

INVESTIGATION: Deputy-Involved Shootings Sacramento County Sheriff's Department

INTRODUCTION

During 2012, Sacramento County Sheriff's Department (SSD) deputies were involved in 13 situations where they discharged their firearms. This number was unusually high, as compared with previous years, and received attention of Sheriff Scott Jones, the public at large, and the media.

The grand jury initiated a review of the incidents and received complaints concerning one or more of the incidents.

The determination of whether a specific deputy-involved shooting was consistent with the requirements of law and the Sheriff's policy is beyond the scope of the authority of the grand jury. The legal determination is the exclusive prerogative of the District Attorney and compliance with policy is the exclusive prerogative of the Sheriff. As a result, the purpose of the grand jury's review was to: (1) determine whether any nexus could be found between the elimination of reviews by the District Attorney and the rather rapid and the high number of deputy-involved shootings; (2) identify any trends or patterns that may exist within the 13 incidents; and (3) determine whether further actions are available to the Sheriff's Department or other agencies, to minimize the number of shooting incidents in the future.

BACKGROUND

In 2007, the Sacramento County Board of Supervisors created the independent Office of the Inspector General (OIG). The role of the OIG, as described on the web site for the office is to "...conduct [] fact finding, audits, and other inquiries pertaining to administrative or operational matters as deemed appropriate by the Board of Supervisors, County Executive, Sheriff, or concerned Department Head...". With regard to the Sheriff's Department, the OIG reviews each deputy-involved shooting case, as well as in-custody deaths, and citizen complaints against employees of the department. The OIG publishes a summary report every January that describes the activities, findings, and recommendations for the previous year.

In June 2011, the Sacramento County District Attorney announced that due to reduced staff and resources resulting from budget reductions, the office would discontinue its practice to review each officer-involved shooting that occurs in the county. Prior to that, as the OIG noted in several annual reports, the shooting review program within the SSD had not been operational for several years. The

grand jury reviewed several newspaper articles citing community concerns regarding the discontinuation of the District Attorney’s independent review process.

In the first eight months of calendar year 2012, Sheriff’s Department deputies were involved in 13 shootings, eight of which resulted in the death of a citizen.

The first shooting case occurred on January 8, 2012, and was followed by five more in the same month. The last shooting incident occurred in August 2012. The Sheriff’s Department investigated the circumstances of each shooting and concluded that each was consistent with the law and internal policy. The OIG reviewed each case to determine if the actions of the deputies involved were consistent with existing law and policy.

INVESTIGATION METHODOLOGY

The grand jury interviewed the Inspector General (who retired at the end of 2012) and staff of the Sheriff’s Department. The grand jury reviewed reports of the internal investigation of each shooting case, written policy and procedures of the Sheriff’s Department concerning use of force and firearms, and training curricula from the Commission on Peace Officers Standards and Training (POST) and the SSD. In addition, members of the grand jury reviewed policies and manuals from several sheriffs’ departments in California regarding the use of force in the making of detentions and arrests, model policies published by the International Association of Chiefs of Police (IACP), law enforcement association web sites, and newspaper archives.

Reports issued by the civil grand jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the grand jury not contain the name of any person or facts leading to the identity of any person who provides information to the civil grand jury.
--

THE SHOOTING INCIDENTS

On January 8, 2012, deputies assisted a California Highway Patrol officer with a vehicle stop of a fleeing suspect. As the deputies approached the car with the driver still inside, the driver drove his car at them. As the deputies moved out of the way, they shot and hit the driver. After several blocks, the car stalled and the deputies used a Taser to subdue the driver. The driver suffered non-lethal injuries.

On January 15, a deputy detained two “suspicious” subjects. During the questioning, one of the suspects attempted to hit the deputy, then fled on foot and

the deputy pursued. When the deputy caught the man, a fight ensued during which both of them fell down an embankment 20 feet into a creek. The subject landed on top of the deputy and continued to hit him. After trying unsuccessfully to defend himself, the deputy shot the subject. The subject continued to fight other responding officers. The subject suffered non-lethal injuries.

On January 17, a deputy went to a residence in response to a call of a family disturbance involving a twenty-four-year-old male with a history of mental health problems who was acting violently toward family members. In the house, the subject physically assaulted the deputy, both fell on a bed, and the subject began grabbing for the equipment on the deputy's belt. The deputy was able to free his gun and shot the man inflicting a fatal injury.

On January 27, deputies assisted Galt police officers with a burglary in progress, with one suspect inside the store and another running from it. A deputy entered the store and confronted the suspect in the store who held what the deputy believed was an axe. The suspect ran toward another deputy at an open door, ignoring orders to stop. When the suspect did not stop, the deputy shot him. The suspect suffered non-fatal injuries.

