



Multnomah County Sheriff's Office
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MICHAEL REESE
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Exemplary service for a safe, livable community

December 14, 2016

Mr. Michael Jackson, Technical Manager
National Institute of Corrections
Department of Justice, Federal Bureau of Prisons
320 First Street, NW, Room 5002
Washington, DC 20534

Subject: Technical Assistance Project #16J-1048
Mr. Timothy Ryan, Technical Resource Provider
Letter of Appreciation and Acceptance

Dear Mr. Jackson,

As Sheriff for Multnomah County, Oregon, I extend my sincere appreciation for the services provided by your office through Technical Resource Provider, Timothy Ryan. During his three-day, on-site, audit of issues and circumstances relating to Use of Force within the MCSO Corrections Division, Mr. Ryan conducted on-site jail visits, interviews of Multnomah County Sheriff's Office (MCSO) employees, interviews of other stakeholders, personal observations of jail operations, and educated himself about Multnomah County and Oregon. He relied on weeks of personally-conducted research and data review to support his on-site audit. His years of experience in the field of corrections coupled with his analytical skills resulted in a valuable and useful report of findings and recommendations which I now have.

Briefly, Mr. Ryan identified several areas for improvement within MCSO's corrections administration and operations. His observations included recommendations for Use of Force policy reform. This should include an alignment with currently recognized governing statutes and recognized practices in the field. He cited a need for enhanced training in a number of areas which will strengthen corrections significantly and the MCSO overall. Further, Mr. Ryan emphasized the need for individual and departmental accountability as well as a focused approach to relevant data collection and accurate and reliable reporting. Mr. Ryan's report is attached and incorporated by reference to ensure all recommendations made by Mr. Ryan are known. I accept these recommendations and have included an attached action plan in response. In addition, I have begun to prioritize the recommendations such that those requiring immediate action are acted upon first.

In keeping with my commitment to transparency and exceptional public service, I will make this report public to ensure Multnomah County, its residents, fellow stakeholders, and allied agencies are aware that the MCSO is committed to treating all persons with dignity, respect and fairness, regardless of race, national origin, gender, aged, religion, mental illness or physical disability, economic or any other status. I will continue to maintain a zero tolerance in this regard. I will invite comment and dialogue as MCSO moves forward in improving its service to the community.

Again, thank you for your effort and a very valuable and useful product. Mr. Ryan's contribution and professionalism cannot be overstated.

Michael Reese
Sheriff



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MEMORANDUM

TO: All MCSO Staff

FROM: Sheriff Michael Reese

DATE: 12/14/2016

RE: NIC Audit and Recommendations

MCSO Recognition of the National Institute of Corrections Audit

The National Institute of Corrections (NIC), a division of the Department of Justice, Bureau of Prisons, was established to provide assistance to correctional agencies around the country. The Multnomah County Sheriff's Office (MCSO), wishes to thank the NIC, for its November 2016 direct on-site assistance and subsequent technical report attached. The public release of this audit reflects our core commitment to transparency and ensuring this Office is always striving to be at the forefront of best practices and a model for other jurisdictions to emulate.

MCSO appreciates the numerous weeks of work that included, but was not limited to, the review of files, interviews of staff and MCSO stakeholders, site inspections, and analysis the NIC completed to inform its recommendations to this Office. MCSO will continue to ask difficult questions about its practices, especially with regard to disparate service outcomes.

I charge each member of MCSO to treat all persons with dignity, respect and fairness, regardless of race, national origin, gender, age, religion, mental illness or physical disability, economic or any other status. MCSO has a zero tolerance policy in this regard.

In making NIC recommendations public, I want Multnomah County, its residents, and our intergovernmental partners to understand MCSO is open to a critical review of internal operations. Indeed, effective leadership and a well-managed correctional system promote a high-level of professionalism while ensuring best practices and constitutional rights for all are vigorously protected.

MCSO Acceptance of NIC Recommendations

Our agency accepts the recommendations made in the NIC report, and will take immediate steps to address areas of policy, training, systems of accountability, and our data collection and reporting. Our Use of Force Policy will be revised. This process will create clear definitions of force, communicate approved tactics with an emphasis on disengagement and de-escalation, and limiting use of force on vulnerable populations such as the mentally ill. This new policy will establish direction with regard to use of force reporting, supervisory reviews, as well as set a foundation for sound data collection and reporting of outcomes.

As new policy is developed, we are committed to collaboration with necessary stakeholders surrounding use of force. This process will include understanding the expectations of our community, and considering these throughout the policy drafting stages. This valuable insight will prove beneficial as the Sheriff's Office considers how thoughtful preparations and decision might reduce the need for force in our jails.

In order for effective policy to become valued practice, training must be a primary focus. The MCSO Training Unit will be committed to developing training plans focused on providing the knowledge and skills to professionally develop our members and create a platform for retraining as necessary. Training subject matter will include, but will not be limited to; field training, equity and diversity, interpersonal communication, de-escalation, crisis intervention, accurate reporting and supervisory oversight. To best educate our staff, the Training Unit will maximize intergovernmental training resources available to ensure industry best practices are being taught, and a clear understanding of the role of technology has in use of force programming.

Having effective systems of accountability is essential to our goal of transparency in public safety. MCSO will develop a support system around use of force, with a particular focus on; ensuring clear expectations are set, effectively communicated, consistently practiced and objectively evaluated. MCSO will create an Employee Information System that will provide the agency a holistic picture of employee performance.

Implementation of revised policy, new training plans, and updated systems of accountability will be measured through a more structured, comprehensive data collection and reporting process. Through the creation of a Use of Force Inspector position, working in collaboration with Planning and Research staff, an objective means of evaluating use of force will be established. The process of evaluation will include; data collection based on policy and contextual variables, analyzing of data by the Use of Force Inspector and an informed chain of command, routine inspections and audits of facility practices and management, preparing annual reports and regular updates for conversations with both stakeholders and the community, and continuing to develop long-term goals for improvement.

I trust these efforts will ensure Multnomah County Sheriff's Office remains a leader in corrections policy and practice, and continues our commitment to exemplary service to our community.

Use of Force Policy and Procedure Review
Multnomah County Sheriff's Office
(Jail System)
Portland, Oregon

National Institute of Corrections
Technical Assistance Project #16J – 1048
November 9-11, 2016

Submitted by:
Timothy Ryan
(Technical Resource Provider)

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December 1, 2016

Michael Reese, Sheriff
Multnomah County Sheriff's Office
501 SE Hawthorne Blvd., Suite 350
Portland, OR 97214

Subject: Use of Force Policy and Procedure Review of the Multnomah County Sheriff's Office Jail System (re: NIC Technical Assistance Project #16J – 1048)

Dear Sheriff Reese:

Enclosed is the report that I prepared as a result of my on-site visit November 9-11, 2016. It outlines my observations and recommendations. I hope that they will serve as information, guidance, and resource for you and your staff as you work toward making the Multnomah County Sheriff's Office Jail System, its operation and its facilities, a model for other jail jurisdictions to emulate.

I would like to express my sincere appreciation to you and all the MCSO staff for the courtesy and cooperation extended to me. I recognize that my visit requires modification to the routine, but all found time to meet my every need or request. My special thanks to Chief Deputy Shults, Captain Travis Gullberg, Lieutenant Diamond, along with the other staff leaders, and many others who helped guide and respond to my visit and its needs. They were consummate professionals throughout the review and had any information requested made readily available. Notably, they all exhibited integrity and dedication which are attributes essential for jail administrators, managers, and staff to move positively forward into the future.

I certainly wish you and the entire Multnomah County Sheriff's Office Detention System well in your and its future endeavors and commend you for voluntarily undergoing this NIC Use of Force Review.

Sincerely yours,
Timothy P. Ryan

Cc: Mr. Michael Jackson, NIC Jails Division, Technical Assistance Manager
Chief Deputy Michael Shults, MCSO

Disclaimer

NIC Technical Assistance #16J – 1048

This technical assistance activity was funded by the Jails Division of the National Institute of Corrections. The Institute is a Federal Agency established to provide assistance to strengthen state and local correctional agencies by creating more effective, humane, safe and just correctional services.

The resource person who provided the on-site technical assistance did so through a cooperative agreement, at the request of the Multnomah County Sheriff's Office, Office of the Sheriff, and through the coordination of the National Institute of Corrections. The direct on-site assistance and the subsequent report are intended to assist the agency in addressing issues outlined in the original request and in efforts to enhance the effectiveness of the agency.

The contents of this document reflect the views of Mr. Timothy Ryan. Points of view or opinions expressed in the Technical Assistance Report are those of the author and do not represent the official opinions or policies of the US Department of Justice. Upon delivery of the final Technical Assistance Report to the agency that requested the assistance, the report becomes the property of that agency. The National Institute of Corrections will not distribute the report to non – NIC entities, or consider it an agency record of the federal FOIA, without the express, written approval of the agency.

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Preface

The County of Multnomah is the smallest in area of the 36 counties in the State of Oregon (466 square miles), but is the most populous of the state with 790,294 (2015). It was created in 1854 as one of the 13 counties in the Oregon Territory. The word “Multnomah” is a Native American translation of “the lower river”. The Lewis and Clark Expedition identified it, similarly, calling it “the down-river” location.

The County is governed by five (5) Commissioners and an elected Sheriff, who directs the Multnomah County Sheriff’s Office (MCSO), in which this Report focuses. The first Sheriff was elected in 1894 and the Office is presently held by Sheriff Michael Reese, who only recently became Sheriff (August, 2016). This Report was actually requested by the previous Sheriff, Daniel Staton, in the spring of 2016 and is being continued under the authority of Sheriff Reese. (Note: In addition to the Sheriff and Board of County Commissioners, the County also has the Multnomah County Local Public Safety Coordinating Council (LPSCC) which was created in 1995 under state law. It was established to coordinate local criminal justice policy among affected criminal justice agencies. They meet to focus on key issues within the public safety system.)

The Report is to focus on the operations relative to the Use of Force (UOF) in the MCSO jail/corrections system. Specifically, the report was requested to address:

Using the ‘Corrections Use of Force Audit’ (September 14, 2015) as initial information only, what data regarding use of force incidents in the Corrections Division should be collected, and how should statistical reporting be designed to provide management ongoing comprehensive and effective monitoring that includes relevant demographics, meaningful context, and causation? What changes or additions to existing policies, systems of accountability, and training are recommended to help align the agency to industry best practices in the area of use of force in corrections?

In attempting to do so, it is important to place the system in perspective with some general information.

First, the system involves two jails, the Multnomah County Detention Center (MCDC), located in downtown Portland, and the Inverness Jail located on the eastern side of Portland. The MCDC is considered a maximum security facility and the Inverness Jail a medium security operation.

Second, upon review of the system’s general statistics, the following is noted:

- The jail system’s rated capacity is 1,310 and the Average Daily Population (ADP) over the last six months has been 1,201 (92% of capacity). The jail is budgeted at a 95% level (1,254) and is considered in “emergency status” if it exceeds 95%;
- The jail books an average of 2,625 persons per month, 87.5 a day, or 4 per hour;
- The gender of those booked is 22% female and 78% male;

- The ethnicity of those booked is 66% White, 20% African American, 9% Hispanic, and 5% Other;
- The Average Length of Stay (ALS) is 14 days. The longest in custody are the “A-Felony Inmates” which is over 85 days, but there are about 100 inmates who have been in custody over 150 days. However, most leave custody between 2-5 days and many within 12 hours;
- The system also tracks inmate disciplinary matters of which there are over 140 Hearings a month or 5 per day.

