for several years.

While these reforms are commendable, more can and should be done in this area. As part of our review, we spent a shift riding with FPD's homeless liaison officer. We saw first-hand the way in which he interacted with Fullerton's homeless individuals and the positive relationships he had developed with them. He also had a wide-ranging knowledge of the issues bedeviling the homeless, the challenges in developing the appropriate enforcement model for that population, the effect of mental illness on law enforcement's ability to effectively deal with those in the population so impacted, and the need to strike the appropriate balance between enforcing quality of life laws with the impact it has on the homeless population. The effective strategies employed by the homeless liaison officer highlighted the need to expand this program. During the four days

when the liaison officer is not at work or during his off hours, there was no comparable resource on duty for FPD. Case in point, the liaison officer was not on duty when the Kelly Thomas incident occurred. Although at least one FPD officer who had recently received crisis intervention training was working that evening, he was not dispatched to the Kelly Thomas call and only arrived after the force incident had been concluded.

The doubling of resources for the homeless liaison initiative is a major positive step. Yet even with this significant commitment, there is still not yet round the clock coverage for the Department. It is recommended that the Department work with the City to learn whether additional liaison officers can be designated for homeless assignment so there is total and seamless coverage in this area. Even if it proves impracticable to have a fully dedicated liaison officer on shift at all times, we suggest the Department at least designate an officer on each shift to fill this role and continue to provide those officers additional training and tools in order to better deal with the homeless population.

Recommendation 1: The Department should work with the City to develop a corps of officers specially trained and committed to interacting with the homeless population so that there can be round-the-clock coverage by a homeless liaison officer.

While the presence of now two liaison officers for the homeless has certainly served the City well, we feel that other FPD personnel have not fully benefited from his knowledge and experience. Police officers often model their behavior based on experiences with their training officers as well as their more experienced peers. While, as noted above, FPD patrol officers have recently undergone training in dealing with the homeless and mentally ill, working with someone who has perfected certain techniques and polices with a deeper understanding of the homeless population could serve an important role in modeling behavior and allow all officers to further develop verbal skills and strategies first hand. For that reason, we recommend that FPD patrol personnel be periodically scheduled to ride with the homeless liaison officers. For trainees, the field training program should mandate some ride along time with the liaison officers. In addition, civilian personnel who work for FPD in the jail and whose job assignments cause them to interact with the public should also be scheduled periodically to ride with the homeless liaison in order to have a better understanding of the population. Finally, and perhaps most importantly, FPD supervisors and command staff should also be mandated to ride periodically with homeless liaison officers so they can continue to be cognizant of the enforcement challenges and issues with regard to that population.

Homeless liaison officers should continue to be encouraged to participate and assist in

more broad-ranging initiatives dealing with the homeless. As a result of the Kelly Thomas incident, the City, County, and advocacy organizations have all increased their attention to dealing with this issue in a multi-faceted way, soliciting input from the community and the homeless community itself. To the degree such events and meetings are held in the evening or on weekends, we encourage FPD supervisors to continue to provide the liaison officers flexibility in their schedules so that they may regularly participate in such events and help facilitate the broader-based initiatives designed to address the issue.

Homelessness is obviously not exclusively an issue for Fullerton; there is a significant homeless population throughout the neighboring cities of Orange County. One strategy that could result in more effective policing of the homeless population would be to continue to reach out to neighboring cities to learn whether officers specially skilled and dedicated to dealing with the homeless could be cross-designated across city boundaries in North Orange County in a regional task-force type configuration. Policing has long recognized that law enforcement challenges do not respect city boundaries and for that reason, increased use of the multi-agency task force model has been devised to address such issues. A similar approach should be considered in addressing the homeless population in North Orange County and could result in a more cohesive, efficient, and integrated response.

Recently, an Orange County Homeless Liaison Officers' Association was created and, to its credit, FPD is a charter member. The Association's goal is for law enforcement in neighboring departments to discuss common issues and strategies regarding dealing with the homeless. This Association could pose a major step in a positive direction towards future interagency collaboration on this issue and is consistent with the recommendations set out here.

Recommendation 2: The Department should develop protocols that would have all of its officers periodically ride with a homeless liaison officer and include such ride-along assignments for trainees in the field training program. The Department should also include in the ride-along program FPD civilian personnel who deal with the public. The Department should ensure that supervisors and FPD's executive team periodically ride with the homeless liaison officers.

Recommendation 3: The Department should continue to encourage and facilitate its homeless liaison officers to participate in efforts by other agencies and organizations that address the issues of the homeless. The Department should continue to provide flexibility in homeless liaison officers' schedules so they can attend such events while on duty on evenings and weekends.

Recommendation 4: The Department should continue to explore and expand the concept of regional cooperation with neighboring police departments to continue to develop best practices, information sharing, and possibly shared enforcement responsibilities with regard to the homeless population.

Use of the Digital Audio Recorder

For years, FPD has required its officers to carry Department-issued digital audio recorders ("DARs") and developed policy establishing its use. The use of DARs is not mandated by law and most law enforcement agencies in California do not require their officers to regularly record citizen contacts. In that regard, FPD has long seen the value in having its officers be required to tape record such citizen contacts and has been well ahead of other police agencies in having its officers use DARs to do so.

In the Kelly Thomas incident, information captured from Department-issued digital audio recorders ("DARs") became critical evidence for both the criminal and internal affairs investigation. The Department was able to synch the audio evidence with the video to provide a compelling and evidentially critical account of what had transpired. While some of the officers who responded to the incident recognized the importance of activating their DARs, a number of other officers did not activate their recorders. One officer is heard on his DAR instructing his trainee to activate his DAR as they are traveling with lights and siren to the location. As the training officer explained on tape, it was important to activate the DAR as they were en route so that they did not have to worry about doing so when they arrived on scene.

In contrast, other officers who responded to the scene did not activate their DARs, indicating that they did not see the value in doing so, that they forgot to do so, or that they thought they had done so but in actuality they had not. There was also uneven performance with regard to when it was appropriate to deactivate their DARs. The varied response of officers who arrived to the Kelly Thomas incident was a clear indicator that FPD officers had not been provided sufficient guidance and training on the Department's expectations regarding the use of the DAR.

In our review of other force cases, we detected other shortcomings with regard to the Department's DAR policy that was in effect in July 2011. For example, one citizen alleged in a complaint that officers made inappropriate comments during the time the citizen was being transported to jail. However, when the investigator reviewed the DAR of the officers involved in the arrest and transport, he discovered that while the initial encounter and arrest of the

complainant was recorded, the time during which the prisoner was transported was not. As a result, there was no audio evidence to either establish or refute the complaint.

Earlier this year, and in response to the Kelly Thomas incident, an improved DAR policy was promulgated by FPD. For example, the new policy instructs officers that once activated, the DAR should continue to be in the record position throughout the entire field contact or until otherwise directed by a supervisor. In addition, the improved policy now specifies that the DAR should be activated when transporting all persons, including prisoners, and shall remain activated until the transport is completed.

Another positive reform to the DAR policy allows for FPD supervisors to conduct random audits in order to identify negative and positive performance or potential training issues. While the capability to perform random audits is a positive step in ensuring desired performance of its police officers, the new policy could be interpreted as inexplicably preventing supervisors from reviewing DARs to monitor an officer's performance based on cause. We recommend that the "for cause" targeted audit should expressly remain as an additional option for FPD supervisors in the policy. If there is well-founded suspicion that an officer is violating performance expectations of the Department, a DAR audit should be expressly permitted by FPD policy. While we have been informed that the recent amendments to the DAR policy were not intended to eliminate the review of DARs when there is cause and that it is still requisite that in every use of force, citizen complaint, prisoner injury, or any other investigation in which a supervisor investigates an incident involving an officer there will be a DAR review, the unintended consequence of the change was to expressly eliminate the "for cause" provision and we recommend that to avoid confusion it be expressly reinstated.

We recommend additional modifications to the DAR policy. First, in the Kelly Thomas incident, once the force incident began, all subsequent responding officers traveled "Code 3," i.e., lights and sirens to the incident. However, most of those responding officers did not activate their DARs en route to the location. A number of those officers failed to turn on their DARs when they arrived at the location because they immediately became engaged in the incident. However, as noted above, for those who had activated their DARs en route to the location, they did not have to think about turning them on when they arrived on scene.

In our review of other force incidents, other FPD officers also did not turn on their DARs after traveling "Code 3" to an incident and the resulting citizen contact was not captured because of their perceived need to immediately respond. For that reason, we recommend that the DAR policy be revised to instruct officers that they need activate their DARs as soon as they activate

lights and siren and begin a Code 3 response. In addition, the DAR policy should instruct officers to similarly activate their DAR when traveling to any "hot" calls, even if lights and sirens are not activated.

In our review of other force incidents, we found cases in which plain clothes FPD officers did not activate their DARs during citizen contacts because they were not carrying their recording equipment. While we recognize there may be rationale for limiting activation of DARs when officers are working a pure undercover assignment and when there is no obvious indicia that they are police officers such as a badge, shirt, or raid jacket. However, in cases in which FPD officers are wearing badges or other insignia making them recognizable as police officers, the DAR activation policy should apply to them in the same way it applies to uniformed patrol officers. While we have been informed that it is FPD practice for plain clothes detectives to be held to the same standard, we recommend that this practice be expressly included in FPD policy.

Recommendation 5: FPD should revise its DAR policy to provide supervisors the express ability to conduct targeted audits of police officers' recordings.

Recommendation 6: FPD should revise its DAR policy to require activation of DARs when officers initiate a "Code 3" or "hot call" response.

Recommendation 7: FPD should revise its DAR policy to require that officers who are in plain clothes but identifiable as police officers comply with the dictates of the DAR policy.

Referral to the District Attorney

After Mr. Thomas was taken into custody and transported to the hospital, Fullerton detectives and FPD supervisors arrived at the scene to determine how to proceed with the investigation. In cases involving fatal officer-involved shootings or in-custody deaths, existing protocols are clear that the District Attorney's Office is to be contacted so that they may respond and assume the investigation. However, in this instance, while FPD received early information that Mr. Thomas was in grave condition, he had not yet expired. In fact, hospital staff was able to keep Mr. Thomas alive for several days after the incident.

Because this incident fell outside existing protocols between FPD and the DA's Office, FPD supervisors were unsure how to proceed. A call did go out to DA's Office representatives the night of the incident and further communications occurred the next day; it is unclear whether at that time an actual request was made for the DA's Office to assume investigative

responsibility for the incident. It was not until July 7, 2011 that, as a result of a further call from FPD that the DA's Office assumed responsibility for the investigation. The lack of clarity about the nature of the communications is, in part, because there was little documentation about what was being requested. What is known is that the District Attorney did not assume responsibility for the investigation the night of the incident. FPD's subsequent uncertainty over whether the District Attorney's Office was going to immediately assume the investigation created delay and uncertainty by FPD investigators and command staff about whether, how, and to what extent they should begin collecting officer statements and other evidence.

