

WOMEN OCCUPY SAN DIEGO
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March 14, 2016

Councilmember Marti Emerald, Chair
Public Safety & Liveable Neighborhoods Committee
San Diego City Council
202 "C" Street, 12th Floor
San Diego CA 92101

Via E-mail to MBerumen@sandiego.gov

Dear Chair Emerald:

Enclosed please find our PowerPoint Presentation for the Public Safety & Liveable Neighborhoods (PSLN) Committee on March 23, 2016, regarding our community-backed Ballot Proposal to make the City of San Diego's Citizens Review Board on Police Practices (CRB) truly independent and transparent. We now have 24 Endorsing community organizations, as listed in the enclosed PowerPoint Presentation.

As you know, on January 5, 2016, in accordance with San Diego City Council Policy 000-21, we filed this Ballot Proposal for consideration by the City Council Rules Committee for referral to the full City Council to be placed on the Ballot for the November 2016 General Election. On January 13, 2016, the Rules Committee held this item over to its meeting of June 15, 2016, where it will consider Ballot Proposals for the November 2016 Election. On that same day, the Charter Review Committee, of which you are Vice Chair, requested that the PSLN Committee hear this Ballot Proposal and make a recommendation to the Charter Review Committee for its determination on inclusion in its recommended Charter Amendments prior to June.

Since then, we have made changes to this Ballot Proposal based on input from current and former CRB members, the ACLU, the Earl B. Gilliam Bar Association, the Police Officers Association and others. Our revised Ballot Proposal with revisions noted by underlining, is also enclosed.

This proposed Charter Amendment would give the CRB independent investigators and legal counsel as well as subpoena powers, like the City's own Ethics Commission and except for legal counsel, the San Diego County Law Enforcement Review Board since 1990. This Amendment also renames the CRB the COMMUNITY Review Board to reflect the fact that ALL San Diegans are impacted by the San Diego Police Department, and it will have 3 members appointed by each of the City Council Districts to ensure representation of our diverse City.

We presented much of this proposal to the Charter Review Committee last June, which referred it to the PSLN Committee, to which we presented in late September. The PSLN

Committee seemed to find that this proposal requires a Charter Amendment, which would be in the Charter Review Committee's purview. No further action was forthcoming, despite our repeated follow-up, as well as an editorial by the San Diego Union-Tribune:

*"As a San Diego City Council committee considers a wide range of possible City Charter changes for submission to voters next year, we hope it pushes forward ideas to strengthen the powers of the Citizens Review Board on Police Practices. The U-T editorial board is not yet prepared to endorse these added powers, but we think it is an important debate for voters to have and to decide."*¹

In the interim, more reasons for this simple Good Government Charter Amendment surfaced in the press, including a NBC7/39 Investigates report on the failings of the current CRB. This report inspired us to revise our proposal to include independent legal counsel for the CRB, as provided for the City's Ethics Commission.²

The release of security camera video by court order in the case of Afghan refugee, Fridoon Rawshan Nehad, shot dead by San Diego Police Officer Neal Broward in a Midway alley last April, reinforces the need for INDEPENDENT investigation and legal counsel of officer-involved deaths. Any institution that investigates itself has a built-in conflict of interest. We believe this to be true of the San Diego Police Department, City Attorney and District Attorney representing San Diego City law enforcement powers, and it must change.

We look forward to presenting our Ballot Proposal to the PSLN Committee on March 23rd, reflecting input from key stakeholders, as well as a growing community of Endorsing organizations.

Thank you for your assistance,

O/S

Martha Sullivan and Kate Yavenditti, for
Women Occupy San Diego
858-945-6273

Enclosures (2)

¹<http://www.sandiegouniontribune.com/news/2015/oct/03/tp-should-powers-of-san-diego-police-review-board/>.
²<http://www.nbcsandiego.com/news/local/Citizens-Review-Board-Has-Conflicts-And-Lacks-Transparency-Former-Members-360530091.html>

PROPOSED AMENDMENT TO THE SAN DIEGO CITY CHARTER BY AMENDING ARTICLE V SECTION 43 (d) IN ITS ENTIRETY AS FOLLOWS: (Revisions from 1/5/16 underlined.)

(d) COMMUNITY REVIEW BOARD ON POLICE PRACTICES.

- (1) The purpose of the Community Review Board on Police Practices (hereinafter CRB) is to provide effective public civilian oversight of the San Diego Police Department. This representative community group is authorized to investigate independently, conduct reviews and make findings and recommendations concerning allegations of police misconduct or abuse by any member of the San Diego Police Department. The CRB shall also review and evaluate the San Diego Police Department's administration of discipline arising from such complaints. The CRB shall investigate all police shootings (fatal or non-fatal), all cases involving use of weapons (lethal or non-lethal), all criminal conduct by San Diego Police Department, any court finding where evidence has been excluded due to lack of probable cause, and all in-custody deaths. The CRB may also review, discuss and recommend changes in SDPD policies and practices and may hold public hearings on policy issues.
- (2) The CRB shall be supported by one Executive Director, sufficient independent investigators, at least one Complainant Advocate and other staff as determined by the CRB to complete all complaint reviews and recommendations of policy and discipline within the statutory time limits outlined in California law. The Executive Director shall be appointed by the Mayor, with the approval of the City Council and a majority vote of the CRB. The role of the Executive Director is to be administrative staff to supervise other staff. The Executive Director shall support the volunteer members of the CRB in their work, not supervise their work or provide opinions about investigations. The CRB volunteer members shall have input into the position description/contract, hiring, and performance evaluation of the Executive Director. The independent investigators and Complainant Advocates shall be selected, hired and evaluated by the volunteer members of the CRB.
- (3) The CRB shall consist of twenty-seven (27) volunteer members. At least three (3) CRB members must review each case. The members shall reflect the diversity of the City of San Diego in all respects and the diversity of the District from which said member is appointed. Three (3) members shall be appointed by each of the nine (9) Councilmembers from persons residing or working in their respective Council district. The members shall serve without compensation for terms of (4) years, renewable by the Councilmember and a majority of the CRB for an additional four (4) years, after which the member may not apply for membership for a period of four (4) years. Each Councilmember may also select one Prospective Member (member-in-training) who may participate in reviews and all meetings as a non-voting member of the Board.
- (4) Upon the effective date of this legislation, the entire volunteer member CRB will be appointed as follows: the initial term of nine (9) members shall be for three (3) years, another nine (9) for two (2) years and another nine (9) for one (1) year so that no more than nine (9) terms will expire in any one year. Each Councilmember shall make one appointment for each term. Current CRB members shall be eligible for appointment for any of these terms. The Councilmember shall fill any vacancy occurring for any reason for the remainder of that term only.
- (5) The CRB shall retain its own independent legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its responsibilities and duties. Said legal counsel shall have no involvement in defending the City of San Diego from liability for misconduct of San Diego Police Department officers or representing or advising the City of San Diego in any legal matter that might involve a conflict of interest. The CRB shall not receive legal advice or counsel from the City Attorney and no representative from the office of the City Attorney shall be present or provide input at any CRB meetings in his/her representative capacity. Legal counsel shall be selected by the volunteer members of the CRB. The members may request information from the City Attorney's office.

- (6) Throughout their terms, CRB members must fully disclose any conflicts of interest they have in doing the work of the CRB and may be challenged by any other CRB member regarding conflict of interest at any time. Failure to disclose conflicts of interest and violations of the CRB Code of Ethics shall be considered cause for removal. The CRB may remove a member of the CRB for cause by vote of two-thirds (2/3) of the volunteer members of the CRB. No member or investigator or Executive Director shall be currently or formerly employed by the San Diego Police Department or any other law enforcement agency or be employed by or hold any paid office in the City of San Diego.
- (7) The CRB shall establish such rules and regulations, including Bylaws and a Code of Ethics based upon national law enforcement oversight recommended standards, as may be necessary to carry out the purpose for which the CRB is created. All such rules and regulations shall be created within six (6) months of the effective date of this legislation and shall be made available for public comment through all methods available to the CRB for a period of at least sixty (60) days prior to presentation to the City Council for approval. Any changes, amendments, revisions, deletions, etc. from the Bylaws and Code of Ethics shall also involve the same public comment and approval process.
- (8) With the exception of CRB meetings discussing police records or other matters whose discussion in public are prohibited by law (which shall be noticed), all meetings shall be noticed and open to the public, including all committee, executive and ad hoc committee meetings. Officers and staff from the San Diego Police Department shall not attend any CRB meetings where case reviews are discussed, except as requested by the CRB to answer questions.
- (9) Any complaint submitted for consideration by the CRB, whether submitted directly to the CRB or to the San Diego Police Department, shall be in writing and the truth thereof shall be attested to under penalty of perjury. All complaints involving allegations of slur, criminal conduct, force, arrest or discrimination shall be considered by the CRB. Complaint subjects shall be determined by the complainant using published unclassified segments of San Diego Police Department Policies and Procedures from the CRB website or where otherwise available. Except where otherwise prohibited by law, the San Diego Police Department Policies and Procedures shall be published on the CRB website. Complainants may be assisted by a Complainant Advocate. Where a complainant does not indicate one of the above specific categories, the CRB shall determine the nature of the allegation and if it involves one of these categories shall review it. If a complaint does not involve one of these categories, the CRB may decide whether or not to investigate it. The CRB shall review all officer-involved shootings, other fatalities and in-custody deaths, any criminal conduct by San Diego Police Department personal and any court finding where evidence has been excluded because of lack of probable cause whether or not a complaint is filed with the CRB. All complaints received shall also be referred to Internal Affairs Department of the San Diego Police Department for internal review, with the consent of the complainant and all complaints received by San Diego Police Department shall be referred to the CRB for consideration for review.
- (10) All complaints received by the San Diego Police Department shall be delivered directly to the CRB without delay, and the CRB shall review and investigate all complaints it receives promptly, regardless of whether the complainant has also filed a claim against the City of San Diego. The CRB will have adequate staff and technological support to ensure complaints are recorded, tracked, reviewed and investigated in a thorough, accurate, timely and unbiased manner. The status of all complaints presented to the CRB shall be available on the website and through all of the CRB's other public information channels. The CRB shall have the power to subpoena and require the attendance of witnesses and the production of books, papers, and all other data including electronic data pertinent to the investigation from the San Diego Police Department and to administer oath to witnesses.

