

ANAHEIM POLICE DEPARTMENT USE OF FORCE REPORT 2017



Published November 2017

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Special Thanks to Sheryl Bell, Julian Alexander Memorial Fund, Belinda Escobosa-Helzer, and Theresa Smith, Law Enforcement Accountability Network

I. Introduction

On July 21, 2012, Anaheim police officer Nick Bennallack shot and killed a young, unarmed Latino man, Manuel Diaz, during a foot chase. The officer shot Mr. Diaz twice, once in the buttocks and once in the back of the head. Officers then handcuffed Mr. Diaz as he lay dying in the grass outside an apartment building in a predominantly Latino neighborhood. As shown in a bystander video, the officers did not immediately administer first aid, but instead called for backup and began searching the area.¹ The next day, in separate incident, Anaheim Police Officer Kelly Phillips shot and killed another young Latino man, Joel Acevedo, during a foot pursuit after a police car stop. Again, according to the coroner's report, the officer shot the victim in the back of the head.

These back-to-back killings ignited several days of protest and unrest. Hundreds of demonstrators marched through the city, often confronted by police officers dressed in riot gear and officers on horseback, who loosed dogs on protestors and fired on crowds with bean bag shotguns and pepper spray, and arrested dozens of people who were protesting the department's actions.

Unfortunately, these killings and their aftermath are not isolated incidents, but part of a pattern of excessive use of force in Anaheim. This paper examines patterns in fatal shootings and the recent history of Anaheim Police Department to recommend reforms to department policy and oversight of the agency.

II. Methodology

This report provides data and analysis on killings by Anaheim Police Department officers from 2003 to 2016, based on police reports, newspaper articles, coroner's reports, and data collected by the California Attorney General and the U.S. Department of Justice. We also drew from research on police use of force and best practices across the nation, as well as the history of reform recommendations made to the Anaheim PD. Since 2012, the ACLU of Southern California has worked on police reform issues with Anaheim and Orange County organizations and residents. This paper grows from those community-based reform efforts and relies on interviews with community members who have lost family members to police homicide.

Research on police shootings always suffers from limitations. California law cloaks internal investigations of police killings in secrecy that makes it impossible for the public to know what really happened in any officer-involved shootings, and whether any of the officers that kill civilians have been disciplined or been given other corrective action. While California law requires departments to report killings and other in-custody deaths to the state's Attorney General, officer involved shootings and other critical incidents are, at times, unreported.

¹ Janell Ross, *Anaheim Riots Sparked By Power Imbalance, Police Shootings In Time-Tested Formula (Video)*, Huffington Post, (July 28, 2012), http://www.huffingtonpost.com/2012/07/28/anaheim-riots-police-shootings_n_1712105.html.

III. Fatal Use of Force Data for Anaheim PD

From 2003 to 2016, 33 people died following a use-of-force by on-duty Anaheim PD officers, according to our review of police reports, coroner's reports, and data provided to the California Attorney General. Of those 33 individuals who died, APD officers shot twenty-nine. Three died in incidents in which officers used a TASER as well as other physical force, and one died after APD officers placed him in a chokehold, knelt on his back, and restrained him.

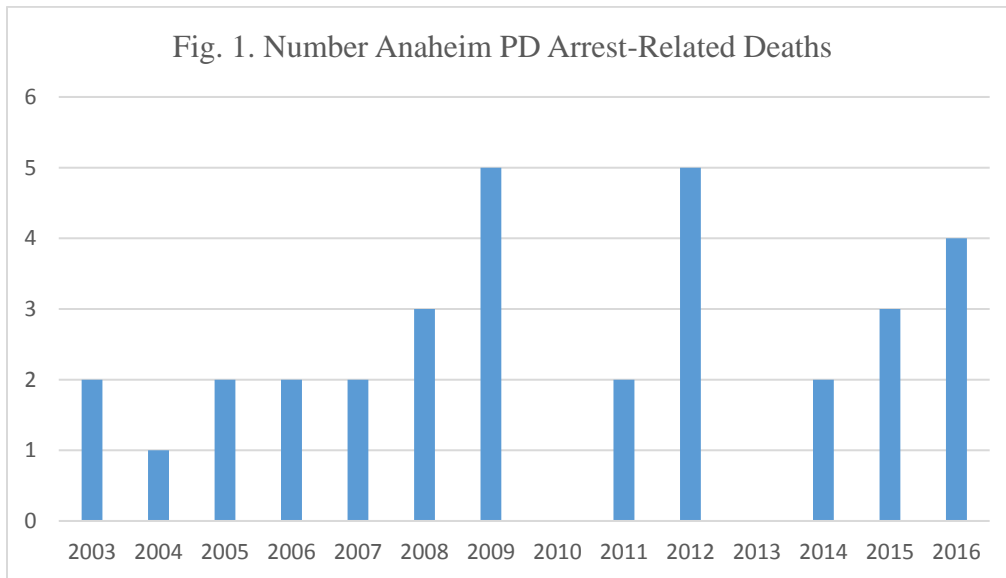


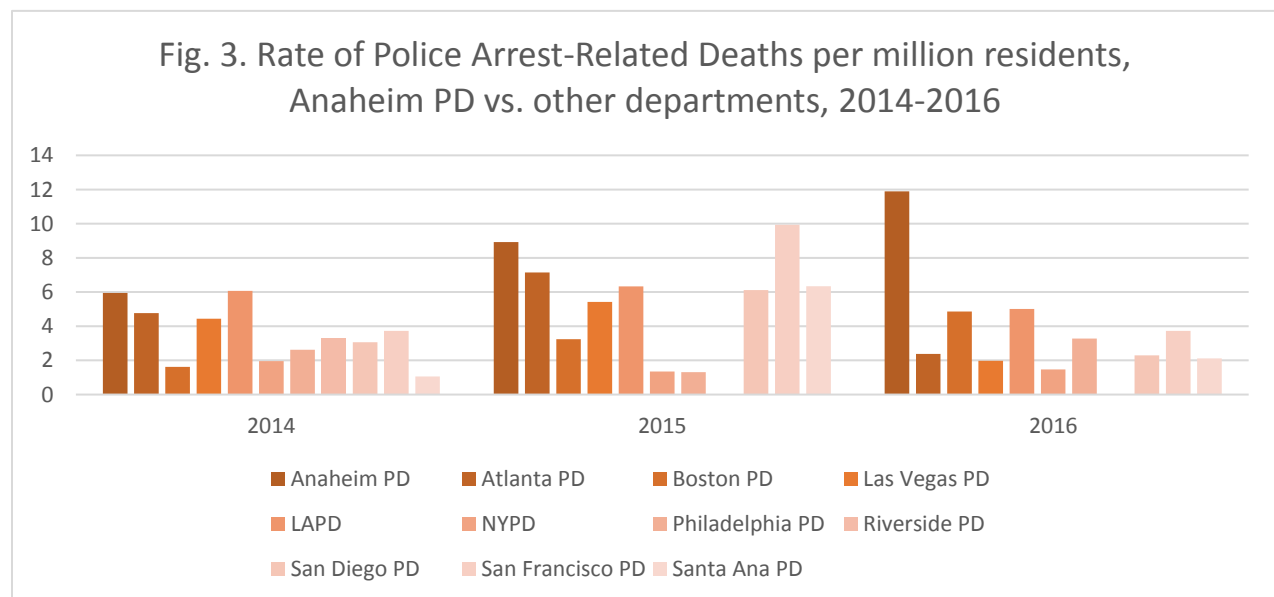
Fig. 2. Type of Force Used in APD Arrest-Related Deaths (2003-2016)		
Type of Force		
Officer Shooting	29	88%
Chokehold/Physical Restraint	1	3%
TASER (and other physical force)	3	9%

An average of about 2.4 people per year die in incidents with Anaheim PD. Although the Department made some changes in the wake of shootings in 2012, as discussed below, arrest-related deaths have persisted at a similar rate. Indeed, over the past three years, from 2013 to 2016, Anaheim PD was involved in an average of 3 arrest-related deaths per year, higher than the average over the entire fourteen-year period.

A. Anaheim PD kills at a higher rate than other police departments.

Accurate data on police shootings is unfortunately limited. Until recently, there was no requirement for police agencies to report shootings to the federal government.² Although California law has required local departments to report in-custody deaths – including deaths during arrest – a large number of departments have failed to make those reports, so that data published by the Attorney General is only partially complete.³ However, in recent years, several projects by journalists and organizers have endeavored to provide complete counts of those killed by police. We compared the data we collected on Anaheim PD to data about other cities compiled by the Mapping Police Violence project.

Over the past three years, Anaheim PD's rate of officer-involved deaths during arrest consistently exceeded that of many major police departments — including the Los Angeles Police Department, New York Police Department, San Diego Police Department and San Francisco Police Department, as well as other California cities, including Riverside and Santa Ana. In 2015, Anaheim PD was the 9th deadliest police force among the 60 largest U.S. cities, according to FBI data.⁴



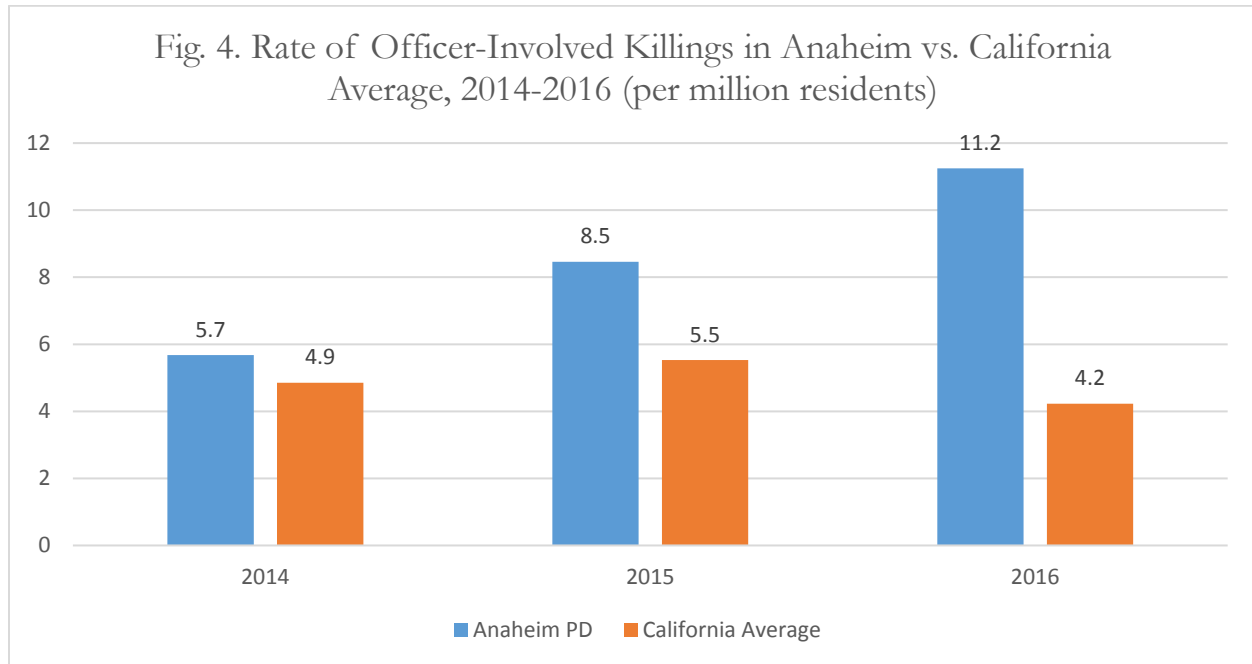
Source: Mapping Police Violence

² Aaron C. Davis and Wesley Lowery, *FBI Director Calls Lack of Data on Police Shootings 'Ridiculous,' 'Embarrassing,'* Washington Post, (Oct. 7, 2015), https://www.washingtonpost.com/national/fbi-director-calls-lack-of-data-on-police-shootings-ridiculous-embarrassing/2015/10/07/c0ebaf7a-6d16-11e5-b31c-d80d62b53e28_story.html; Wesley Lowery, *How Many Police Shootings A Year? No One Knows*, Washington Post, (Sept. 8, 2014), <https://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows>.