On January 31, deputies went to an apartment complex to serve a felony arrest warrant. Inside an apartment, deputies were confronted by a man who pointed a shotgun at them. He ignored the orders to drop the weapon and one of the deputies fired, missing the suspect, as they retreated from the apartment. An eight-hour standoff ensued with the suspect barricaded inside the apartment. The Special Enforcement Detail (SED) and Critical Incident Negotiations Team (CINT) responded; these are emergency response units that respond in hostage situations and other incidents involving a threat to human life. Ultimately, the suspect was arrested without injury.

Also in January, deputies shot a vicious dog that attacked and severely injured a child after the dog also menaced the deputies. Although the shooting did not involve a human, the incident was investigated, reviewed, and assessed for compliance with SSD policy.

On February 6, deputies located a stolen car at a gas station. They stopped a man walking nearby. As they patted him down for possible weapons, the man ran and a deputy fired a Taser, which was ineffective. When the suspect was caught by the deputy, he attempted to reach into his coat. The deputy shot the subject inflicting a fatal injury.

No deputy-involved shooting occurred during the remainder of February or the month of March.

On April 12, deputies were serving a search warrant at a residence. They confronted a man who ran from them and was caught. He was taken back into the house and handcuffed so the deputies could search the house. A locked safe with a biometric lock that belonged to the suspect was located in a closet. At the suggestion of the deputies, the suspect agreed to open the safe and told the deputies a gun was in the safe. Deputies allowed the suspect to open the safe by matching his finger to the lock scanner but told him not to reach inside or try to get the gun. Immediately upon opening the safe, the man removed a handgun from the safe and pointed it at the deputies. The deputies fired at the man as they retreated from the closet. One deputy was shot in the hand by another deputy during this time. Subsequently, a robot was sent into the house and the suspect was found dead.

On April 20, deputies went to an apartment complex to assist the West Sacramento Police Department in an investigation of a series of carjackings that occurred earlier that morning. They contacted a man who matched the description of the suspect but he ran into an apartment and barricaded the door. The SED responded and the suspect remained barricaded in the apartment and on the balcony. A fire started in the apartment but firefighters could not attack the fire because the suspect was barricaded inside and hostile. The SED deputies shot the suspect inflicting a fatal injury.

On May 19, deputies responded to a report of a robbery and the description of the suspect matched that from an earlier robbery in the same area. The suspect fled from both locations on a motorcycle. Deputies observed a suspect who fled on a motorcycle. The motorcycle crashed and the suspect continued to flee on foot. As deputies pursued him on foot, the suspect turned, faced the deputies and reached into his waistband. A deputy shot the suspect inflicting a fatal injury.

On May 28, deputies went to a home to investigate an assault. While speaking to the neighbor who may have been involved, the garage door of the home suddenly opened and a man came out holding a pitchfork. He approached the deputies, who backed away and ordered him to drop the pitchfork. While backing up, one deputy fell, as the man continued to approach in an aggressive manner. Another deputy shot the subject inflicting a fatal injury.

No deputy-involved shooting occurred during June or July.

On August 2, deputies went to a home to serve a felony arrest warrant. The subject of the warrant refused to leave the house. The deputies forcibly entered the home and confronted the suspect who pointed a gun at them. The deputies retreated out of the house. Over the next few hours, teams from the SED and CINT attempted to negotiate with the suspect. The suspect threatened to kill them if they entered the house. After some time, the suspect exited the garage brandishing a firearm. A deputy shot at the suspect who retreated into the house. A robot was sent into the house and the suspect was found dead.

On August 14, deputies assisted the Folsom Police Department in a foot pursuit of an armed bank robbery suspect. The suspect entered a private residence containing a woman and four young children. A deputy followed the suspect into the house and shot him, inflicting a fatal injury.

No deputy-involved shootings occurred during September, October, November, or December. No deputy-involved shootings have occurred from January 1 through April 15, 2013, when this report was written.

DISCUSSION

From the information available to the grand jury, the brief analysis of the incidents above shows:

1. A total of 13 deputy-involved shooting incidents occurred during 2012. During each of the three previous years (2009, 2010, and 2011), five or six shooting incidents occurred.
2. One incident involved a vicious dog; three incidents involved an armed, barricaded suspect and the specialized response of SED and CINT, and two incidents involved deputies acting in assistance to municipal police officers in their cities.
3. Seven incidents involved a deputy in a situation that developed from a call for service; four subjects died in these incidents.
4. The circumstances of each case were different from every other case; no common characteristics or elements were identified among a significant number of the cases.
5. No pattern or trend of actions or omissions was identified in the incidents.