- (11) The results, findings and recommendations of any CRB determination on a complaint shall not be confidential and shall be available to the public except as otherwise provided by law. Redactions may be used by the CRB when law prohibits personal identifying information of police officers, complainants or witnesses from disclosure. The Complainant may also remain anonymous, if he or she chooses. A determination shall be made by the CRB as to whether an allegation of police misconduct was sustained (evidence supports finding of officer misconduct), not sustained (insufficient evidence either way to reach a determination), or unfounded (evidence supports police officer exoneration). The CRB report shall be provided to the Internal Affairs Department of the San Diego Police Department, to the involved officer's Commanding Officer and to the Chief of Police. The CRB may also make recommendations to the San Diego Police Department and to the Mayor concerning policy changes and/or specific discipline measures in connection with any investigation. In addition, the CRB may hold public hearings and make recommendations on general policy and practices issues of the San Diego Police Department not involving any particular complaint. The CRB shall receive quarterly reports from the San Diego Police Department and the Mayor concerning the status of all recommendations so made.
- (12) The CRB shall submit a budget request during budget planning each year. The CRB budget shall be wholly independent of the San Diego Police Department and City Attorney budgets.
- (13) The CRB shall prepare and submit annual reports to the City Council, the mayor and the public, subject to such confidentiality as required by law. Said reports shall be public and provided within 60 days of the end of each calendar year and shall report CRB findings and recommendations on each allegation for all complaints reviewed during the year as well as information on complaints received but not reviewed. Interim or special subject reports may be directed by the CRB, City Council or the Mayor. Reports shall also contain follow-up reports on recommendations made by the CRB.
- (14) Nothing in this legislation or any rules or regulations developed as a result of this legislation shall interfere with the CRB's authority to independently refer a completed complaint investigation to the grand jury, district attorney, or any other governmental agency authorized by law to investigate the activities of a law enforcement agency.



THE CITY OF SAN DIEGO
CITIZENS' REVIEW BOARD ON POLICE PRACTICES

A G E N D A

Tuesday, February 23, 2016

Mira Mesa Branch Library

8405 New Salem St

San Diego, CA 92126

CLOSED SESSION 4:00 p.m. – 6:00 p.m.

Board Members and Staff Only

- I. Call to Order
- II. Shooting Review Board Reports
- III. Discipline Reports (0)
- IV. Case Review Team Reports (6)
- V. Case-specific Recommendations to the Mayor
- VI. Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency

Pursuant to California Government Code Section 54957 — To discuss citizens' complaints brought against San Diego Police Department Officers under California Penal Code Section 832.7.

OPEN/PUBLIC MEETING 6:30 p.m. – 8:00 p.m.

Open to the Public

- I. CALL TO ORDER/WELCOME
- II. PURPOSE OF THE CITIZENS' REVIEW BOARD ON POLICE PRACTICES
- III. APPROVAL OF MINUTES: CRB Open Meeting Minutes of January 26, 2016
- IV. NON-AGENDA PUBLIC COMMENT (speaker slip required)
- V. PRESENTATION: Psychiatric Emergency Response Team (PERT)
Guest Speaker: **Marla Kincaid - Law Enforcement Liaison**
- VI. COMMITTEE REPORTS (DISCUSSION/ACTION)
 - A. Continuing Education Committee (Charlene McAdory)
 - B. Outreach Committee (Ernestine Smith)
 - C. Rules Committee (Doug Case)
 - D. Policy Committee (Joe Craver)
 - Recommendation to SDPD Van Policy- If for any reason an officer is not able to seatbelt someone in the van, it must be documented.
 - E. Recruitment & Retention Committee (William Beck)

- VII. CHAIR'S REPORT (Lisa Sorce)
 - A. CRB Retreat – March 19, 2016 from 9am -1pm at American Red Cross
3950 Calle Fortunada
 - B. CRB Presentation to League of Women Voters
- VIII. EXECUTIVE DIRECTOR'S REPORT (Sharmaine Moseley)
 - A. Caseload Update
 - B. Community Events/Forums
 - C. Educational Opportunity Forms
 - D. Annual Report Status
- IX. SAN DIEGO POLICE DEPARTMENT REPORT (Executive Assistant Chief David Ramirez)
- X. CITY ATTORNEY REPORT (Noah Brazier)
- XI. OLD BUSINESS
 - A. Proposed Revisions to the Bylaws
- XII. NEW BUSINESS (DISCUSSION/ACTION)
 - A. Report on the NACOLE Conference
 - B. Transportation of Females to Sally Port/Restroom
- XIII. BOARD MEMBER ANNOUNCEMENTS/COMMENTS
- XIV. ADJOURNMENT

Materials Provided:

- Minutes from CRB Open Session Meeting of January 26, 2016
- Suggested Revisions to CRB Bylaws

Public Comment on an Action/Discussion Item: If you wish to address the Board on an item on today's agenda, please complete a speaker form (on the table near the door) and give it to the Board's Executive Director before the Board hears the agenda item. You will be called to express your comment at the time the item is heard. Please note, however, that you are not required to register your name or provide other information to the Board in order to attend our public session or to speak.

Public Comment on Committee/Staff Reports: Public comment on reports by Board Committees or staff may be heard on items which are specifically noticed on the agenda.

Public Comment on Matters Not on the Agenda: If you wish to address the Board on any matter within the jurisdiction of the Board that is not listed on today's agenda, you may do so during the PUBLIC COMMENT period during the meeting. Please complete a speaker form (on the table near the door) and give it to the Board's Executive Director. The Board will listen to your comments. However, California's open meeting laws do not permit the Board to take any action on the matter at today's meeting. At its discretion, the Board may refer the matter to staff, to a Board committee for discussion and/or resolution, or place the matter on a future Board agenda. The Board cannot hear specific complaints against named individual officers at open meetings.

Comments from individuals are limited to five (5) minutes per speaker, or less at the discretion of the Chair. At the discretion of the Chair, if a large number of people wish to speak on the same item, comment may be limited to a set period of time per item. If you would like to have an item considered for placement on a future Board agenda, please contact the Executive Director at (619) 236-6296. The Director will consult with the Board Chair who may place the item on a future Board agenda. If you or your organization would like to have the Board meet in your neighborhood or community, please call the Executive Director at (619) 236-6296.

This agenda will be made available in alternate formats upon request, as required by the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Requests for disability related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services or interpreters, should be forwarded to citizensreviewboard@sandiego.gov, or call (619) 236-6296.



THE CITY OF SAN DIEGO

**CITIZENS' REVIEW BOARD ON POLICE PRACTICES
MINUTES**

Tuesday, September 22, 2015
Malcolm X Branch Library/Valencia Park
5148 Market Street
San Diego, CA 92114

Members Present:

Lisa Sorce, Chair	Diana Dent	Larry McMinn	Ernestine Smith
William Beck, 1st Vice-Chair	Godwin Higa	Joyce Mohrlock	Kathy Vandenneuvel
Douglas Case, 2 nd Vice-Chair	Brandon Hilpert	Mary O'Tousa	Nancy Vaughn
Joe Craver	Charlene McAdory	Pauline Theodore	Martin Workman

Members Not Present:

Taura Gentry
Jim Hurl
Thomas Lincoln
Pieter O'Leary

Staff Present:

Sharmaine Moseley, Executive Director, CRB
Michael S. Giorgino, Deputy City Attorney, City Attorney's Office
David Ramirez, Executive Assistant Chief, San Diego Police Department
Anastasia Smith, Captain, San Diego Police Department
Matt Novak, Lieutenant, San Diego Police Department
Marshall White, Lieutenant, San Diego Police Department
Angelica Navarro - Mora, Detective, Internal Affairs, San Diego Police Department
Denise Sandoval, Executive Secretary, CRB

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- I. CALL TO ORDER/WELCOME: The meeting was called to order at 6:30 p.m.
 - II. PURPOSE OF THE CITIZENS' REVIEW BOARD ON POLICE PRACTICES: The Chair explained the purpose of the Citizens' Review Board on Police Practices to those in attendance.
 - III. APPROVAL OF MINUTES: The CRB's open meeting minutes of August 25, 2015 were reviewed by the Board. It was noted that there were no changes. Doug Case moved to approve the minutes. Nancy Vaughn seconded the motion. The motion was approved unanimously by the Board

IV. NON-AGENDA PUBLIC COMMENT (speaker slip required): It was noted that the Board had one speaker slip.

- Margaret Kuchnia – Women Occupy – City Council Committee Meeting 9/23/2015

V. TRAINING PRESENTATION: “The Ralph M. Brown Open Meetings Act” (*handouts*)
Michael S. Giorgino, Deputy City Attorney
City of San Diego

VI. COMMITTEE REPORTS (DISCUSSION/ACTION)

- Continuing Education Committee (Charlene McAdory) -- Announced the new chair and members of this committee.
- Outreach Committee (Ernestine Smith) - Announced the new co-chairs and members this committee.
- Rules Committee (Doug Case) – Reported that the committee is scheduled to meet on October 13 to discuss case reporting procedures. Announced new chair and members of this committee.
- Policy Committee (Joe Craver) – Reported that he is in the process of scheduling a meeting. Announced new chair and members of this committee. It was announced that the out-going were in the process of organizing standing rules and procedural updates.
- Recruitment & Retention Committee (William Beck & Joe Craver) – Announced new co-chairs and members of this committee. Reported that this committee had a productive meeting with those in attendance. It was further reported that the committee is currently working on scheduling the informational meetings and reviewing resumes of interested individuals.