Over the next several days, there were additional conversations between FPD officials and the District Attorney's Office. Those conversations eventually resulted in the District Attorney's Office assuming the criminal investigation for the incident, but by then FPD detectives and crime scene staff had already undertaken many investigative tasks.

This incident evidences a lack of sufficient clarity in the handling protocols between FPD and the District Attorney regarding responsibility for investigations where there is not yet an incustody death, but officer-involved force has resulted in a person being critically injured. It should be noted that this gap in protocols is not unique to FPD but also exists relative to all local law enforcement agencies in Orange County. That being said, it is critical before the next such critical incident that the protocols are clear regarding which entity will handle the investigation. For that reason, FPD executive staff should work with the DA's Office to refine investigative protocols so that there is clarity about which entity will be handling future investigations of this type where there is not yet an in-custody death, but officer-involved force has resulted in a person being critically injured. Agencies need to know with certainty and before the fact what entity is to investigate situations in which an individual has been severely injured as a result of police action.

Any discussions between agencies regarding which entity should handle an investigation need to be contemporaneously documented. Such documentation will provide a real time record of such discussions should, as in this case, later questions arise about the nature of those discussions.

In talking with other former and current members of FPD, we have been informed that there have been other occasions where there was uncertainty and divided opinions internally whether a force incident or allegations of misconduct should be referred to the District Attorney. For example, in a case in which a handcuffed prisoner was subjected to excessive force, the incident was not presented to the District Attorney for potential prosecution. In another incident

involving apparent intentional destruction of evidence, there was debate about whether the matter should be presented to the District Attorney (eventually it was, leading to a prosecution of the officer).

In our view, internal written protocols should be devised to provide guidance to FPD command staff about which matters should be presented to the District Attorney. Instead of ad hoc case by case decisions, development of such guidelines will result in more consistent and principled decision making. These protocols should be developed in consultation with the District Attorney. Certainly cases in which there exists probable cause that a crime has been committed by an FPD officer should be subject to a District Attorney referral.

Recommendation 8: FPD command staff should work with the District Attorney to refine protocols about which entity is to assume investigation of incidents in which an individual has been severely injured as a result of police action.

Recommendation 9: FPD should develop written protocols that would require contemporaneous documentation of any discussions with representatives of the District Attorney regarding the handling of force and critical incident investigations.

Recommendation 10: FPD should develop written protocols to guide command staff on which force incidents or allegations of officer misconduct should be criminally referred to the District Attorney.

Police Officer Access to Recorded Information

After the Kelly Thomas incident, all involved and responding officers were eventually transported to the police station. A copy of the video of the incident was available in the watch commander's office. Prior to writing their reports, involved officers were afforded the opportunity to watch the video recording of the incident. The viewing of the video recording was undertaken with groups of officers and no documentation was created about who had viewed the tape and when. It appears that the review by officers involved in the incident occurred with little or no supervision or control.

When the public learned that FPD officers had been afforded the opportunity to review the video tape before writing their reports, a firestorm of criticism erupted. Because the preview of video evidence is not consistent with standard best investigative practices, many members of the public believed that the officers were provided an ability to tailor their reports consistent with the video; an ability that is not afforded non-peace officers. For example, if a private individual

was under investigation for battering his neighbor, neither the suspect nor the neighbor would be afforded the ability to preview a video recording of the incident before a statement was taken from them by investigating authorities.

Some have argued that officers should be afforded the opportunity to review recordings of an event so that their reports are consistent with the recording. However, there is no scientific or empirical data that a report consistent with other pieces of evidence is an accurate one. By allowing officers to preview the footage, a police department is, in essence, causing the officer's own recollection to be supplanted by what is caught on video, even if what is recorded does not account for the state of mind of the officer, does not record sound, and does not disclose all actions that took place.

If consistency were the sole goal of an investigation into a force incident, police officers should also be privy to each other's accounts of the incident, civilian witness interviews, medical records, photographs, and other forensic evidence. There is no principled reason to create an exception for officers to allow previewing of video evidence when the investigative norm is to not provide such early access to evidence to those whose actions are being assessed.

While video surveillance footage is a helpful tool for investigation, supervision, and training, it has its limits. Cameras only record from a fixed point and present a two-dimensional view. Angle, distance and lighting conditions can all work towards creating an impression of actions that may be distorted. And very often, as in the Kelly Thomas incident, the video is not taken from the vantage point of the involved officer. Finally, the lighting condition, distance, and acuity of the video are sometimes better but often worse than what a live witness may have been able to observe.

Viewing video footage before writing a report is likely to distort pure recall either consciously or subconsciously. Studies by experts in witness memory have established that subjecting witnesses to extraneous evidence such as a video recording can cause witnesses to supplant what they actually recall with what they see from the video evidence. As a result, allowing personnel to view a video prior to obtaining an account of the incident from those involved eliminates the ability to obtain a pure unvarnished narrative of the incident.

Affording police personnel the ability to preview video evidence potentially subjects Department personnel to questions over the accuracy of reports. While an officer could be impeached on the witness stand in instances where his or her report is inconsistent with the recorded footage, a jurisdiction also may face liability risks if civil plaintiffs' attorneys

successfully convince juries that Departmental accounts are not to be trusted because video was viewed before reports were written. The same is true with regard to criminal defense attorneys who could use the "preview" procedure to attack the integrity of the Department's criminal investigation of their clients.

A view-first policy could create the impression among some that the Department is attempting to clean up its reports so they appear consistent with each other and the video evidence that is present. Such an impression will reduce the public's confidence in the Department's ability to investigate incidents of officer-involved force or allegations of officer misconduct.

Perhaps most importantly, and as noted above, a view-first policy is not consistent with current investigative practices police departments employ on a daily basis. For example, bank employee victims of a robbery are not shown videos of the incident prior to being interviewed. Creating an exception for police personnel is inconsistent with long-accepted investigative practices.

For all of the above reasons, we recommend that FPD develop policy that would require that when officers use force or when officers' actions are under investigation and there is recorded evidence of the incident, officers should be required to prepare reports or be interviewed before being afforded the opportunity to review the recording of the incident. If viewing or listening to a recording refreshes an officer's recollections, the policy should afford the officers the opportunity to supplement their interviews or written reports.

With regard to any review of recorded evidence, standard investigative practices also demand that such review be undertaken individually. Group reviews of recorded evidence increases the likelihood that comments made by one police officer witness could impact the recall of another police officer witness. More significantly, providing group access to recorded information subjects the Department to perceptions among some that such access was provided to facilitate orchestration of recall and assist officers in "getting their stories straight".

Recommendation 11: FPD should develop policy that would require that when officer conduct is being reviewed, the officer should be interviewed or write a report prior to viewing the recording. This policy should cover both video and audio evidence, including DARs.

Recommendation 12: FPD should develop policy prohibiting group access of recorded evidence to involved or witness police officers.

Best Practices for Obtaining Information from Officers in Major Force Incidents

On July 5, 2011, after Mr. Thomas was transported to the hospital, there was much discussion among FPD command staff about the collection of information from involved and witness officers. This discussion was compounded by the initial uncertainty regarding whether the District Attorney was going to assume immediate responsibility of the investigation. When FPD eventually learned that the District Attorney was not responding that evening, the Department was left with the decision about how to obtain information from witness and involved officers about what had transpired.

During our review, we were informed that there was much discussion and debate that night about the best way to gain an account of the event from FPD personnel. Eventually, it was decided that involved and witness officers would write police reports about what they had observed. In our view, considering the nature of this incident, the better practice would have been for FPD detectives to conduct tape-recorded interviews of witness and involved officers. Such interviews are the best vehicle for obtaining comprehensive and contemporaneous information about observations and actions. Police reports contain a narrative in which the reporting officer determines which facts and details to include in the report. As noted below, to the degree that the level of detail in the report is found wanting, supervisors can request further information but the give and take of that information flow is not immediately apparent in the final report. Finally, because of the delay in the writing and approval process, the final written report of the incident may not be obtained by the agency for several days.

Interviews, on the other hand, provide contemporaneous and detailed information about an officer's observations and actions. Unlike the report writing process, interviewers can immediately ask follow up questions and answers are recorded in real time. Finally, interviews contain voice inflection, tone, and other audio cues that are not captured in a written report. The investigation into the Kelly Thomas incident would have been better-served if the decision had been made to interview the involved and witness officers the night of the incident.

Recommendation 13: FPD should revise its protocols regarding how information is obtained from witness and involved officers in a major use of force incident to require that personnel are contemporaneously interviewed on tape about the incident to supplement or supplant the report writing requirement.

Timing and Submission of Police Reports

Some police agencies require that witness and involved officers to a major force incident also write police reports documenting their observations. In less significant force incidents, most agencies initially rely on a police report or supplemental report to capture the officers' recollection about what had transpired. As noted above, in the Kelly Thomas' incident, the decision was eventually made that the involved officers would prepare police reports to document their observations and actions. However, in some cases, it was days later before a final version of the police report was submitted and approved.

This fact was largely a circumstance of the editing and approval process. Standard police practices require any submitted police report to be reviewed and approved by a supervisor. This practice is sound; it is important to have a supervisor review initial reports to ensure that the officer has provided a report that is clear and has sufficient detail about the event.

In the Kelly Thomas case, it was decided, consistent with best practices, that one supervisor would be responsible for reviewing and editing all of the officers' reports. However, because of the editing process and officers' schedules, some reports were not officially approved until several days after the incident.

In our view, whenever possible, the submission of a final police report documenting the officer's actions or observations in a use of force incident should not be delayed but should be approved before the officer is released from duty. It is important that the Department obtain documentation about a force incident as soon as practicable and not have to wait several days for the report approval process to be completed.

Recommendation 14: In cases in which officers are to write reports regarding their actions or observations of a force incident, FPD should develop written protocols requiring that, barring exceptional circumstances, such as the incapacity of the officer due to injury, the report be completed and approved before the officer is excused from his shift.

Editing of Force Reports

Standard police practice is that all police reports, including reports in which an officer's force is documented, should be subjected to review by a supervisor and returned to the officers should the report lack clarity, contain grammatical or typographical errors, or is not sufficiently detailed. During our review, we were able to compare the original draft reports submitted by the involved officers in the Kelly Thomas case and, by and large, we found the review and editing

process to mostly involve the correction of grammatical and typographical errors. However, in one case, the submitting officer included in his original report a numerical range regarding the number of times he used force. During the report review process, the supervisor returned the report to the officer and suggested that he replace the numerical range with the word "multiple."