And third, to place some demographic perspective to the above, the 2010 Census noted the following:

- The racial makeup of the county was 76.5% White, 10.9% Hispanic, 6.5% Asian, 5.6% African America, 1.1% American Indian, 0.5% Pacific Islander, 5.1% Other, and 4.6% mixed two or more races;
- The median age is 35.7 years;
- The population density is 1,700 per square mile with a housing density of 325,000 units at 750 per square mile;
- Of the 300,000 households, there were 27% with children under the age of 18; 39% married couples; 11% a female householder with absent husband; 46% were non-families; and 33% were household made up of individuals;
- The average household is 2.35 and the average family size is 3.03;
- The median income for a household was \$50,000 and a family was \$63,000;
- Males had a median income of \$45,000 and females \$38,000;
- The per capita income for the county was \$29,000;
- About 11.3% of families and 16% of the population were below the poverty line, including 21% under 18 and 12% over 65.

This information, and other gathered at the site visit over the period November 9-11, 2016, will be used in the preparation of a review of the Use of Force (UOF) policy, procedures, and practices of the MCSO within its jail system.

Upon completion, a Technical Assistance Report (TAR) will be prepared in an effort to give guidance and recommendations to the Sheriff relative to his operations in the jail and the application of force policy and practices as identified in evidenced-based and contemporary national practices. (Note: As noted above, this review is an outgrowth of the attention given to an internal MCSO report entitled, “Corrections Use of Force Audit” (9/14/2015), but, although significant, this is only one element of this short review.)

This is a voluntary program funded by the Federal Bureau of Prisons, National Institute of Corrections, and Sheriff Reese is commended for continuing this effort.

Introduction

Use of force in correctional agencies continues to promote considerable concern and debate among local officials and the community. Using force to maintain safe and orderly correctional facilities remains a necessary action, but requires vigilant oversight by correctional leaders to minimize harm to staff and inmates. Diligent monitoring of correctional staff compliance with well-written use of force policies and procedures can protect staff and inmate well-being while protecting the constitutional rights of inmates. Concomitantly, rigorous management of the use of force program helps to limit or eliminate adverse legal consequence. Ultimately, a well-administered and managed correctional use of force program can promote a high-level of agency professionalism while ensuring that “best practices” and “constitutional rights” for all are vigorously protected.

In conducting this National Institute of Correction (NIC) Technical Assistance Project (TAP), it is considered appropriate to provide a review of the standards under which “Use of Force Incident/s” should be evaluated. Pursuant to that, the Technical Resource Provider (TRP), Timothy Ryan, found three cases that have relevance to a custodial environment (discussed below); however, initially, the U.S. Supreme Court in the case of *Graham vs Connor* (1989) has provided guidelines for Use of Force events involving a “free citizen” relative to criminal behavior and requiring use of force by a law enforcement officer. This decision created a national standard that is still in place today.

In its decision, the Supreme Court made it clear that an officer’s use of force on a “free citizen” is to be evaluated as a seizure of the person under the Fourth Amendment. Specifically, the Supreme Court held that all claims that law enforcement officials have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other “seizure” of a “free citizen” are properly utilized under the Fourth Amendment’s **“objective reasonableness” standard**.

This term “objective reasonableness” has several important factors to consider when evaluating an officer’s force response. Specifically, the fact that officers are often forced to make split – second judgements – in circumstances that are tense, uncertain, and rapidly evolving – create questions about the force that is necessary to the situation. This has certainly been played out in the Ferguson, Missouri events of 2015.

Therefore, it is critically important to judge the reasonableness of the officer’s force response from the perspective of a reasonable officer with the same or similar training and experience; facing similar circumstances; and acting the same way or using similar judgement. Second, the assessment must be based on the totality of the facts known to the officer at the time the force was applied, no matter how compelling the evidence is to be found later nor via hindsight evaluation. Further, the assessment must be based on facts known to the officer without regard to the underlying intent or motivation. And finally, that the officer acted properly, under established law, at the time.

However, the use of force in the Multnomah County Sheriff's Office Detention System involves persons that "are not free." Therefore, the applicability of the *Graham vs Connor* case can only be used as a guideline in this assessment. Specifically though, it seemed clear that a Deputy Sheriff of the MCSO who is responding to a criminally associated event within the facility should be evaluated, in his response, relative to the Graham Case standards, even though, the involved party or parties are not free. Events, such as fights between inmates, inmate on inmate assaults, inmate on staff assaults, illegal substance contraband, or any other criminally associated activity involving the use of force by deputies should be judged, initially, under the "objective reasonableness" standard, even though, in the end, the event may be handled administratively.

Given this foundation, in the incarceration environment, there are administrative and institutional standards that are required to be maintained for the safety, security, and discipline of the operation, as well as the expectation of the community. Given the nature of some of those that are incarcerated, the following of these expectations, such as compliance with basic institutional rules, may be limited (mental illness, recalcitrance, abusiveness, etc.), but a level of force is still necessary to address compliance. Additionally, some jail events, like a pushing/shoving action between inmates, requires some level of force to separate. These do not necessarily reach the level of criminal behavior and are not, generally considered, depending upon cases by case circumstances, under the Graham "objective reasonableness" standard.

In these events and others occurring in a jail, which do not involve criminal behavior, the TRP found that three other cases have relevance in Oregon. These are *Whitely vs. Albers* (1986), a second case, *Hudson vs. McMillian* (1992), and the latest, *Kingsley vs. Hendrickson* (2015) needed to be considered.

The *Whitely* case involved an Oregon State Penitentiary where a hostage taking/riot occurred (Pre-Graham). During the event inmate Albers was shot and suffered knee injury of a significant nature. The allegation was that this was "cruel and unusual punishment", 8th Amendment concerns. The Court assessed it from whether the injury was from a "good faith effort to maintain or restore order" or "maliciously or sadistically for the very purpose of causing harm." Further, the Court assessed the plausibility of the action as being necessary or was there a wantonness of unjustifiable infliction of pain; however, at the same time, there was consideration as to the extent of the threat to the safety of staff and inmates, as reasonably perceived by the officials, given the situation. Using these standards, the court found in favor of the State (good faith, reasonable given situation, justifiable).

The second case, *Hudson*, originated in Louisiana at the Angola State Penitentiary, in which, Hudson, an inmate, was punched and kicked by custodial staff, with minor injuries, after washing his clothes in his toilet. He won \$800 in a Section 1983 claim alleging excessive force in violation of the 8th Amendment (cruel and unusual punishment) from the District Court, but was overturned by the Fifth Circuit. Hudson appealed and the Supreme Court ruled giving specific direction to custodial staff on Use of Force (UOF) actions in an incarceration setting.

The Court held that a claim of excessive force, in a jail or prison, will be resolved by whether the officer used force in “good faith to restore discipline” or “maliciously and sadistically” to cause harm. Therefore, the “malicious and sadistic” standard became the guideline for the cases of the excessive force claims under the 8th Amendment in jails. The Court also said that force can “exceed contemporary standards of decency”, even in the absence of significant injury; therefore, the “officer’s intent” is a critical component of any case. The Court did indicate, though, that the extent of injury is only one factor in an excessive force allegation in a jail.

The other important factors were:

- The need for force;
- The degree of force used in proportion to that need;
- And, the perceived threat to the officer at the time.

The latest case, *Kingsley*, involved an inmate at a local jail who had refused to comply with an order to remove a paper cover from a light in his cell. He was forcibly moved from this cell to another while handcuffed. At the other cell, he was tazed in the back. The issue for the U.S. Supreme Court was whether this force action created a new standard called “objective unreasonableness.”

The US Supreme Court held that “... a pre-trial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable to prevail on an excessive force claim.” Further, the determination must be made “from the perspective of a reasonable officer on the scene, including what the officer knew at the time” and must account for the “legitimate interests (stemming from the government’s) need to manage the facility in which the individual is detained.” These officer actions also must appropriately defer to the “policies and practices that in the judgement of jail officials are needed to preserve internal order and discipline and to maintain institutional security.”

It is with all of this in mind, that the TRP focused this assessment of the MCSO, and any associated use of force policy, procedure, training, action, and/or response, essentially within the three cases, specifically inclusive of the Hudson standards, of “need” and “force level”, recognizing that “the extent of any injury to inmate and/or staff” and the “perceived threat” must be examined on a case by case basis. Additionally, though, any force action must be determined to be done in good faith within a legitimate governmental interest, and not malicious or sadistic reaching to the level of objective unreasonableness.

Additionally, the TRP also considered that, given that inmates are not free citizen, there are some options in dealing with these persons that are not available to a law enforcement officer in the streets. First, the jail deputy, sometimes, has additional time to assess the situation that would not be available to a street officer. Second, the deputy has de-escalation opportunities not available to the street officer. And third, the deputy usually has readier access to staff support and supervision not as readily available to the street officer. Given these, the TRP

found that the first step in evaluating a use of force in the incarceration environment is to assess whether “the action was necessary?” The TRP, then determined, that a progressive review process, starting at this level, was recommended before going to the next.

If a determination was made that the event “was necessary”, then a second stage in the evaluation would be required. That stage needs to involve an assessment of the “level of force” utilized. In the MCSO, the force level can involve hands-on to deadly force and is regulated under Oregon State Law, specifically:

- **Section 161.205, Use of Physical Force Generally.** The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances: ...

(2) **An authorized official of a jail, prison, or correctional facility may use physical force when and to the extent that the official reasonably believes it necessary to maintain order and discipline or as is authorized by law; ...**

(4) A person acting under the reasonable belief that another person is about to commit suicide or to inflict serious physical self-injury may use physical force upon that person to the extent that the person reasonably believes it necessary to thwart the result;

(5) A person may use physical force upon another person in self-defense or in defending a third person, in defending property, in making an arrest or in preventing an escape, as hereafter prescribed in Chapter 743.

- **Section 161.209, Use of Physical Force in Defense of a Person.** ..., a person is justified in using physical force upon another person for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes to be necessary for the purpose.

- **Section 161.215, Limitation on Use of Physical Force in Defense of a Person.** ..., a person is not justified in using physical force upon another person if:

(1) With intent to cause physical injury or death to another person, the person provokes the use of unlawful physical force by that person, or

(2) The person is the initial aggressor, except that the use of physical force upon another person under such circumstances is justifiable if the person withdraws from the encounter and effectively communicates to the other person the intent to do so, but later nevertheless continues or threatens to continue the use of unlawful physical force...

- **Section 161.219, Limitations on Use of Deadly Physical Force in Defense of a Person.**
..., a person is not justified in using deadly physical force upon another person unless the person reasonably believes that the other person is:
 - (1) Committing or attempting to commit a felon involving the use or threatened imminent use of physical force against a person,...
 - (3) Using or about to use unlawful deadly physical force against a person.