VII. CHAIR’S REPORT (Lisa Sorce)

- Work Retreat II – Chair Sorce reported that the Board’s next retreat will focus on case reports and the presentation of cases. The retreat will take place on September 29, 2015 from 5:00 p.m. – 7:00 p.m. at the American Red Cross Facility (*address and map to be sent out*)
- CRB Red Binder -- Chair Sorce went over the rules and regulations in the section of 6.2 in the Red Binder. Chair Sorce emphasized the regulations that encourage dialogue between members while still being respectful of fellow board members. Being on time to meetings was also emphasized in this Red Binder section along with being considerate to the time taken out to complete case reviews.

VIII. EXECUTIVE DIRECTOR’S REPORT (Sharmaine Moseley)

- CRB Caseload Update – It was reported that after tonight’s review of cases, the Board has a total of 36 active cases to review. It was further reported that in this new FY, the Board reviewed and closed out 13 cases. There are 12 cases in backlog. In order to address the backlog of cases, the Board agreed to extend its next closed session meeting to 8 p.m. instead of 7 p.m.
- Semi-Annual Report – It was reported that the report might be completed by the first week in October.
- Public Safety & Livable Neighborhoods Committee Meeting – It was reported that the Executive Director’s report for this meeting was sent to the Board late last week. It was further reported that on September 23rd at 1p.m. the Executive Director will appear before committee to update them on operational improvements and long term goals for the

Board. Most of the long term goals would enhance visibility and transparency of the Board. The Board was invited to attend this public meeting.

D. CRB Revised Complaint Form – It was reported that a copy of the new CRB complaint form was included in the Board’s meeting packets. The difference between the old form and the new form was explained to the Board.

IX. SAN DIEGO POLICE DEPARTMENT REPORT – SDPD Captain Anastasia Smith thanked Detective Navarro-Moran and Denise Sandoval for their continued effort in supporting the use of the Share Point Drive and coordinating requested updates made to the tracking system.

X. CITY ATTORNEY REPORT – It was noted that the Mike Giorgino had nothing new to report.

X. NEW BUSINESS (DISCUSSION/ACTION) – It was noted that the Board had no new business to discuss.

XII. BOARD MEMBER ANNOUNCEMENTS/COMMENTS - Several members stood up and shared their ride- along experiences with the rest of the Board. These board members witnessed new police officers embracing Body Worn Cameras (BWC) while in the field and members also witnessed positive relationships between the homeless of San Diego and the SDPD.

XI. ADJOURNMENT

- The meeting adjourned at 7:49 p.m.

Materials Provided

- Minutes from CRB Open Session Meeting of August 25, 2015
- Brown Act Power Point
- CRB Revised Complaint Form



THE CITY OF SAN DIEGO

**CITIZENS' REVIEW BOARD ON POLICE PRACTICES
MINUTES**

Tuesday, November 24, 2015
6:30 p.m. – 8:00 p.m.
City Heights/ Weingart Branch Library
3795 Fairmount Avenue
San Diego, CA 92105

Members Present:

Lisa Sorce, Chair	Brandon Hilpert	Pieter O'Leary	Martin Workman
William Beck, 1st Vice-Chair	Jim Hurl	Mary O'Tousa	
Douglas Case, 2 nd Vice-Chair	Tom Lincoln	Pauline Theodore	
Diana Dent	Charlene McAdory	Ernestine Smith	
Taura Gentry	Larry McMinn	Nancy Vaughn	

Members Absent:

Joe Craver
Godwin Higa
Joyce Morhlock
Kathy Vandenheuval

Staff Present:

Sharmaine Moseley, Executive Director, CRB
Greg Halsey, Deputy City Attorney, City Attorney's Office
David Ramirez, Executive Assistant Chief, San Diego Police Department
Marshall White, Lieutenant, San Diego Police Department
Mike Holden, Lieutenant, San Diego Police Department
Angelica Navarro-Moran, Detective, Internal Affairs, San Diego Police Department
Denise Sandoval, Executive Secretary, CRB

I. CALL TO ORDER/WELCOME: The meeting was called to order at 6:30 p.m.

- II. PURPOSE OF THE CITIZENS' REVIEW BOARD ON POLICE PRACTICES: Chair Lisa Sorce explained the purpose of the Citizens' Review Board on Police Practices to those in attendance.
- III. APPROVAL OF MINUTES: Chair Lisa Sorce moved to approve the CRB Open Meeting Minutes of October 27, 2015. Bill Beck moved to approve the minutes. Larry McMinn seconded the motion. The motion passed unanimously.
- IV. NON-AGENDA PUBLIC COMMENT (speaker slip required): It was noted that there were four speaker slips filled out for the meeting. The first speaker was Judy Neufeld- Fernandez who spoke on the issue of Child Abuse Investigations with the San Diego Unified School District and the San Diego Police Department (SDPD). The second speaker was Margaret Kuchnia who spoke on behalf of Women's Occupy, San Diego. The third speaker did not give a name, as citizens are protected under California Law and are not required to identify themselves when addressing a government entity. The third speaker discussed how the CRB should better communicate with complainants when their complaint is going through the review process. The fourth speaker was Mr. Payne who discussed police complaints concerning reinvestigations of closed investigations.
- V. GUEST SPEAKER: Marquez Equalibria (Conciliation Specialist-United States Department of Justice) "Bridging the Gap Between the Communities and Police"
- The presentation included a summary of what the Department of Justice (DOJ) does and how it functions. Mr. Equalibria explained that DOJ has been around for about 50 years after the Civil Rights Act was passed. The main function of the Department of Justice is to act as a third party mediator for conflicts around the country. It also acts as a conflict resolution organization and offers voluntary assistance to cities in the country with police disputes. Some of the current confidential cases the Department of Justice assists in also include hate crimes. Mr. Equilibria also summarized community policing and how to strengthen the national relations between law enforcement and different communities in the country.
- VI. COMMITTEE REPORTS (DISCUSSION/ACTION)
- A. Continuing Education Committee (Charlene McAdory) – It was reported that with the upcoming holiday season, this committee will be working on securing speakers for future public CRB meetings for the 2016 year.
- B. Outreach Committee (Ernestine Smith and Taura Gentry) – It was reported that the Committee held a meeting earlier that same day at 3:30 p.m. It was further reported that the meeting was successful in identifying different outreach techniques the Board should partake in. The new techniques suggested for improvements was to prepare a 3-6 minute presentation at public meetings to explain the purpose and procedures of the Board to the public in attendance. The committee also suggested that not just members on the outreach committee but all the CRB members should be open to planning their own presentations explaining the purpose of the CRB to their various neighborhoods and communities in order to expand the CRB's audience. It was noted that the revised complaint forms can be used in these

presentations as handouts. These outreach initiatives would be a great way to recruit new members to the Board.

- C. Rules Committee (Doug Case) -- Committee member Nancy Vaughn gave a brief summary on the past Rules and Bylaws of the CRB and how the changes that were made in the last few years. The presentation began with an explanation of Bylaws and Rules from 2012 under Robert's Rules (a guide for how to conduct meetings and making decisions as a group). These rules were organized under three different categories with an additional review of the different standing committees in the CRB. These Bylaws were split up into three separate documents. It was reported that the Rules Committee is now currently working on altering various CRB Procedural Rules. The Rules Committee is also working on reorganizing the format for case reports and is rewriting the CRB's Parliamentary Rules. The role of Parliamentarian is currently being changed from the previous Robert's Rule. The Committee is currently organizing the changed Bylaws into an organized set of documents to present to the Board. Lastly, this committee is working on planning a workshop to clarify the changes regarding case review procedure.
- D. Policy Committee (Joe Craver) -- It was reported that the Policy Committee had nothing new to report.
- E. Recruitment & Training Committee (William Beck and Joe Craver) -- It was reported that the Committee will be beginning interviews for potential Prospective Members on December 2nd and 3rd at the CRB's downtown office. It was reported that around 10 people were selected to be interviewed.

VII. CHAIR'S REPORT (Lisa Sorce)

It was noted that the Chair had nothing new to report.