As noted above, the purpose of the police report is to obtain a detailed statement of the force used. While, in our experience, the officer using force is often not able to be precise about the number of times he struck the subject, whatever information the officer possesses about the frequency of the force should be included. It is also not uncommon for a report documenting force to contain a range about the number of times force was applied since the officer is not counting the blows during the fast moving incident. However, a reviewing supervisor should not, during the review process, request the officer to substitute a numerical range with an even more imprecise description such as "multiple." It should be the goal of any reviewing supervisor to obtain more detail, not less.

Recommendation 15: FPD should develop training materials for supervisors that emphasize the important role and goals of the report review and approval process. In those training materials, it should be emphasized that supervisors should not propose any edits that make the report less precise than originally submitted.

Evidence Preservation

With one important exception, we found the evidence collection by FPD representatives to be consistent with best practices. The exception was that when Mr. Thomas was transported to the hospital, the hobble that had been used to secure him was cut away so that he could be treated. Rather than having the hobble collected by the transporting FPD officers for its potential evidentiary value, it was discarded by hospital staff. While in this case, the hobble may have proved to have had little evidentiary value, it should have been collected and booked into evidence along with all other personal effects of Mr. Thomas and the evidence collected on scene. While as stated above, this failure to retain evidence appears to be a singular mistake and does not indicate a pattern or trend, as a prophylactic measure FPD should use this event as an opportunity to alert its officers on the need to preserve evidence in critical events.

Recommendation 16: FPD should regularly brief its officers on principles of evidence preservation.

Response to Stakeholders and the General Public Regarding the Incident

As the Kelly Thomas incident progressed from the night of July 5, 2011, FPD was relatively silent in informing its stakeholders about the incident. While City officials were contacted telephonically within hours of the incident, few details were provided. The existence of the video and the audio recordings and what was depicted on them should have placed Department leaders on immediate notice of the import of the incident before them. While this recognition certainly occurred to some, FPD was slow to respond publicly to the incident.

With regard to Mr. Thomas' father, the Chief of Police did reach out the next day and indicated that he was available for him as a resource. While Mr. Thomas continued to be treated at the hospital, the handling FPD detective provided support and information to Mr. Thomas' father to the degree possible considering the infancy of the investigation.

While FPD was releasing scant information to the media about the incident, information was beginning to reach the public's consciousness. Graphic photographs of Mr. Thomas' injuries taken at the hospital were released. Another video of the incident made its way onto YouTube which depicted the audio of Mr. Thomas calling out to his father. And Mr. Thomas then expired later in the week as a result of the injuries suffered from the incident.

During this period of time, FPD continued to remain relatively silent publicly about the incident and some information that did come out proved to be inaccurate. As noted in our interim report, a comment by the Department's Public Information Officer about the responding officer suffering "broken bones" turned out not to be accurate. A public comment by the Chief of Police about the use of the Taser also proved to be inaccurate. While as we stated in our interim report, we found no evidence to suggest that FPD intentionally provided misinformation about the incident, the Department should have resisted the dissemination of information until it could be verified. Most importantly, there was no overarching message delivered publicly about the tragic event that had occurred at the hands of police.

With regard to the Chief of Police, after receiving a telephonic notification of what had transpired that evening, he chose not to respond to the station. The next day, there were no public pronouncements expressing the Department's concern for what had transpired. Rather, the Department seemed to "hunker down" as the information about the incident became known through other sources and dribbled out information about the event in a rather haphazard way and usually "upon request." For example, as noted in our interim report, the release of Kelly Thomas' booking photo upon request from a news organization coupled with public information

that focused on the relatively minor injuries the officers' sustained only served to fan the flames of opinion that FPD's interest was in demonizing Mr. Thomas and siding with the officers. And as the incident continued to crescendo, the Chief of Police decided to leave for his pre-planned vacation.

To be fair, the Chief's decision not to speak in broad tones about the incident and to leave for vacation while the incident was "going viral" was not made alone or without consultation with others. That being said, as the leader of the law enforcement agency responsible for the incident, a Chief of Police has the ultimate responsibility for speaking for and leading the agency in a time of crisis.

In our view, the Chief of Police needed to address the incident head on and almost immediately. Certainly, by the time he arrived in the office the day after the incident, the Department had enough information to know that it had a serious and tragic event with which to deal. At that time, the Chief should have pushed more vehemently for the District Attorney to assume the investigation and informed the media about that request. The Chief also should have gone before the media, not to provide a detailed summary about the incident, but to inform all regarding the Department's deep concern about the incident. Regardless of whether criminal charges or administrative sanctions were being considered for the involved officers, a tragedy had occurred. A homeless man who had been detained for investigation of a relatively minor infraction was on the brink of death as a result of police action. Without prematurely assessing fault, the Chief could have and should have expressed regret for what occurred and communicated the Department's apologies to the Kelly Thomas family for what had happened to their son. The days after the tragic event were not the time for the City to think strategically or have potential litigation risk dictate the response; an unequivocal apology was called for and should have been made the very next day.

As indicated in our interim report, potentially misleading information about the condition of the officers and photos showing a disheveled Kelly Thomas from an earlier arrest was released by Department sources. As a result, some of the public believed the scant information that was being released by the Department was intended to discredit Mr. Thomas and portray the involved officers as victims. As we also noted, if information is to be released about a critical incident, it needs to be completely accurate; there is nothing that will undermine the public's trust more about how a Department is handling a critical force incident than inaccurate information. In our view, more important than a preliminary, and potentially inaccurate recitation of the facts is the need to demonstrate that the Department can empathize with family members' pain and the public's concern, regardless of what any eventual liability may be.

The task of providing information about the incident fell significantly to the Department's Public Information Officer ("PIO"). The PIO was a sworn supervisor and, coincidentally, an officer in the Department's Police Association, the group responsible for defending officers who are the subject of misconduct investigations. The mere fact that the PIO held dual titles caused some to be skeptical about his ability to be objective as a result of the inherent potential conflict in the two roles.

We have been informed that FPD's PIO protocol has been changed and that in future similar critical incidents, the Chief of Police would be responsible for communicating to the public. We agree with this important reform.

Recommendation 17: The Department should develop guidelines about how to handle the public response to critical incidents in which police officers' conduct is under scrutiny.

Recommendation 18: In the future, the Department should not be reticent about expressing regret should tragedy befall a citizen as a result of an FPD officer's use of force.

Recommendation 19: Consistent with FPD's new PIO protocols, in critical incidents in which an FPD officer's conduct is under scrutiny, all public responses should be made either by the Chief of Police or by a City official rather than a sworn police officer.

At the time of the Kelly Thomas incident, FPD had developed insufficient regular formal outside contacts in the community with which to communicate and receive information about the incident from the community's perspective. As a result, FPD had not built sufficient capital and trust among its community when the incident occurred. For that reason, the Acting Chief of Police's announced intent to create an Advisory Board is an important step toward improving Department and community relationships. With institutions such as advisory boards already in place, the Department will be better placed to respond to future crises. In addition, regular Advisory Board meetings offer an effective way to communicate FPD initiatives, reforms, and challenges to its community, and more importantly, receive information about matters of community concern on a sustained basis.

While there has been no formal Advisory Board in Fullerton, many of the Department's officers and professional staff have deep ties to the City. Currently, thirty officers and twenty-four professional staff reside in Fullerton. FPD officers are involved in many community-oriented activities, including scouting, boys' and girls' clubs, athletic teams, and the Fullerton lifting youth program. Individuals and the Police Officers' Association regularly donate to non-profit organizations and community causes. In a recent assessment by the federal grantors of

community-policing monies, a site visit found the Police Department to be in compliance with its requirements for community partnering. The Department has created a community policing strategy that is in accord with progressive community policing models.

In freeway-centric Southern California where employees often live miles from where they work with long commutes, the task of finding ways for those line officers, who are not residents of Fullerton, to connect in other ways with the community they serve is not easily achievable. However, command staff, from the Chief on down, does have the ability to set a tone for its patrol officers and should continue to find ways to reinforce any initiatives by its officers to connect with its community in positive ways.

The advantages of officers engaging the Fullerton community outside of their policing responsibilities cannot be underestimated in establishing trust and familiarity in that community. The community clearly benefits from such interactions. In addition, officers report that engaging with the community in which they work helps them gain a broader understanding of their policing responsibilities. In short, the development of such connections results in officers viewing their roles as more than just a job as a "law enforcer", but rather a career as service-oriented problem solvers for the community.

Recommendation 20: FPD and the City should implement the recommendation by the interim Chief of Police to form a Chief's Advisory Board.

Recommendation 21: FPD leadership should continue to encourage its line officers and supervisors to engage with the Fullerton community consistent with a true community policing model.

Leadership Issues at FPD

As noted above, our review of FPD was intended to extend beyond the Kelly Thomas incident and examine how the Department treated other force incidents and integrity issues. As with all police agencies, many other aspects of FPD's operations are necessarily interrelated to the investigation and review of force, including policy development, training, hiring, remediation, and accountability. In addition, perhaps the most important components that impact the direction of a law enforcement agency are leadership and supervision.

As a result of lost trust in FPD by some, there have been repeated averments about FPD possessing a "culture of corruption." While there have been incidents in which FPD employees have had serious integrity failures, our review found no evidence that supervisors and leaders

actively condoned such conduct. In fact, in the more egregious cases, FPD moved purposely to separate these employees from their jobs. We also saw no examples where officers and supervisors conspired to purposefully protect officers and prevent misconduct from coming to light. We did, however find that, prior to the Kelly Thomas incident, FPD had developed a "culture of complacency" whereby command staff had not devised sufficient control mechanisms to more readily detect misconduct and when it did, had a propensity to insufficiently address the problems. While none of the command staff discussed below are any longer with FPD, their legacy has certainly had a lasting impact on the organization that survives beyond their tenure. We would also be deficient if we did not caution that the illustrations below should not be applied broadly to all current and former command staff at FPD; we met and were informed about exemplary individuals who have filled those roles over the years. And even the high ranking supervisors who were involved in questionable incidents over the years also brought talents and dedication to the organization in their years in positions of authority.

That being said, one phenomenon that contributed to the development of a culture was a period of time in the recent history of the Department when there was dysfunction among higher command staff. In our review, we were informed about how two now retired high level command personnel were involved in an alcohol-related "horseplay scuffle" at a bar in Fullerton. In that case, the immediate response was to do nothing formally to address the incident. While there ended up being some formal response to the incident, the consequences suffered by the involved upper level command officers were not robust to say the least. During our review, we were informed that at least the internal perception was that other transgressions by upper level command staff went largely unaddressed or ignored.

As another illustration, one of the recent policing challenges FPD has faced is the downtown nightlife community. As a result of an explosion of bars in a concentrated area, the Department has had to create special units of officers to address the enforcement challenges. While the Department has frowned on its line officers frequenting the establishments, over the past years some former high level supervisors were regular attendees at the downtown bars.