- **Section 161.235. Use of Physical Force in Making an Arrest or in Preventing an Escape.**
..., a peace officer is justified in using physical force upon another person only when and to the extent that the peace officer reasonably believes is necessary:
 - (1) To make an arrest or to prevent an escape from custody of an arrested person, ...;
 - (2) For self-defense or to defend a third person from what the peace officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape.

- **Section 161.239. Use of Deadly Physical Force in Making an Arrest or in Preventing an Escape.** ..., a peace officer may use deadly physical force only when the peace officer reasonably believes that:
 - (a) The crime committed by the person was a felony or an attempt to commit a felony involving the use or threatened use of physical force against a person, or
 - (b) The crime committed by the person was kidnapping, arson, escape in the first degree..., or
 - (c) Regardless of the particular offense... the use of deadly physical force is necessary to defend the peace officer or another person from the use or threatened use of deadly physical force; or
 - (d) The crime committed by the person was a felony or an attempt to commit a felony and under the totality of the circumstances existing at the time and place, the use of such force is necessary, or
 - (e) The officer's life or personal safety is endangered in the particular circumstances involved.

But (2) Nothing in subsection (1) of this section constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom the peace officer is not seeking to arrest or retain in custody.

Within the Oregon Law, the MCSO also has its own policy which governs the actions of its staff. Specifically, Chapter 12 of the Policy Manual entitled “Use of Force” states: **It is the policy of this Agency that members shall only use the amount of force that they reasonably believe appears necessary to effectively control the incident.** The Chapter has 26 sections which add details to the policy.

Therefore, the TRP found himself conducting this review of the MCSO Jail Operations and its’ Use of Force within a five-step process to be inclusive of case law, legislation, and policy. Specifically, that involved:

1. What are the strengths/weaknesses of the “pre-need/action steps” (pre-Hudson)?
2. What are the options at the “necessity/need” point in the encounter (Hudson – Step 1)?
3. What is the “reasonable and necessary force requirement” of the action (Hudson – Step 2)?
4. Was the level of force actually used within the “reasonable and necessary force expectation” (Hudson – post review) or “objectively unreasonable” (Kingsley)?
5. If not, was it under the expected reasonable and necessary use of force or was it over the expected reasonable and necessary use of force (objectively unreasonable) and what are the consequences?

Special Note 1: What if the behavior was criminal in nature, was the “objective reasonableness” standard assessed (Graham) and what were the consequences?

Special Note 2: Given that MCSO is in the Federal 9th Circuit, there have been a couple of cases worthy of additional review regarding electronic stunning devices (and by extension OC spray) both of which are used in the jail. These cases *Bryan v. MacPherson*, *Brooks v. City of Seattle*, *Mattos v. Agarano*, and *Nelson v. City of Davis*, have several actions required in common. Specifically: the force report must be very detailed; the individual must pose an “immediate threat”; these intermediate levels of force may not be used solely to compel compliance with an order; there must be a clear warning that the use is imminent; and the warning must be documented.

Special Note 3: Section 500, Use of Force and Restraints, of the Oregon Jail Standards also outlines the department’s requirements and should be given due consideration in the development of policies and procedures.

It is with this progressive thought process in mind that helped the TRP assess where the MCSO is on its UOF actions continuum. Further, it provided guidance on the recommendations that might be made during this short time-framed assessment and analysis.

Of special note, it is recognized that within the focus of the above, a concern has been raised as to the application of force actions at the MCSO jail in a disparate manner relative to the ethnicity of the inmate. This is not meant to be side stepped, but the “first step” is to assess

the propriety of the existing policies, procedures and practices of the MCSO, generally, relative to UOF. Subsequently, depending on the assessment of the first step, a drill down of the application relative to this concern can be conducted.

It should be made clear though, that the TRP was not on-site to assess any particular event, but rather, to conduct an overview of policy, practice, training, procedure, investigation, and other associated administrative/institutional activities from a global perspective. The goal was to make recommendations, where appropriate, and if applicable, for the improvement, as may be needed, of the MCSO's jail system's actions surrounding the "use of force" and its internal operations.

It is hoped that this report will do just that.

UOF Review Process

Over the period, Wednesday, November 9, through Friday, November 11, 2016, Timothy Ryan (Retired, Director of the Miami – Dade Corrections and Rehabilitation Department, Miami, Florida) was a Technical Resource Provider (TRP) for an on-site Use of Force Assessment of the Multnomah County Sheriff's Office Jail System in Portland, Oregon. The work, conducted under the auspices of the Jails Division of the National Institute of Corrections (NIC), a Federal Agency, under the Federal Bureau of Prisons, was initiated by a Technical Assistance Request from, Daniel Staton, then Sheriff, of the Multnomah County Sheriff's Office (April 4, 2016).

The letter was accepted for action by NIC and a contract for services was issued to Timothy Ryan on September 20, 2016 signed by Federal Bureau of Prisons (BOP) Contracting Officer Gary Clark. Upon that, it was designated that Mr. Mike Jackson of the NIC Jails Division was to be the Technical Assistance Manager for this contract and would be the contact person for the MCSO Technical Assistance Project (TAP) identified as NIC/TAP #16J – 1048.

The following report represents the observations, findings, conclusions, and recommendations of Tim Ryan. These determinations were the results of his review of documents, facility inspections, and interviews with the leadership team, general staff, and inmates of the MCSO Jail System. The recommendations, although recognized to have been developed over only a three day review, reflect his extensive knowledge and experience in managing and consulting for major jail systems, involvement in national professional organizations including the American Jail Association, American Correctional Association, as well as active participation in other assessments and audits under the NIC, Commission on Accreditation for Corrections, and/or consulting services. However, even with these credentials, it is important to acknowledge that such a short site visit (just three days) develops only impressions and perceptions requiring further, in-depth, assessments by site managers as part of their consideration of this report.

According to the Statement of Work, the following guidelines were provided by the BOP/NIC for this MCSO Use of Force Assessment including the following:

1. **Goal.** The direct on-site assistance and the subsequent report are intended to assist the managers and administrators of the MCSO in addressing issues outlined in the original request and in efforts to enhance the effectiveness of the organization. (Note: The original request stated "I am requesting ... the assistance of the National Institute of Corrections in developing and studying our data (regarding UOF) to determine if changes are necessary or whether we developed an effective program to date.")

However, during the initial contact with the MCSO leadership, a more, specified focus was developed. That evolved into the following question:

Using the 'Corrections Use of Force Audit' (September 14, 2015) as initial information only, what data regarding use of force incidents in the Corrections Division should be collected, and how should statistical reporting be designed to provide management ongoing comprehensive and effective monitoring that includes relevant demographics, meaningful context, and causation? What changes or additions to existing policies, systems of accountability, and training are recommended to help align the agency to industry best practices in area of use of force in corrections?

- 2. Statement of Work:** The Use of Force assessment was to include, but not be limited to, the following:
 - a. A discussion with the local points of contact regarding their concerns, as well as addressing the on-site preparations (Completed prior to visit);
 - b. A request from the points of contact for the preliminary assessment of use of force data; agency use of force policy and procedures; agency training curricula as it relates to use of force training at both the recruit and in service levels; and any pending or past (5 years) litigation pertaining to use of force incidents (Completed prior to and at visit);
 - c. Upon this, the development and confirmation of an agenda for the on-site activity via the points of contact (Confirmed 11/8/16);
 - d. While on-site to meet with the Sheriff and his command staff to gather additional background information, review the desired outcomes of the technical assistance activity, and confirm the agenda for the three-day site visit (Completed 11/9/16);
 - e. To tour the system facilities to become acquainted with the physical work/living environment of the staff/inmates (Accomplished 11/9/16);
 - f. To interview line staff, supervisors and training staff to assess their knowledge of the use of force policy and practices (Addressed 11/9-10/16);
 - g. And at the end, conduct an exit meeting with the Sheriff and his command staff to review the findings and to discuss suggestions for improvement (Completed 11/11/16).

- 3. Preparation Activities:** In preparation for the site visit, the following was addressed:
 - a. Mr. Ryan discussed with Mr. Jackson the expectations of the Technical Assistance Project and worked out a coordinated approach to be followed (Completed);
 - b. Chief Deputy Shults of the MCSO was contacted and the desires and expectations of the T/A, along with the dates for the site review, were discussed (Accomplished);
 - c. A proposed agenda for the T/A events was prepared and sent, inclusive of a timeline of tasks to be completed while on-site (Attachment VII);

- d. A formal request for a set of preliminary items was sent to the MCSO for review, consideration, and presentation (Attachment VI);
 - e. A letter of introduction was sent to the Sheriff, inclusive of the above items, advising that the site visit would occur November 9-11, 2016 (Attachment V).
4. **On Site Activities:** Over the period November 9-11, 2016, the site visit included, but was not be limited to the following:
- a. A meeting with the Sheriff and his Command Staff was held on the morning of Wednesday, November 9th, to discuss the purpose of the TAP and the scope of work;
 - b. A tour of the facilities was conducted over the first day in an effort to familiarize the TRP with each facility's unique design, its supervision model, and its issues surrounding use of force events;
 - c. In conjunction with the three day visit, the TRP conducted reviews of policy documentation, procedural application of the same, and training curricula as applicable to MCSO Jail Operations;
 - d. Throughout the visit interviews with MCSO leadership, supervisory, and line staff were conducted;
 - e. The TRP also collected and examined additional documentation, including statistical reports pertaining to use of force events and activity;
 - f. On Thursday, November 10th, MCSO and County Staff interviews were conducted with County Commissioners (1 Commissioner on 11/9), County Counsel, and Sheriff staff including Training, Classification, Jail Training Officers, Medical and Mental Health staff, Disciplinary Hearing Officer, and others in which the observations, preliminary findings, and some recommendations were discussed;
 - g. On the morning of Friday, November 11th, an exit briefing was conducted with the Sheriff and the Command Staff which was followed by a review of UOF event reports and their respective video support. The site visit was concluded in early afternoon and I left the Sheriff's Office to return home on Saturday, November 12, 2016.
5. **Prepare Technical Assistance Report:** The TRP is to submit the Technical Assistance Report in early December, 2016.

Relative to the required work actions and the ultimate observations and recommendations, Mr. Ryan recognizes the difficulty in conducting an in-depth review of the MCSO Detention System in just three days. The results will be the impressions and perceptions of this short examination, through the eyes a long time professional, but, certainly, are not absolutes and will need further assessment and review prior to any direct actions by the MCSO leadership and staff.

Review of September 14, 2015 Report

It is important that the Report of September 14, 2015 stand on its own separate from the NIC Report being prepared and submitted below. There will certainly be elements of each that might be criticized and/or contested; however, that should not be the foundation from which a department is to grow and improve its operations. Each of these Reports will have information that can be used for pro-active actions that will help the Multnomah County jails become operations that others will want to emulate.

In particular, the 2015 Report has set the stage for the gathering of important data that will facilitate jail operations in determining the numbers and types of force events that may be occurring in the jail. Absent such a statistical basis, UOF events are not, necessarily, captured in a manner that helps the jail's leadership identify, in specificity, such areas of concern. This 2015 Report has begun that process and is worthy of praise for that effort.