In January and February 2012, Sheriff's Department administration assigned a special project to a lead member of the SED who completed the POST Master Instructor course. The project's goal was to develop and present a series of short training modules for deputies on the topics of use of force including deadly force, Tasers, first aid, and vehicle pursuits. The training is presented at the beginning of

shift briefing and consumes approximately one hour. The use-of-force training was presented first to all patrol deputies and supervisors, beginning in March 2012. It has also been presented to correctional officers. Subsequently, the Taser and first aid modules were presented. The vehicle pursuit module is under development. The Inspector General was complimentary of the SSD training curriculum. Jurors reviewed the curriculum of the use-of-force module and it appears to be contemporary and comprehensive, given the time allotted and the conditions for the presentation. An important theme of the training is to illustrate the difference between those instances where force may be legally permitted and those where it is actually necessary to be used (the difference between “can” and “should”). At the least, the training was successful in raising the level of situational awareness of the deputies in respect to the use of force.

Jurors learned the use-of-force training was developed by the assigned deputy without specific assistance or information from either the OIG or the Internal Affairs unit that investigates deputy-involved shootings. Specific information from the 13 cases apparently was not available for inclusion in the training curriculum. Further, jurors have no information that suggests the training staff at SSD was involved in the development or presentation of the training. The training was developed based on the knowledge and experience of the deputy and with “best practices” that are available from other experienced Special Weapons and Tactical (SWAT) officers and professional associations (e.g., California Association of Tactical Officers).

Based on this information, the grand jury concluded the use-of-force curriculum is valuable and pertinent. However, the grand jury found no continuing effort to expand the training, standardize the curriculum, incorporate the elements in other training, or prepare more instructors to broaden the delivery of the training. Training presented during the limited time of pre-shift briefing is generally based on lecture and discussion, and the audience is often distracted by other matters as they prepare to go to work. The expansion of the training to incorporate “lessons learned” from actual cases, including interactive scenarios, should be a goal of the training module. All deputies and supervisors would benefit from the increased awareness and emphasis provided by this training, and from the time dedicated for the training without other distractions. While it is difficult to quantify the value of this training, the awareness created by the training may have been a factor in the reduction of shooting incidents after April 2012.

The grand jury found there was no direct communication between the deputy who developed and presented the training, the Internal Affairs section, the Inspector General, or the SSD training staff. Although the 13 shooting incidents have little in

common, each has potentially significant value as a teaching tool. The value of using actual incidents instead of hypothetical situations for training is a common and effective approach. Further, the OIG, and the Sheriff's Department itself, have the ability to analyze a single incident or a series of incidents to identify the behavior, language, and tactics, and the "lessons learned" from the incidents and include that information in training and policy. This practice is the basis for a 20-year project of POST. Known as the Law Enforcement Officers Killed in Action (LEOKA) program, each case wherein a peace officer in California is killed is analyzed and "lessons learned" are incorporated into training curricula, both for academy and in-service training. A comparable effort with cases of deputy-involved shootings would seem to have similar value. A Tactical Review Board for deputy-involved shooting incidents previously existed in the SSD but apparently ceased to function several years ago. Annual reports from the OIG comment about the absence of the review process. The function of the review process, as described in the OIG reports, was to identify equipment, policy, and tactics issues from the shooting cases and to recommend improvements.

The grand jury found no information that indicated the OIG completed an analysis of a single shooting incident or a series of incidents, beyond the summary information published in the annual report. Recommendations contained in the 2011 and 2012 reports from the OIG did not address directly issues of policy, tactics, or training that may have been present in the cases. However, the OIG did develop, at the request of the Sheriff, a new protocol for the review of deputy-involved shootings. The goal of the new process is to identify issues of training and equipment, and to "compare incidents over time." The adoption of the protocol was described by the Inspector General and reported in an article in *The Sacramento Bee* on October 28, 2012. The newspaper's editorial board on October 31, supported the protocol, stating "...the community has to be sure that the use of deadly force is justified...."

The grand jury's investigation found no evidence or indication that the District Attorney's decision to disband its independent review process was an element of the increase in deputy-involved shootings in the first half of 2012. The Internal Affairs section of the Sheriff's Department continued to operate and to investigate each incident. The case files reviewed by the jurors included written reports, recorded statements of deputies and witnesses, photographs, and physical evidence. The case files appeared to be complete; the investigations were objective and thorough; and the jurors found no indication that the investigators acted irresponsibly or negligently in any of the cases.

The larger question, for the Sacramento County Board of Supervisors, remains: whether an independent review is of value to the SSD in particular and to Sacramento County in general. This was the highest number of deputy-involved shootings in many years. It began six months after the District Attorney discontinued the only independent review of such cases which review, according to some persons, was at least partially responsible for a decrease in such incidents in the several years preceding 2012. An independent review, either by the OIG or the District Attorney, may well be important for the county, both in financial terms and in giving the citizens of the county the confidence that deputy-involved shootings, especially those that result in the loss of life, are thoroughly investigated by an independent body without any appearance of a conflict of interest.