We were informed that over recent years that there were competing camps among former upper level command staff which created real divisions among lower level supervisors. The rifts among certain upper level command staff often required lieutenants and sergeants to "choose sides" in the power struggle. The dysfunction rose to a level that at one point, some captains were virtually not talking to each other in the work place. The internal perception was that this dysfunction was allowed to fester during the internal maneuvering among command staff for the next Chief of Police position.

We were also informed during our review that this "culture of complacency" was evidenced by a lack of sufficient interest in ensuring that FPD hired, trained, developed and channeled the highest caliber officer possible. Leadership made comments openly at the station that every organization needed "C" players and that the supervisor would "be retired by the time they are problems" to justify questionable hires or retaining mediocre officer trainees on the Department. Some former command staff received a reputation of being so undemanding of subordinates that the supervisor would "give a goat a good evaluation." Lower ranking supervisors also expressed concern about the attachment of some of their leaders to the community and to what degree there was true commitment to the job.

Statements and actions at the highest level of any law enforcement's command structure molds the esprit de core for the whole organization. If lower level supervisors receive the impression that higher command staff are both not "talking the talk" and "walking the walk," they too may become less vigilant and committed to ensuring that line officers under their command are performing well and consistent with the values of the organization. In any organization, but particularly law enforcement, subordinates carefully assess their supervisors and often pattern their orientation toward the Department similarly.

One illustration of this culture of complacency came to light as a result of a recent investigation into the theft of monies from FPD's property safe. While again, credit should be afforded FPD for eventually discovering the theft, complacency and insufficient monitoring protocols allowed the thievery to go on for a period of time. And perhaps most telling, when FPD investigators made inquiry about the combination for the safe in which the cash was held, they found the combination attached to the outside of the property safe.

To be fair, we must emphasize that much has happened since the Kelly Thomas incident and that the development of any culture that we identify here occurred prior to July 5, 2011. As noted elsewhere in this report, much has already been accomplished in the ensuing year in an attempt to modify the culture. In fact, we have seen evidence that accountability among command staff is now seen as critical to the Department's well-being. While a Department's culture cannot be turned around overnight, we are heartened by how current leadership seems to understand the need for change and have begun to devise ways to address that need.

Another issue that has bedeviled FPD in recent years is the repeated formation of supervisor subordinate personal relationships. Sociological studies have regularly shown that the most frequent place that individuals meet and develop personal relationships is in the work place. The development of these relationships, particularly supervisor subordinate relationships when

the supervisor is high up in the organization's chain of command is fraught with challenges to the organization. First, the two involved during the initial development of such a relationship often attempt to keep the development of such relationships secret, sometimes because one or both of the individuals already have legal commitments to others. Usually, particularly in a small organization, word gets out and there still may be initial denials of the existence of the relationship. Then, when the relationship finally becomes public, distrustful feelings may have developed towards the two as a result of their denials.

A second problem with the existence of such a relationship is the almost automatic perception of favoritism toward the subordinate. No matter what precautions a law enforcement agency may try to create to keep a highly placed supervisor out of the reporting chain of the subordinate, there will always be a perception among some that the subordinate will receive special treatment as a result of her or his relationship with the supervisor. Many will conclude that the subordinate's supervisors will naturally want to ingratiate themselves with the high ranking officer and that will result in the subordinate receiving special assignments or being on a faster track for promotion.

Finally, when the relationship goes bad, and statistics show that it almost always does, the Department and the City is often vulnerable to a law suit by the subordinate that either she or he was "coerced" by the supervisor into the relationship from the beginning or that she or he was "harassed" by the supervisor when the subordinate decided to end the relationship. These legal claims are often difficult to prove or disprove, and when they occur, have the potential for creating significant liability and a schism within the Department should members have to choose sides in the dispute.

Unfortunately, for law enforcement leadership, the phenomena of supervisor-subordinate relationships in a law enforcement agency prove difficult to address. It is impractical to order officers not to develop such relationships, although new supervisors can be enlightened about the challenges such relationships may present to themselves and the Department at the time of their promotion. Another helpful palliative to the problem is to develop policy requiring supervisors to inform the Chief of Police when such a relationship forms and to hold supervisors accountable should they violate such a reporting policy. While certainly neither remedial measure is fool proof, the initiatives at least indicate that a Department is aware of the pitfalls of such relationships to the organization and that it is doing what it can in an attempt to address the potential problems.

Recommendation 22: FPD should ensure that supervisors in its organization are held to a higher standard, that high level command staff is held to the highest standard and when there is information that a supervisor has performed inconsistently with the values of FPD, the allegation is thoroughly investigated and, when merited, accountability is stern.

Recommendation 23: FPD supervisors should be exposed and required to regularly acquaint themselves with principles of ethics based leadership.

Recommendation 24: In line with recent improvements, FPD should continue to bolster its auditing of property, narcotics, and firearms.

Recommendation 25: FPD should ensure that its supervisors are regularly briefed on the pitfalls of developing supervisor subordinate relationships.

Recommendation 26: FPD should develop policy requiring FPD supervisors to notify the Chief of Police once a personal supervisor subordinate relationship is initiated. The Chief should then take all precautions to ensure that actual or the appearance of favoritism toward the subordinate is not permitted to occur.

Review of FPD Hiring Practices

One issue emanating from the Kelly Thomas incident related to the hiring of one of the involved officers. We have reviewed that issue and found nothing untoward or extraordinary about that hiring decision. The applicant met standards by the Peace Officers Standards and Training ("POST"), the credentialing state agency for peace officers in California. The fact that the officer had suffered the loss of use of an eye was not then and is not now a disqualifier for police service. Other similarly situated peace officers have performed ably in their roles.

We were informed that, in the past, those responsible for FPD's hiring program had relationships with one feeder academic institution that caused the Department to rely heavily on that institution for police candidates. Recently, the Department wisely has broadened its recruitment program so that it can draw from a larger array of potential candidates.

Recommendation 27: FPD should continue with its new orientation of recruiting police candidates from a diverse pool of resources.

Review of FPD Force Policies and Related Policies/ Training

During our review, we examined FPD's basic use of force policies and related policies

and found them to be consistent with case law and current police practices and similar to most other law enforcement agencies in the State. This is due in part to the fact that FPD subscribes to Lexipol, a private service that provides sample policies for many law enforcement agencies in the State of California and around the country. Lexipol is staffed with former police practitioners and attorneys who work to ensure that the policies they promote stay consistent with current case law. When new case law warrants a change in policy, Lexipol advises its subscribers that a change in policy is required.

However, the managers of Lexipol recognize that there may be times in which a law enforcement agency may want to customize certain policies dependent on the mission or interests of the organization and expressly designs its policies allowing for such customization. While the policies promoted by Lexipol provide a base line for law enforcement agencies to consider, each policy should continue to be considered individually by law enforcement managers to determine whether the policy should be modified to fit particular needs or interests of the agency. FPD has appropriately performed this calculus in the past; for example its policy regarding the use of DARs is a customized policy.

Consistent with this philosophy, we recommend that FPD consider the following refinements to its current policies relating to use of force:

The preamble to current FPD policy regarding use of force describing the Department's philosophy contains some commendable phrases about the dignity of life:

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

Certainly, officers must have authority to use force to perform their duties to effectuate an arrest or to protect themselves or others from threats of harm. However, the goal of any progressive police agency should be to ensure that force is used only when necessary. While there will always be occasions in which force is required, the objective should be to eliminate incidents in which officers may be "authorized" or "justified" in using force, but it is not "necessary" to use that force to complete their responsibilities. In accord with principles of progressive policing, FPD's interest should be to eliminate these uses of discretionary force to handle a situation when other skills and tactics can be used in their stead. This objective requires a reorientation and culture change of police attitudes regarding the use of force. The goal is to

eliminate force which is "lawful but awful"; force which is defensible but likely did not need to occur.

While FPD's current language in its philosophy regarding use of force somewhat speaks to this concept, to help reinforce the idea that the Department's interest is to reduce incidents of force to an absolute minimum, we also recommend that the Department consider reorienting its use of force policy to further promote the prevention of force. For example, the preamble might contain language such as below to assist in further articulating FPD's interest in reducing uses of force:

When time, circumstances, and safety permit, there may be alternatives to using force. When reasonable and safe under the totality of the circumstances, members should consider such alternatives as advisements, warning, verbal persuasion, and other tactics.

Recommendation 28: FPD should reorient officers' philosophy with regard to use of force by promoting alternatives to force to resolve situations in the field.

FPD policy and protocols should reinforce officers who handle situations in which force would have been justifiable but who found other ways to resolve the incident without resorting to force. One way in which this behavior can be encouraged is through the issuance of "commendable restraint" citations. Another way to positively recognize officers who find ways short of force to perform their duties is to include that assessment in FPD's performance evaluation as a metric of desirable behavior.

FPD's version of "commendable restraint" citations is to include incidents in which officer's handled matters without resorting to force in the Department's Watch Commander's Log. We were presented samples of the log in which officers' performance was documented in which they showed, for example, "great restraint in getting [the arrestee] to cooperate and follow commands". We were also informed that the information in such logs found their way into employee's performance evaluations. While we appreciate that FPD has understood the need to comment favorably on officer performance that resolves issues without turning to force, we believe that the "log" method makes it more difficult to track and reward such performance and suggest that such information be more formally exported into a separate document and then be inserted into the officer's personnel file.

Recommendation 29: FPD should reinforce officers' conduct that resolve confrontations without resorting to force through formal means such as commendable restraint citations

and by considering the amount of force an officer uses in assessing the officer's annual performance.

Current FPD policy appropriately requires any officer who uses force to immediately report the incident to a supervisor. We recommend that the reporting requirement extend to any officer who witnesses another officer using force, including force by other police agencies. This requirement will help ensure that all force is reported and will help orient officers to make them better witnesses to the use of force by other officers.

Recommendation 30: FPD should enact policy that would require FPD personnel who witness force being used by a fellow officer or by another law enforcement agency report the force to a supervisor.

Current FPD policy allows in some instances for force to be documented without the need to interview the officers involved in the use of force. In cases in which the evidence surrounding the use of force is "unequivocal," current policy states that involved officers need not be interviewed about the incident, and information in their police reports will be used to assess the use of force. While this approach may have utility in cases in which the arrestee's statement, the injury evidence, other witnesses, and the officers' report are consistent, we believe that some force incidents should always require an interview of the involved officers and a heightened level of review by FPD executives. For example, incidents which should require this increased scrutiny include cases in which there was significant injury as a result of the force that required medical treatment, or certain applications of force such as canine bites, use of the carotid restraint, use of the baton, head strikes with impact weapons, and use of the Taser.

Recommendation 31: FPD should set out with more specificity force incidents which would require that involved and witness personnel are interviewed.