³ Lise Olsen, *In Texas and California, Police Fail to Report Use-Of-Force Fatalities From 2005-2015*, Houston Chronicle (Oct. 9, 2016), <http://www.houstonchronicle.com/news/houston-texas/houston/article/In-Texas-and-California-police-fail-to-report-9958631.php>; Kate Morrissey and Merrie Monteagudo, *Official Data Fails to Capture Hundreds of Police Shootings*, San Diego Union Tribune (Oct. 8, 2016), <http://www.sandiegouniontribune.com/news/data-watch/sd-me-shooting-data-20161008-story.html>.

⁴ Mapping Police Violence, *2015 Police Violence Report*, <http://mappingpoliceviolence.org/2015/>.

Since 2014, Anaheim PD's rate of arrest-related deaths also significantly exceeds that of California as a whole. In 2016, Anaheim PD killed individuals at nearly 3 times the average rate for California. (Figure 4). Over the three years from 2014 through 2016, Anaheim PD was involved in arrest-related deaths at a rate 74% higher than average for police in California. (See Appendix.)



Sources: Mapping Police Violence Project; Population: Center for Demographic Research at California State University, Fullerton; California Employment Development Department; California Dept. of Finance.

B. Anaheim PD's arrest-related deaths are out of proportion to the city's crime rate

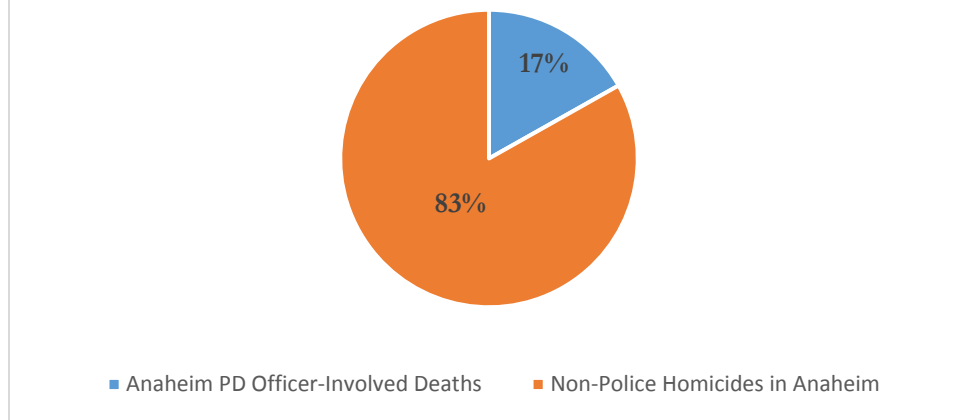
The high rate of arrest-related deaths in Anaheim is not related to the city's crime rate. In 2014, the city ranked 2nd safest among the 50 largest cities in terms of violent crime, 8th safest in terms of property crime, and 8th safest overall, according to FBI statistics.⁵ Police departments in cities with similar crime rates kill far fewer people than Anaheim PD.⁶

Anaheim's low crime rates make the number of killings by Anaheim PD all the more shocking, particularly when compared to the homicide rates. Between 2003 and 2016, Anaheim PD was responsible for 17% of all homicides in the city. (Figure 5.) In 2009, 36% of all homicides in Anaheim were at the hands of Anaheim PD officers. In 2012, Anaheim PD officers were responsible for one in four of all homicides in Anaheim. In 2016, Anaheim PD officers were responsible for 36% of all homicides in Anaheim.

⁵ Anaheim Police Dep't, *Year in Review 2015*, 9 (2015) <https://www.anaheim.net/DocumentCenter/View/16885>.

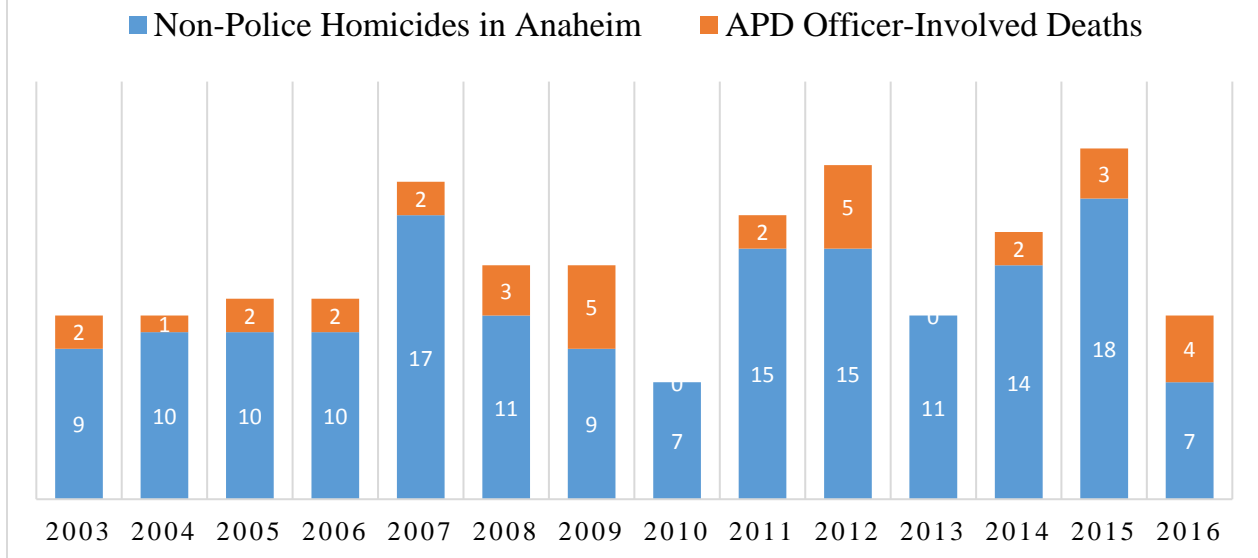
⁶ Mapping Police Violence, *Police Violence and Community Violence are Independent Issues* (data from Jan. 1 through Dec. 15, 2015) <https://static1.squarespace.com/static/54ecf211e4b0ed744420c5b6/t/5677f85d1115e0704eb36ed3/1450702944850/?format=750w>.

Fig. 5. Officer-Involved Deaths by APD as Percentage of All Anaheim Homicides (2003-2016)



Sources: FBI National Archive of Criminal Justice Data, Anaheim PD reports

Fig. 6. Officer-Involved Deaths As Portion of Homicides in Anaheim



Sources: FBI National Archive of Criminal Justice Data, Anaheim PD reports

C. Nearly 40 percent of people killed by Anaheim PD were unarmed.

Of the individuals killed by Anaheim PD between 2003 and 2016, nearly 40 percent were unarmed, even counting conservatively. In determining whether people were unarmed for purposes of this report, we counted as “armed” individuals carrying a toy or replica gun, or a BB gun. We also counted as armed Cesar Cruz, who Anaheim PD officers shot as he emerged from his car after a pursuit, claiming that he was reaching for his waistband. Although no gun was found on Cruz, a gun was found on the passenger seat of his car. We nonetheless counted Cruz as armed for purposes

of this report. We excluded people holding ordinary household objects, such as Julian Alexander, who was in his front yard holding a broomstick when he was shot by police.

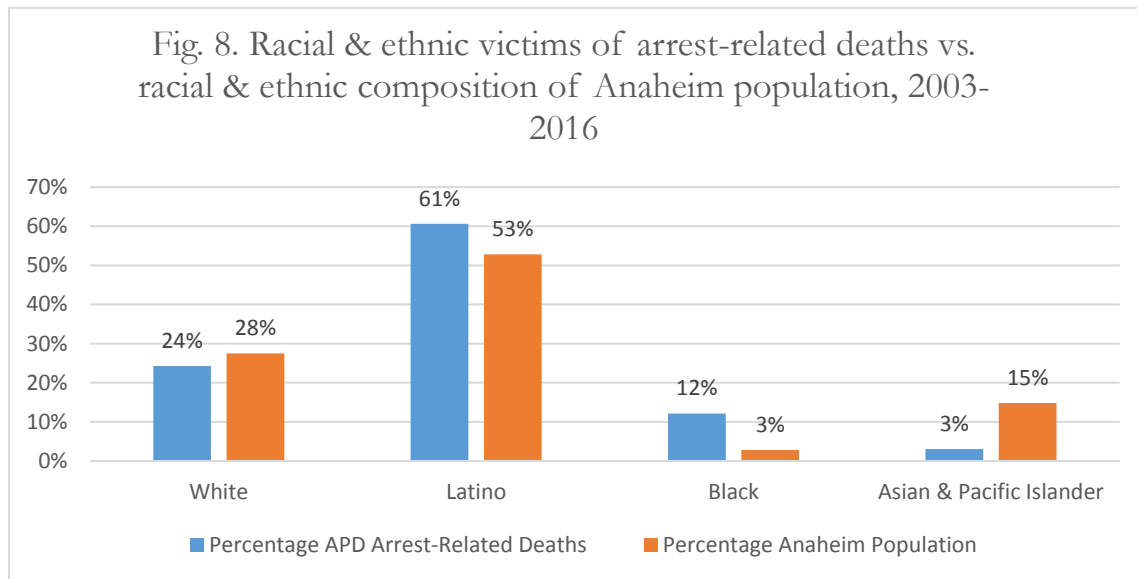
Fig. 7. Characteristics of Anaheim Arrest-Related Deaths, Totals and by Race/Ethnicity						
	Number	% Total	White	Black	Latino	API
Armed, gun	12	36%	37.5%	25.0%	40.0%	0.0%
Armed, Knife	6	18%	37.5%	50.0%	5.0%	0.0%
BB or replica gun	2	6%	12.5%	0.0%	0.0%	100.0%
Unarmed	13	39%	12.5%	25.0%	55.0%	0.0%
Involved Mental Health Conditions	6	18%	25%	25%	15%	0%
Foot Pursuit	12	36%	13%	25%	50%	0%

The data show a disparity by race: 55% Latino victims killed by Anaheim PD were unarmed, compared to 25% of Blacks and only 12.5% of whites. All white victims of Anaheim PD homicides were armed with either a knife or a gun (or replica), with the exception of one person.