The review and analysis of the incidents by members of the grand jury did identify some issues of tactics and policy. In one case, deputies shot at a suspect in a moving vehicle and surrounded the vehicle putting the deputies in a “cross fire” situation. In three cases, a tactical decision by a single deputy put him in a position where he was overcome by the suspect and shot to end the attack. In one case, a “common practice” and a tactical decision allowed a subject who was handcuffed to obtain a gun and deputies shot the subject. One deputy was injured by another deputy in that incident. The grand jury believes the policy and tactical issues presented in these cases should have been identified by either the OIG or an internal SSD review. The grand jury has no information that this occurred.

The jurors received and reviewed the SSD General Order concerning use-of-force. The policy is sufficient in the opinion of the OIG and the Sheriff. Interestingly, while the policy addresses shooting *from* a moving vehicle, it does not address shooting at a moving vehicle. The issue of shooting at a moving vehicle is the subject of considerable discussion and debate within law enforcement. Many law enforcement agencies prohibit the practice (e.g., Los Angeles Police Department) or limit the circumstances where it is permitted. A model policy promulgated by the IACP has been adopted by many departments across the country. The policy does not prohibit shooting at a moving vehicle, but notes the increased dangers of doing so. The grand jury believes the SSD policy should be revised to address this issue and others that can be identified from the shooting cases.

FINDINGS AND RECOMMENDATIONS

Finding 1: The Grand Jury finds that the decision by the District Attorney to discontinue the independent review of officer-involved shootings has negatively affected the perception of law enforcement accountability in the county and public confidence in the review process. The Grand Jury further finds the independent

review of deputy-involved shooting cases should be conducted by the OIG or the District Attorney.

Recommendation 1: The Grand Jury recommends the Board of Supervisors provide sufficient funds to support the comprehensive, objective review and analysis of officer-involved shootings by either the OIG or the District Attorney, or both, as the Board determines is appropriate and necessary.

Finding 2: The Grand Jury finds the Sheriff's Department and the OIG do not conduct an analysis of deputy-involved shooting incidents to identify the behavior, policy, or tactical issues that are present. The Grand Jury further finds the Sheriff's Department does not routinely review shooting cases to identify "lessons learned" that can be incorporated in training.

Recommendation 2: The Grand Jury recommends the Sheriff consider restoring the use-of-force review process in the Department with a specific focus on the identification of behavior, policy, and tactical issues, and "lessons learned." The Grand Jury further recommends the review panel include both tactical and training staff.

Finding 3: The Grand Jury finds that there is insufficient communication between the Office of the Inspector General and the administration of the Sheriff's Department concerning the "lessons learned" from the shooting cases.

Recommendation 3: The Grand Jury recommends that the Inspector General adopt a more proactive review of deputy-involved shooting incidents, beyond simply reviewing the findings of the Department's internal investigation. Rather, the Inspector General should review each incident with the goal of communicating "lessons learned" to the Department.

Finding 4: The Grand Jury finds the policies and orders of the SSD concerning use-of-force and deadly force are relatively generic and not comprehensive.

Recommendation 4: The Grand Jury recommends the Sheriff initiate a review of the orders and policies concerning the use-of-force and deadly force, and revise those orders as appropriate and legally competent to specifically address topics that are not addressed in the current policies (e.g., shooting at a moving vehicle). The Grand Jury further recommends the Sheriff consider the inclusion of use-of-force policy in tactical and firearms training courses developed and presented in the Department.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Sacramento County Grand Jury requests that the Sacramento County Sheriff, the Sacramento County District Attorney, the Sacramento County Inspector General, and the Sacramento County Board of Supervisors respond to the findings and recommendations as detailed below. The Sacramento County Board of Supervisors response must comply with the notice, agenda and open meeting requirements of the Brown Act.

- Sacramento County Sheriff (Findings and Recommendations 2, 3, and 4)
- Sacramento County District Attorney (Finding and Recommendation 1)
- Sacramento County Inspector General (Finding and Recommendation 3)
- Sacramento County Board of Supervisors (Finding and Recommendation 1)

The response should be submitted by September 28, 2013, to:
The Honorable Laurie Earl, Presiding Judge
Sacramento County Superior Court
720 9th Street, Department 47
Sacramento, CA 95814

In addition, the response should be emailed to Rebecca Castaneda, Grand Jury Coordinator at: castanb@saccourt.com.

DISCLAIMER

This report was issued by the grand jury with the exception of one member of the jury who is a retired peace officer from the Sacramento County Sheriff's Department. This juror was excluded from all parts of the investigation, including interviews, deliberations, and the making and acceptance of the report.