Training/Use of Force Options

Police agencies train on force options that are available to its officers depending on the situation presented. Those force options are dependent on the level of resistance or threat faced by the officer. For example, when presented with a deadly threat, officers are authorized to use deadly force to eliminate that threat. When presented with solely resistive behavior, officers are only authorized to use lesser levels of force.

In our interviews with officers, there was possible confusion by some regarding appropriate force levels. For example, in discussing whether the use of the Taser was authorized

and designed as an impact weapon, officers responded in the negative but some indicated that they had been taught that any device was allowable as a weapon in certain circumstances. While certainly in a life-threatening circumstance that fact may be true, it was unclear whether the officers clearly understood that the exception was limited to those circumstances. In fact, the sentiment among some officers seemed to intimate that virtually any level of force was permitted to address resistive behavior in order to bring a resistive suspect under arrest short of the use of a firearm. Clearly, that view is inconsistent with FPD's force policy; for example, only certain levels of force are authorized to accomplish tasks such as securing the arms of a suspect so that he can be handcuffed.

In order to eliminate any potential confusion on this issue, targeted refresher training on these limits to force options should be provided to all officers on the Department.

Recommendation 32: The Department should provide targeted training to its officers so that all are clear that only certain force options are available and authorized in non-life threatening situations.

Distraction Strikes

In our review of FPD, we learned that officers had been trained in the use of "distraction strikes." Distraction strikes were explained to us as blows to a part of the body of a suspect intended to "distract" him so that hands could be secured or handcuffs could be applied. We found general confusion about what was allowable as a "distraction strike." The use of distraction strikes has proved controversial with other agencies and is in need of further review by FPD about what is meant by a distraction strike and what is permitted. For example, there was at least some evidence that an officer involved in the Kelly Thomas incident believed that a knee to the head of an individual was allowable as a "distraction blow."

We are concerned about the lack of clarity surrounding the use of distraction strikes by the FPD. We recommend that if the Department is going to continue to allow distraction blows, clear policy should be devised on their use regarding what is permissible and what is prohibited. We believe that any written policy should prohibit the use of blows to the head as "distraction strikes."

Recommendation 33: FPD should reconsider its training protocols and policy regarding the use of "distraction strikes." If distraction strikes are to be authorized, officers should be provided more guidance on the allowable uses of force under such category. Any distraction strikes policy should prohibit blows to the head.

Foot Pursuits

FPD's current policy regarding foot pursuits is comprehensive and alerts its officers to the inherent dangers of foot pursuits, particularly those that are conducted in a tactically unsafe manner. For example, the foot pursuit policy notes the need for officers to be in radio contact during a pursuit, the dangers of partner splitting, and entering into a structure. However, the foot pursuit policy is written as an advisory with factors for the officer to consider and there is no formal review mechanism in the policy to give the advisory language any teeth. In our review of a select number of force incidents, we noticed that a significant percentage of them began with a foot pursuit. As noted elsewhere in this report, some of the foot pursuits that we reviewed raised questions about the appropriateness of the tactics. For example, there was one foot pursuit in which plain clothes officers went into a long foot pursuit of a suspect without the tools that a uniformed officer would have such as a radio, pepper spray, Taser, handcuffs, and vest.

FPD should review its foot pursuit policy to prohibit certain foot pursuits that are on their face inherently dangerous, such as non-uniformed officers going into pursuit. More importantly, FPD should include a more formal review mechanism for foot pursuits, and when performance of its officers falls below performance standards, hold officers accountable for violation of those standards.

Recommendation 34: FPD should reexamine its foot pursuit policy to rule out particularly dangerous pursuits such as pursuits by non-uniformed personnel.

Recommendation 35: FPD should develop protocols to more formally review foot pursuits and hold officers accountable when they engage in foot pursuits that are not consistent with Department standards.

Taser Use

Current FPD policy regarding the use of the Taser is comprehensive and generally well-considered. However, based on the Kelly Thomas incident, it is clear that the policy should be revised to prohibit the use of the Taser as an impact weapon. In addition, we believe that the current Taser policy allows too much discretion for its use in certain situations. For example, current policy permits Taser use of persons on rooftops, pregnant persons, handcuffed persons, elderly persons, and juveniles provided that the need to control the person outweighs the attendant risks. We believe that the inherent risk associated with Tasers for these limited categories of individuals will almost always be too great to deploy a Taser on them and would recommend that FPD's policy more strongly caution Taser use in those situations.

Recent studies of Taser use, including a study by the Department of Justice's National Institute of Justice, cautions against multiple and prolonged use of the Taser as presenting particular risks of dire injury. For that reason, we believe that the current FPD policy affords officers too much discretion to allow "multiple reasonable applications" of the Taser. We believe that after three unsuccessful applications, unless there are exceptional articulable circumstances, officers should be instructed to cease using the Taser and move to other control methods. We also believe that the Department's Taser policy should speak to the dangers of prolonged use of the Taser by prohibiting such use.

Recommendation 36: FPD should modify its Taser use policy to prohibit its use as an impact weapon.

Recommendation 37: FPD should modify its Taser use policy to rule out more than three applications of the Taser and to prohibit prolonged Taser applications.

Performance to Standards Policy

While current FPD policy has principles that touch on the topic, there is currently no succinct general performance policy in its manual. In our experience, there are frequently occasions in which a police officer will perform duties in such a way that there may be no specific policy which is violated by the actions but the acts or series of acts are markedly below the expectations of the Department. In force incidents, this arises most frequently when tactical blunders inconsistent with training end up causing the officer to use force. In these cases, the force may be in policy, but the officer, by his tactical deficiencies and disregard for officer safety may have placed him in a situation where he was then required to use force.

In these situations, the existence of a performance to standards policy affords police managers the ability to hold employees accountable for behaving incompetently. We recommend that FPD enact policy that informs its employees that they are expected to maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions and that they will be expected to perform their duties in a manner which will tend to establish and maintain the highest standard of efficiency in carrying out the functions and objectives of the Department.

Recommendation 38: FPD should adopt a "performance to standards" policy which can be used to hold officers accountable when an officer's performance is so below the expectations of the Department's training that discipline is warranted.

Review of FPD Force Investigations and Review

As part of our systemic review, we examined a random sample of FPD force investigations that were completed prior to the Kelly Thomas incident. While obviously the issue of FPD's use of force in the Kelly Thomas incident has brought this issue center stage in Fullerton, it is incumbent upon a police agency to examine every officer's use of force for compliance with the policies and expectations of the organization, potential training issues, supervisory issues, equipment issues, and gaps or lack of clarity in existing policies. By law and necessity, officers may use force as part of their peace officer authorities. It is incumbent upon law enforcement executives to review each use of force exactingly; as evidenced repeatedly over the course of the past generation or two, no one event can shake the public's trust in a police agency more than an abuse of its authority to use force.

FPD expressly states the need for thorough investigations into allegations of misconduct in its closing letters to citizen complainants by noting: "you can be assured that this matter was treated seriously and the incident was thoroughly investigated." In our review, we did find some aspects of the investigative process to be well done. For example, in general, we found the officers' description of the force used to be detailed and well written. Another aspect of the force investigation that deserves positive comment is the high quality photographs of injuries as a result of the force which are taken by FPD's Crime Scenes Investigative unit. We also found that the force reviews and investigations were timely completed. In one case, even when the complainant failed to re-contact the Department for an interview, FPD admirably continued on to complete the investigation. However, as detailed below, our review did find significant room for improvement in FPD's internal investigative process and cases which were not "thoroughly investigated."

Review of Investigations

In one force investigation, a witness officer was not interviewed because according to the supervisor investigator, a review of the officer's DAR and police report found that his version of the incident was consistent with the other on-scene officers. Even in cases in which a supervisor's initial review finds consistency between officers, a thorough force investigation will include interviews of all officers who either used or witnessed the force.

A number of the force investigations we reviewed involved a dynamic situation such as a foot pursuit that preceded the use of force. In other force incidents, officers who used force or witnessed force were in various positions when relating to the subject. In these cases, it is

helpful when both police and civilian witnesses are interviewed to have the witness sketch a diagram so that the reviewer can track the direction of travel and/or the relative positioning of the officers and witnesses when the force occurred. While many law enforcement agencies do not use this technique to capture this information, we recommend that FPD surpass the norm by deploying this effective investigative technique.

In one force investigation in which the person arrested complained about the force used on him, the interviews of witnesses identified by the complainant were conducted telephonically. Telephone interviews are usually a poor substitute for in-person interviews. For example, in this case, the way in which the officer took the complainant to the ground was critical in analyzing the appropriateness of the force and it would have assisted the investigator if the witness could have demonstrated how he viewed the takedown. In addition, the positioning of the witness, complainant, and arresting officer was important in this case, and it would have been helpful to have the witness sketch a diagram to show the relative positioning. Neither investigative technique was possible in a telephonic interview. In addition, one could interpret the use of telephonic interviews for civilian witnesses as evidence that the fact gatherer is not particularly interested in obtaining a complete account from these witnesses. For these reasons, we recommend that telephonic interviews be avoided in force complaint investigations unless there is considerable geographic distance between the investigators and the witness or other significant hurdles make an in-person interview impracticable.

We were informed that telephonic interviews are not FPD's norm in conducting use of force investigations but are sometimes necessary when a witness is unwilling to come to the station or allow the investigator to visit their home or business. In those cases, we recommend that all efforts to obtain contact or an in-person interview be documented and included in the force report.

In one force complaint investigation, the officer indicated that he "tackled" the subject, but there is no further description about the tackle, e.g. whether he grabbed the subject's legs, torso, or other parts of the body; whether he pushed the subject to the ground and if so, how that was accomplished; or whether he tripped the subject to the ground. The interviews of participants must be of sufficient depth and articulation so that the actions of the officer are described in detail. One effective interview technique is to have the witness demonstrate the force that was observed and then have the interviewer describe the activity for purposes of the recording. Some take down techniques are generally preferred over others, but in this case insufficient information was obtained from the involved officer for any reviewer to gain a mental picture about precisely how the force was effectuated.

In another force complaint investigation, a summary of an interview of an individual is included in the report but it is unclear from the narrative whether the individual is an onlooker, nearby resident, or if he is a friend or associate of the subject. Witness summaries should explain how it is that the individual happened to witness the event, some background about the witness and if the witness is affiliated with the subject. Witness summaries should also include addresses and contact information for the witness should he or she need to be re-contacted.

Many force incidents occur in relation to an arrest. It is helpful for any reviewer to learn the results of that arrest, i.e., whether the District Attorney filed or dismissed the case, and the current status of the case by the time the force investigation is complete.