More than one-third of arrest-related deaths occurred after a foot pursuit. And nearly one in five arrest related deaths involved a person with a mental health condition.

D. Anaheim PD's use of deadly force disproportionately impacts low-income communities and people of color.

The vast majority of people killed by Anaheim PD officers since 2003 have been black or Latino. And black and Latino people are killed by Anaheim PD at rates disproportionate to their percentage of Anaheim's population.



Source: 2010 Census, Coroner's reports

Twelve percent of people killed by Anaheim police have been black, even though Anaheim's population is less than three percent black.

Latinos are also disproportionately represented among Anaheim PD's arrest-related deaths. From 2003 to 2016, Latinos made up 61 percent of those killed by Anaheim PD officers, despite making up only a little more than half of Anaheim's population.

E. "Hot spots" for police homicide

Anaheim remains a racially and spatially divided city. Power and wealth are concentrated in "Anaheim Hills," a sprawling majority-white neighborhood in the Northeastern section of town. Voting District Six, which includes Anaheim Hills, is 58 percent white and only 19 percent Latino. A full 16 percent of households have income over \$200,000, while 9 percent of households have income of \$25,000 or less. Three-quarters of homes are owned. Voting district three, in the center of the city, is 72 percent Latino and only 16 percent white. Only 2 percent of households have incomes over \$200,000, a full 25 percent have household incomes of \$25,000 or less, and 62 percent of homes are rented.

These stark physical divisions by race and wealth also show disparities in police violence. Low-income communities of color are disproportionately affected. Most Anaheim PD homicides from 2003 to the present have occurred in Districts Two, Three, Four, and Five. This area is generally low-income and has a high concentration of Latinos, according to census data.⁷ In contrast, the Anaheim Hills has been relatively untouched by Anaheim PD homicides.⁸

⁷ According to the U.S. Census, most census tracts have median income of less than \$55,000 and are at least 60% Hispanic/Latino. Several census tracts are over 80% Hispanic/Latino.

⁸ Census tracts rarely exceed 20% Hispanic/Latino, and median income often exceeds \$100,000. The one homicide in Anaheim Hills occurred at the Anaheim PD East Substation.

F. Repeat Shooters — Anaheim PD’s Failure to Correct Patterns of Force

The vast majority of Anaheim PD officers — about 88% — have never been involved in a fatal incident. But several officers have been involved in two or even three arrest-related deaths, and these officers have played a role in a significant percentage of Anaheim’s officer-involved deaths.

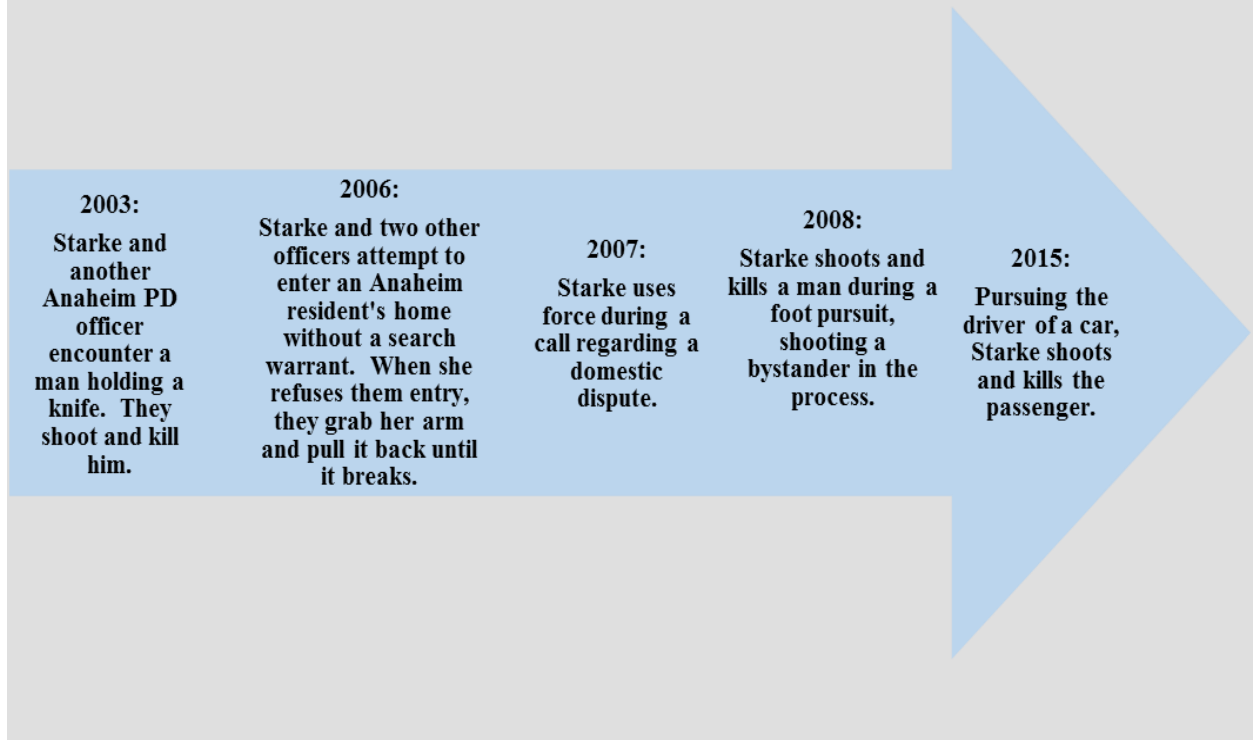
The 33 arrest-related deaths between 2003 and 2016 involved a total of 50 Anaheim PD officers. Nineteen of those officers were involved in more than one fatal incident, and three officers were involved in three arrest-related deaths.

The data show that 58% of Anaheim PD’s arrest-related deaths— over half — involve officers who were also involved in at least one other death. More than a quarter of Anaheim PD’s arrest-related deaths — 27% — involved the same three officers: Ben Starke, Nick Bennallack, and Kevin Flanagan.

Fig. 9. APD Officers Involved in Multiple Deaths	
Number sworn officers in Anaheim PD	408
Officers involved in Officer-Involved Deaths (OIDs)	50
% officers never involved in an OID	88%
Officers involved in multiple fatal incidents	9
Officers involved in 3 deaths	3
Number OIDs in Anaheim PD	
... total	33
... involving officers involved in multiple deaths*	19
... involving three officers involved with 3 deaths	9
Percentage OIDs in Anaheim PD	
... involving officers involved in multiple deaths	58%
... involving three APD officers involved with 3 deaths	27%

The high proportion of arrest-related deaths involving officers repeatedly involved in deadly force raises questions on whether Anaheim PD has failed to identify and correct patterns of force. For example, Anaheim PD Officer Starke was involved in two fatal shootings and two other use of force incidents before he shot and killed Paul Anderson in 2015. The victim of the force was armed in only one of Officer Starke’s prior incidents. (Figure 11).

Fig. 10. Pattern of Force — APD Officer Starke



In two separate instances, Anaheim PD has decided to hire officers that have previously used deadly force, who have gone on to kill a person the year after they were hired. This raises questions about the Department's hiring process and the scrutiny given to lateral hires from other police departments.

In 2004, Daron Wyatt shot and killed Brian Charles Smith while employed as a police officer by the Placentia Police Department.⁹ Despite this, Anaheim PD hired Wyatt in 2008. The following year, Wyatt shot and killed Adolph Anthony Gonzalez, who was unarmed. The next year, Wyatt had a use of force complaint filed against him after he strip-searched an individual in front of other Anaheim PD officers. Sgt. Wyatt now serves as Anaheim PD Public Information Officer. While Anaheim PD's decision to assign a repeat shooter to duty that pulls them off the streets is commendable, making an officer with multiple shootings the face of the department sends a troubling message to the community.

Wyatt is not the only repeat offender that has transferred to Anaheim PD from another department. Officer Lorenzo Uribe used deadly force twice while working for Long Beach Police Department, shooting Carlos Eduardo Romo in 2010 and Travis Charles Brown in 2014. The following year, Anaheim PD hired Uribe.¹⁰ In 2016, Uribe shot and killed unarmed Adalid

⁹ *Gray v. City of Placentia*, No. 8:06-CV-00097-GW (C.D. Cal. 2006).

¹⁰ Transparent California, 'Lorenzo J Uribe' search results, <http://transparentcalifornia.com/salaries/search/?q=Lorenzo%20J%20Uribe>.

Flores after a foot pursuit.¹¹ He was then presented with a Lifesaving Award by Anaheim PD in 2017.¹²

Other repeat shooters have had long careers with Anaheim PD and have received promotions and awards. Anaheim PD Detective Linn was involved in two lethal uses of force, one in 2010 and one in 2011. Both homicides involved unarmed men. He went on to receive the Investigator of the Year award in 2013, a Meritorious Service Award in 2014, and in 2015, he received recognition of 25 years of service during the Anaheim PD's 2015 Awards and Retirement Ceremony. Anaheim PD Officer Phillips was involved in two lethal uses of force in 2010 and 2011. He went on to receive a Distinguished Service award from the department in 2014.

The number of killings involving repeat shooters raises questions about Anaheim PD's handling of shootings, how effectively they identify officers that use deadly force too easily, and their inability to keep officers involved in one fatal shooting from killing again.

Fig. 11. Officers Involved in Multiple Fatal Incidents, 2003-2016

Officer	Fatal Force Incidents	Fatal Shootings	Fatal TASER or physical force	Fatal Incidents
Starke, Ben	3	3	0	Abrams (2008), Anderson (2015), Murphy (2003)
Bennallack, Nick	3	3	0	Diaz (2012), Villegas (2012), Parker (2014)
Flanagan, Kevin	3	2	1	Alexander (2008), Gutierrez (2009 – TASER), Deckard (2015)
Olmedo, Richard	2	2	0	Hernandez (2006), Rosalescavetto (2008)
Linn, Bruce	2	2	0	Cruz (2009), Raya (2011)
Phillips, Kelly	2	2	0	Acevedo (2012), Cruz (2009)
McAlpine, Mike	2	2	0	Hertl (2003), Castillo (2009)
Skeete, Sheddi	2	1	1	Terriquez (2007 - TASER), Whitehouse (2007)
Wyatt, Daron*	2	2	0	Gonzalez (2009); <i>Smith (shot in 2004 while Wyatt was employed by Placentia PD)</i>

*One of Officer Wyatt's two fatal shootings occurred when he was employed by Placentia P.D., before Anaheim P.D. hired him in 2008.