Also, the 2015 Report addresses the statistical data from a global (high level) perspective which helps the department ask the hard questions about the propriety of its operations. It is important to ask these questions so that the community has an awareness of the challenges facing its jail and the professionals who must address these challenges daily. As such, it is important for the community to have a trusted understanding of these through an open and transparent process of reporting the actions occurring in their jail. (Note: Sheriff Reese has given his commitment to such transparency and openness.)

As noted, at the end of the 2015 Report, several "next step" questions/directions are proposed. These have become the catalyst for this NIC Technical Assistance Report. Therefore, now, it is time to move to the next level of assessment, using the information in the 2015 Report and the recommendations in this NIC Report, to drill down and capture more, in-depth detail relative to the statistics.

It is believed that through these next steps, an action plan can be created, goals will be set, and the community will be able to assess the positive direction that will result.

Observations and Recommendations

Upon completion of my initial briefing and throughout my tours, I was impressed by all the Multnomah County Sheriff's Office staff as they presented a very positive and professional image. It was clear and convincing that the reason for my visit was known to the staff and they were ready and available to assist in any manner possible. They were open, honest, and transparent in the information that was provided or any information that I requested. This is a credit to the Sheriff and his Command Staff, as well as the correctional staff itself.

As noted in the recent tour by the Grand Jury, I also found the jails to be clean and well attended. This is an indication that the jails have good leadership and they pay attention to sanitation concerns, as well as general operations. However, in conducting this overview, a NIC TRP is directed to give special attention to any item that "may" have life safety implications. Given that these were not the direct focus of this Report, they are listed in the Appendices (Attachment II).

General UOF Considerations

Relative to the focus on the concerns surrounding the Use of Force, the following general information is provided (Note: It is not designed to, necessarily, be in priority order; however, these are items of significance which I will attempt to give appropriate attention.):

- A. Due to the negative connotations of the term "Use of Force" (UOF), this terminology (term of art) has been changing across the nation to **"Response to Resistance (RTR)."** Essentially, nearly all force events in the custodial environment tend to surround inmate non-compliance with reasonable and appropriate institutional rules and expectations. This non-compliance (resistance), then requires staff action (response) from verbal commands to physical contact. This refocused terminology now identifies the necessity for action back to the inmate's actions initially, and then follows up with the assessment of the appropriate level of response by staff (Hudson/Kingsley considerations).

Recommendation: The MCSO should update their UOF policies and procedures to reflect the changing terminology to "Response to Resistance (RTR)."

- B. The present UOF policies and procedures require a report whenever "force is used to gain compliance." In discussions with line staff, supervisors, and managers, it was absolutely clear in a major incident that a report was expected. However, at the lowest level of response, such as a physical arm guidance hold without resistance and/or "slight resistance, but compliance", there was confusion. This confusion apparently leads to reports sometimes being written and other times not. As such, department

standardization needs to be addressed for clarity of action, consistency, and data gathering.

Recommendation: If a non-compliant inmate subsequently complies through good persuasive Inter-Personal Communication (IPC) skills and verbal commands without physical contact by staff, a report is not necessary, unless there is some exigent circumstance that lead to the action. However, whenever staff must make physical contact, even if it involves a controlled guidance of a compliant inmate, most contemporary agencies are requiring a means of logging these actions. Clearly, such minor events do not require the level of reporting that serious events necessitate, but some level of logging (Redbook notation and/or Field Information type card (FI) is required). Further, this information should be captured for reporting, monitoring, and training purposes.

- C. Presently, the MCSO data gathering process does not seem to clearly differentiate between a “low level/compliance UOF” event and a serious event which might involve injuries. Unfortunately, even though, most jail UOF events are not of a major nature, the present reporting process makes them all “look like” major events.

Recommendation: In an effort to provide some perspective to the statistics, it seems it would be of value to provide a means to categorize UOF events from minor to major. Possibly a numbering system could be created to assist. For example, maybe level 1 is single officer arm hold, guidance, and non-resistance; level 2 single/multiple officer arm hold, guidance, and some resistance; level 3 is single/multiple officer, two handed, and moderate resistance; level 4 single/multiple officer, significant resistance, use of non-lethal force, and medical response; and level 5 single/multiple officers, significant resistance, use of non-lethal force and/or significant staff physical force, injuries, and medical response/transport. With such a system, then a better means of assessing the implications of force events in the jail might be possible and the community could have an improved understanding of jail force events.

- D. Upon addressing A, B, and C above, it would be appropriate and necessary to re-write and update the policy regarding UOF. First, the present policy, located in Chapter 12 of the MCSO Policy Manual, is presented in an outdated format which does not include references to Oregon law, applicable case law, Oregon Jail Standards and national standards. Second, there is reference to another procedure which provides the detail to the actions surrounding UOF when it seems more appropriate to have all the references in a single location. Third, given the differences in interpretation identified during supervisor discussions regarding when a report is required, it must clearly provide direction on report writing requirements. Fourth, it would be of value to include a deputy and supervisor “checklist” which incorporates the expected items for inclusion in reports. Fifth, it does not seem to present any direction for “de-escalation and/or dis-engagement” in which confrontational situation might be reduced and/or avoided. And

sixth, before implementation, there should be acceptance and signoff by MCSO leadership, the Medical Director, and the County Attorney.

Recommendation: Although I believe that the present policy would meet the minimum expectations of the law, given the items noted above, it is an opportune time to update the present policy and bring it into a more contemporary policy model.

- E. Upon updating the policy and procedure, it is critical that the appropriate level of training follow. In assessing this, the following was noted:
1. In discussions with the Training Staff, it seemed that there was a need for an improvement in setting the foundation for “Response to Resistance” (RTR) training. For example, even though the training discussed, in general, the elements of the Hudson Case, it did not seem to actually mention the case details, nor was there information on the Kingsley Case (2015). It seems very important that the concepts of reasonable and unreasonable force be absolutely understood. In addition, the consideration of what’s in the “governmental interest” vs. “what is “malicious and sadistic” are very important concepts as well. Given that the “Whitely” case comes out of Oregon and is one of the precedent setting cases, this should be a study item as well.
 2. The case law should certainly be supplemented by the Oregon State Law, the Oregon Jail Standards, as well as MCSO policy and procedure;
 3. There certainly was sufficient training in “defensive tactics”, but there did not seem to be much relative to de-escalation skills. In the jail environment it is critically important for deputy staff to be able to calm situations and disengage as much as become seriously involved in force incidents. (Note: The September/October, 2016, American Jails Magazine, has an article entitled, “Use of Force in 3D”, which discusses not only “defense, but also de-escalation and disengagement.” This article by Sheriff Karl Leonard of Chesterfield County, Virginia sets the stage for a reduction in force events by re-focusing on utilizing verbal skills and patience, rather than physical actions.);
 4. The Training Staff apparently does not utilize the department’s own videos to show good UOF actions. It seems that this would be of value. At the same time, adverse UOF jail events could be gathered from other agencies and they might be used to train and critique for education purposes;
 5. The TRP did not see the curriculum relative to Inter-Personal Communication (IPC) skills and/or Sensitivity Training regarding Cultural Diversity in the Community. If this is not presently in the Academy and the annual In-Service Training, it should be seriously considered. It was also unclear as to whether there was “Crisis Intervention Training” (CIT) for custodial staff, especially those assigned to the Mental Health floors, provided. If not, this has been

proved very valuable in jails across the nation (contact Miami Dade Training);

6. Given that there are 34 sergeants and, at least, in some of the responses to questions asked of them, the TRP received conflicting answers, it seems that a focused supervisory training effort should be made relative to the UOF policy, procedure, and expected practices for RTR in the jail's operations. This will be especially critical in the gathering of statistics as consistency will be absolutely necessary.
7. It was unclear as to what level of training the Field Training Officers (FTEP) had received. Since these persons are the first ones the new employee connects with in the jail, it seems critical that they have a solid understanding of UOF policy, procedure, and practice.

Recommendation: The importance of training cannot be underestimated. Not only is it a legal mandate, it provides solid direction for staff in times of necessary action. It is recommended that due consideration be given to the above training proposals.

- F. Once the policy and procedures are set, and the practice has been initiated, it is going to very important to monitor and audit the RTR activities. As such, it was evident that the MCSO intended to gather use of force events information in a proactive manner. In so doing, the TRP was provided with some preliminary data from the Planning and Research Staff regarding such events. Although this preliminary information was clearly valuable, it was unclear how this information was actually going to be put to use and whether the information gathered actually was of value in better addressing the Use of Force (UOF) events. Given this, it seemed that the following would be of value:

Recommendation A: It is strongly recommended that a committee headed by the command staff be created that includes line, supervisory, and management personnel to assess what data is to be gathered, how it should be presented, and what should be done with it. In particular, UOF data should include facility location, shift, and personnel involved. The goal would be to assess this information in an effort to provide personnel/personal staff training and supervisory oversight where it might be specifically needed. Absent this detailed information, it cannot be used as a preventative measure for any future adverse events. (Note: There are some software packages that can provide this information – check Miami Dade Corrections Internal Affairs.)

Recommendation B: Use of force data analysis should be policy-based. Core measures should be derived from use of force policies and procedures to ensure “out-come” focused quantitative and qualitative analysis of force activities. Simply counting force volume and specific variables cannot provide a cogent understanding with regard to whether force complies with policies and procedures, whether and what training is needed, or to determine whether force activity is changing as a result of specifically intended modifications made to the use of force program. For example, MCSO should

include “base rate” analysis to better understand use of force event activity. Base rate analysis simply involves comparing use of force data with other data i.e. ADP, Admissions, etc. The volume and frequency of force being used alone cannot provide a clear understanding about use of force activity. Rather, base rate analysis is used to more clearly understand the “rate” of force. Just because reports of force increases or decreases does not necessarily mean that force is increasing or decreasing. Base rate analysis would more accurately calculate actual changes in force event activity. (Note: See Base Rate Analysis information in the Appendices II.)

- G. The data provided appears to indicate that there are 300+ UOF events per year. The Inverness facility has 17% of the incidents and the MCDC has 83%. Overall, it appears that there might be less than one (1) UOF event per day, system-wide, which seems to indicate a generally, positive atmosphere for such a large system, especially considering the intake process of more than 100 a day. However, a goal would be to even reduce this as much as possible.

Recommendation: The base rate analysis will provide a foundation from which to set goals. Presuming that on or about January 1, 2017, such a starting point can be identified, then some goals can be set. For example, if there have been 300 UOF events in a year, would it not be reasonable to set a reduction goal of one-third or 200 in 2017. Of these, if 70% involved physical contact, could the level of physical contact used be reduced as well? Of course, there would have to be an audit system in place where management examined the statistics on a quarterly basis assessing the progress, the application of training, and the watching of supervisory oversight. It is recommended that during the review of the data gathering by the committee identified above that these goals be determined too.

As an aside: Given the inmate population difference between Inverness, 800, and MCDC, 400, the discrepancy between the number of UOF events should be examined also (17% vs. 83%). Obviously, it has to do with who is housed there, but could there be more to it. For example, the Inverness Jail is operated under more of the “direct supervision model”, with considerable movement by inmates. MCDC appears to have a significant amount of “lock down time”. The TRP did not fully examine the actual period of in cell time, but it is worthy of review. The jail studies “seem to indicate” that as the time out of cell is increased, the fewer adverse events occur. (Note: NIC has a Direct Supervision Operational Handbook which might be helpful in assessing the operation of MCDC relative to this concept. Please check with the NIC Library on line or in Aurora, Colorado for this. Also see the NIC “Inmate Behavior Management (IBM)” Program information listed in the Appendices.)