In one force review, the subject upon whom force was used was questioned about that force by the officer who used force on him. To have the officer who used force actually ask the arrestee about the force he used is directly contrary to good police practices. Force interviews of the subject should be conducted by a supervisor who was not involved, did not direct, and did not witness the force incident. To allow the officer who used force to interview the subject who is in custody about the force used on him creates a dynamic that does not advance general principles of objective fact finding and creates a coercive environment that will likely chill or distort the witness' response and should be expressly prohibited. FPD should developed policy that would to prohibit an officer who used, directed, or witnessed force from interviewing the person upon whom force was used or civilians who witnessed the force.

The supervisor who compiles the factual recitation of the force investigation report should avoid editorializing or including conclusory statements about the substance of the witness interviews. For example, in one force review, the supervisor wrote that the complainant "changed his story" in the middle of the interview. Rather than write such a conclusion in the fact section, it is preferable that internal conflicting information provided by the complainant be set out in detail and with dispassion. It is best to leave to the analysis/conclusion section of the investigative report as the place to point out any inconsistencies in witness accounts.

Witness interviews were not transcribed in any of the force investigations that we reviewed. While ideally, every force investigation would contain transcribed interviews, we recognize the resource dedication that such a protocol would entail. Stopping short of that requirement, we recommend that interviews and DARs of significant force incidents be transcribed.

In order to ensure that investigations of force incidents are thorough, FPD should revise

its Administrative Investigation Guide to include the aforementioned precepts. The revised Guide should include language that expresses FPD's expectations for high quality investigations. When the investigation is internally reviewed, supervisors should continue to consider the investigative regimen set out in the Guide in assessing any investigation for completeness.

Recommendation 39: FPD should revise its Administrative Investigation Guide that sets out the Department's expectations for force investigations. Supervisors should continue to review force investigations to ensure compliance with the investigative requirements as follows:

- a. Every officer who used force or witnessed force should be interviewed;
- b. When the force incident is dynamic, the force investigator should ask witnesses to diagram the positioning and track the movement of the participants. The diagram should be initialed and included in the investigative file;
- c. A preference for in-person interviews should be articulated. Should geography or other issues prove to be an obstacle to in-person interviews, that fact should be included in the investigative report;
- d. The interviewer should obtain sufficient information from participants and witnesses so that the force used is articulated with specificity. The report narrative should contain a detailed description of the officer's actions;
- e. The report narrative should indicate how it is that a civilian witness was in a position to witness the force and whether the witness was known to the individual upon whom force was used, and if so, how;
- f. Contact information of complainants and witnesses should be obtained and included in initial reports;
- g. A discussion of whether any charges were filed against the person upon whom force was used and the status of those charges should be included in the report;
- h. Instruction to investigators to refrain in the factual narrative of the report from characterizing or editorializing about the facts compiled in the case.

Recommendation 40: FPD should develop policy that would prohibit officers who used, directed, or witnessed force from interviewing the person upon whom force was used or civilian witnesses about the force incident.

It should be noted that the force and complaint investigations that are the subject of this discussion were conducted by FPD field supervisors, not the two sergeants who make up the Department's Professional Standards Bureau. ("PSB") Serious internal affairs matters are assigned to these two sergeants, and in contrast to the field conducted force reviews and force complaint investigations, we found PSB investigations to be largely objective and thorough. For that reason, we recommend that a higher percentage of force investigations be assigned to PSB for handling.

As a result of budget challenges, FPD has needed to be creative in staffing assignments. Officers assigned to patrol fulfill the public's expectation for reasonable response times. Because resource concerns have made it impossible for FPD to maintain past staffing levels, detectives and officers assigned to other specialized assignments have had to regularly assume patrol duties for at least some of their shifts. This adjustment has also required sergeants assigned to FPD's Professional Standards Bureau to fill in regularly on patrol. Because of the critical role that internal affairs investigators fill in ensuring timely and thorough internal investigations of misconduct, we recommend that FPD refrain, if at all possible, from regularly assigning Professional Standards Bureau sergeants to patrol functions. Doing so would also free those sergeants up to conduct a higher percentage of force investigations, other allegations of misconduct, and audits.

We note some recent positive developments in this arena that were self-initiated by FPD. Recently, an additional sergeant was added to PSB to assist with additional investigations and audits. While the sergeant's primary duty will be in the Personnel/Training Division to provide greater supervisory oversight on hiring and training, he will be able to take on administrative investigations as well.

Recommendation 41: FPD should shift responsibility for a greater percentage of force complaint investigations to be handled by its Professional Standards Bureau.

Recommendation 42: FPD should refrain from regularly scheduling sergeants assigned to the Professional Standards Bureau to patrol duties.

FPD's Force Review Process

The standard letter response that FPD provides to a complainant at the end of an investigation into alleged misconduct states: "We always learn something of value when citizens take the time to share their feelings and personal impressions about the conduct of Fullerton Police Department employees." While, in fact, every force or complaint investigation has the capacity to be a learning experience for FPD, our review of force investigations has found scant evidence that FPD, in fact, does learn as much as it could from such events.

In one force incident, an FPD officer came upon a man sleeping in his car that he recognized and suspected may have had outstanding warrants. Appropriately, the officer called for backup and other officers, including a canine officer responded to the location. The initial officer also appropriately radioed dispatch to learn whether there were any outstanding warrants for the man. Before he was able to obtain a response from dispatch, responding officers arrived and placed their cars in a position to attempt to block the man from escaping. The initial officer then approached the man and ordered him out of the car. The man claimed he could not get out because he could not open his door, and he was instructed to climb out of the window.

When the man declined to follow instructions, the canine officer told the man that he was going to unleash the dog to get the man to comply. Then one of the responding officers used his baton to smash the passenger window of the car and stated that he was intending to reach into the car to take the key out of the ignition. At the same time, the canine officer placed the canine on the hood of the car. The man was able to defeat the blocking maneuver, window smashing, and canine response and drove away with officers in pursuit. The pursuit eventually took the officers into a neighboring city, at which point the officers used a pit maneuver to stop the man and the canine was deployed. The man was then successfully taken into custody.

With regard to this case, we did not disagree with FPD's finding that the force used, i.e. the canine, was appropriate under the circumstances. We also noted that there were several tactical decisions that were in accord with best police practices. First, as noted above, the initial responding officer called for backup before approaching the individual he had known from previous encounters. Second, the officer radioed dispatch to learn if the man had any outstanding warrants. In FPD's review, it did not comment positively regarding these well-considered tactical decisions.

On the other hand, there were also some tactical decisions that were debatable and others at least worthy of further discussion and analysis. First, while as noted above, the initial officer

radioed dispatch to learn whether the man had any outstanding warrants, he did not wait to receive a reply before he began his approach even though it appeared he had time to do so. Second, the decision to smash the window with the baton so that the officer could reach into the car and grab the keys to the ignition is a dangerous maneuver fraught with peril for the officers. We have seen too many instances in which officers have been caught positioned half way into a car and the suspect drives off, dragging the officer and placing the officer in a life threatening position. The decision by the canine officer to position the dog on the hood placed the canine in a precarious situation. As the car drove away, the dog could easily have been run over or badly hurt, endangering a valuable FPD asset. There was also no discussion about the unsuccessful "boxing in" of the suspect and how tactics might be improved the next time officers encountered a similar situation. Finally, there was little analysis or assessment of the vehicle pursuit, an inherently dangerous maneuver and the positioning of those in pursuit as well as the increased danger when the suspect vehicle traveled out of city limits and onto less familiar streets. In essence, any analysis was limited to the legitimacy of the force and failed to address the other important performance issues identified above.

We similarly found a lack of analysis in other force incidents that we reviewed:

In one incident, plain clothes officers went into foot pursuit of a suspect without equipment a patrol officer would have and eventually used force. As a result, the officers were not wearing vests and did not have a radio, pepper spray, a Taser, baton, or handcuffs. At the end of the pursuit, the officers were disadvantaged as a result of their failure to have the basic equipment patrol officers carry. There was no discussion in the force review of the advisability of plain clothes officers going into foot pursuit of suspects.

In another incident, an officer drove past a suspect he believed to be armed and eventually force was used on the suspect. No discussion or analysis was included in the force review about the advisability of this tactical decision.

In one incident, two officers were in a neighboring city when they went into foot pursuit of a suspect they believed to be armed and eventually used force on the suspect. No discussion or analysis was included in the force review about the dangers of engaging in a foot pursuit in an unfamiliar area.

In another incident, one officer split from his partner to go into foot pursuit, eventually using force on the suspect. No discussion or analysis was included in the force review about the safety issues that arise when officers split and the pursuing officer is now one-on-one with the

fleeing suspect.

In one incident, officers went into foot pursuit of an individual and eventually used force to take him down. No discussion or analysis is included in the force review about why the officers decided to go into pursuit or the legal basis for pursuing. Based on the information included in the report, there was scant legal justification for chasing the suspect.

In each of these force reviews, we did not disagree with FPD's determination that the force used was in policy. However, in each force incident there were lost opportunities to examine issues that were presented through various lenses of review.

The first lens that was lost was that of officer accountability. The force reviews and complaints of excessive force investigations were confined to determining whether the force itself was in policy. Substandard tactical decision making that could have increased the likelihood that force would end up being used was not analyzed. The tactical decisions by officers prior to the force incident were not evaluated to learn whether they measured up to the expectations of FPD. In our view, a holistic review to assess officer performance with regard to the entire incident is an essential component of any thorough force review.

The second opportunity presented by each force incident that was overlooked was to reinforce officer behavior that was tactically proficient. For example, the decision to call backup rather than approach a possible felon alone was consistent with FPD training and the precepts of officer safety. However, there are no indicia that during any subsequent force debriefing whether the officer's actions were commended either formally or informally.

Another aspect of any force incident to consider is whether the force incident suggests that FPD policies provided insufficient guidance to its officers regarding its expectations of performance or whether the force incident suggests some Department-wide training deficits. Each force review should be examined as to whether the incident is an indicator of a need for refinement of policy or increased training. Finally, the incident should be evaluated in terms of whether supervision was sufficient and whether any equipment used worked according to design and expectations.

During our review, there was no evidence that FPD's training staff was integrated into the force review process. We reviewed some of the training scenarios that FPD provides to its officers and were impressed with the dynamic nature of them and the teaching on "shoot/don't shoot" scenarios. One of the best feedback mechanisms for training personnel to learn whether officers are successfully applying their training in the field is to personally review use of force

investigations. That review can help identify weak spots in officers' proficiency both on an individual and systemic basis, tactical challenges being faced by officers in the field, and insight into where the training curriculum could use adjustment or emphasis. To ensure a completely robust response to the Department's uses of force, FPD should find a mechanism to ensure that the officers entrusted with training have a meaningful role in the process.