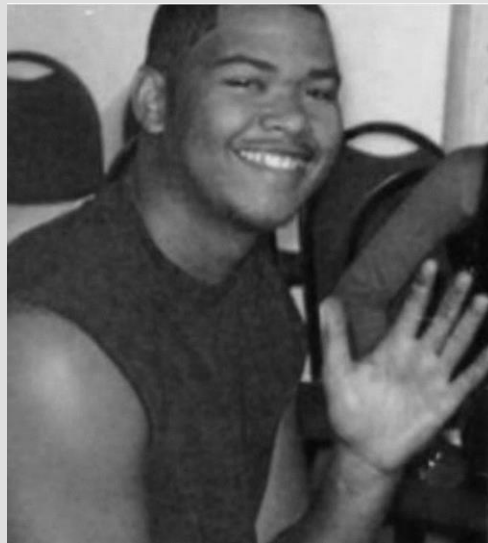
¹¹ Orange County District Attorney (OCDA), *OCDA's Investigation and Legal Conclusion of Fatal Officer-Involved Shooting of Adalid Flores*, (Jun. 29, 2017), <http://orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23526>.

¹² Shawn Price, *Anaheim PD, 'Like No Other Work Family,' Celebrates Good Work of Its Employees*, Behind the Badge OC (May 23, 2017), <http://behindthebadgeoc.com/cities/apd/anaheim-pd-like-no-work-family-celebrates-good-work-employees/>.

The Human Impact of Deadly Force

Like many parents of children of color, Sheryl Bell had ‘the talk’ with her son, Julian Alexander, when he was a young man. “My son knew better than to come toward a police officer. He was very well versed in what I call Police 101. You have to be aware of yourself and how you appear to others. Especially if you are a black male.”

Tragically, Sheryl’s efforts did not save her son from a senseless death at the hands of an Anaheim PD police officer. Mr. Alexander was only 20 years old at the time of his death. He was in his house on October 28, 2008 when he heard a commotion in his yard. He grabbed a broomstick for protection and stepped outside. There, he encountered Anaheim police officers who were chasing a robbery suspect through his yard. Although Mr. Alexander was standing in his own yard, Officer Kevin Flanagan shot him twice in the chest, killing him a



little more than a week after his wedding. Mr. Alexander’s widow, Renee Alexander, gave birth to the couple’s child a month after his death.

As has been the case in every other police homicide in Anaheim, the OCDA found the shooting justified. Yet the city settled a civil lawsuit by paying \$1.55 million to Julian’s widow and \$50,000 to his parents.

Sheryl Bell, sought accountability for her son’s death. She says that during her civil suit, “I was on trial for them killing my son. They came at me hard, picking apart how I mothered my child, his growing up, and none of that was a prerequisite for what happened to him.”

As Sheryl says, “It’s sad to see every day another mother is added to this group” who has lost a child to police violence.

Officer Flanagan continued to work for Anaheim PD. He received awards for the Recovery Officer of the Year for Anaheim in 2013 and 2014. Then, in 2015, Officer Flanagan was one of the police officers who shot Monique Deckard 12 times, killing her.

On March 18, 2015, Anaheim PD officers visited Ms. Deckard's apartment to do a welfare check at the request of her brother. Ms. Deckard, who had a history of mental illness, was holding a knife when the officers arrived. When Monique emerged from her apartment, she followed officer's commands to put her hands up. One officer fired non-lethal rubber bullets, while Officer Flanagan fired 8 shots into Monique. Two other officers also fired on Monique. They shot her 12 times: twice in the chest; once in the left flank; once in the forearm; twice in the upper arm; once in the mid-back; twice in the lower back; twice in the left breast; and once in the lower chest. According to the coroner's report, Ms. Deckard had so many gunshot wounds with overlapping paths that the coroner was unable to determine the exact trajectory of the bullets.

One Mother's Fight for Justice

Theresa Smith knows all too well that Anaheim police officers are almost never held accountable when they injure or kill. She is the surviving mother of Caesar Cruz, who lost his life at the hands of Anaheim police in 2009, when he was only 35. After his death, she founded the Law Enforcement Accountability Network, an organization that works to hold law enforcement accountable for killings and to support families that have lost loved ones to this violence.



Theresa derives strength from a group of mothers who have lost children to law enforcement. She says that when the mothers get together, they support each other like nobody else can. As she explains, "When children are killed by people other than law enforcement, someone is usually held accountable. In our cases, nobody is held accountable. When there is no accountability, there is no closure." She argues that part of the problem is that people don't

value the lives of those killed by police. “People like to criminalize and dehumanize those who are killed by police, calling them ex-felons, parolees, gang members, or mentally ill, when in fact they are human beings,” she says. “I always tell people, ‘One human being killed another human being, and they should be held accountable.’”

Theresa continued, “I’m not against the police. I’m against the ones who are abusing their power. They need to be held accountable.”

When Theresa lost her son, Caesar, to Anaheim PD lethal use of force, she waited over a year for the District Attorney’s report on the shooting. It never came. Finally, a reporter called her and asked if she knew that the DA had ruled on her son’s case. The reporter had taken an interest in the case and was close to Theresa. She had humanized Caesar and the rest of the family, for which Theresa was grateful. A year and a half after the killing, the reporter told Theresa that the ruling was public record.

When she looked up the ruling on the DA’s website, Theresa’s heart fell. The DA had ruled the killing justified, even though the police officers had shot Caesar in the back. Theresa said, “I had a really difficult couple of days. It was hard to read the DA report. It was a half-page form letter. There was no information. And they didn’t even bother to send it to our family.” The DA does not regularly send letters declining to prosecute police killings to the family members of the person killed. Currently, the DA issues a press release and posts the letter on the DA’s website.

Theresa brought a wrongful death civil lawsuit. The Ninth Circuit Court of Appeals ruled on the case. The summary opinion by Chief Judge Kozinski states:

*“Four of the officers alleged that they shot Cruz after he exited his vehicle and reached for what they believed was a gun in the waistband of his pants. The panel held that given the curious and material factual discrepancies, including that Cruz did not have a gun on him and was still suspended by his seat belt when he was shot, the district court erred in ruling that only an unreasonable or speculative jury could disbelieve the officers’ version of events.”*¹³

Anaheim PD officers regularly justify shooting deaths by stating that the victim was reaching for his waistband to retrieve a firearm. Caesar is survived by his mother, five sons, two sisters, and one brother.

¹³ *Cruz v. City of Anaheim*, No. 12-55481, (9th Cir. 2014), <http://cdn.ca9.uscourts.gov/datastore/opinions/2014/08/28/12-55481.pdf>.

IV. Analysis & Recommendations

A. Recent Efforts Have Fallen Short of Reform

After the back-to-back shootings of Manual Diaz and Joel Acevedo in 2012 and as a result of community advocacy, Anaheim took some steps to improve police oversight. In 2013, Anaheim retained the Office of Independent Review (OIR), a group of attorneys specializing in reviewing policing for government entities, to review some officer-involved shootings, use of force incidents, and in-custody deaths. The OIR does not conduct separate investigations of each incident. Rather, they review incidents in real time and from Anaheim PD's reports. OIR works closely with the Anaheim Police Department to issue quarterly reports that review all uses of deadly force and in-custody deaths, all biased-based policing complaints, all administrative investigations in which the subject employee is a sergeant or higher, a random selection of one-third of all administrative investigations, a random selection of one-third of citizen complaints, and a random selection of one-fourth of use of force reviews. In each report, OIR delivers public recommendations. However, the decision to implement OIR recommendations is at the discretion of the Police Chief. The OIR does not have the authority to deem an officer-involved shooting justified or unjustified, nor can it enforce any of its recommendations.

In 2014, Anaheim also created a pilot Public Safety Board ("PSB"), consisting of nine appointed community members, in order to solicit community input on matters related to public safety and the services provided by the Anaheim PD and the Anaheim Fire Department; to review the public policies, procedures, and practices of those departments; and to provide a forum by which updates and discussion on matters related to public safety could be made available to the public at large.¹⁴ As set forth below, the PSB lacked sufficient authority and resources to provide meaningful oversight.

Anaheim PD has also taken some steps to improve its policies on use of force and to improve relationships with the public. The Department outfitted its officers with body-worn cameras in 2015. Anaheim PD increased staffing on the community policing team, in which officers regularly patrol in the same neighborhoods and conduct community outreach. Anaheim PD also provided some training to officers on how to interact with people experiencing mental illness—although the department requires only four hours of training, and refused to increase required training on mental illness to 40 hours as recommended by the Orange County Grand Jury in 2015.¹⁵ Anaheim PD took limited steps towards increased transparency by making some information available online, including some department policies, data on officer-involved shootings, and complaint filing forms. Anaheim PD improved its communications procedures following fatal use-of-force incidents by requiring Command Staff to meet with families of those

¹⁴ City of Anaheim, Office of the City Manager, *Council Agenda Report, Public Safety Board* (Feb. 18, 2014) <https://www.anaheim.net/DocumentCenter/Home/View/3792>.

¹⁵ Orange County Grand Jury, *The Mental Illness Revolving Door: A Problem For Police, Hospitals and the Health Care Agency*, 21, 46 (2015), http://www.ocgrandjury.org/pdfs/2014_2015_GJreport/Mental_Illness_Website.pdf; Anaheim Police Department, Chief Raul Quezada's *Response to Grand Jury Report the Mental Illness Revolving Door: A Problem for Police, Hospitals and the Health Care Agency*, Statement refusing to increase to 40 hours. POST currently requires on four hours of academy training on mental illness and developmental disability. 11 Cal. Code Regulations § 1081, (Sept. 24, 2015), http://www.ocgrandjury.org/pdfs/2014_2015_GJreport/2015-09-24_Anaheim_Police_Dept.pdf.

killed by Anaheim PD officers to explain the investigation process and timeline. After a critical incident, Anaheim PD also outreaches to affected neighborhoods in an effort to “respond to community members’ concerns.”¹⁶

But while these changes are important, many more significant reforms remain. And while Anaheim PD has made some changes to their policies and procedures at the urging of OIR, it has disregarded other critical OIR recommendations.

B. Meaningful and Effective Civilian Oversight

As the President’s Commission on 21st Century Policing recognized, “[s]ome form of civilian oversight of law enforcement is important in order to strengthen trust with the community.”¹⁷ Anaheim’s pilot Public Safety Board, while commendable as an experiment with increased civilian oversight, suffered serious structural problems that prevented it from providing meaningful oversight or reassurance to the community that it could help hold Anaheim PD accountable.

1. Anaheim’s Pilot Public Safety Board Was Too Weak to Provide Oversight

Operating under the City Manager’s Office, the PSB was tasked with reviewing department budgets and staffing in order to examine services provided to the public. Board members were responsible for reviewing the efficiency of public safety services such as response and handling of critical incidents, including officer involved shootings or use of force. The PSB, in conjunction with the OIR, could issue recommendations to the City Manager, who would communicate them to the Police Chief, Fire Chief, or when suitable, the City Council. By providing another point of interface with the public, the PSB was also intended to provide a forum for feedback, complaints and commendations.¹⁸ The PSB also created a public forum for discussion of public safety issues: for example, OIR reported its findings to the PSB during public meetings, and Anaheim PD responded publicly to OIR’s recommendations during PSB meetings as well. The PSB and City Manager’s office were responsible for producing annual public reports covering the number of complaints against public safety departments,

¹⁶ OIR Group, *Officer-Involved Shootings RE Anaheim Police Department: Systemic Recommendations*, (Apr. 2015), <http://www.anaheim.net/DocumentCenter/Home/View/9388>.