VIII. EXECUTIVE DIRECTOR'S REPORT (Sharmaine Moseley)

- A. Executive Director Moseley began her report by wishing everyone a Happy Thanksgiving.
- B. Case Load Update- It was reported that the Board is almost caught up with cases. There will not be another extended meeting because of the review teams' hard work. Executive Director Moseley thanked everyone for their work and for getting the cases back on track.
- C. Community Forum/ Forums- It was reported that the CRB participated in a joint Community Forum with Jefferson Law School on November 9th and the event had a good audience in attendance. The Director is planning on collaborating with various San Diego law schools to sponsor future joint forums. It was reported that Executive Director Moseley was a guest speaker at a Broadway Heights Community Event and at a Criminal Justice Class at Southwestern College during the last few weeks. It was also reported that she is also planning on participating with the Outreach Committee in engaging the community to clear up questions about the difference between Albany's Review Board and the CRB as well as questions regarding Body Worn Cameras (BWC). Executive Director Moseley reported that she also spoke at a BAPAC meeting with a good turnout of around 60 to 70 community members. Lastly, Executive Director Moseley reported that she has been attending the SDPD Captain's Advisory Board meetings at the Northern Division.
- D. SDPD Menu Classes- It was reported that Executive Director Moseley attended a class on Street Gangs that was very informative.

IX. SAN DIEGO POLICE DEPARTMENT REPORT (Exec. Assistant Chief David Ramirez)

- It was reported that the SDPD is currently working on the matrix for discipline against officers who have violated Body Worn Camera (BWC) procedures. The SDPD is currently reviewing cases with BWC discrepancies. It was further reported that these reviews are still very progressive. It was lastly reported that the SDPD has been grateful for the CRB and their suggestions for how to review these cases with BWC discrepancies.

X. CITY ATTORNEY REPORT (Greg Halsey)

- It was reported that the City Attorney had nothing new to report.

XI. UNFINISHED BUSINESS

A. Proposed Revisions to the Bylaws

- Nancy Vaughn moved to delete the following sentence from Article III, Section 2.A. of the bylaws revision proposal from the Rules Committee: "If for any reason a member serves a partial term in excess of one-half of a full term, that partial term will be considered a full term for purposes of any term limitations. The motion passed unanimously.
- The Board considered a motion made by Kathy Vandenneuval at the October 27, 2015 and postponed to this meeting that would change the terms of Board members to two year appointments. The motion failed.
- It was decided to vote on the remainder of the proposed changes to Article III, Section 2.A. at the January 2016 open meeting, and a request was made to send Board members a memorandum clarifying the status of the votes on the bylaws proposals

XII. NEW BUSINESS (DISCUSSION/ACTION)

- A. Should the names of subject officers and complainants be redacted from case reports?
(Tabled)
- B. Feedback on alternate method of case presentation *(Tabled)*
- C. Report on the NACOLE Conference *(Tabled)*
- D. Transportation of Females to Sally Port/Restroom *(Tabled)*

XIII. BOARD MEMBER ANNOUNCEMENTS/COMMENTS *(Tabled)*

XIV. ADJOURNMENT

- Meeting was adjourned at 7:55 p.m.

Materials Provided

- XV. Minutes from CRB Open Session Meeting of October 27, 2015.

BOARD MEMBERS

LOREN VINSON
Chair
SANDRA I. ARKIN
Vice Chair
DEBRA DEPRATTI GARDNER
Secretary
GARY BROWN
DELORES CHAVEZ-HARMES
P. DARREL HARRISON
JAMES LASSWELL
CLIFFORD O. MYERS III
LOURDES N. SILVA



EXECUTIVE OFFICER
PATRICK A. HUNTER

County of San Diego
CITIZENS' LAW ENFORCEMENT REVIEW BOARD

555 W BEECH STREET, SUITE 505, SAN DIEGO, CA 92101-2940
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www.sdcounty.ca.gov/clerb

REGULAR MEETING AGENDA
TUESDAY, JANUARY 12, 2016, 5:30 P.M.
San Diego County Administration Center
1600 Pacific Highway, Room 302/303, San Diego, 92101

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the 3-hour public parking spaces.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Ste. 505, San Diego, CA.

1. SWEARING IN OF NEW BOARD MEMBERS

- a) Courtney Chase & Kim-Thoa Hoang

2. ROLL CALL

3. MINUTES APPROVAL

- a) Minutes of the November 2015 Regular Meeting (*Attachment A*)

4. PRESENTATION / TRAINING

- a) Stops/Detentions/Arrests/Field Interview Reports/Photographs: Damon Mosler, Deputy District Attorney

5. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

-continued on next page-

6. NEW BUSINESS

- a) N/A

7. UNFINISHED BUSINESS

- a) Committee for the 2016 CLERB Executive Board

8. BOARD MEMBER COMMENTS

9. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

10. SHERIFF / PROBATION LIAISON QUERY

11. CLOSED SESSION

- a) **Request for Reconsideration:** Pursuant to CLERB Rules & Regulations: 16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report.
 - 14-072 / Giles
 - 14-075 / James
- b) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
 - 14-074 / Foster (Sustained – Deputy 3)
 - 14-075 / James (Sustained – Deputy 6 & the Sheriff's Department)
 - 14-114 / Morales (Sustained – Deputy)
- c) **Evaluation of Executive Officer:** Notice pursuant to Government Code 54957

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (11)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

14-005

1. Death Investigation/Medical - Deputy 1 discovered Dennis Lane unresponsive in his cell on January 28, 2014.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing for this incident; a review was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required. The 62-year old decedent had been incarcerated since December 28, 2013, in mainline psychiatric housing, with a number of medical issues to include bipolar disorder, alcohol and drug abuse, hepatitis, and kidney stones. The day before his death, Lane attempted to assault a deputy and was forcibly restrained; medical staff evaluated Lane and there were no injuries or adverse effects noted. Additionally, the night prior to his death, Lane had a skirmish with his cellmate. Then, while delivering lunch, Deputy 1 discovered the decedent unresponsive and initiated emergency procedures. The medical examiner determined the complainant died from natural causes - acute gastrointestinal hemorrhage due to hepatitis C, with hypertensive cardiovascular disease listed as contributing - and that there were no recent injuries. Detentions staff monitored and supervised the decedent's activities according to Department policy and procedure, and the evidence showed that the actions of the deputies were lawful, justified and proper.

14-121

1. False Arrest – Deputy 2 arrested the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 2 arrested him for allegedly making threats. Deputies responded to multiple reports that the complainant brandished a baton and a firearm, and threatened the apartment leasing consultant and maintenance personnel. The leasing consultant signed a Citizens Declaration to effect the complainant's arrest. Deputy 2 reviewed video evidence provided by security personnel, went to the complainant's residence, and arrested him for violation of Penal Code § 22210, Possession of a Billy Club. A search warrant was served for the complainant's apartment, and deputies recovered a number of firearms, ammunition and other weapons, and the complainant was charged with multiple violations of Penal Code §§ 22210, Sap and Similar Weapons; Prohibition Against Manufacture, Importation, Sale or Possession, 417(a)(1) Brandishing a Weapon other than a Firearm, and 417(a)(2) Brandishing a Firearm. The evidence showed that the complainant was arrested, and the arrest was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to provide an interpreter for the complainant.

Recommended Finding: Action Justified

Rationale: The complainant said he requested a German interpreter during his interview, and when none was provided, he spoke only in German. Deputy 2 reported that he attempted to provide the complainant with Miranda advisements in English prior to interrogation, and the complainant responded only in German. Although Deputy 2 did not understand German, he stated that the complainant did not request an interpreter. At no time during the recorded interview was Deputy 2 heard to deny the complainant an interpreter. Case law, with respect to Miranda advisements, indicates that everyone about to undergo custodial interrogation is entitled to Miranda advisements, and the courts consider the "totality of the circumstances," including the suspect's age, background, intelligence, experience, and conduct, in determining whether the waiver was valid. Further, when dealing with a suspect who does not speak English, the warnings are to be provided in a language the suspect understands. Similarly, a suspect's difficulty in understanding the language in which the warnings are given impact whether a Miranda waiver was knowing and intelligent. Video and audio evidence obtained by Sheriff's detectives prior to the complainant's arrest showed that the complainant, a U.S. military veteran, understood the

English language. Deputy 2 was aware of the complainant's English-speaking abilities prior to the interview, and was under no obligation to provide the uncooperative complainant with an interpreter. Because of the complainant's failure to cooperate, Deputy 2 terminated the interview and the complainant was processed into jail. Deputy 2's conduct was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 2 mocked the complainant for wearing fingernail polish.

Recommended Finding: Not Sustained

Rationale: The complainant stated he was mocked for wearing fingernail polish, because of some items found in his apartment. Deputy 2 reported that he noticed all of the complainant's fingernails were painted black, and asked if the women's apparel found in the residence belonged to the complainant. Deputy 2 denied that the complainant was mocked during the conversation. There was no audio recording of this encounter and therefore, there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 3 played an internet video of “Adolf Hitler” hate speeches.

Recommended Finding: Sustained

Rationale: The complainant stated that Deputy 3 played video and audio of speeches from Adolf Hitler talking about killing Jews, and other non-Germans, while he was being processed for booking. Deputy 3 reported that the complainant was very agitated and yelling loudly in German while at the Patrol Station, so he elected to play a YouTube video of Adolf Hitler speaking to a large crowd. Deputy 3 said he did not understand German, and therefore did not know the content of the speeches. The act, which served no legitimate purpose, was in violation of Sheriff's Policies and Procedures 2.4, Unbecoming Conduct; 2.22, Courtesy; 2.30, Failure to Meet Standards; 2.36, Use of Department Equipment; 2.48, Treatment of Persons in Custody; and 2.53, Discrimination. The act did occur and was not justified.