While a holistic review described above can be accomplished through a paper review, we have found that a multi-faceted approach is more effectively accomplished through a committee approach. With regard to at least more significant force and a sampling of less significant force, a committee comprised of members with various types of expertise and responsibility can perform an exacting and full ranging review. Ideally, a force review committee would obtain a copy of the investigative reports for review before the meeting. At the meeting, the investigator will present a briefing of the facts gathered. Then, the committee would move into its review phase where issues such as the propriety of the force, tactical decision making, supervision, training, and policy would be discussed. Robust force committees then devise written action plans intended to inform the officer about whether the force was in policy and make recommendations about briefing the incident to the involved officers or the Department as a whole. If concerns are raised about supervision or current policy, a member of the committee is assigned to conduct further research on the issue and bring findings and recommendations back to the committee at a later date. In sum, the force committee is designed to achieve the critical goal of ensuring the involved offices and the department as a whole benefit from a review of the incident with the objective of reducing the need to use force in future incidents and that when force is used that only the minimal force is used to resolve the matter.

We were informed that FPD's Force Review Process is meant to determine solely whether force was reasonable and within policy. Tactical considerations were delegated to the employee's supervisor and lieutenant and addressed in briefing sessions as training and in evaluations as performance issues. In some cases, additional training is also sometimes required and/or an employee is placed on a performance improvement plan.

While we did receive examples where tactical decisions and performance were addressed through briefings, we do not agree that such important aspects of force incidents should be delegated to the officer's immediate supervisor. The Department's approach will likely result in uneven supervision and treatment; with diligent sergeants appropriately identifying issues and guiding their officers while others who are less skilled, experienced, or motivated less likely to identify such issues or provide sufficient guidance and remediation. In our view, these important issues should be incorporated into the force review process and command staff should be

regularly ensuring that in each force incident there is robust feedback to the officers involved and to the Department as a whole.

Recommendation 43: FPD should improve its force review process to ensure that not only is the incident centrally reviewed to determine whether the force used was in policy but also to examine whether there was tactical decision making that was consistent with FPD policy and expectations.

Recommendation 44: FPD's force review should also consistently reinforce officer conduct that is consistent with or surpasses the Department's expectations through formal or informal commendations.

Recommendation 45: At the end of the force review, officers involved in every force incident should be debriefed regarding how the Department considered the handling of the incident including the tactical decision making.

Recommendation 46: In addition to deciding whether the force was in policy, FPD should examine force incidents to determine whether there were issues of supervision, policy, or training that it should address.

Recommendation 47: FPD should develop protocols so that training staff reviews force incident investigations and provides meaningful input in an individual and systemic way to improve the training of officers.

Recommendation 48: FPD should consider designing protocols whereby significant force incidents and a sampling of less significant force incidents are reviewed by a force review committee. The force review committee should develop a written action plan for each force incident reviewed and ensure an effective feedback loop to present the results of any action plan back to the committee at a later time.

Recommendation 49: FPD should continue to use mechanisms, such as training bulletins or briefings to ensure that information learned is exported back to the line officers and first level supervisors in a meaningful way.

FPD's Imposition of Discipline

One of the most important responsibilities for command staff of a law enforcement organization is the imposition of discipline. In our experience, the few officers who end up

facing charges of criminality often have a history of disciplinary issues for which a Department has not held the officer sufficiently accountable. When that occurs, the message to the officer is that the Department tolerated his misconduct and that the worst he need be concerned about is a slap on the wrist. As a result, an ungrounded officer could end up repeating and often escalating his incidents of misconduct to the point where he or she becomes a liability for the organization and a danger to the community he is intended to serve.

During our review of FPD, we found examples where officers who had performed inconsistently with the values of the organization had been insufficiently addressed by former FPD executives:

In one instance, an officer was hired despite a prior arrest for driving under the influence. While still on training, the officer was again arrested for driving under the influence of alcohol. When an officer is on training, a law enforcement agency can separate the officer for any incident and the officer has virtually no legal recourse to challenge the decision. However, in this case, former FPD managers did not move to separate the officer despite the warning signs displayed by the two arrests. Subsequently, the officer used City funds to fuel his drug dependency habit which finally ended his law enforcement career. Had FPD moved more resolutely when the pattern of substance abuse first emerged, the officer would not have been in a position to further harm the City as a result of his substance dependency issues. There were also indicia in this case that the weak response of the Department to the earlier incidents was, in part, a result of the officer's family connections to the law enforcement community.

Several years ago, several FPD officers were found to have violated policy and the values of the organization as a result of on-duty misconduct in dealing with a citizen. The misconduct was so aberrant and distasteful that a case could well have been made for termination of at least some of the participants. While each received discipline for their violations of policy, none were terminated, and several of the involved officers ran into further trouble as their careers progressed.

More recently, an officer was found to have subjected a handcuffed arrestee to excessive force. However, instead of presenting the matter for potential criminal prosecution and/or terminating the officer, former police managers decided to award him merely a reprimand for his misdeeds.

Failure to hold officers sufficiently accountable for misconduct provides license to those officers to continue their miscreant ways. Giving an officer a "break" ends up working to the

disadvantage of the Department, erodes trust in the community that the Department has the fortitude to address misconduct, and actually does a disservice to the offending officer. When transgressions are allowed to slide, it increases the likelihood that the officer will offend repeatedly, causing more serious jeopardy for that officer down the road.

In most cases, by effectively communicating to their officers the expectations of the agency, holding them accountable and developing an effective corrective action when officers transgress, command staff can manage to remediate most transgressors. However, no matter how effective and exacting the hiring process may be, so long as law enforcement agencies are required to select from the human race, a small set of applicants will be hired who will abuse the trust and authority that we must provide to them in order for them to fulfill their responsibilities. It is incumbent upon law enforcement leaders to address the first indicia of abusive conduct from these individuals and move to separate them from the agency to prevent dire consequences.

For that reason, we have found it helpful when law enforcement command staff considers the disciplinary system as dichotomous -- in one category are serious transgressions involving abuse, integrity, or character flaws that demand that the badge be separated from the officer and, all other violations. With that binary conceptualization, leaders of the organization should not negotiate with those who fit into the first category at the grievance or post-disciplinary phase, while those who fit in the second group are deserving of a well-crafted remedial plan designed to prevent the employee from future violations of policy.

In determining the appropriate level of discipline, command staff should strive for consistency so that similarly situated employees are treated similarly while recognizing that there is room for differential treatment depending on factors unique to the employee. One helpful device that law enforcement agencies have used successfully is a disciplinary matrix or disciplinary guidelines. A disciplinary matrix sets out a disciplinary range for all potential policy violations. More refined matrices then note factors specific to the employee's situation that may be a basis for mitigating or aggravating the discipline. For example, a complete acceptance of responsibility by the employee is cause for mitigating the discipline and the obverse denial of responsibility may be a basis for aggravating the discipline. A past history of discipline could serve as a basis for aggravating the discipline while an officer with no disciplinary history over a lengthy career may deserve discipline on the lower end of the scale. More refined disciplinary guidelines allow for decision-makers to depart upward and downward from the defined disciplinary range in unusual circumstances provided there is articulated justification for the departure. Another significant advantage to using a disciplinary guideline system is that it places employees on fair notice about what kind of discipline they may expect should they violate a

particular policy provision and reduces the perception among officers that the imposition of discipline is completely arbitrary. Finally, the use of a matrix or guideline system reduces the ability to have unprincipled factors such as favoritism enter into the decision making.

The Department should also make more effective use of the probationary process. During the one year probationary period of every new hire, exacting monitoring of the progress (or lack thereof) of the officer is essential. It is during this one year where all of the auditing and review tools available to the Department should be effectively used to learn whether the officer is meeting the expectations of the Department. If even minor transgressions, violations of policy, off-duty misconduct or other red flags are observed during this one year period, serious consideration should be provided to releasing the officer from probation and separating the employee from the Department. Because the Department does not need "cause" to fail an officer from his probationary status, it is better to address early concerns about an officer's performance during that one year period, rather than allow a troubled probationary officer to slip by so that he can be a potential problem employee for the Department for the twenty -plus years of the officer's tenure.

Recommendation 50: FPD should consider developing a disciplinary matrix or guidelines to help ensure consistent and principled disciplinary decisions.

Recommendation 51: FPD should hold firm when its initial determination is to terminate an officer and should only modify the decision when there is new information or analysis provided during the grievance process that warrant such modification.

Recommendation 52: FPD should make effective use of the one year probationary period for newly hired employees and should not hesitate to remove officers should concerns about the officer's performance be identified during the probationary period.

Communicating Results to the Complainant

We reviewed a sampling of letters FPD prepared to complainants in which they reported the results of any complaint investigation and found them to be professionally prepared with a level of detail that is not generally seen by other police agencies. In one case, however, we did see a letter which failed to note that in addition to force and discourtesy complaints, the complainant had also alleged that he was not read his Miranda rights. It is important that any response letter responds to all concerns raised by the complainant.

Recommendation 53: FPD should develop protocols to ensure that complaint response

letters address each of the allegations raised by the complainant.

Mediation

Some law enforcement agencies successfully employ mediation as a way to resolve citizen complaints about officer conduct. While each organization deploys the mediation process somewhat differently, the idea is that low level complaints about officer conduct can be better resolved short of a ponderous administrative investigation by simply bringing the complaining party and the officer together with a mediator. The citizen complainant and the officer both must agree to attempt to have the complaint resolved in this way; some Departments incentivize its officers by indicating that a successful mediation will obviate the need for there to be an internal affairs investigation involving the officer.

The most effective mediation programs have been those in which the mediator is a non-department member, neutral third party who has been trained in mediation techniques. Orange County has a number of volunteer mediators who could serve to mediate disputes between FPD and citizen complainants.

In our experience, mediation is often effective because sometimes the complainant is mainly interested in having his concerns taken seriously. A neutral setting also provides an opportunity to educate the complainant about police procedures and provide better insight on why the officer took certain actions. Officers can benefit from going through the process as a result of the self-reflection prompted by the mediator and subsequent discussion to better learn how and why certain behaviors may be off-putting to citizens with whom the officer comes into contact.

Recommendation 54: FPD should develop a mediation system as an alternative way to resolve disputes among citizens and its officers.

Pre-Investigative Resolutions

In our experience, there are situations in which an officer's policy violation is evident, the employee recognizes his or her errors, but the matter still proceeds to a lengthy formal investigation. It seems as if the "bureaucracy" of administration takes hold and a rigid adherence to the system causes an unnecessary deployment of investigative resources when the facts and violation are not at issue. Some police agencies are beginning to develop alternative resolution mechanisms for these cases which hold employees accountable without the delay and expense of formal investigations.

Resolving a misconduct case by way of mutual agreement early in the case's lifecycle can be beneficial to both the Department and the employee. Early settlements can save the Department the time and resources necessary to conduct a complete investigation. Settlements also resolve the matter permanently, avoiding the cost and uncertainty of an appeal. The employee's benefits are also two-fold. The employee receives a speedy outcome of their case, thereby avoiding a long period of insecurity. The employee should also be offered a somewhat discounted penalty for accepting responsibility and agreeing to an early settlement.