¹⁷ President’s Task Force on 21st Century Policing. 2015, *Final Report of the President’s Task Force on 21st Century Policing*. Washington, DC: Office of Community Oriented Policing Services., Recommendation 2.8, at 26 (2016), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.; Joseph De Angelis, Richard Rosenthal and Brian Buchner, *Civilian Oversight Of Law Enforcement, A Review Of The Strengths And Weakness Of Various Models* (September 2016), https://d3n8a8pro7vnmx.cloudfront.net/nacole/pages/161/attachments/original/1481727977/NACOLE_short_doc_FINAL.pdf?1481727977; Joseph De Angelis, Richard Rosenthal and Brian Buchner, *Civilian Oversight Of Law Enforcement: Assessing The Evidence*, Office of Justice Programs Diagnostic Center & the National Ass’n for Civilian Oversight of Law Enforcement (Sept. 2016) (hereinafter “*Assessing the Evidence*”), https://d3n8a8pro7vnmx.cloudfront.net/nacole/pages/161/attachments/original/1481727974/NACOLE_AssessingtheEvidence_Final.pdf?1481727974.

¹⁸ City of Anaheim, *Operating Procedures, Pilot Public Safety Board* (Mar. 4, 2014) <https://www.anaheim.net/DocumentCenter/Home/View/9475>.

recommendations, and discussion on public perception of Police and Fire Department standards.¹⁹

The PSB's performance fell far short of these expectations. An assessment commissioned by the City at the conclusion of the PSB's two-year pilot period reported that community members did "not believe the PSB has the investigative and disciplinary authority to effect change in the police department."²⁰ Board members expressed frustration with the limitations on the board's authority and scope and voiced a "relatively high level of skepticism" in response to the assessment's questions whether the PSB benefitted the police department.²¹ Board members also found the lack of staffing and resourcing posed an obstacle, noting that the Board lacked an independent budget and was staffed by a single member of the City Manager's office, as one among many other duties.²² As one example, when board members voted to ask the Office of Independent Review to inquire into a specific complaint, Anaheim's City Manager informed them that only he would take their vote under advisement.²³ Ultimately, the City Manager directed internal human resources to review the complaint, at the recommendation of the OIR—but the episode made clear that the PSB lacked independence to conduct even reviews of complaints or investigations, and instead depended on the approval of the City Manager to perform its appointed role.²⁴

The PSB also lacked any authority to change Anaheim PD policy and practice. Instead, final policy decisions remained with the Chief of Police without regular review of policy changes by PSB or City Council. Nor did the PSB manage to review specific incidents regularly. Even when OIR did investigate an incident and report to PSB, the City limited the information it could share with the Board out of concerns for confidentiality of internal investigations. As the City's assessment noted, the PSB never issued reports analyzing complaints and recommendations for improvements to Anaheim PD as directed by City Council.²⁵ In the end, the PSB became a forum for board members and the public to hear presentations by OIR and Anaheim PD on policy recommendations and decisions, respectively. PSB members did not review complaints of the Anaheim PD, but only heard grievances from community members during the public comment period of the PSB meetings. This community forum meeting format rendered PSB members powerless in addressing complaints and the public disillusioned with the purpose of the PSB.

A recent review of civilian oversight models by the U.S. Department of Justice Office of Justice Programs ("OJP") described three types of oversight: *investigation-focused* models, which may

¹⁹ City of Anaheim, *Operating Procedures, Pilot Public Safety Board*, (Mar. 4, 2014) <https://www.anaheim.net/DocumentCenter/Home/View/9475>.

²⁰ Joseph Brann & Associates, *Evaluation of the Anaheim Public Safety Board* (Jan. 26, 2017) (hereinafter "Brann Report"), <https://ca-anaheim.civicplus.com/DocumentCenter/View/14764>.

²¹ Gabriel San Roman, *Will Anaheim Purge Its Public Safety Board Five Years After Summer Riots?*, O.C. Weekly, (April 10, 2017), <http://www.ocweekly.com/news/will-anaheim-purge-its-public-safety-board-five-years-after-summer-riots-8026760>; Brann Report, *supra* note 20, at 8.

²² Brann Report, *supra* note 20, at 6.

²³ Thy Vo, *Anaheim Residents: City's Police Watchdog Panel Has No Bite*, Voice of O.C. (Jan. 3, 2017), <https://voiceofoc.org/2017/01/anaheim-residents-say-citys-police-watchdog-has-no-bite>.

²⁴ Thy Vo, *Anaheim Police Chief Didn't Have Complete Information About KKK Rally, City Says*, Voice of O.C. (May 9, 2017), <https://voiceofoc.org/2017/05/anaheim-police-chief-didnt-have-complete-information-about-kkk-rally-city-says>.

²⁵ Brann Report, *supra* note 20, at 11.

operate separately from the police department to investigate complaints independently with a staff of civilian investigators and power to hold hearings; *review-focused* models, which use civilian volunteers to review the quality of investigations into misconduct completed by the police department and may take complaints and make recommendations to the department; and *auditor/monitor-focused* models, which use professional staff to examine patterns in complaints and department policies, practices and training, often empowering them to initiate their own investigations.²⁶

Due to its lack of power, the PSB does not fit within any of these common models of civilian oversight. It arguably best matched the review-focused model because of its volunteer civilian composition. The PSB certainly suffered from typical limitations of that model, including a lack of authority to evaluate larger-scale policies and procedures or patterns in officer conduct; a lack of independence due to an absence of staff of budget, insufficient authority to conduct independent investigations; and reliance on volunteers with less time and expertise than paid staff to review police actions.²⁷ But because OIR was limited in the evidence it could share with board members due to concerns over confidentiality, the PSB never fulfilled even a review function because it lacked access to the evidence gathered in specific investigations or power to issue even recommendations or findings in specific investigations.

2. *Implementing Improved Oversight*

To provide civilian oversight that the City needs to build trust between police and the public, Anaheim's City Council should create a strengthened civilian review agency dedicated to overseeing police.²⁸ Both the OJP analysis and other scholarship have identified key factors in successful oversight, which mirror recommendations already made by ACLU SoCal and a coalition of community members and organizations.²⁹ The City should create an oversight entity that satisfies each of these factors:

1. **Independence.** The new oversight body should be structurally separate from the police department and appointed with individuals that represent the community rather than being beholden to the Police Department or other City entities. To ensure this, include representatives from communities most affected by police practices and exclude current and former City, Department, and Association employees.³⁰ The entity must also have clearly defined legal and fiscal authority to exercise its oversight role by conducting investigations and making recommendations, without requiring approval of other City entities for individual decisions or expenditures. As the OJP analysis notes, "The more

²⁶ *Assessing the Evidence*, *supra* note 17, 24-32.

²⁷ *Id.* at 29.

²⁸ The Brann Report questioned why the PSB would be charged with reviewing the Fire Department given the absence of community concern over that agency, and recommended that the PSB no longer be charged with reviewing the Fire Department so that it could "devote [its] full attention to the Police Department." Brann Report, *supra* note 20, at 15.

²⁹ Letter to Anaheim City Council from ACLU SoCal, Anaheim Community Coalition, Anaheim Poverty Task Force, Law Enforcement Accountability Network, and Orange County Communities Organized for Responsible Development (OCCORD) (Apr. 25, 2017).

³⁰ *Assessing the Evidence*, *supra* note 17, at 36-37.

difficult it is to eliminate, censor or shutter the oversight agency, the more likely it is the agency will be able to act with some measure of independence.”³¹

The consideration of independence should also inform the City’s choice for its model of oversight. Investigation-focused agencies, staffed with professionals empowered to conduct investigations independently of the police department, “are the most independent forms of oversight” and are best suited to “increase public faith in the integrity of the investigations process.”³² Independent investigations, directed by a board of community members who are independent of Anaheim PD, City Council, and the City Manager, will best assure the community that Anaheim PD is being held accountable to the city it serves.

2. **Adequate Jurisdiction and Authority.** Civilian review agencies “need to have adequate jurisdiction that will allow them to achieve their organizational goals.”³³ Whether the City adopts a model of separate, independent investigations or review of Anaheim PD’s work, Anaheim’s civilian review agency should have clear authority to investigate or review complaints and any other individual incidents of potential misconduct involving civilians, such as uses of force, in-custody deaths, sexual misconduct, falsifying evidence, unlawful stops and searches, discrimination, and other misconduct, and to set or at least recommend discipline. But the new agency should not be limited to investigation or review of individual incidents. It should also be authorized to audit Anaheim PD’s practices, policies, and procedures and play at least an advisory role in setting and changing policies, including the Department’s budget and budgeting process and in hiring and training.

The board must be given clear independent investigative authority sufficient to fulfill its mission. Whether it conducts independent investigations or reviews Anaheim PD’s, the new board must be empowered to review all materials and evidence in complaint investigations, department-initiated investigations, and uses of force; to monitor open investigations; to refer investigations back to the police department for further inquiry; to direct OIR or its own staff to conduct specific inquiries, to recommend findings and discipline, and to have resources to review policies and best practices to make recommendations for policy changes arising from incidents. To review policies, the board should be empowered to require the Department to report regarding certain policies and be empowered to approve or reject policies, or recommend that City Council do so. And the board must be empowered to initiate its investigations without seeking permission from the City Manager or other City officials.

3. **Enforceable & Unfettered Access to Police Records.** OJP describes access to police department records as “a critical component of effective oversight.”³⁴ In order to conduct meaningful review and oversight, the board must have access to records (including police disciplinary documents, body camera footage and other video) and other relevant materials, as well as the cooperation of Anaheim PD officers and employees. To ensure independence, this access must be legally enforceable through subpoena power or other

³¹ *Id.* at 37.

³² *Id.* at 25.

³³ *Id.* at 37.

³⁴ *Id.* at 39.

means. The board should also be empowered to subpoena evidence from third-party witnesses outside the police department.

If the new board is clearly charged with reviewing individual incidents and making findings or even recommendations as part of the disciplinary process, state law confidentiality requirements for peace officer personnel records pose no obstacle. Under decisions of the California Supreme Court, a civilian board charged with reviewing police discipline is treated as part of the police agency for purposes of confidentiality of peace officer records under state law and can therefore review investigative materials without violating that confidentiality, and can go into closed session to consider any such confidential materials.³⁵

- 4. Access to and Cooperation of Anaheim PD.** In addition to access to documents, an oversight entity must have access to and cooperation of Anaheim PD and its employees, including command staff, both to provide information to the new board and to receive and respond to its recommendations. The City should require the Department to respond to requests by the new agency for information and testimony, and allow for enforcement through discipline including termination. Additionally, the City should require the Chief to review and provide meaningful responses to all recommendations made by the new board. Where Anaheim PD delays or declines the board's recommendations, the City should consider granting the board authority to enforce its recommendations by setting department policy, or at least empower the board to refer any such disagreement to City Council for hearing and decision.
- 5. Adequate Resources.** In order to fulfill its functions, the new agency must not only have legal authority to perform its work, but must also have the staffing and budget to do so. "In general, an oversight agency's resourcing is considered one of the most important potential indicators of effectiveness."³⁶ Even with the limited authority granted the PSB, the City's consultant found concern among board members about the lack of staffing and resources.³⁷ The City should guarantee the new agency sufficient staff and budget to accomplish its goals, including professional staff (or budgets for outside consultants) to guide investigation and review of critical incidents and help review policies and practices.
- 6. Public Reporting, Transparency and Community Engagement.** For a civilian oversight board or agency to help foster public trust, it must operate as transparently as possible. Indeed, the Department of Justice identifies transparency as one of four pillars

³⁵ See *Copley Press, Inc. v. Superior Court*, 39 Cal. 4th 1272, 1290 (2006) (civilian commission, in hearing disciplinary appeals, is functioning as part of a department or agency that employs peace officers such that any records it maintains regarding such appeals are being maintained by such a department or agency for purposes of confidentiality law); *Berkeley Police Ass'n v. City of Berkeley*, 167 Cal. App. 4th 385, 401 (2008) (applying *Copley Press* to civilian review board that investigated civilian complaints and made recommendations on discipline).