5. Misconduct/Discourtesy – Deputy 4 called the complainant a “Fucker” and a “Faggot.”

Recommended Finding: Not Sustained

Rationale: The complainant said that Deputy 4 called him a “Fucker” and a “Faggot.” All deputies involved in the complainant's apprehension denied that they made, or heard, any such statements. No evidence directly linked any deputy to the alleged statements, but it was plausible that one or more of those deputies present used the purported language. There were no audio/video recordings available or independent witnesses; therefore, there was insufficient evidence to prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 1 dissuaded the complainant from filing a complaint.

Recommended Finding: Not Sustained

Rationale: The complainant stated that he attempted to file a complaint about the Hitler and Nazi audio/video, and a female deputy dissuaded him from making the complaint. Deputy 1 acknowledged that the complainant had requested to file a complaint, and that he was subjected to a pat down search because of his prior history with weapons. Deputy 1 denied that she attempted to dissuade the complainant from filing a complaint, but did not recall if she provided the complainant with a complaint form. After the pat down search Deputy 1 said she would take the complaint, but the complainant reportedly was no longer comfortable with the situation and departed. There were no independent witnesses or audio recordings of this encounter; therefore, there was insufficient evidence to prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 2 failed to comply with court orders to release property.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 2 failed to release his military identification card and \$121 dollars in cash when requested, in accordance with a court order. The complainant reported to the Station with a court order and requested that the property identified in the court order be released. The property in question was not physically located at the station and needed to be requested from central evidence/property, with delivery expected the following week. On the following day, the complainant sent a friend to the Patrol Station

with a note authorizing the pick-up of his property, but the property could not be released at that time. Deputy 2 did not immediately release the complainant's property when presented with court orders, because the property was not physically located at the Patrol Station. One week later, Deputy 2 facilitated the release of the complainant's property after it was received from central evidence/property. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

14-129

1. Misconduct/Procedure – Deputy 1 failed to immediately notify the complainant when her 12-year-old child was taken into temporary custody.

Recommended Finding: Sustained

Rationale: The complainant alleged that Deputy 1 questioned her child without her permission regarding his alleged involvement in a crime. Witnesses identified the complainant's son as the primary suspect in a felony vandalism crime. Deputy 1 had reasonable cause to believe that the complainant's child had violated the law and was a person described in Section 602 of the Welfare and Institution code, so he contacted the minor at school, and without Mirandizing him (advising a person of their constitutional rights), questioned the minor regarding his involvement in the crime being investigated. Deputy 1 acknowledged that he did not contact the complainant until after he had completed his interview with the minor. The minor was in temporary custody at the time of this questioning, as he was not free to leave. Welfare and Institutions Code Section 627 requires that when an officer takes a minor into custody and to any place of confinement, he shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that such minor is in custody, and the place where he is being held. Deputy 1 did not provide this notification, and his actions were not justified.

2. Misconduct/Procedure – Deputy 1 failed to provide telephone calls to the complainant's 12-year-old child when he was taken into temporary custody.

Recommended Finding: Sustained

Rationale: Deputy 1 had reasonable cause to believe that the complainant's child had violated the law and was a person described in Section 602 of the Welfare and Institution code, and took the minor into temporary custody for questioning. Welfare and Institutions Code Section 627 requires that a minor is allowed the right to make at least two telephone calls from the place where he is being held, immediately after being taken into custody. Deputy 1 acknowledged that he did not provide the minor these telephone calls and his actions were not justified.

3. Misconduct/Procedure – Deputy 1 questioned a minor regarding his involvement in a crime, without Mirandizing him.

Recommended Finding: Sustained

Rationale: The complainant reported that Deputy 1 questioned her 12-year-old child regarding his involvement in a crime, without advising the minor of his constitutional rights. Deputy 1 acknowledged that he did not advise the minor prior to questioning him, nor at any time while the minor was in temporary custody. Welfare & Institution Code § 625, Temporary custody by peace officer; advisement of constitutional rights, requires that when a minor is taken into temporary custody on the ground that there is reasonable cause for believing that such minor has violated any law, he shall receive a Miranda advisement. Deputy 1 had reasonable cause to believe that the complainant's 12-year-old child had violated the law, and did not advise the minor of his rights upon taking him into temporary custody. The evidence supports the allegation, and the act was not justified.

4. Misconduct/Intimidation – Deputy 1 told the complainant's 12-year-old child to confess to a crime or go to jail, or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant was informed by her child that during questioning, Deputy 1 told the minor to confess to a crime or go to jail, or used words to that effect. Deputy 1 denied making this statement, and school

officials present while the minor was being questioned, denied that they heard Deputy 1 make this alleged statement. Absent the presence of independent witnesses, and an audio recording of Deputy 1's interview with the minor, there is insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Discourtesy – Deputy 1 shouted at the complainant to “Get off the phone” when she tried to contact her lawyer for legal advice.

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 exclaimed, “Get off the phone!” when she attempted to contact her attorney for legal advice. Deputy 1 denied that he shouted to the complainant to “Get off the phone,” but rather asked her to hang the phone up or at least set the phone down so that he could continue his investigation. There were no independent witnesses or audio recording of this statement in order to assess the content and tone of what Deputy 1 specifically stated to the complainant. Absent this evidence, it cannot be determined if the actual statement could be construed as discourteous, leaving insufficient evidence to either prove or disprove the allegation.

14-141

1. Misconduct/Procedure – Deputy 1 designated the complainant an improper housing classification, despite a doctor's order for medical housing.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 improperly classified him and assigned him to general population housing, despite a doctor's order for medical housing. The purpose of the Inmate Classification System is to screen, assess and house inmates in a manner that will protect the safety of the community, staff and other inmates, while assisting detention managers and staff in making sound decisions regarding inmate population management. During intake, the complainant underwent a classification evaluation, which included a classification interview, a review of the complainant's criminal history, and a review of all hazards and instructions related to the complainant, to determine his appropriate security level and housing assignment. Based on this evaluation, the complainant was classified a Level 3-Medium Security inmate and cleared for General Population housing. Contrary to the complainant's assertion, there existed no medical or psychiatric doctor's orders directing that he be moved to medical housing. Deputy 1 classified and housed the complainant according to his security level, and this action was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to respond to the complainant's numerous grievances and inmate requests regarding his housing assignment.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that he filed numerous grievances regarding his housing assignment, to which Deputy 2 failed to respond. Detentions Policy N.1, Grievance Procedure, requires that when a written grievance is delivered to a deputy or staff, he or she will sign it so that the signature is recorded on both pages of the two-part NCR form, and the second page of the grievance form is to be given back to the inmate as a signed receipt. If the grievance is collected from a grievance box, the deputy will sign it and ensure that the second page of the grievance form is returned to the inmate concerned. The complainant reported that he did not have any grievance receipts in his possession. Moreover, a review of the Jail Information Management System (JIMS) showed that the only grievances on file related to medical issues and jail conditions – issues outside the purview of sworn staff - and none were found related to the complainant's housing assignment. Absent this documentation, there is insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 2 failed to mail out the complainant's letters to his attorney and Veteran Justice Outreach personnel.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 failed to mail out his letters to his attorney and Veteran

Justice Outreach personnel. During the course of the investigation, however, the complainant subsequently reported that his attorney and Veteran Justice Outreach personnel had received his letters, but they were delayed 2-3 weeks from the time they were sent. The length of the delay of the complainant's mail cannot be determined, nor whether the delay was caused by detentions staff or by the U.S. Postal Service. That withstanding, the complainant acknowledged that mail sent was received, showing that the actions of Deputy 2 were lawful, justified and proper.

15-003

1. Excessive Force/Pepper Spray – Deputy 2 responded to an inmate-on-inmate assault with a use of force against the complainant.

Recommended Finding: Action Justified

Rationale: The complainant reported that the victim initiated a fight with her. Video evidence documented the complainant repeatedly and violently striking the victim in the head with her fist. Deputy 2 reportedly responded to the assault and issued commands, but the complainant continued to fight until two-short bursts of pepper-spray were applied to her face. Video evidence corroborated that the force used was proper and necessary to prevent further injury to the victim.

2. Misconduct/Procedure - Deputy 1 placed the complainant in lock-up without providing medical care for a wrist fracture.

Recommended Finding: Action Justified

Rationale: The complainant was unavailable for further clarification in this matter. Sheriff's medical records confirmed the complainant was treated by medical staff, who followed protocol for pepper spray removal, and issued her an ice pack for an unspecified strain. There was no documentation associated with a wrist injury. Deputy 1 conducted a Disciplinary Hearing with the complainant following the use of force for an inmate-on-inmate assault. Based upon comments, actions and observations of video evidence, he determined the complainant was in violation of the following Inmate Rules & Regulations - assaulted an inmate, interfered with jail operations, and disobeyed staff instructions. Deputy 1 imposed five days of disciplinary isolation in accordance with policy. The complainant then sought medical treatment following her release from custody and hospital records confirmed assessment and treatment for wrist, neck, back, and leg pains. The evidence showed the actions taken by medical and sworn staff at the time of the incident, were lawful, justified and proper.