- H. The accuracy of those UOF reports that are prepared is absolutely critical. This is especially true in a time where video monitoring is used as a significant piece of the evidence in a use of force event. The video is going to show the use of force event in total. In order to avoid the appearance of “purposeful omissions”, those preparing initial

reports, as well as follow-up reports should make sure that what is observed in the video is accurately reflected in the reports. The mere appearance of an action of omission tends to taint the credibility of the agency, its officers, its oversight, and its integrity, in general.

Recommendation A: Although opinion differ across the nation regarding the allowance of line staff and supervisors to observe the video prior to preparation of their reports, it is absolutely clear that those preparing a summary of the reports must view the video, and ensure, that every element is properly articulated and documented. There should be no gaps in the video and the reports themselves must reflect all that is observed, of a significant nature, in the video itself.

Recommendation B: It was presented that some of the management staff (Lieutenants) have better skills in preparing the UOF summary reports than others. Given this, it was said that Sheriff Reese has selected one lieutenant to oversee UOF events and their reporting. It has been the TRP's experience that this has merit, but must include up-to-date training, as well as commensurate authority to delve deeply into issues, if necessary. Further, this person should have the ability to call together any staff, supervisors, and managers involved in any event for an in-depth assessment, if there is something unique and/or special about the incident that requires review.

Recommendation C: It was noted that neither MDCD staff nor the Inverness staff had access to portable video cameras to film planned inmate force events. Since jail monitors tend to show open areas, planned events, in cells, would not be normally be seen by the existing camera system. Although some events are unplanned, many are. For those planned events, there should be two cameras rolling, just in case one stops, showing the actions of the staff in the event. (Note: There are a couple of positives that come out of this process. First, it usually slows things down, granting patience, provided there are not exigent circumstances. Second the inmate may comply once the camera is rolling. And third, if there is an allegation of unreasonable force, the event can clearly be shown without any speculation. Although staff sometimes have reservations, in the end the video usually shows appropriate actions mitigating adverse allegations from the outset.)

- I. Since the use of force has certainly become a significant issue in the operation of the jail, the training associated with it is critical as well (as noted above). Given that the TRP discussed a couple of events where the necessity of action did not seem to be immediately required, and yet, force can occur, the need for specialized training in these areas would seemingly be of significant value. In discussing this with the training staff, it was recognized that enhanced training relative to de-escalation skills, as well as scenario application of the same would be helpful. Further, supervisory training in these areas would seemingly be of value as well. The Training Staff indicated that this type of

scenario training has become a larger part of all training. (Aside: As noted in this report, this might be something to share with the PSCC.)

Recommendation: During the discussions with the training leadership, the leadership recognized the importance of the above-noted items and pledged to include them in future training. Of particular importance to the TRP was the enhancement of de-escalation skills surrounding taking a more patient approach to inmate recalcitrance. Again, as noted above, it is critical that staff identified the “necessity of action” before proceeding down a path that will certainly lead to a use of force. Further, it was recommended that the training unit be given access to video documentation of UOF events, where de-escalation might have been a more positive approach to the adverse action, with direction to use it for training purposes.

Also, as noted at several points in this report, training on using force with mentally ill inmates, in particular, but any vulnerable inmate populations, should be discussed in detail. For example, the State of Florida has now prohibited the use of pepper spray when the inmate is known to be seriously mentally ill. This has caused a different approach to be initiated in those units that are known as housing the mentally ill. Also, the pregnant inmate can no longer be restrained like a non-pregnant inmate absent specifically articulated knowledge of that inmate’s history and/or threats. These evolving changes must be part of the training curricula as well.

These were the primary areas of concern, but there were other items that came to my attention. I wish to share these thoughts and considerations in the next section.

General Thoughts and Considerations

In addition to the items noted above, there were several items found that may be of interest regarding the use of force at the MCSO. The following are presented as information for your action as may be deemed appropriate:

1. Many jail systems, especially those holding a large number of the mentally ill, have chosen to provide specialized training for any staff who come in contact with these inmates. That specialized training is entitled "Crisis Intervention Training (CIT)" and is focused on the custodial environment. The staff members who have taken this training have said that it is some of the best training they have had in their career. As noted above, if the MCSO is not presently considering this type of training, it is strongly recommended that it start.
2. The Inmate Handbook begins discussing inmate responsibilities on page 3 with "Expectations" which is followed regarding disciplinary rules and process on page 7 thru 12. Since inmates can become involved in uses of force incidents due to their adverse activities, it seems important that, as is done in the handbook, they should be notified, up front, of areas where their behavior could be both positive and/or problematic. However, in reviewing this document, the following is suggested:
 - a. Are there any positive incentives for acting within the "Expectations?" For example, is there an "Honor dorm" where special privileges are granted like the allowing of inmates to purchase personal radios with earphones, few lock down periods, movies on Friday/Saturday night, popcorn machine, microwave machines for hot coffee, etc. Basically, is there something for the inmate to "shoot for" for good behavior, and something to be taken away for bad?
 - b. Recently, the PREA Commission has requested that "PREA Information" be placed at the front of the Inmate Handbook, like the ADA information. It was noted that it is on page 14.
 - c. The term of art for "Religious Services" has been changing to "Faith Based Services." Also, "Religious Diets" to "Faith Based Diets."
 - d. As a special consideration, has an inmate committee been created to look at the Inmate Handbook to assess its clarity and ease of understanding? Are there items that are missing that would be helpful? (Note: Given the reading level of many in custody (5th grade), would a video orientation be a better approach?)

Also, the Inmate handbook discusses the "Grievance Procedure." The Rules seem to indicate that grievances against an employee is not allowed (meaning another process is to be used). However, PREA Regulations indicate that there should be no limitation on sexual abuse and/or harassment allegations which should also include unreasonable UOF.

This comes out of the consideration that “threats and intimidation” may restrict the inmate’s ability to report such allegations. This language needs to be reviewed.

3. Relative to the Disciplinary Process itself, it was said that there are over 140 appeals a month. In fact it was intimated that there were really more. Given the Disciplinary Hearing Officers duties, during a 5 day work week, this means 7-10 Hearings a day. This causes the TRP concern as it raises several questions:
 - a. This must mean that there are 7 or more disciplinary citations written per day. This seems like too many? Are the deputies using this system as a default to addressing misbehavior with discipline, rather than, IPC skills?
 - b. Has there been a review of the deputies, supervisors, and shifts which use this system the most? Are the uses valid?
 - c. Is there a need for a policy review and/or a training effort (see IBM information in the Appendices)?
4. It should be noted that there is a significant amount of training regarding Use of Force Training available through the American Jail Association (Check for National Webinars - \$75), the American Correctional Association, and the National Institute of Corrections. It is important to take advantage of these to the maximum extent possible.
5. One method being used in an attempt to increase professionalism and integrity within an agency is that of the leader providing a video which identifies the professional expectations that are required to maintain employment, as well as the consequences for a failure to meet those standards (Note: A copy of a model of this was left with Lt. Diamond.)
6. It was indicated that 45% of the UOF events occur in reception/booking. Of note was that, unlike many jails today, the first person to see the arrestee at the MCDC was a deputy, not a nurse. Many jails now have the arrestee immediately cleared by medical personnel, before acceptance. This has been observed to calm the intake process from the outset. Second, there was not a metal detector, so if the arrestee was “hiding something” not detected by the arresting officer, it might find its way into the booking center and initiate a force struggle. And third, some jails have initiated an “amnesty box” which allows the inmate to discard adverse items before they get caught in the jail reducing the possibility of a struggle. Such actions should be given due consideration.
7. It was said that from time to time there are inmate fights requiring staff to intercede with force. Obviously, this will require a certain amount of paperwork. However, it was said that subsequent to the inmate altercation the classification staff does not interview the involved parties. Seemingly, this would be a good practice in an effort to determine what might have been done to prevent the event in the first place. Specifically, was there

something in the classification process, if identified at that point or in between, that might have prevented the fight?

8. It was noted that the MCSO Jail Management System does not seem to drill down deep enough relative to use of force events so that names, dates and times are clearly identified. The goal in gathering this information is to determine which officers might need additional training and which shifts might need additional monitoring. There are some software packages which purport to address this and it is suggested that these be reviewed (Check with Miami-Dade Corrections Internal Affairs).
9. It was identified that the MCSO has a Jail Training Officer Program (FTEP) in which new recruits are overseen by more senior staff. It was indicated that these training officers had only minimal training and some had not had any. Since these staff are some of the first that new staff see, it seems critical that they set the positive operational standards for UOF/RTR incidents. As such, this is also where the training officers have their most important duties as well in garnering loyalty and support for the organization.

If true, it appears that some special attention should be given to the training officers so that they might better focus on the prevention, as well as de-escalation of possible use of force events. One method used for this is to have the leadership team meet with the FTEPs to reaffirm the mission, vision, and the core values of the organization, as well as clearly discussing the expectations relative to uses of force.

10. It is understood that officers, may, from time to time, become involved in a minor use of force which, had it been handled differently, might have been avoided. These are the types of occasions where the critical oversight by a supervisor can truly make a difference. As part of the supervisor training recommended above, training in providing positive criticism seems appropriate. (Note: Even recognizing that there could be possible union issues in the giving of such positive criticism, the importance of finding ways to convey such critical information must be found.)
11. The County of Multnomah has a Local Public Safety Coordinating Council (LPSCC) which was established in 1995. It seems that it might be of value to engage this group in a better understanding of the UOF actions in the jail. Specifically, the following is suggested:
 - a. Given that Oregon requires each county to have a PSCC, and unfortunately, NIC no longer provides training for the participants in a PSCC, it still seems it would be of value to have surrounding county PSCCs meet to discuss areas of mutual interest. Such meetings brings together PSCC participants from

multiple areas to share information and thoughts on the improvement of criminal justice operations. It is suggested that this be pursued;

- b. Upon completion of the follow-up report pending from the 2015 Report, it would be of value to prepare a presentation to the PSCC prior to any new report release. This presentation should be thoroughly vetted to insure its integrity and transparency;
- c. It might be suggested that a sub-committee of the PSCC be created to attend the training that is developed from the updated policies and procedures;
- d. It also may be of value to have the PSCC create working groups that would become observers on busy booking nights like Thursday, Friday, and Saturdays in an effort for them to gain perspective of the issues faced by the booking personnel.