The Brown Act allows a local government body to hold a closed session "to consider the ... evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee." Gov't Code § 54957(b). Civilian review boards that have the authority to make factual findings or to recommend findings or discipline have authority to evaluate the employee, and review agencies across California routinely hold closed sessions to review individual complaints or investigations.

³⁶ *Assessing the Evidence*, *supra* note 17, at 41.

³⁷ Brann Report, *supra* note 20, at 6.

of procedural justice, a concept of fairness in process that can help build confidence in police and other institutions.³⁸ The City should empower the new oversight agency to bring as much transparency as possible to Anaheim PD's policies and practices, and to the handling of complaints and investigations of critical incidents, by holding regular public meetings, issuing regular public reports on Department policies and key issues such as uses of force and officer discipline, and issuing as much detailed information as legally permitted on critical incidents and their resolution. The new agency should also engage the community, including marginalized populations, to help publicize complaint processes, inform the public about the agency's work and Anaheim PD policies and issues, and gather input on needs and concerns regarding policing in Anaheim.³⁹

C. Anaheim PD Must Reform Its Policies and Procedures Related to Deadly Force

Our review of Anaheim PD's use of force policy shows a number of ways it is out of step with best practices. Anaheim PD's high rate of police killings may be a system problem, but there are clear steps the department could take to reduce force by changing its policies.

1. Anaheim Should Immediately Implement Changes Recommended by OIR

The City hired OIR in 2013 to review shooting investigations based on investigative information that is not available to the public or the press, and to issue recommendations for improvements to department policies and investigation. As of September 2017, Anaheim PD has implemented forty-two of fifty-seven OIR recommendations. However, some of the most important reforms have been rejected without deliberation involving the City Council or Public Safety Board.

As a first step to reducing force, the department should immediately implement all the recommendations issued by OIR:

Foot Pursuit Policy. Anaheim PD refuses to implement OIR's first recommendation: to develop a robust foot-pursuit policy.⁴⁰ Of the total number of deaths at the hands of the police in 2003-2016, 36% occurred during or after a foot pursuit. The nature of foot pursuits inherently compromises the subjective judgment of officers to use force due to the belief that an ambiguous move by a subject is an effort to retrieve a weapon as they are retreating. Anaheim PD current use of force policy allows officers to act according to compromised judgment and their discretion. Since OIR issued the recommendation in April 2015, two Anaheim residents have been killed by Anaheim PD officers on foot pursuit.

Shooting in Bursts. Anaheim PD also rejected OIR's recommendation to reform police shooting methodology to shoot in short bursts. The department maintains the policy that officers will fire until the imminent threat no longer exists.⁴¹ This policy results in Anaheim PD shooting people

³⁸ Laura Kunard and Charlene Moe, *Procedural Justice for Law Enforcement: An Overview*, U.S. Dep't of Justice, Office of Community Oriented Policing Services, 7 (2015), <https://ric-zai-inc.com/Publications/cops-p333-pub.pdf>.

³⁹ *Assessing the Evidence*, *supra* note 17, at 43.

⁴⁰ Anaheim Police Department, *Response to Office of Independent Review Group Report*, 2 (May 5, 2015) ("Anaheim PD Response to OIR Report"), <https://www.anaheim.net/DocumentCenter/Home/View/9389>.

⁴¹ *Id.* at 8.

an excessive number of times, increasing the chance of fatalities. For example, Anaheim PD in 2015 killed Monique Deckard, who was in her apartment with a knife experiencing a mental health crisis, by shooting her 12 times. Because the gunshot wounds crossed multiple paths, the Orange County Sheriff Coroner was unable to determine gunshot exit wounds.

Out-of-Jurisdiction Shootings. In 2015, the OIR recommended that the Anaheim PD develop a policy to require notification and approval from out-of-jurisdiction police departments before Anaheim police officers conduct operations outside of Anaheim. Since 2003, Anaheim PD has killed two people outside of the city limits. In spite of this, the department determined that pre-notification and approval to conduct operations in outside cities is impractical.⁴²

Officer Early-Intervention System. Police departments throughout the nation have implemented the personnel management tools, variously called “early warning systems,” “early intervention systems” or “early identification systems,” to track use of force and identify individual officers with troubling patterns in order to correct problematic conduct and improve department trends overall.⁴³ Early intervention systems provide an opportunity for department heads to hold officers accountable when they repetitively shoot and kill residents. The OIR noted that Anaheim PD has developed a force review system, but has “determined not to take advantage of the system by determining not to identify the involved officers” in its force review system, instead providing only summary information, apparently in deference to police union concerns that identifying officers “might transform the force review documents into an employee performance tracking system.”⁴⁴ Anaheim PD’s refusal to track officers’ use of force prevents patterns of excessive force from being efficiently identified and corrected. This is especially crucial here, as a small number of officers repeatedly involved in force played a role in more than half the incidents we examined.

Changes to Use-of-Force Policy. Finally, the OIR made multiple recommendations to reform the Use of Force policy. Anaheim PD’s deadly force policy states that an officer may use deadly force to protect themselves or others from what they reasonably believe would be an “imminent” threat of death or serious bodily injury, but does not define what constitutes an “imminent” threat. While a suspect pointing a gun may clearly pose an imminent threat, other situations are less clear — for example, would a suspect who might be armed fleeing into a neighborhood pose an imminent threat of harm? Such a broad definition could justify the use of deadly force in a wide variety of circumstances on subjects who had made no direct threats of force.

OIR suggested that Anaheim PD clearly define what constitutes an “imminent” threat because the current definition in the Use of Force policy is overly broad.⁴⁵ Anaheim PD discounted the recommendation by stating that the Use of Force policy specifically and sufficiently defines

⁴² *Id.* at 19.

⁴³ See, e.g., Samuel Walker, Geoffrey P. Alpert, and Dennis J. Kenney, *Early Warning Systems: Responding to the Problem Police Officer*, Research Brief, Nat’l Inst. of Justice (July 2001), <https://www.ncjrs.gov/pdffiles1/nij/188565.pdf>.

⁴⁴ OIR Group, *OIR Group Independent Review of Anaheim Police Department’s Use of Force and Internal Affairs Investigations: Fourth Quarter 2014 and First Quarter 2015*, at 7 (Oct. 2015), <https://www.anaheim.net/DocumentCenter/Home/View/11122>.

⁴⁵ OIR Group, *Officer-Involved Shootings Re Anaheim Police Department: Systemic Recommendations*, at 6 (Apr. 2015) <https://www.anaheim.net/DocumentCenter/Home/View/9388>.

imminent threat.⁴⁶ When addressing deadly force, the policy should state that deadly force is only justified as a last resort and after all other reasonably available options are exhausted. Deadly force should be justified only in response to an *immediate*, rather than *imminent* threat of death or serious bodily injury. The definition of “imminent” should make clear that an imminent threat to others means persons who are on scene and clearly identifiable as vulnerable, as OIR indicates.

OIR also recommended that Anaheim PD consider intentional head strikes with an impact weapon as a deadly use of force. The department rejected the suggestion by stating that the Use of Force policy already defines all uses of force that can result in death.⁴⁷

It is extremely troubling that Anaheim PD would dismiss such critical policy recommendations by experts that the City itself hired. Neither the Public Safety Board nor the City Manager has the power or opportunity to force Anaheim PD to adopt these recommendations. The City Council has neither reviewed nor challenged the decisions by the Anaheim PD. It should do so, and should require the Department to implement OIR’s recommendations.

2. *Anaheim’s Use of Force Policy Should Be Brought Up To Best Practices*

Beyond the recommendations already made by OIR, Anaheim PD’s use of force policy falls short of national law enforcement standards and strays from governing law in several respects that the Department must change immediately.

Anaheim PD Must Clarify the Standard for Permissible Force. Anaheim PD’s use of force policy does not adequately guide or constrain its officers’ discretion with respect to the use of force. The policy authorizes officers to use reasonable force, but does not define what “reasonable” means. It lists factors that officers should use to determine the reasonableness of force but does not provide a framework within which officers may analyze those factors.⁴⁸ Indeed, the policy states in its first paragraph (then reiterates) that “there is no way to specify the exact amount or type of reasonable force to be applied in any situation,” leaving officers to their discretion to determine the appropriate use of force.⁴⁹

Under established constitutional law, the reasonableness of police force is measured by an objective standard balancing the intrusiveness of the force against the importance of the law enforcement objective under the totality of circumstances known to the officer at the time.⁵⁰ Anaheim PD’s use of force policy does not articulate this balancing test or discuss

⁴⁶ Anaheim PD Response to OIR Report, *supra* note 40, at 8.

⁴⁷ *Id.* at 17.

⁴⁸ Anaheim Police Department Policy Manual, Policy 300 (Use of Force), § 300.3.2 (Jun. 14, 2017) (“APD Use of Force Policy”), <http://www.anaheim.net/DocumentCenter/Home/View/303>.

⁴⁹ APD Use of Force Policy, *supra* note 48, § 300.1, 300.3.