15-016

1. Illegal Search & Seizure – Deputy 1 searched the aggrieved's property without her permission.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputy 1 searched her house guest's property without her permission. The complainant was on searchable probation, which in part required that she submit her person, vehicle, residence and property to search by her Probation Officer or law enforcement officers, at any time, with or without a warrant, and with or without reasonable cause. Deputies were conducting a Fourth Waiver search at the residence of the complainant, when during a protective sweep, the aggrieved was contacted while in the complainant's bedroom and escorted to the kitchen area downstairs. The aggrieved's backpack was located in the complainant's bedroom and searched by Deputy 1. It is disputed as to whether or not consent was given for the search, however during probation searches, any property under a probationer's control is subject to search, without consent. The backpack was located in the complainant's bedroom, a person who was on searchable probation, and as such the actions of Deputy 1 were lawful, justified and proper.

2. False Arrest – Deputy 1 arrested the aggrieved without cause.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 arrested her house guest without cause. Deputy 1 contacted the aggrieved while conducting a protective sweep during a probation search in the complainant's home. The aggrieved's personal property was searched, and illegal contraband was located. Pursuant to PC§ 836, Peace Officer Arrests, a peace officer may arrest a person if the officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence. The aggrieved was found in possession of drug paraphernalia containing a small amount of a controlled substance. Deputy 1 arrested the aggrieved pursuant to HS §§ 11364, Possession of Controlled Substance Paraphernalia, and 11377, Unlawful Possession of Restricted Dangerous Drug, and this action was lawful, justified and proper.

3. Illegal Search & Seizure – Deputy 2 searched the complainant's vehicle without authorization or permission.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 searched her vehicle without authorization or consent. During the conduction of a Probation Search at the home of the complainant, the complainant's vehicle was located in the garage and searched. The complainant was on searchable probation at the time of this search, and as such was required to submit her person, vehicle, residence and property to search by Probation Officers or law enforcement officers, at any time, with or without a warrant, and with or without reasonable cause. Deputy 2 searched the complainant's vehicle pursuant to the complainant's probation conditions, and his actions were lawful, justified and proper.

15-017

1. Excessive Force – Deputies 2 and 3 “attacked” and threw the complainant to the ground, causing serious injuries.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 2 and 3 “attacked” and threw him to the ground during an incident involving the use of force. The complainant was observed purposely exposing his genitalia to the entire module during laundry exchange. Deputies 1 and 2 instructed the complainant multiple times to cover himself with his blanket, but he ignored their instructions in violation of the facilities' rules and regulations. Deputies 2 and 3 attempted to handcuff the complainant in order to escort him from the module, when the complainant grabbed the upper tier railing and actively resisted the deputies' efforts to control him. Deputies 2 and 3 used their combined body weight to take the complainant to the ground, and applied several knee strikes to his ribcage area, until the complainant surrendered his hands and was controlled. The complainant was seen by medical following this incident, and x-rays taken later did not show any fractures or serious injuries. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. Deputies 2 and 3 utilized department approved Use of Force control compliance techniques, and their actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 placed the complainant in a cell with no clothing or bedding.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 placed him in a cell while naked, and did not provide clothing or bedding for over 24 hours. Following a force incident, the complainant was escorted to the Medical Dispensary for treatment of his injuries and then to Disciplinary Isolation, pending a Disciplinary Hearing for his rules violation. During a use of force involving deputies, the complainant's blanket fell off, and because of his aggressive behavior, it was not safe to remove the handcuffs to allow the complainant to dress prior to moving him. Furthermore, when the complainant was placed in the Disciplinary Isolation cell, deputies were unable to open his cell door to provide clothing because the complainant acted violently, spat on the cell door window, and informed deputies that he had MRSA and AIDS, threatening to infect them with these diseases. Deputy 1 reported that the cell door was not opened due to the complainant's aggressive behavior and to prevent any further use of force. Deputy 1 further reported that it would have been the responsibility of deputies assigned to the complainant's new temporary housing to provide clothing and bedding, and she was unaware as

to when these items were provided. Deputy 1 acted properly in placing the complainant, while naked, into a cell because of significant safety issues, and this action was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 4 failed to provide the complainant clothing and bedding for over 24 hours.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 failed to provide him with clothing and bedding for over 24 hours after he was placed in a Disciplinary Isolation cell. The complainant was placed in Disciplinary Isolation following an incident in which force was used. The complainant was aggressive and acted violently during this placement, informing deputies that he had MRSA and AIDS, and threatened to spit on deputies to infect them with these diseases. Sheriff's records do not document how long the complainant's aggressive behaviors persisted, or when the situation had settled sufficiently so that housing deputies could provide clothing and bedding. Absent this documentation, there is insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 4 failed to respond to the complainant's grievances regarding a use of force incident, and the "cruel and unusual treatment" he allegedly received.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 failed to respond to multiple grievances filed regarding a force incident, and other "cruel and unusual treatment" by deputies. The complainant reported being in possession of grievance receipts filed against these deputies, but failed to provide this documentation for CLERB's investigation when requested. The grievances filed by the complainant that are documented in sheriff's records, related only to medical issues, over which CLERB has no jurisdiction. Absent documentation of filed grievances against subject deputies, there was insufficient evidence to either prove or disprove the allegation.

15-021

1. Misconduct/Procedure – Deputy 1 failed to investigate a crime and apprehend a criminal after the complainant supplied investigative leads.

Recommended Finding: Action Justified

Rationale: The complainant reported that the Sheriff's department had a total lack of interest for investigating this case, identifying what happened and why, and apprehending the criminal. Witnesses provided information concerning a female and unknown male who reportedly fled out of state immediately following this incident. Deputy 1 reported that he pursued this information and attempted to locate and/or interview the female, who was uncooperative. He also contacted out of state police detectives for information on the suspect's whereabouts, but was unsuccessful in developing any leads. An arrest is valid only if supported by probable cause. The involved deputies were in compliance with Sheriff's Policy & Procedure, and the ongoing investigation was re-assigned when Deputy 1 transferred to a different station.

15-026

1. Illegal Search or Seizure – Deputy 2 detained the complainant.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 detained him without cause. The complainant was seated in his car in a parking lot at approximately 11:00 pm waiting for a friend, when he was contacted by Deputy 2. Deputy 2 reported that he noticed a lone vehicle parked at the mall at an hour when all of the mall's stores were closed, so he contacted the complainant to further inquire. While speaking with the complainant, Deputy 2 noticed in plain sight what appeared to be an opened alcohol container in the back seat of the vehicle, in violation of Business & Professional Code Section 25620, Possession of Open Container in Park or Other Public Property, and Poway Municipal Code 8.10.010(a) which prohibits possession of open alcoholic

containers on or near premises where liquor is sold. Deputy 2 asked the complainant to exit his vehicle and detained him pending investigation of the alcohol container, to determine if the seal had been broken and contents partially removed. Case law holds that a detention is valid if law enforcement officers have "reasonable suspicion" that a crime has been committed, or is afoot; and the person being detained is connected with that activity. Deputy 2, having seen an open alcohol container in the complainant's vehicle, had reasonable suspicion to detain the complainant, and his actions were lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 4 stated to the complainant, "Get the hell out of the car, or we'll drag you out," or used words to that effect.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 4 stated to him, "Get the hell out of the car, or we'll drag you out," or used words to that effect. Deputy 4 was dispatched to the scene at 11:00 pm, with a report that a suspicious, occupied vehicle had been located parked in the parking lot of a closed mall. When Deputy 4 arrived on scene, he heard Deputy 2 repeatedly order the complainant to step out of his vehicle, while the complainant continually argued and refused. In an attempt to avoid having to use physical force to gain compliance, Deputy 4 reported that he made the alleged statement, as experience had shown him that the use of strong language was helpful in avoiding the use of physical force when dealing with uncooperative subjects. The complainant immediately exited the vehicle without further incident. Sheriff's Policy 2.22, Courtesy, prohibits the use of coarse, profane or violent language, except when necessary to establish control during a violent or dangerous situation. The complainant was seated in a dark vehicle and had repeatedly refused to follow Deputy 2's orders to exit his vehicle. The complainant's refusal to cooperate created a potentially dangerous situation, as the complainant possibly had access to concealed weapons while seated in his vehicle. Moreover, it is an atypical mindset that would blatantly disobey a lawful order given by law enforcement, and caution is paramount while dealing with such a person. Deputy 4's language, while strong under normal conditions, was used within policy given the totality of the circumstances, and was justified and proper.

3. Misconduct/Discourtesy – Deputy 4 stated to the complainant, "Shut the hell up," or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 stated to him to, "Shut the hell up," or used words to that effect during a law enforcement contact. Deputy 4 denied making this statement, and other deputies on scene denied that they heard Deputy 4 make the alleged statement. Absent independent witnesses or an audio recording of this contact, there was insufficient evidence to prove or disprove the allegation.

4. Illegal Search or Seizure – Deputy 2 searched the complainant's vehicle without permission.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 searched his vehicle without permission. When Deputy 2 contacted the complainant, he noticed in plain sight what appeared to be an opened alcohol container in the back seat of the vehicle. The complainant was parked in a lot adjacent to a liquor store. Deputy 2 detained the complainant pending investigation of the alcohol container, and conducted a probable cause search of the complainant's vehicle for additional contraband. Under the "Automobile Exception," case law authorizes law enforcement officers to search any part of a vehicle (including the trunk and closed containers) if there is probable cause to believe that the vehicle contains evidence of criminal activity, and the evidence may be located in the area searched. Deputy 2 observed an open bottle of an alcoholic beverage inside the complainant's vehicle, and conducted a limited search of the vehicle to ensure that no other contraband was present. This search was within policy and was lawful, justified and proper.