12. Given the media articles that the TRP read, it seems that the MCSO did not have a solid package of what actually goes on in the jail so that the news reports gave the articles no perspective. It is therefore suggested that an information sheet be created, that might begin any news release, which provides the context within which the jail operates. For example, the following might be considered (beginning paragraph):

In responding to the incident that occurred in the jail, the MCSO would like to provide the following information in an effort to add perspective to the totality of the circumstances. Specifically, the MCDC processes about 38,000 arrestees every year, over 100 a day, or 4-5 per hour. From February, 2012 to December, 2015, the MCSO processed 138,816 persons. The jail must accept all persons legally arrested by the county's law enforcement agencies without regard to race, ethnicity, etc. Over this period, the jail was required to process from these outside agencies, XX% White (2010 Census 76.5% of county population), XX% Black or African American (2010 Census 5.6% of county population), and XX% other (2010 Census XX% including Asian, Hispanic, Native American and others) inmates within which there were 1109 (this is a preliminary number provided by Planning and Research) incidents requiring deputies to respond to arrestee/inmate resistance events. Given that this period represents 1410 days, there is an average of less than 1 incident per day in the jail system. Of the incidents, there were 584 incidents in the reception center (booking) which represents 0.4% of all the intakes (136,816) or 99.6% without incident. Of the 534 incidents in the housing areas over this same period (2012-2015) or 1 every 3 days, and given an average daily population of about 1200 (1,680,946 inmate days in custody), there were only 0.03% incidents or 99.07% of all persons in custody without incident.

Obviously, the MCSO PIO would have to assess the validity of the above, as well as its applicability in the Portland media market. However, the TRP believes that providing such

information would add perspective, if used, but, if not, it can be provided to other leadership in the county so they might gain perspective.

The above is intended to bring to the attention of the leadership team some of the observations made by the TRP during his visit.

Response to Global Question

As this TAP evolved, and as the staff of the MCSO were contacted, there was a refining of the goal of the project. It became important to attempt to focus the initiative in a manner that might better surround the concerns regarding the use of force policy, procedure, and practices at the MCSO and the jails. With that, the following question became the focus:

Using the ‘Corrections Use of Force Audit’ (September 14, 2015) as initial information only, what data regarding use of force incidents in the Corrections Division should be collected , and how should statistical reporting be designed to provide management ongoing comprehensive and effective monitoring that includes relevant demographics, meaningful context, and causation? What changes or additions to existing policies, systems of accountability, and training are recommended to help align the agency to industry best practices in the area of use of force in corrections?

In an effort to respond as directly as possible, this is addressed as follows:

1. **What was the assessment of the 9/14/2015 Report?** This 2015 Report has provided a basis of information from which the department can grow. It has clearly become a catalyst for further action. Therefore, it is critical that a follow-up report be prepared in an effort to add credibility and transparency to the effort. It is my understanding that the Sheriff has directed the MCSO Planning and Research Unit to accomplish this in the near future.
2. **What data should be collected?** Although the 2015 report collected many data items, it left out the basis from where these items originated. It used data without substantiated backup data (percentages which allowed confusion). Therefore, in an effort to address this and other data considerations, the following is needed:
 - a. The report must first define the levels of response in force incidents. There needs to be an understanding of the multiple levels of response from a guiding hand to physical restraint. The data must be able to identify the differences;
 - b. The report must clearly identify the number of incidents versus the number of deputies involved in the incident and reports generated.
 - c. These incidents must identify the number of inmates involved like a single inmate cell extraction versus an inmate altercation involving a forced separation between multiple inmates;
 - d. The specific location of the event in the facility must be identified, along with the shift, time, and deputies/supervisors involved;
 - e. There are, at least, 9 identified classifications of inmates from those in reception to general housing, to close custody, to protective custody, to psychiatric housing, etc. The classification of the involved inmates must be logged as well;

- f. It would also be of value to have the charges of the inmate identified from misdemeanor, felony, violence, parolee, extensive criminal history, first timer, etc.;
- g. If there is information available regarding the medical or mental health of the involved inmate, that should be available also;
- h. Given the sensitivity of these events, it is critical that the demographics of the involved parties, inmate and staff, be identified. However, this should include not only ethnicity, but age, previous incarceration history (problematic past institutionalizations), disciplinary history, etc.;
- i. The data should include not only the reports, but information of the level of force instruments used like an electronic stunning device, OC spray, or other devices. Further, it should include whether there was video from the jail system and/or the hand held camera recommended.

Additionally, there should be a follow up report provided annually of the Internal Affairs actions surrounding its inquiries to provide further perspective to the department's review practice. This should include:

- a. Statistics of the activities of the UOF Review Lieutenant's oversight;
- b. The number of UOF/RTR complaints, where they came from (inmate, staff, family, etc.);
- c. Investigation action numbers (Pre-Investigative Assessment (PAI) to formal investigations);
- d. Investigative determination numbers (exonerated, unfounded, not sustained, and sustained);
- e. Levels of discipline initiated;
- f. Any criminal actions;

In consideration of the above, there should be a command centered committee created to assess what is needed and how the information gathered should be used. Further, given that a PSCC exists, it seems it would be of value to share this information with them as it is developed. Clearly though, all of this information needs to be easily understood, so that, if there are issues of concern, they can quickly be identified and corrected. However, at the same time, if the actions are reasonable, the statistics should help to validate the operational actions supporting the operational policies, procedures, and practices of the staff.

3. What changes or additions to existing policies, systems of accountability, and training are recommended to help align the MCSO to best practices in the UOF in corrections?

First, I believe it is important to recognize that the data seems to show less than one UOF incident per day and most of these are of a minor nature. Of course, that does not mean that this number should not be reduced to even less, and it is mentioned above that there might be a goal of reducing this by a third. However, along with some of the recommendations mentioned above, the following is noted:

- a. The existing policy needs to be updated and the overall policy manual needs to be modernized incorporating the legal basis for the policy, as well as the necessary details in a single policy (not two);
- b. The Planning and Research Unit has started the next statistical report which adds some important detail that was missing in the 2015 report. As this is finalized, it needs to be closely assessed to insure that it is providing all the necessary information and is providing a document that will help the jail's operational staff. Upon accomplishing this, there should be monthly reviews for the first 6 months of 2017, and quarterly reviews thereafter.
- c. Along the way, the data gathering process needs to be in a place that monitors use of force events including dates (day of the week), location, shift, involved officers, and supervisor/managers. The clear intent must be to identify any specific area of concern and proactively, in a preventive manner for the future, address, corrective measures, as may be deemed necessary, like re-training, assignment modification, etc.
- d. Using this new report, action goals should be identified and monitored with a full assessment in the beginning of 2018. This annual report should have the latest statistics, but also, the new policy, procedures, training curriculum, and I/A inquiries information available. It should be shared with the Commission, the PSCC, and the community;
- e. The training recommendations have been addressed above, but are clearly a critical component of the operational success of reducing RTR actions.

By addressing these items, the MCSO will certainly minimize the potential for constitutional inquiry regarding use of force, and continue to insure that the MCSO is a leader in correctional operations.

4. **While fully recognizing the above, Sheriff Reese asked for some special attention to the following:** Obviously, there have been several of his concerns addressed above, but reinforcement, as well as possible additions, seems appropriate at this time:
 - **Is it possible to determine if there was disparate treatment relative to African American inmates involving use of force?** Given the information provided for the Reception Center, I find the information indicates no disparate treatment. Relative to the housing areas, I find that the information is insufficient to draw any conclusions. Relative to this, I recommend that the Planning and Research Unit gather the additional information identified above like inmate classification, charges, institutional history, housing location, etc. I believe that a "drill down" like this will be absolutely necessary before an accurate assessment can be determined;
 - **Relative to "best practices", are there opportunities for the MCSO?** Specifically noted are the following:

1. Enhance the Training Program to include more de-escalation and scenario programming, including CIT training and “necessity for action requirements”;
 2. Initiate a two-step investigation process for administrative use of force events which clearly focuses on “necessity first”, then “level”;
 3. Continue to create an in-depth, drill down automated process for post assessing use of force actions;
 4. Proceed with the development of a specialized investigative team for the review and summary reporting of UOF actions;
 5. Create supervisory (Sergeant) training inclusive of clear direction regarding UOF policy and procedure, constructive criticism skills, and expand this to Lieutenants as soon as possible;
 6. Create a quarterly review process of UOF videos by the leadership team to assess 3-5 videos to insure policy compliance and report accuracy;
 7. Increase the number of stationary video monitors throughout the facilities and consider the use of “hand held” or “on person cameras” in critical areas, as determined by the data assessments;
 8. Consider the addition of the “wand (or other) monitoring devices” in the facilities, where staff have significant distances to travel to observe and provide inmate inter-action. (Note: Supervisors and managers should be included to insure that oversight is occurring.);
 9. And continue the pro-active attention to all of the above.
- **Relative to the media, are there ways to improve the relationship with the jail?**
 One suggestion above identifies the enclosure of jail statistics with every press release. One thought is have the press visit a jail staff training day of UOF/RTR curriculum. Could you allow the visual media to come and video non secure areas for what’s called “B Roll” purposes? Also, many jails have now created what is called an information dash board which is always available on the internet for intake numbers, demographics, etc. Check with Orange County and Miami Dade County, Florida if you desire a model. Also, even though the press may not use it, it always a good idea to have the PIO use their media contacts to provide information on the positive actions in the jail, like inmate graduations from programs, the gift programs that some jails have like making quilts for infants in the hospitals, male inmates fixing derelict bicycles that police and deputies find and giving them out at the holidays, etc.

It is hoped that this has addressed the intention of the question while giving guidance for improvements to insure the integrity of the MCSO Jail operations.

Conclusion

Even though the TRP has made recommendations relative to the present operation of the MCSO relative to their Use of Force processes, it is extremely important to note that the overall operation, relative to UOF events, was actually found to be below the UOF numbers expected for such a large and diverse system. This determination, unfortunately, is not based on any sort of national standards or statistical analysis as to my knowledge they do not exist. However, given that there is less than 1 use of force event per day (statistically) and they can be as minimal as a guiding hand, it is subjectively believed that the MCSO is actually functioning in a very positive manner.

Of course, in every jail there are exceptions, but I believe that the MCSO has processes in place to address such events in a progressive manner. As part of that, the MCSO seems extremely responsive and pro-active, and therefore, a leader in actively pursuing any improvements that will make their system better. This report is designed to be part of such a process.

It is hoped that this Use of Force Assessment will serve as a catalyst for positive functional changes to the organization, its structure, its operation, and its culture. My review is not intended to cast aspersions on any areas, but rather to offer observations, thoughts, and recommendations for making the operation better. As such, it is clear that all persons with whom I spoke were as eager, as I was, to improve the MCSO, its' staff and its' operations in the future.

I sincerely appreciate the opportunity to share my thoughts. I want to thank all for the courtesies I was shown and Sheriff Reese and his entire staff for the honest, forthright, and professional approach that was demonstrated during my technical assistance action. I wish the best for the Multnomah County Sheriff's Office and its Detention Operation both now and into the future.

TPR

Appendices/Attachments

- I. Multnomah County Sheriff's Office Mission Statement**
- II. Possible Life Safety Concerns**
- III. Base Rate Analysis**
- IV. Special Considerations/Avoiding Civil Rights Litigation**
- V. NIC Inmate Behavior Management (IBM) Program**
- VI. Overview of Technical Assistance Activities**
- VII. Letter of Introduction**
- VIII. Proposed Itinerary and Agenda**
- IX. Materials Request**

Attachment I

Multnomah County Sheriff's Office Mission Statement

Agency Vision: The Vision of the Multnomah County Sheriff's Office is "Exemplary service for a safe, livable community."