⁵⁰ *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Tennessee v. Garner*, 471 U.S. 1 (1985); Internat’l Ass’n of Chiefs of Police, *National Consensus Policy and Discussion Paper on Use of Force*, Policy, Pt. II. (Oct. 2017) (“National Consensus Policy”) (“Officers shall use only the force that is *objectively reasonable* . . .”), http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf; *id.* Pt. III (defining “objectively reasonable”); Police Executive Research Forum, *Use of Force: Taking Policing to a Higher Standard* (Jan. 29, 2016) (“PERF Principles”), 2 (“Police use of force must meet the test of proportionality”).

proportionality. In this way, it fails to establish even the constitutional floor outlined by the Supreme Court’s decisions *Graham v. Connor* and *Tennessee v. Garner*, at a time when many police agencies are starting to hold themselves to a higher standard than the minimum required by those decisions.⁵¹

Rather than abdicate its responsibility, Anaheim PD should provide effective guidance to officers on what constitutes objectively reasonable force. First, force must be *proportional* to the purpose for which it is used.⁵² To avoid confusing this standard, the Department should remove the policy’s discussion of Penal Code § 835a, which suggests, without discussing proportionality, that any force used to arrest or overcome resistance is permissible. Second, consistent with national standards and models, the Department should emphasize that officers must use the minimal amount of force necessary, using force “only when no reasonably effective alternative appears to exist.”⁵³

Anaheim PD Should Correct Its Definition of Deadly Force. The narrow definition of “deadly force” set forth in Anaheim PD’s use of force policy is not based on any valid legal standard. Under federal and state law, deadly force is “force that creates a substantial risk of causing death or serious bodily injury.”⁵⁴ To meet the constitutional requirement of proportionality, the use of deadly force is legally permissible only to prevent death or serious bodily injury. This legal limitation applies to police use of deadly force whether or not the officer specifically intends to kill or seriously injure. But Anaheim PD policy states that force is not “deadly” unless the officer “anticipated and intended” to cause risk of death or serious bodily injury.⁵⁵ In this way, Anaheim PD’s definition of “deadly force” also deviates from the definition articulated in standard law enforcement use of force policies, including the National Consensus Policy on Use of Force developed by the International Association of Chiefs of Police, which appropriately defines deadly force as “any use of force that creates a substantial risk of causing death or serious bodily injury.”⁵⁶

Anaheim PD’s policy frees its officers to use life-endangering tactics and weapons, without requiring due consideration of whether such force is legal or appropriate under the circumstances. OIR specifically recommended that Anaheim PD clarify whether a head strike

⁵¹ PERF Principles, 1 (“Departments should adopt policies that hold themselves to a higher standard than the legal requirements of *Graham v. Connor*.”); San Francisco Police Department, DGO 5.01, Use of Force (Rev. Dec. 12, 2016) (“SFPD Policy”).

⁵² See, e.g., LASD Settlement Agreement at Pt. VIII (“Deputies and staff shall endeavor to use only that level of force necessary for the situation.”); id. ¶ 104 (requiring LASD to emphasize to deputies that force “must be proportional to the threat or resistance of the subject”); Consent Decree, *U.S. v. Police Dep’t of Baltimore City et. al.*, No. 1:17-cv-0099-JKB (Dkt. 2-2) (D. Md. Jan. 12, 2017) (“Baltimore Consent Decree”) ¶ 127 (“BPD will ensure that . . . officers will use only the amount of force necessary”); Consent Decree, *U.S. v. City of Newark* (D.N.J. signed Mar. 30, 2016) (“Newark Consent Decree”) ¶ 218(oo) (“Reasonable force means force that is objectively reasonable under the circumstances and the minimum force necessary to effect an arrest or protect the officer or another person”).

⁵³ National Consensus Policy, *supra* note 50, Policy Pt. II; see also, e.g., LASD Settlement Agreement at Pt. VIII (requiring LASD to ensure that deputies use force “as a last resort”); Baltimore Consent Decree ¶ 124(a).

⁵⁴ See, e.g., *Smith v. City of Hemet*, 394 F.3d 689, 693 (9th Cir. 2005).

⁵⁵ APD Use of Force Policy, *supra* note 48, § 300.1.1.

⁵⁶ National Consensus Policy, *supra* note 50, Policy Pt. III.

with a flashlight or baton constitutes deadly force, noting that many law enforcement agencies consider all intentional head strikes with an impact weapon to be deadly force due to the likelihood that serious injury or death will result. Anaheim PD's use of force policy does not provide clarity about whether such a deployment constitutes deadly force. Nevertheless, Anaheim PD rejected OIR's recommendation to clarify its policy. Anaheim PD should correct its definition of "deadly force" to make clear that a head strike with an impact weapon, like any other tactic that causes substantial risk of death or serious bodily injury, is subject to the restrictions applicable to deadly force.

Anaheim PD Should Adopt A De-Escalation Policy. Anaheim PD should formally adopt de-escalation by amending its use of force policy to require officers to use de-escalation techniques whenever possible. Currently, the department's use of force policy does not mention de-escalation at all.

De-escalation techniques empower officers to prevent or reduce the need for force. Accordingly, law enforcement experts, such as those comprising the President's Task Force on 21st Century Policing and the Police Executive Research Forum, recommend that police adopt use of force policies that require de-escalation and emphasize alternatives to arrest.⁵⁷ Many police departments, such as those in San Francisco, California; Seattle, Washington; Camden, New Jersey; and more recently Chicago, Illinois, have adopted use of force policies that require officers to use de-escalation techniques whenever it is safe and feasible to do so.⁵⁸ The National Consensus Policy on Use of Force requires officers to use de-escalation techniques and other alternatives to higher levels of force "whenever possible and appropriate before resorting to force."⁵⁹ The Consensus Policy also authorizes officers to use force "only when no reasonably effective alternative appears to exist."⁶⁰

Anaheim PD's use of force policy should similarly require de-escalation and emphasize alternatives to force. The Department should replace the policy's reference to PC § 835a, which suggests that officers have no duty to retreat from forceful efforts to arrest, with language emphasizing that de-escalation techniques may include the use of time, distance, and tactical repositioning to stabilize a situation.⁶¹ Finally, the Department must provide its officers with the training they need to meaningfully use de-escalation.⁶²

⁵⁷ PERF Principles, 4 ("Agencies should adopt General Orders and/or policy statements making it clear that de-escalation is the preferred, tactically sound approach in many critical incidents."); Final Report of the President's Task Force on 21 Century Policing, Dep't of Justice Office of Community Oriented Policing Services 20-21 (May 2015) (21st C. Policing Report).

⁵⁸ See, e.g., SFPD Policy, Pt. I(C); Seattle Police Department Manual, Policies 8.100 (Sept. 2015), available at <http://www.seattle.gov/police-manual/title-8>; Chicago Police Department, General Order G03-02 ("Use of Force") (2017), Pt. III(B)(4), available at <https://home.chicagopolice.org/use-of-force-policy/>.

⁵⁹ National Consensus Policy, *supra* note 50, Policy Pt. IV(B) ("De-escalation").

⁶⁰ *Id.*, Pt. II.

⁶¹ *Id.*, Pt. III (defining de-escalation); Final Report of the President's Task Force on 21st Century Policy, at 20-21.

⁶² In the fall of 2015, Anaheim PD rejected the Orange County Grand Jury's recommendation to provide increased training on how to interact with individuals suffering from mental illness and on the application of de-escalation tactics and techniques. Although Chief Quezada agreed with the Grand Jury that the training provided to law enforcement officers is deficient, and additional training would "greatly enhance" service delivery, he concluded that requiring the training suggested by the Grand Jury would be "untenable." City of Anaheim Police Department

D. Anaheim PD Should Revise Its Body Camera Policy to Promote Transparency and Accountability

When Anaheim PD began using body-worn cameras in November 2014, Mayor Tait explained that cameras would “bring[] transparency and accountability to both sides.”⁶³ But body cameras are only tools. The extent to which they promote transparency and accountability depends on how they are used, and Anaheim PD’s policy governing body worn cameras suffers serious flaws that are at odds with those stated goals. Since Anaheim PD implemented its body worn camera policy in 2015, Anaheim PD has been involved in six arrest-related deaths. The Department should revise its body camera policy to

1. Anaheim Should Release Body Camera Footage of Critical Incidents

Body cameras do not promote transparency if the public does not get to see the footage. But to date, Anaheim PD has not released body camera footage of critical incidents. The body camera policy states:

“The Chief of Police has the discretion to allow viewing or release of recorded files if the Chief determines it is in the best interest of the Police Department or the City of Anaheim.”⁶⁴ (Policy Manual, 345)

When police kill a civilian, the community needs answers. They need to understand why the killing occurred, whether the Department believes the officer acted appropriately, and what the Department will do to help ensure killings won’t happen again. Under California law, the public has essentially no access to information about disciplinary investigations of police officers, even those arising from police killings. However, a California Court of Appeal recently ruled that body camera footage is not a confidential personnel record.⁶⁵

In California, 84% of voters favor requiring police to wear body cameras and 74% endorsed public access to video captured by those cameras when an officer stands accused of misconduct.⁶⁶ Body camera footage must be publicly released in critical incidents and when there is a strong public interest that outweighs privacy concerns.

For shootings and other critical incidents, Anaheim PD should release video promptly, within 30 days after the incident. That period should allow the Sheriff’s Department sufficient time to undertake its initial investigations, yet ensure that footage is released in a timely manner to address community concerns. A critical incident involving an officer’s use of deadly force is a

Response to Grand Jury Report (The Mental Illness Revolving Door: A Problem for Police, Hospitals and the Health Care Agency), Sept. 24, 2015.

⁶³ Louis Casiano, *Anaheim Police Officers to Wear Cameras*, Orange County Register (Sept. 10, 2014), <http://www.ocregister.com/articles/cameras-634334-video-police.html>.

⁶⁴ Anaheim Police Department Policy Manual, Policy 451 (Body Worn Cameras), (adoption date Jan. 1, 2015) <http://www.anaheim.net/documentcenter/view/346>.

⁶⁵ *City of Eureka v. Super. Ct. (Greenon)*, 1 Cal.App.5th 755 (2016).

⁶⁶ Conor Friedersdorf, *Policing Reforms That Politicians Won’t Deliver*, The Atlantic, (Aug. 27, 2015) <https://www.theatlantic.com/politics/archive/2015/08/california-police-reform/402511/>.

high-priority investigation and interviews of most potential witnesses realistically will take place within the first days—if not hours— following the incident. A 30-day delay will provide more than enough time to conduct relevant interviews, and should only be extended under extraordinary circumstances, such as if an officer or witness to the shooting was seriously injured during the incident could not be interviewed within that timeframe.

There is no basis to withhold video camera footage until after internal investigations have been completed, or charging decisions are made. The public should not have to wait years for the release of footage from a high-profile use of force incident. Withholding footage for that length of time severely undermines the value of body cameras as tools for transparency and accountability without serving any countervailing public good. The justification often cited for delaying the release of body camera video until all criminal or civil proceedings have ended are based on a stated concern that the video could unduly influence a jury pool in criminal or civil proceedings or the District Attorney himself; neither provides a compelling reason for delayed release. Any possible prejudicial effect of video footage on a jury already can be mitigated through existing procedures such as *voir dire*, challenges to jurors, or, in the extreme case, change of venue, which courts already use to protect against any undue influence caused by media coverage.

2. *Anaheim PD Should Require Officers Involved in Critical Incidents to Provide An Initial Interview Before Viewing Body Camera Footage*

Moreover, in many cases there may exist video from third parties already in circulation that provides a less-complete picture of the use of force than body camera footage. Delaying the release of the full footage therefore only risks the promulgation of public misinformation rather than ensuring that the public remains ignorant of the incident prior to trial. Nor should there be any concern that the release of the body camera footage prior to the District Attorney's charging decision may influence the D.A.'s decision, because—to the extent the D.A. may be persuaded by public pressure—the pressure will be just as great if the video is released at the same time as his decision. Withholding footage for an extended period of time therefore only serves to foster the perception that law enforcement is attempting to hide the truth of what happened or bide its time until a particular incident has receded from the forefront of the public's memory.