Settlements are, by their nature, voluntary. An employee should understand that he or she may opt instead for the traditional route, waiting for the outcome of a complete investigation and maintaining his or her right to appeal. FPD also should only offer these settlements to a clear category of well-suited cases. The matter should have straightforward facts. The facts should not be complicated, and there should be low potential that new information or violations would be revealed by conducting a full investigation. The violation should also be clear-cut. The types of violations should be those that would result in lower level discipline and should not be applicable to potential termination cases, excessive force cases, or those involving potential integrity issues. The employee should readily admit to and take responsibility for the facts at issue and the policy violation.

Because these are agreed upon settlements and do not involve serious misconduct, they also provide an opportunity to create tailored remediation plans. In the end, through the use of pre-investigative settlements, the Department can document the truth in a fair process, resolve the matter promptly, expend fewer resources, protect employee's rights, and develop a tailored remedial plan to address the violation.

Recommendation 55: FPD should consider developing protocols and policy permitting the Department and the employee to address potential policy violations without the need to resort to a full, formal, and time consuming administrative investigation.

Alternatives to Standard Discipline

For situations in which the policy violation is not so severe that termination is the only acceptable remedy, the root purpose of any resulting discipline should be to remediate the employee and reduce the likelihood of future similar misconduct. Adopting this premise as a guiding principle, FPD can develop an alternative disciplinary system to better advance these concepts than the traditional disciplinary system. The tailored remedial system is predicated on the belief that the traditional disciplinary system anchored by reductions in pay is too simplistic

in that it does not require management to engage with the employee in a meaningful way or consider remedial programs designed to reduce the likelihood that the misconduct will reoccur. Moreover, the imposition of reduced pay is essentially punitive, with deterrence as a result of financial loss the only possible benefit. Because of its strictly punitive nature, reductions in pay often leave the employee disgruntled with no remedial component. Moreover, a collateral consequence of any financial penalty is that the hardship suffered by the employee extends to his or her family.

Under the alternative disciplinary model, the employee would be able to choose either the traditional penalty or the alternative program which is more closely tailored to remediate the violation of policy. Specifically, employees in suitable cases can agree to take courses, receive training or counseling, make presentations to their peers, write apologies, or engage in other projects that can provide professional growth for themselves and their peers. In addition to the greater likelihood that such a tailored program will reduce the likelihood that the employee will reoffend, if there is a subsequent violation, the Department is better positioned to defend the award of progressive discipline, since the tailored remedial program has proven ineffectual. Moreover, another beneficial consequence of the tailored remedial disciplinary system is that if an employee elects that disposition, he or she also relinquishes any right of grievance or appeal, thus eliminating challenges to the discipline imposed.

Recommendation 56: FPD should consider developing an alternative disciplinary system tailored to more artfully remediate the policy violation at issue.

Purging of Documents Relating to Allegations of Misconduct

During our review, we were advised that FPD "purges" its force reports and internal affairs investigation after five years. While exceptions are made to this purging process, for example, retention of documents regarding incidents that are the subject of litigation, most internal affairs investigations are destroyed after five years. This practice is not unusual for California law enforcement agencies and is consistent with state law that requires retention of those materials for at least five years.

However, in our view, the retention law for internal affairs records was intended as a floor rather than a ceiling for how long a law enforcement agency should keep such documents. The career of many law enforcement officers span twenty or more years and it seems incongruous to destroy materials which might demonstrate a pattern of undesirable conduct over more than five years. The routine destruction of materials over this period of time provides an

information deficit, particularly for newer supervisors and decision makers who may not be aware of the older cases. It also limits a longer span review of FPD culture and, in fact, notable cases which we were informed about we were not able to review in detail because they had been destroyed consistent with the internal five-year purge law.

As a result, we recommend a longer period of retention. In our view, allegations of misconduct should be retained until at least five years after the employee is no longer employed by the Department. This longer retention time allows for the Department to continue to have available the complete history of an employee's prior investigations of misconduct. Finally, the retention time extending past the employment of the officer affords the City to fully respond to Brady requests and inquiries from other agencies should a separated officer seek employment with them.

Recommendation 57: FPD should develop protocols that would extend the purging of internal affairs investigations and disciplinary records to at least five years beyond the employment end date of the employee.

Transparency

Our review found that issues identified through the internal investigative process rarely find their way to Department members at large. As with other police agencies, the disciplinary and internal affairs system is shrouded in mystery; Department members have little clue about the workings of the process, the types of cases and misconduct they address, and what information is learned about the disciplinary system comes from locker room talk.

This lack of transparency in the internal investigative process extends as well to those outside the Department. Important stakeholders such as advocacy groups, civic leaders, and the residents of Fullerton know and learn little from the Department about individual cases and systemic issues impacting FPD. While there have been recent exceptions, the Department has traditionally provided virtually no information about the methodology, case outcomes or systemic issues to its residents or to the general public. As a result, particularly since the Kelly Thomas incident, the outside world has relied for virtually all of its information about internal investigations and accountability from the media and the blogs, some of it inaccurate. Since the Kelly Thomas incident, the decision to place the Department's policy manual on line is a huge step in the right direction, it is incumbent upon FPD, consistent with the privacy rights afforded peace officers by state law, to continue this move toward more transparency and to educate its employees and the people of Fullerton about its efforts to ensure fair and effective investigations

and appropriate accountability.

Recommendation 58: FPD should work to devise ways, consistent with state law, to provide employees, stakeholders, and the public at large with more information about individual cases and systemic issues flowing out of its internal investigative processes.

Independent Oversight

As noted above, our review of the FPD has resulted in a number of systemic recommendations, designed to instill best practices in how the Department trains its officers on the use of force, investigates and reviews force incidents and allegations of misconduct, and, more broadly to move the Department in a cultural shift towards force prevention and more organizational accountability. To the extent FPD agrees to adopt our specific recommendations, we believe that better systems will be in place to achieve these stated goals. However, police departments are round-the-clock operations and always just a critical incident away from renewed public concern about the Department's actions.

Moreover, despite the installation of systems designed to ensure more thorough and unbiased internal investigations of misconduct, skepticism about the Department's ability to fairly police itself will remain. Because American policing has not historically fared well in this area, there is general skepticism about whether police will ask its officers the hard questions during an internal investigation, whether the evidence will be objectively assessed, and whether there will be appropriate accountability when police decision-makers judge the actions of their officers. Many will continue to believe that when assessing complaints of officer misconduct, the Department will either consciously or subconsciously place a thumb on the scale in favor of the officer.

As a result of this concern, progressive police agencies have adopted various forms of oversight ranging from professional auditing to a more traditional civilian review board. Because a police agency is a busy organization, internal investigations have a complex set of rules set out by state law, and most importantly, access issues and recent interpretations of state law have hampered the ability of the civilian review boards to be transparent and effective. Similar challenges have impacted oversight models which have endeavored to actually take over the internal investigations of police departments. While attractive in theory, a police board consisting of members of the community, without more, does not have the access to information, the time, or the expertise to impact police agencies in a meaningful way.

Provided it obtains a commitment to access of internal documents, as we have been provided during this study, a professional auditing/monitoring model can provide a meaningful outside voice in the way in which the Department completes and makes disciplinary decisions. Our experience has been that for this model to be most effective, it should be able to fulfill its oversight role in "real time," that is to provide quality control over internal investigations before they are completed and forwarded to the decision maker and to provide real time input before final decisions are reached on whether the officer violated policy and if so, what level of accountability is demanded. Moreover, real time monitors will readily be able to identify additional systemic issues and work with the Department to develop fixes through refinement in policy, training, or protocols.

One model that enjoys the benefit of professional monitors and retains community input is a hybrid oversight system with a professional monitor and liaison police review committee. Under this model, the auditor works on case specific matters but regularly meets with appointed representatives of the community to report on specific cases and systems issues. In addition, the regular meetings allow the Committee to bring concerns percolating in the community to the monitor for inquiry and review. Our experience is that independent oversight provides a meaningful check on police authority, and if done effectively, works to the benefit of the City and the Department by increasing the public's trust in its policing.

Recommendation 59: The City should consider creating an independent model of oversight to ensure that its Police Department objectively and thoroughly investigates critical incidents and allegations of misconduct and renders objective disciplinary decisions.

ADDENDUM

Post Thomas Incident: Subsequent FPD Reforms

To the credit of recent Department leadership, FPD has instituted and agreed to implement important reforms to address issues emanating from the Kelly Thomas incident and other matters brought to the Department's attention. Shortly after the incident, Department members received additional training on interacting with the homeless and the mentally ill. In addition, FPD officers also received crisis intervention training, including an overview of schizophrenia, bi-polar personalities, and depression, and FPD officers were also taught deescalation techniques.

FPD has also recently adopted improved policies on use of its Digital Activated Recorders and improved protocols should officers mistakenly enter the wrong residence.

More recently, a new policy manual was approved and made publicly accessible. Most police departments do not have their manual of policies and procedures as publicly available and it is a testament to a commitment to increased transparency by current FPD leadership that it was amenable to placing the Department's manual on the Internet.

Another important reform to FPD's policies and procedures is the more robust review of property, money, and narcotics. Critical in these reforms is a commitment to conduct regular audits of the handling of these items and the dedication of personnel to a long overdue property audit.

FPD has also created new and improved policy regarding the handling of citizen complaints, including the ability to access complaints on-line.

The Department has updated its hiring standards that surpass the POST standards and has increased the number and type of locations from which it is recruiting.

More recent training that is being afforded FPD officers involves the use of force. Included in this training is a two hour block discussing legal, reasonable, ethical, and moral decision making when using force. The training also includes scenarios where force would be justifiable but may not be necessary to resolve the situation.

FPD has initiated community policing and crime strategy meetings in accord with its commitment to community policing.

There has been a commitment to form a Chief's Community Advisory Board. The Board would provide a vehicle with which matters of community interest could be directly presented to the Chief. Additionally, the Board would serve as a sounding board for the Chief to gain insight from its members on policing in Fullerton and discuss ways to improve those services. We were afforded the opportunity to review a proposed model for this Board and found it to provide a good blueprint for its formation and mission. The creation of an Advisory Board is one circumstance that we would have pushed for in this report; we are pleased that the initiative is already in process.

Importantly, FPD has committed in writing to provide an additional officer to assist with homeless policing matters. The addition of an officer to provide that service would double the resource dedication that currently exists. While this doubling of resources to this issue is commendable, as detailed above, we recommend even more resource dedication by FPD. In addition, the agreement between FPD and Orange County's Mental Health Services to have an outreach clinician ride with officers on a regular basis to assist with providing services to the mentally ill and homeless in the community is a significant step in the right direction. Many of these reforms would have been on our list of recommendations and we are heartened that Department leaders identified the need for them before we issued our report.