Agency Mission: Our Commitment is to provide quality, cost-effective prevention, intervention and detention services to the communities of Multnomah County. We will improve the quality of life by reducing crime and the fear of crime through innovation, partnerships and teamwork.

Agency Values and Principles: Without exception, employees of this agency will protect the rights of citizens and adhere to the following values and principles:

- **Ethical actions** – trust, honesty, integrity, and compassion
- **Professional excellence** – continuous improvement, pride, training and cross-training, public service, efficiency and effectiveness
- **Leadership** – proactive, integrated, cooperative partnerships, long-term problem solving, community policing, and corrections ideals, loyalty and dedication of staff
- **Accountability** – fiscal responsibility open communication, accessibility, responsiveness
- **Diversity** - equality, respect, multiculturalism
- **Attract and retain quality employees** – provide a safe and secure workplace, promote fair and consistent policies, provide benefits in order to recruit highly qualified individuals

Agency Core Competencies: To achieve our mission in an exemplary manner, the Multnomah County Sheriff's Office will hire and train employees so that they have the ability to:

- Understand and embrace the philosophy of the organization
- Employ effective communication skills: interpersonal, written, and verbal
- Be proficient with information and communication technology skills
- Deal with our stakeholders from a customer service philosophy, adapted to each workplace
- Use Problem solving skills in daily activities
- Show creativity, innovation and initiative in assignments
- Focus on efficiency through management and project management skills
- Possess and utilize critical thinking skills
- Be flexible, adaptable, and open-minded
- Exhibit an attitude that is positive, loyal, cooperative
- Develop and practice leadership skills

Attachment II

Possible Life Safety Concerns

1. The TRP tour of the Multnomah County Detention Center (MCDC) was conducted during a period when custody staff had vacated housing units to attend to their lunch period. Inmates are locked-down and a movement officer makes rounds, but, at times, units do not have staff in the units. Although inmates should not be out, all internal areas should be locked secure. However, in one unit the janitorial closet was left open and unattended with brooms, mops, and chemicals readily accessible.
2. While touring the MCDC Medical Clinic, I was able to enter the dental laboratory and open drawers that had a locking mechanism on them. Inside were syringes, etc. Obviously, drawers with locks should be locked and this is a serious security and safety concern.
3. When an arrestee arrives at the jail booking area, it is required that the arresting and/or transporting officer provide information about the arrestee/s relative to any significant issue that developed during the arrest (force used and what level, such as tazer). Further, if there is medical and/or mental health issues, this is to be passed along (such as health information like diabetes, heart disease, medication information, suicidal ideations, air bag deployment, etc.). Relative to this information, the medical staff indicated that they would like to review this form as they believe it might need to be updated as they are finding “some gaps” in information that could be more helpful from the outset. (Note: It is not known the last time the form was reviewed.)
4. In the booking area, some chair locations are such that the inmates are facing away from staff. Operationally, this means that inmate’s faces and their frontal body cannot be readily observed at all times (such as hands). It is suggested that consideration be given to turning them 180 degrees so that such observation could be maintained.
5. It was noted that there is a program in process to increase the number of cameras monitoring the jail operations. It was said that the Inverness Jail was first and may be near completion. MCDC is next and this is appropriate to move forward as expeditiously as possible. PREA requires all jails to expand this capability and MCDC needs this effort. However, it is very important to have a monitoring process in place that does not overburden monitoring staff so that observations may be missed. (Note: When staff was asked how long the videos were maintained several answers were received (such as, 30, 60, 90 days and longer if MC IT staff were contacted. It seems that this should be clarified and all staff should be made aware.)

6. Although the likelihood of a key control concern is very limited at the Inverness Jail, there is the possibility of internal adverse movements of inmates if a key was inadvertently misplaced or lost. It is suggested that the key system be reviewed by the staff as was discussed during site visit and exit briefing for safety consideration.

The above was presented during the “Exit Briefing” and the leadership team indicated that each would be given due consideration.

Attachment III

Base Rate Analysis

In so doing this, some of the following terms have been found to be useful in developing an objective, performance-based, assessment process for measuring MCSO's efforts to change the initiation and outcomes of use of force events:

- Compliance Control: Implies activities designed and intended to inspect and reject defective or deficient performance, processes, services, equipment, etc. when applied.
- Compliance Assurance: Implies activities designed and intended to identify performance and services that assure compliance when applied.
- Compliance Improvement: Implies activities designed and intended to correct and/or improve compliance in performance and services.
- Compliance Management: Implies activities designed and intended to ensure targeted compliance outcomes.
- Domain: A core aspect of the organization's performance, such as *access* to care, *costs* of care, use of force, staff and/or inmate injuries, staffing shortages, or *quality* of care (e.g., mentally ill inmate level of functioning, relapse and recidivism rates, or use of force volume and frequency base rates, use of force grievances, etc.).
- Performance Indicator: A defined, objectively measurable variable that can be used to assess an organization's performance within a given domain. For example, within the domain of use of force, a performance indicator might be: "the rate (base rate) of reported force per average daily population, or inmate days, staffing levels, etc."

Core measures should be developed from revised use of force policies and procedures to assess performance and compliance with these policies. Core measures must be objectively measured and performance-based.

The chart below illustrates a very basic base rate analysis of use of force activity. This example calculates force rates per 1000 ADP and per 100 on duty correctional officers. Reported uses of force increased 35 percent over a two-year study period. Of particular interest is that the ADP increased by only seven (7) percent, but force per 1000 inmates increased 26 percent while force per 100 on duty correctional officers increased 35 percent. On-duty staffing levels remain constant while all other variables (reported force and ADP) increased. Although this mock chart shows an adverse consequence over time, the same approach could just as easily have shown positive marks.

Assessment Period	Reported Uses of Force	ADP	Force Per 1000 ADP	On-Duty CO Staffing Levels	Force Per 100 COs
1st 6 Months	500	8500	58.8	300	167
2nd 6 Months	550	7900	69.6	300	183
3rd 6 Months	600	8800	68.2	300	200
4th 6 Months	675	9100	74.2	300	225
Percent Increase	35%	7%	26%	0%	35%

By using such a process, a more focused and statistically supportable assessment can be made. And within this, questions could be asked and more informed response actions might be more available to management. For example, what are the possible causes for these base-rate differences? Why did force increase five times the rate that ADP increased? Why is the increase in force per 1000 inmates less than the increase in reported force? Why did force rates per 100 COs equal increases in reported force. The answers to these questions could ultimately help the inquiring jurisdiction gain more salient and clearer understanding about its force program and the various dynamics affecting use of force.

Recommendation: The MCSO should consider setting a “reduction goal” of 25 – 50 percent over the next 12 months in an effort to determine if the recommendations in the rest of this report, when applied, might actually reduce the events and set an enhanced positive culture within the facilities in the system. However, it also seems critical, that the command committee be utilized, in conjunction with a solid, statistically supportable assessment tool, so that, a true reduction can actually be determined.

Attachment VI

Special Consideration/Avoiding Civil Rights Litigation

(Force and 1983 Actions)

Title 42, U.S.C Section 1983, DOJ “Civil Rights for Institutionalized Persons Act (CRIPA) Investigations have particularly focused on allegations of “excessive and unreasonable use of force” in many jurisdictions in the US over the last 10 years. Not only can they focus on agencies, in general, but on personal liability (individual officer) as well. Clearly, this can and does have significant legal and financial consequences. But equally, damage in loss of public trust for a local correctional institution, its leadership, and political officials can compound the consequences. As such, excessive use of force allegations against prisoners, whether pretrial or convicted, continues as a significant concern for correctional administrators and policy makers.

At the same time though, correctional officers (Deputy Sheriff’s at MCSO) are legitimately and legally authorized to use reasonable force to protect staff and prisoners from harm and to maintain institutional order. However, the correctional subculture can cause officers to never trust inmates and to remain vigilant for inmate manipulation in word and conduct. This mindset, combined with the enormous stress inherent to effectively and safely managing inmate populations, reduces an officer’s ability to de-escalate confrontations, without physical force. Additionally, the correctional culture can create feelings among officers that they must be seen as infallible among peers. These circumstances can set the stage for unreasonable use of force events and related consequences.

Current research on correctional use of force has detected a few themes with regard to possible precursors to unreasonable use of force by correctional officers.

In some cases, unreasonable use of force can result from correctional officers’ harboring latent anger or aggression and ultimately manifests in unjustified force and harm to inmates. Ruminating anger is a human trait, but is not nature. Anger rumination is/can be developmental and/or the product of traumatic experiences. However, when anger rumination is couple with possessing the legal authority to control other humans (i.e., inmates), the risk for unreasonable use of force escalates.

Unreasonable force is also seen when inmate verbal non-compliance and taunts occurs. Correctional officers have the legal and legitimate power to enforce institutional rules, but gaining compliance and reasonable cooperation from prisoners to comply with a myriad of rules can be very challenging and difficult for correctional staff. The stress created by daily inmate verbal noncompliance and abuse can quickly erode correctional officers emotional stamina and create conditions for spontaneous use of force events.

Correctional officers see themselves, at constant real and potential risk of serious harm and for good reason. Correctional facilities imprison very dangerous people and correctional officers are always out-numbered. Shrinking criminal justice budgets have rightfully caused significant decreases in lower-risk prisoners resulting in a commensurate increase in violent and dangerous offenders. Officers are required to make split-second decisions under certain extreme circumstances. An officer's miscalculation of a threat can result in inadequate or unreasonable use of force. Both miscalculations can result in serious harm to the officer and/or the prisoner.

Correctional officers also have a duty to intervene and stop another officer's unreasonable use of force. Correctional officers have an "affirmative duty" to protect inmate's rights, as well as harm caused by any person – staff or another inmate. However, intervening to stop unreasonable force can be very difficult for a correctional officer. The correctional culture requires constant team work to ensure the safety and security of the institution. Correctional officers, similar to police officers, daily entrust their lives and well-being to other correctional officers. This entrustment creates emotional ties between officers that can be extremely difficult to break, especially when doing so is legally and morally required.

Finally, liability can be incurred when correctional officers fail to consider a prisoner's health status when determining whether force should be used and what level of force is appropriate. For example, it is not uncommon for an inmate being restrained by correctional officers to plead, "I can't breathe". However, in some cases, from the officer's perception, the prisoner is being manipulative and resisting, and then, force may be increased. In some such events, the prisoner has died from positional asphyxia. Obviously, not the intent of anyone involved, but to a certain extent can be attributed to a lack of understanding of roles, responsibilities, and consequences.

Generally speaking, correctional officers are not usually aware of nor adequately trained to assess an inmate's existing health risks before, during, or following a use of force event. Officers are trained to use the least amount of force necessary to stop risk of harm and maintain order. However, failing to train officers in assessing real and potential health risks, when time allows according to the immediacy of a given threat, can create potential liability and devastating consequences.

Although the above is not necessarily part of the intention of this Report, the above reference is intended to draw attention to the many factors jail administrators and their leadership team must be aware as they address the responsibility of their agency to insure the rights of the incarcerated as they work so very hard to protect their staff, and ultimately, the public from those they are duty bound to house in the safest and most secure manner possible.