5. Misconduct/Procedure – Deputies 2, 3 and 4 refused to provide the complainant their names and badge numbers when requested.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that he requested the names and badge numbers of Deputies 2, 3 and 4, but was declined. All three deputies reported that they had no recollection of being requested this information, and

further stated that if asked, they would have provided this information to the complainant. There are no independent witnesses to this incident and absent an audio recording of this contact, there was insufficient evidence to prove or disprove the allegation

6. Misconduct/Procedure – Deputy 1 failed to take a complaint.

Recommended Finding: Not Sustained

Rationale: The complainant reported that he contacted Deputy 1 by phone following this incident with Deputies 2 and 4, but he would not take a complaint, informing the complainant that he would need to speak directly with the subject deputies' supervisor when he was on duty. Deputy 1 did not recall this contact with the complainant, but stated that in situations where a citizen would call and complain about a deputy's actions, customarily he would try to handle the complaint himself, and if that did not suffice, he would notify the deputy's immediate supervisor, who would contact the complainant once back on duty. If, however, a person wanted to file a formal complaint, Deputy 1 stated that he would inform the person about the process. To his recollection, the complainant never requested to file a formal complaint. The contact between Deputy 1 and the complainant took place over the phone with no independent witnesses present, leaving insufficient evidence to prove or disprove the allegation.

15-062

1. Misconduct/Discourtesy – Deputy 1 “scolded” and “berated” the complainant for interfering during a contact involving his neighbor.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 1 “scolded” and “berated” him in front of his family during a contact involving a hallucinating neighbor. The complainant contacted sheriff's dispatch after a neighbor was observed outside wielding a machete, while stating that “people” were attempting to rob him and others in the neighborhood. Deputies arrived on scene, and while attempting to control the troubled neighbor, instructed the complainant to “stop talking and leave” when the complainant attempted to assist deputies with the neighbor. The complainant complied, but felt that later in the contact, Deputy 1 spoke to him discourteously, and demonstrated an “attitude” and “tone” that he felt to be unprofessional and unnecessary. The complainant confirmed that Deputy 1 did not yell at him nor use any expletives during this contact. The complainant's subjective feelings about the deputy's “attitude” and “tone” are acknowledged; however, the complaint lacked a prima facie showing of misconduct. Such complaints are referred to the Review Board for Summary Dismissal, pursuant to CLERB Rules & Regulations: Section 9: Investigation of Complaints; Subsection 9.2: Screening of Complaints.

15-105

1. Misconduct/Discourtesy – Deputy 1 sent “hate mail” correspondence to the complainant.

Recommended Finding: Sustained

Rationale: The correspondence sent by Deputy 1 did not target a protected class associated with race, religion, ethnicity/national origin, sexual orientation, disability, or gender, and therefore, could not be legally termed as “hate mail.” However, the written comments expressed by Deputy 1, violated Sheriff's Policy & Procedure 2.4, Unbecoming Conduct and 2.22, Courtesy, in that no member shall use coarse, profane or insolent language in the performance of his or her duties. The evidence supported the allegation and the act or conduct was not justified.

2. Misconduct/Procedure – Deputy 1 misused departmental equipment.

Recommended Finding: Sustained

Rationale: Sheriff's deputies are prohibited from utilizing departmental computers for anything other than business related matters. Deputy 1 violated Sheriff's Policy & Procedures 2.36, Use of Department Equipment, and 6.21, Automation: Departmental Systems, when he used Sheriff's department equipment to send electronic correspondence to the complainant, which expressed his personal opinion(s). The evidence supported the allegation and the act or conduct was not justified.

End of Report

BOARD MEMBERS

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its January 12, 2016 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **Request for Reconsideration:** Pursuant to CLERB Rules & Regulations: 16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report.
 - 14-072 / Giles
 - 14-075 / James

- b) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
 - 14-074 / Foster (Sustained – Deputy 3)
 - 14-075 / James (Sustained – Deputy 6 & the Sheriff's Department)
 - 14-114 / Morales (Sustained – Deputy)

- c) **Evaluation of Executive Officer:** Notice pursuant to Government Code 54957

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (7)

ALLEGATIONS, FINDINGS & RATIONALE

14-005

1. Death Investigation/Medical - Deputy 1 discovered Dennis Lane unresponsive in his cell on January 28, 2014.

Board Finding: Action Justified

Rationale: There was no complaint of wrongdoing for this incident; a review was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required. The 62-year old decedent had been incarcerated since December 28, 2013, in mainline psychiatric housing, with a number of medical issues to include bipolar disorder, alcohol and drug abuse, hepatitis, and kidney stones. The day before his death, Lane attempted to assault a deputy and was forcibly restrained; medical staff evaluated Lane and there were no injuries or adverse effects noted. Additionally, the night prior to his death, Lane had a skirmish with his cellmate. Then, while delivering lunch, Deputy 1 discovered the decedent unresponsive and initiated emergency procedures. The medical examiner determined the complainant died from natural causes - acute gastrointestinal hemorrhage due to hepatitis C, with hypertensive cardiovascular disease listed as contributing - and that there were no recent injuries. Detentions staff monitored and supervised the decedent's activities according to Department policy and procedure, and the evidence showed that the actions of the deputies were lawful, justified and proper.

14-121

1. False Arrest – Deputy 2 arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 2 arrested him for allegedly making threats. Deputies responded to multiple reports that the complainant brandished a baton and a firearm, and threatened the apartment leasing consultant and maintenance personnel. The leasing consultant signed a Citizens Declaration to effect the complainant's arrest. Deputy 2 reviewed video evidence provided by security personnel, went to the complainant's residence, and arrested him for violation of Penal Code § 22210, Possession of a Billy Club. A search warrant was served for the complainant's apartment, and deputies recovered a number of firearms, ammunition and other weapons, and the complainant was charged with multiple violations of Penal Code §§ 22210, Sap and Similar Weapons; Prohibition Against Manufacture, Importation, Sale or Possession, 417(a)(1) Brandishing a Weapon other than a Firearm, and 417(a)(2) Brandishing a Firearm. The evidence showed that the complainant was arrested, and the arrest was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to provide an interpreter for the complainant.

Board Finding: Action Justified

Rationale: The complainant said he requested a German interpreter during his interview, and when none was provided, he spoke only in German. Deputy 2 reported that he attempted to provide the complainant with Miranda advisements in English prior to interrogation, and the complainant responded only in German. Although Deputy 2 did not understand German, he stated that the complainant did not request an interpreter. At no time during the recorded interview was Deputy 2 heard to deny the complainant an interpreter. Case law, with respect to Miranda advisements, indicates that everyone about to undergo custodial interrogation is entitled to Miranda advisements, and the courts consider the "totality of the circumstances," including the suspect's age, background, intelligence, experience, and conduct, in determining whether the waiver was valid. Further, when dealing with a suspect who does not speak English, the warnings are to be provided in a language the suspect understands. Similarly, a suspect's difficulty in understanding the language in which the warnings are given impact whether a Miranda waiver was knowing and intelligent. Video and audio evidence obtained by Sheriff's detectives prior to the complainant's arrest showed that the complainant, a U.S. military veteran, understood the English language. Deputy 2 was aware of the complainant's English-speaking abilities prior to the interview, and was under no obligation to provide the uncooperative complainant with an interpreter. Because of the complainant's failure to cooperate, Deputy 2 terminated the interview and the complainant was processed into jail. Deputy 2's conduct was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 2 mocked the complainant for wearing fingernail polish.

Board Finding: Not Sustained

Rationale: The complainant stated he was mocked for wearing fingernail polish, because of some items found in his apartment. Deputy 2 reported that he noticed all of the complainant's fingernails were painted black, and asked if the women's apparel found in the residence belonged to the complainant. Deputy 2 denied that the complainant was mocked during the conversation. There was no audio recording of this encounter and therefore, there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 3 played an internet video of “Adolf Hitler” hate speeches.

Board Finding: Sustained

Rationale: The complainant stated that Deputy 3 played video and audio of speeches from Adolf Hitler talking about killing Jews, and other non-Germans, while he was being processed for booking. Deputy 3 reported that the complainant was very agitated and yelling loudly in German while at the Patrol Station, so he elected to play a YouTube video of Adolf Hitler speaking to a large crowd. Deputy 3 said he did not understand German, and therefore did not know the content of the speeches. The act, which served no legitimate purpose, was in violation of Sheriff's Policies and Procedures 2.4, Unbecoming Conduct; 2.22, Courtesy; 2.30, Failure to Meet Standards; 2.36, Use of Department Equipment; 2.48, Treatment of Persons in Custody; and 2.53, Discrimination. The act did occur and was not justified.

5. Misconduct/Discourtesy – Deputy 4 called the complainant a “Fucker” and a “Faggot.”

Board Finding: Not Sustained

Rationale: The complainant said that Deputy 4 called him a “Fucker” and a “Faggot.” All deputies involved in the complainant's apprehension denied that they made, or heard, any such statements. No evidence directly linked any deputy to the alleged statements, but it was plausible that one or more of those deputies present used the purported language. There were no audio/video recordings available or independent witnesses; therefore, there was insufficient evidence to prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 1 dissuaded the complainant from filing a complaint.