Anaheim PD's body camera policy explicitly permits officers who have been involved in shootings, or their attorney the choice of reviewing his or her body camera footage of the incident either "prior to the interview or after the employee has been interviewed by the appropriate investigative personnel."⁶⁷

Allowing officers to review video before they are interviewed hurts rather than helps accountability and public trust. Showing officers video of a critical incident not only allows officers to tailor their statement to the video, but influences their memories by showing them footage that is separate from their own perception prior to obtaining a statement. Increasingly, other California agencies and law enforcement professionals are adopting or endorsing review policies that reflect the common-sense investigative practice applied in all other contexts, by not allowing officers that are part of investigations to review video footage prior to providing an

⁶⁷ Anaheim PD Policy Body Worn Camera, *supra* note 64, § 451.7(m).

initial statement. Many of these entities have formally recognized that giving officers a chance to tailor their story to the video evidence undermines their credibility even when they tell the truth—and the cognitive effects of reviewing video actually change the memory officers are asked to recount. The Oakland Police,⁶⁸ Riverside Sheriff,⁶⁹ San Francisco Police,⁷⁰ and San Jose Police⁷¹ departments all require officers under investigation to provide at least an initial statement to investigators, then allow officers to watch the video and add information and context to their account. The Inspector General for Los Angeles County,⁷² the Inspector General for the New York Police Department,⁷³ and the Executive Director of the Police Executive Research Forum⁷⁴ also urge this approach. By ensuring that officers' individual recollections are not altered or erased through viewing video footage before they are able to provide an initial account of what happened from their perspective, this policy allows for the most complete and accurate investigation of an incident and does not foster the perception that body cameras are being used to cover up misconduct.

Anaheim PD's body camera policy raises other concerns related to privacy rather than accountability and transparency, and the department should provide safeguards by requiring officers to provide notice, where possible that they are being recorded and to prohibit the use of cameras to conduct surveillance of First Amendment protected speech, associations, and religion, or analysis of camera footage using facial recognition technology or other surveillance tools.

Conclusion

As the data and discussion above demonstrate, Anaheim Police Department continues to engage in a high number of police shootings and other officer-involved deaths compared to other departments, despite relatively low crime rates, that disproportionately affect communities of

⁶⁸ Oakland Police Department, Departmental General Order I-15.1, "*Portable Video Management System*," (effective July 16, 2015),

<http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak054254.pdf>.

⁶⁹ Riverside Sheriff's Department, Department Directive #16-003, "*Body Worn Camera Systems – Field Operations*," (effective Jan. 26, 2016), available at <https://www.documentcloud.org/documents/2699342-Body-Camera-Policy.html>.

⁷⁰ San Francisco Police Department, "*Body Worn Cameras Policy – Recommended Draft*," (Dec. 2, 2015), available at [http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/27676-](http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/27676-Body%20Worn%20Camera%20120215%20draft%20for%20meet%20and%20confer.pdf)

[Body%20Worn%20Camera%20120215%20draft%20for%20meet%20and%20confer.pdf](http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/27676-Body%20Worn%20Camera%20120215%20draft%20for%20meet%20and%20confer.pdf). The San Francisco Police Commission approved the policy on Dec. 2, 2015. See <http://sanfranciscopolice.org/body-worn-camera-policy>.

⁷¹ San Jose Police Department Policy, Section 16, Body Worn Camera Policy (effective date Jun. 29, 2015), available at http://www.sjpd.org/InsideSJPd/BodyCameras/BWC_Policy.html.

⁷² Los Angeles County Office of Inspector General, *Body-Worn Cameras: Policy Recommendations and Review of LASD's Pilot Program*, 30 (Sept. 2015), available at https://oig.lacounty.gov/Portals/OIG/Reports/Body-Worn%20Cameras_OIG%20Report.pdf. Moreover, the Los Angeles Sheriff's Department does not permit deputies to view video from cameras in jails under similar circumstances. See Los Angeles County Office of Independent Review, *Eleventh Annual Report*, 36 (Dec. 2013), available at http://shq.lasdnnews.net/shq/LASD_Oversight/OIR-Eleventh-Annual-Report.pdf.

⁷³ New York City Department of Investigation, The Office of the Inspector General for the NYPD, *Body-Worn Cameras in NYC: An Assessment of NYPD's Pilot Program and Recommendations to Promote Accountability*, 26–29 (July 2015), available at <http://www.nyc.gov/html/oignypd/assets/downloads/pdf/nypd-body-camera-report.pdf>.

⁷⁴ Kimberly Kindy, Julie Tate, *Police withhold videos despite vows of transparency - But officers investigated in fatal shootings are routinely given access to body camera footage*, Washington Post (Oct. 8, 2015), available at <http://www.washingtonpost.com/sf/national/2015/10/08/police-withhold-videos-despite-vows-of-transparency/>.

color. Anaheim's efforts at reform since 2012 have fallen significantly short of what is needed to address these police killings. Anaheim PD must change its policies to more clearly limit use of deadly force and make body cameras actually serve their stated purpose of providing transparency and accountability. But more importantly, Anaheim needs to change the structure of oversight, by replacing the piloted Public Safety Board that was too weak to do its job with an entity with the authority and resources to conduct full, independent reviews of critical incidents and civilian complaints, to provide meaningful transparency and systemic review of police policies, practices and discipline.

Appendix: Additional Charts

Anaheim P.D. On-Duty Officer-Involved Deaths (2003-2016)

Person Killed	Date	Age	Race	Force Used	Officers Using Force	Armed	Circumstances
Hertl, Justin Shane	11/14/03	23	White	Shooting	Hale, McAlpine , Norris	Replica handgun	
Murphy, David	12/01/03	44	Black	Shooting	Hayes, Starke	Knife	
Cherry, Brett Alan	05/24/04	37	White	Shooting	Brucks, Bailey, Elliot	Knife	
Carrillo, Frank	04/06/05	28	Latino	Shooting	Ruiz, Edward	Unarmed	Shot at moving vehicle
Velasquez, Juan Alvarez	11/05/05	23	Latino	Shooting	Delgado, Rudy	Gun	
Drummond, Brian	07/26/06	39	White	Chokehold, Restraint	McElhaney, Brian	Unarmed	Mental Health Condition
Hernandez, Hugo	09/11/06	28	Latino	Shooting	Olmedo , Weber	Unarmed	Foot Pursuit
Whitehouse, Joe	07/19/07	30	White	Shooting	Tisdale, Skeete	Knife	
Terriquez, Jorge Renteria	09/09/07	35	Latino	TASER	Christy, Lahmon, Skeete	Unarmed	
Rosalescaretto, Haslin	03/24/08	31	Latino	Shooting	Stancavage, Olmedo	Unarmed	
Abrams, David Michael	06/23/08	40	White	Shooting	Starke	Gun	Foot Pursuit
Alexander, Julian	10/28/08	20	Black	Shooting	Flanagan	Unarmed	
Koeningsberg, Barry	01/08/09	43	White	Shooting	Helmick	Gun	Stand-off
Gutierrez, Andrew Jacob	06/17/09	29	Latino	TASER	Flanagan	Unarmed	Foot Pursuit
Gonzales, Adolph Anthony	09/25/09	21	Latino	Shooting	Wyatt	Unarmed	Foot Pursuit
Castillo, Anthony Encarnacion	09/30/09	31	Latino	Shooting	Helmick , Lopez, McAlpine	Gun	
Cruz, Caesar Ray	12/11/09	35	Latino	Shooting	Phillips , Linn , Vargas, Stauber, M. Brown	Gun*	Stand-off, Gun found on car seat
Raya, David	08/16/11	23	Latino	Shooting	Linn , Meyer	Unarmed	Foot Pursuit
Ceja, Marcel Luis	11/08/11	22	Latino	Shooting	Garcia	Gun	Foot Pursuit
Villegas, Bernie Cervantes	01/07/12	36	API	Shooting	Bennalack	BB Gun	
Cambridge, Roscoe	01/19/12	29	White	Shooting	Bustamante	Knife	Mental Health Condition
Hernandez, Martin Angel	03/06/12	21	Latino	Shooting	Hurtado, Drabek, Brannigan	Gun	Foot Pursuit
Diaz, Manuel Angel	07/21/12	25	Latino	Shooting	Bennalack	Unarmed	Foot Pursuit

Person Killed	Date	Age	Race	Force Used	Officers Using Force	Armed	Circumstances
Acevedo, Joel Matthew	07/22/12	21	Latino	Shooting	Phillips	Gun	Foot Pursuit
Moreno, Robert Andrew	03/20/14	21	Latino	Shooting	Romero, Cossin, Delgado, Dale, Spranger	Gun	Foot Pursuit
Parker, Steen	09/19/14	43	White	Shooting	Bennalack , Brydges, Elms, Panov, Salicos	Gun	Stand-off
Deckard, Monique	03/08/15	43	Black	Shooting	Nooitgedagt, Miller, Flanagan	Knife	Mental Health Condition, Stand-off
Anderson, Paul	04/04/15	31	Black	Shooting	Petropulos, Starke , Moore	Gun	Foot Pursuit
Garcia, Rene	06/08/15	30	Latino	Shooting	Anderson, Escobar	Knife	Mental Health Condition
Najera, Gustavo	02/09/16	22	Latino	Shooting	Alvarez	Unarmed	Mental Health Condition
Rendon, Danny	02/20/16	30	Latino	Shooting	Brennan, Carney, Florendo	Gun	Stand-off
Valenzuela, Vincent	07/10/16	32	Latino	TASER	Wolfe, Jun	Unarmed	Mental Health Condition
Flores, Adalid	11/19/16	29	Latino	Shooting	Uribe	Unarmed	Foot Pursuit

Bold indicates officer involved in multiple shootings.

* Officers shot Cruz while he was emerging from his car after a pursuit, claiming that he was reaching for his waistband. No gun was found on Cruz, but one was found on the passenger seat of Cruz's car. Nonetheless, we treat Cruz as armed with a gun for purposes of the report.

Rate of Officer-Involved Killings During Arrest, per million residents
(Anaheim PD vs. California, 2014-2016)

Year	Anaheim			California		
	OIDs	Population	Rate (per million)	OIDs	Population	Rate (per million)
2014	2	352,146	5.7	179	36,899,392	4.9
2015	3	354,532	8.5	216	39,059,809	5.5
2016	4	355,692	11.2	166	39,250,017	4.2
Average Rate			8.462	4.870		
% over California Rate			74%			

APD Arrest-related deaths vs.
Anaheim homicide rate

Year	Non-Police Homicides in Anaheim	APD Arrest- related Deaths	Total	% involving APD
2003	9	2	11	18%
2004	10	1	11	9%
2005	10	2	12	17%
2006	10	2	12	17%
2007	17	2	19	11%
2008	11	3	14	21%
2009	9	5	14	36%
2010	7	0	7	0%
2011	15	2	17	12%
2012	15	5	20	25%
2013	11	0	11	0%
2014	14	2	16	13%
2015	18	3	21	14%
2016	7	4	11	36%
TOTAL	163	33	185	17%

Source for Homicides: USDOJ Uniform Crime Reports