Board Finding: Not Sustained

Rationale: The complainant stated that he attempted to file a complaint about the Hitler and Nazi audio/video, and a female deputy dissuaded him from making the complaint. Deputy 1 acknowledged that the complainant had requested to file a complaint, and that he was subjected to a pat down search because of his prior history with weapons. Deputy 1 denied that she attempted to dissuade the complainant from filing a complaint, but did not recall if she provided the complainant with a complaint form. After the pat down search Deputy 1 said she would take the complaint, but the complainant reportedly was no longer comfortable with the situation and departed. There were no independent witnesses or audio recordings of this encounter; therefore, there was insufficient evidence to prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 2 failed to comply with court orders to release property.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 2 failed to release his military identification card and \$121 dollars in cash when requested, in accordance with a court order. The complainant reported to the Station with a court order and requested that the property identified in the court order be released. The property in question was not physically located at the station and needed to be requested from central evidence/property, with delivery expected the following week. On the following day, the complainant sent a friend to the Patrol Station with a note authorizing the pick-up of his property, but the property could not be released at that time. Deputy 2 did not immediately release the complainant's property when presented with court orders, because the property was not physically located at the Patrol Station. One week later, Deputy 2 facilitated the release of the complainant's property after it was received from central evidence/property. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

14-141

1. Misconduct/Procedure – Deputy 1 designated the complainant an improper housing classification, despite a doctor’s order for medical housing.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 improperly classified him and assigned him to general population housing, despite a doctor’s order for medical housing. The purpose of the Inmate Classification System is to screen, assess and house inmates in a manner that will protect the safety of the community, staff and other inmates, while assisting detention managers and staff in making sound decisions regarding inmate population management. During intake, the complainant underwent a classification evaluation, which included a classification interview, a review of the complainant’s criminal history, and a review of all hazards and instructions related to the complainant, to determine his appropriate security level and housing assignment. Based on this evaluation, the complainant was classified a Level 3-Medium Security inmate and cleared for General Population housing. Contrary to the complainant’s assertion, there existed no medical or psychiatric doctor’s orders directing that he be moved to medical housing. Deputy 1 classified and housed the complainant according to his security level, and this action was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to respond to the complainant’s numerous grievances and inmate requests regarding his housing assignment.

Board Finding: Not Sustained

Rationale: The complainant alleged that he filed numerous grievances regarding his housing assignment, to which Deputy 2 failed to respond. Detentions Policy N.1, Grievance Procedure, requires that when a written grievance is delivered to a deputy or staff, he or she will sign it so that the signature is recorded on both pages of the two-part NCR form, and the second page of the grievance form is to be given back to the inmate as a signed receipt. If the grievance is collected from a grievance box, the deputy will sign it and ensure that the second page of the grievance form is returned to the inmate concerned. The complainant reported that he did not have any grievance receipts in his possession. Moreover, a review of the Jail Information Management System (JIMS) showed that the only grievances on file related to medical issues and jail conditions – issues outside the purview of sworn staff - and none were found related to the complainant’s housing assignment. Absent this documentation, there is insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 2 failed to mail out the complainant’s letters to his attorney and Veteran Justice Outreach personnel.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 failed to mail out his letters to his attorney and Veteran Justice Outreach personnel. During the course of the investigation, however, the complainant subsequently reported that his attorney and Veteran Justice Outreach personnel had received his letters, but they were delayed 2-3 weeks from the time they were sent. The length of the delay of the complainant’s mail cannot be determined, nor whether the delay was caused by detentions staff or by the U.S. Postal Service. That withstanding, the complainant acknowledged that mail sent was received, showing that the actions of Deputy 2 were lawful, justified and proper.

15-017

1. Excessive Force – Deputies 2 and 3 “attacked” and threw the complainant to the ground, causing serious injuries.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputies 2 and 3 “attacked” and threw him to the ground during an incident involving the use of force. The complainant was observed purposely exposing his genitalia to the entire module during laundry exchange. Deputies 1 and 2 instructed the complainant multiple times to cover himself

with his blanket, but he ignored their instructions in violation of the facilities' rules and regulations. Deputies 2 and 3 attempted to handcuff the complainant in order to escort him from the module, when the complainant grabbed the upper tier railing and actively resisted the deputies' efforts to control him. Deputies 2 and 3 used their combined body weight to take the complainant to the ground, and applied several knee strikes to his ribcage area, until the complainant surrendered his hands and was controlled. The complainant was seen by medical following this incident, and x-rays taken later did not show any fractures or serious injuries. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. Deputies 2 and 3 utilized department approved Use of Force control compliance techniques, and their actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 placed the complainant in a cell with no clothing or bedding.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 placed him in a cell while naked, and did not provide clothing or bedding for over 24 hours. Following a force incident, the complainant was escorted to the Medical Dispensary for treatment of his injuries and then to Disciplinary Isolation, pending a Disciplinary Hearing for his rules violation. During a use of force involving deputies, the complainant's blanket fell off, and because of his aggressive behavior, it was not safe to remove the handcuffs to allow the complainant to dress prior to moving him. Furthermore, when the complainant was placed in the Disciplinary Isolation cell, deputies were unable to open his cell door to provide clothing because the complainant acted violently, spat on the cell door window, and informed deputies that he had MRSA and AIDS, threatening to infect them with these diseases. Deputy 1 reported that the cell door was not opened due to the complainant's aggressive behavior and to prevent any further use of force. Deputy 1 further reported that it would have been the responsibility of deputies assigned to the complainant's new temporary housing to provide clothing and bedding, and she was unaware as to when these items were provided. Deputy 1 acted properly in placing the complainant, while naked, into a cell because of significant safety issues, and this action was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 4 failed to provide the complainant clothing and bedding for over 24 hours.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 failed to provide him with clothing and bedding for over 24 hours after he was placed in a Disciplinary Isolation cell. The complainant was placed in Disciplinary Isolation following an incident in which force was used. The complainant was aggressive and acted violently during this placement, informing deputies that he had MRSA and AIDS, and threatened to spit on deputies to infect them with these diseases. Sheriff's records do not document how long the complainant's aggressive behaviors persisted, or when the situation had settled sufficiently so that housing deputies could provide clothing and bedding. Absent this documentation, there is insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 4 failed to respond to the complainant's grievances regarding a use of force incident, and the "cruel and unusual treatment" he allegedly received.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 failed to respond to multiple grievances filed regarding a force incident, and other "cruel and unusual treatment" by deputies. The complainant reported being in possession of grievance receipts filed against these deputies, but failed to provide this documentation for CLERB's investigation when requested. The grievances filed by the complainant that are documented in sheriff's records, related only to medical issues, over which CLERB has no jurisdiction. Absent documentation of filed grievances against subject deputies, there was insufficient evidence to either prove or disprove the allegation.

15-021

1. Misconduct/Procedure – Deputy 1 failed to investigate a crime and apprehend a criminal after the complainant supplied investigative leads.

Board Finding: Action Justified

Rationale: The complainant reported that the Sheriff's department had a total lack of interest for investigating this case, identifying what happened and why, and apprehending the criminal. Witnesses provided information concerning a female and unknown male who reportedly fled out of state immediately following this incident. Deputy 1 reported that he pursued this information and attempted to locate and/or interview the female, who was uncooperative. He also contacted out of state police detectives for information on the suspect's whereabouts, but was unsuccessful in developing any leads. An arrest is valid only if supported by probable cause. The involved deputies were in compliance with Sheriff's Policy & Procedure, and the ongoing investigation was re-assigned when Deputy 1 transferred to a different station.

15-062

1. Misconduct/Discourtesy – Deputy 1 “scolded” and “berated” the complainant for interfering during a contact involving his neighbor.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 1 “scolded” and “berated” him in front of his family during a contact involving a hallucinating neighbor. The complainant contacted sheriff's dispatch after a neighbor was observed outside wielding a machete, while stating that “people” were attempting to rob him and others in the neighborhood. Deputies arrived on scene, and while attempting to control the troubled neighbor, instructed the complainant to “stop talking and leave” when the complainant attempted to assist deputies with the neighbor. The complainant complied, but felt that later in the contact, Deputy 1 spoke to him discourteously, and demonstrated an “attitude” and “tone” that he felt to be unprofessional and unnecessary. The complainant confirmed that Deputy 1 did not yell at him nor use any expletives during this contact. The complainant's subjective feelings about the deputy's “attitude” and “tone” are acknowledged; however, the complaint lacked a prima facie showing of misconduct. Such complaints are referred to the Review Board for Summary Dismissal, pursuant to CLERB Rules & Regulations: Section 9: Investigation of Complaints; Subsection 9.2: Screening of Complaints.

15-105

1. Misconduct/Discourtesy – Deputy 1 sent “hate mail” correspondence to the complainant.

Board Finding: Sustained

Rationale: The correspondence sent by Deputy 1 did not target a protected class associated with race, religion, ethnicity/national origin, sexual orientation, disability, or gender, and therefore, could not be legally termed as “hate mail.” However, the written comments expressed by Deputy 1, violated Sheriff's Policy & Procedure 2.4, Unbecoming Conduct and 2.22, Courtesy, in that no member shall use coarse, profane or insolent language in the performance of his or her duties. The evidence supported the allegation and the act or conduct was not justified.

2. Misconduct/Procedure – Deputy 1 misused departmental equipment.

Board Finding: Sustained

Rationale: Sheriff's deputies are prohibited from utilizing departmental computers for anything other than business related matters. Deputy 1 violated Sheriff's Policy & Procedures 2.36, Use of Department Equipment, and 6.21, Automation: Departmental Systems, when he used Sheriff's department equipment to send electronic correspondence to the complainant, which expressed his personal opinion(s). The evidence supported the allegation and the act or conduct was not justified.

End of report