Attachment V

NIC Inmate Behavior Management (IBM) Program

The most fundamental goal of every jail is to maintain a safe and secure environment for inmates, staff, and visitors. Effectively managing inmate behavior is critical to this goal. NIC's IBM program is based on the previous work in two major areas: podular direct supervision and inmate classification. The IBM plan consists of six essential elements: (1) Assessing inmate risks and needs at various points during his/her detention; (2) Assigning inmates to housing; (3) Meeting inmates' basic needs; (4) Defining and conveying expectations; (5) Supervising inmates; and (6) Keeping inmates productively occupied with appropriate activities. These elements, once established, function as an ongoing, integrated process designed to generate positive inmate behavior—that is, behavior that complies with staff's expectations of what is acceptable. Integrating these elements puts control of the jail in the hands of the staff instead of the inmates. The purpose of this program is to educate and assist local jails in developing and integrating an IBM plan as an operational philosophy. The six elements of IBM, staff values and beliefs, staff roles, aligning jail operations, managing staff resistance and administrative commitment to IBM are some of the topics that will be explored with participants to accomplish this goal.

For More Information

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Attachment VI

Overview of Technical Assistance Activities

Prior to my visit, I coordinated with Chief Deputy Shults in order to obtain background information, as well as data regarding the operations of the MCSO. Much of the requested materials were sent to me prior to my arrival within the “dropbox system”; however, it was determined that some would be given to me at the site visit.

Upon my arrival in Portland (11/8/16), I checked in with Captain Travis Gullberg and confirmed the meeting with Sheriff Reese for the next morning.

On Wednesday morning, I met with Sheriff Reese, and then, the Command Staff that were available (complication due to a pre-scheduled awards ceremony). This included:

- Michael Reese, Sheriff
- Michael Shults, Chief Deputy
- Raimond Adgers, Commander
- Travis Gullberg, Captain
- Chad Baidos, Lieutenant (PIO)
- Denise Diamond, Lieutenant (PREA Coordinator – And my guide)

At this meeting, we discussed the overall plan for the use of force assessment. I began with a personal history which was followed by a roundtable of introductions. Subsequently, the Sheriff expressed his concerns regarding the use of force in the MCSO Jails and how he hoped that the NIC assessment would be of value in determining what directions must next be taken.

After this orientation briefing, I was escorted for a tour of the Multnomah County Detention Center (MCDC) where I met and was escorted by Captain Derrick Peterson. I saw intake booking and housing areas, including Mental Health and Administrative Segregation, along with the Medical Clinic. I then went to lunch which included a conversation with District 2 Commissioner Loretta Smith and Aide MeeSeon Kwon. Upon completion of this I was taken to the other jail, identified as the Inverness Jail located on the west side of Portland. Here I was escorted by Captain Jose Martinez and Sergeant Hasson. This tour was completed about 4:15 pm and I was returned to my hotel.

Initially, I had discussed observing the court transportation function during the morning of Thursday, November 10; however, subsequent discussions determine that there were few, if any, UOF events during this timeframe, so I chose not to pursue it.

On Thursday (11/10/16) morning I began a process of conducting interviews with staff involved in the UOF processes of the MCSO. This included:

- Planning and Research Staff including Jack Diamond (Development Analyst), Wendy Lia Kelly (Research Evaluation Analyst, Sr.), Kevin Maurelli (Research Evaluation analyst, Sr.), and Dave Braaksma (Research and Evaluation Analyst, Sr.);
- Medical and Mental Health leaders including Michael Seale, MD, (Medical Director), Mary Ann Gordon, DNP, RN, and Celia Throp, Interim Lead Mental Health Coordinator;
- Field Training Employee Program Officers - FTEP (JTOs) – Deputies Williams and Johnson;
- Training Personnel including Nicole Morrissey, Lieutenant and Michael Phelps, Sergeant;
- Internal Affairs, Captain Harry Smith;
- Classification Supervisor, Kraig Anspach, Sergeant ;
- Disciplinary Hearing Officer, Erika Murray;

On Thursday afternoon, the interviews continued with:

- Business Services, Art Balizan, Chief;
- County Counsel, Carlos Calandriello, Senior Assistant County Attorney, and Susan Dunaway, Senior Assistant County Attorney;
- Chair of the Multnomah County Commission, Deborah Kafoury, and Aide Nancy Bennett.

Upon completion of these interviews, I was returned to my hotel by Captain Gullberg.

On Friday morning, I returned to conduct an Exit Briefing which included:

- Michael Reese, Sheriff
- Michael Shults, Chief Deputy
- Raimond Adgers, Commander
- Travis Gullberg, Captain (Inspector)
- Denise Diamond, Lieutenant (PREA Coordinator)
- Chad Gaidos, Lieutenant (PIO)
- Stephanie Prybyl, Chief of Staff
- Diane Hutchinson, Sheriff's Executive Assistant

At this time I discussed my general observations, discussions with staff, and thoughts and preliminary recommendations. In an overview manner, I presented some of the following:

- Some concerns regarding life safety issues;
- The clear and understood definitions for UOF, reasonable force and unreasonable force;
- Report writing rules for UOF events;
- Observations and thoughts regarding the latest UOF Draft Report;

- A new approach to the development and presentation of policies to include necessary actions regarding the UOF policy;
- UOF Training and case law, legislation and curriculum;
- The critical importance of accurate report writing especially the articulation of the “necessity for action”;
- The challenges in investigating UOF events;
- The development of future goals for the reduction of UOF events;
- And other observation including the “Direct Supervision Model of Inmate Supervision”, inmate disciplinary hearings and their high levels, Inmate Orientation, Staff Ethics, Report Writing Manual, CIT Training, and community involvement.

I also discussed some of special observations relative to video monitoring including the need for hand held video cameras for “planned inmate events”, the “3Ds” of defense, de-escalation, and disengagement skills, and other items. At the end I opened it up for questions of which there were very few. I then advised that the expectation for the completion of the report would be in early December. I then thanked all for their help and candor and the meeting was closed.

I spent the rest of the morning reviewing UOF Reports and the video in support of those reports.

Although I know that there were many people from the MCSO staff who assisted in the gathering of materials, providing interviews, and helping me to assess and respond to this project, my particular thanks goes out to Deputy Chief Shults, Captain Gullberg and, in particular Lieutenant Diamond. They provided insight of a special nature throughout the visit/tour/interviews and I am extremely grateful for what they were able to do.

I stayed in Portland over-night and left the next day.

Attachment VII

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October 1, 2016

Michael Reese, Sheriff
Multnomah County Sheriff's Office
501 SE Hawthorne Blvd., Suite 350
Portland, OR 97214

Subject: Introduction, Materials Request and Tentative Agenda (regards: NIC Technical Assistance Project #16J1048)

Dear Sheriff Reese:

Pursuant to your office's request of April 4, 2016, regarding technical assistance thru the National Institute of Corrections, I was advised on September 20, 2016 of my selection to conduct a "review of (your) Use of Force policy, procedures, practices, and training." Since then, I have been in contact with Deputy Chief Mike Shults of your office, initiating actions surrounding my desires for materials and on-site scheduling for such an assessment. In conjunction with him and your direction, I have scheduled the visit for November 9-11, 2016 (Wednesday thru Friday). Further, I have started the process of documents review as he and the associated staff have sent me preliminary materials.

With that in mind, I would respectfully advise and request the following:

1. I expect to arrive in Portland on the evening of Tuesday, November 8, 2016. I will be lodging at the University Place Hotel & Conference Center located at 310 SW Lincoln Street (503- 221-0140). Messages and materials may be left at the hotel, if necessary. In the meantime, DC Shults has my contact information.

2. Clearly, the most important element of the review is to answer the most pressing issues facing you and your jail system regarding the legal, reasonable, and appropriate "Use of Force". To do this, the following question has been formulated by your staff, and accepted by me, but subject to your review and consideration. Specifically:

Using the 'Corrections Use of Force Audit' (September 14, 2015) as a foundation, what data regarding use of force incidents in the Corrections Division should be collected, and how should statistical reporting be designed to provide management ongoing comprehensive and effective monitoring that includes relevant demographics, meaningful context, and causation? What changes or additions to existing policies, systems of accountability, and training are recommended to help align the agency to industry best practices in the area of use of force in corrections?

Please critically review this proposal, making modifications and/or complete changes, as you may deem necessary.

3. It is my hope to meet with you, and then, you and your command staff, at 8:30 AM on Wednesday, November 9th. At this time I would like to discuss your goals and objectives for the visit, as well as review the plans for the assessment.

4. Enclosed is the "tentative" agenda/itinerary (Attachment I). Please have it reviewed and make any adjustments as may be deemed appropriate. Additionally, please add anything that you desire needing special attention. This is very general and will probably change once I am on-site. (Note: The NIC request letter was copied to another person in Multnomah County leadership, Commissioner Smith. If this person or others, who might include county/city political leaders, Sheriff's/county's legal counsel, union leadership, members of any criminal justice oversight group, and/or any others, would be of value to interview, please have them built into the agenda. Thank you.)

5. Prior to my arrival, it would be of value to have your office provide some supplemental information for my review and consideration. As you are aware some has already been sent in the "Dropbox". However, a complete request has been included in Attachment II of this letter. It is clearly subject to change as there are, no doubt, items which you may wish for me to consider that are not listed, or items, found along the way, not yet identified. It is understood that this is an extensive list and that some of the materials may not, in fact, exist. However, whatever is easily accessible, please have gathered.

Please note that it is not my intent to have you create something that is not part of your existing operation. Further, I recognize the difficulty of gathering such a long list of items, so please only provide that which is easily gathered. (Note: If these, or any part of this list, could be gathered and sent to me by November 1, 2015, via the "Dropbox", that would be outstanding. Further, since I am asking, could you also please put these materials in a printed format, such as a binder, available for review on-site during the visit?)

It is my sincere hope that this review will help make the Multnomah County Detention System a model others will want to emulate. Thank you for giving me the opportunity to share my experiences, ideas, and recommendations.

Sincerely yours,

Timothy P Ryan, Technical Resource Provider (TRP)

cc: Mr. Michael Jackson, Corrections Program Specialist (CPS), NIC Jails Division Technical
Assistance Manager

Mr. Mike Shults, Deputy Chief

Attachment VIII

Multnomah County Sheriff's Office
Portland, OR
NIC Technical Assistance Grant #16J1048
Proposed Itinerary and Agenda for Site Assessment
November 9-11, 2016

Tim Ryan, Florida (TRP)

Given the Holiday on Friday, it is believed that some persons for interview may not be available on Thursday (or Friday), and yet, their contribution is of significant value. If so, please schedule their interview on Wednesday and I will adjust the tours as may be required.

Wednesday November 9, 2016:

8:30 AM: Meet with the Sheriff (and his leadership team as desired).

9:00 AM: Meet with Jail Management:

1. Discuss philosophical, administrative, and operational perspectives relative to the mission, vision, and core values;
2. Review Use of Force policy, procedure, practices, and training;
3. Identify and discuss the jail history regarding Use of Force issues and concerns;
4. Discuss any points of interest regarding pre-visit materials;
5. Re-examine the goals and objectives of the TAP visit.

10:30 AM: Begin comprehensive jail tour (Note: This is expected to take all day and cover both facilities):

1. This tour will probably best be guided as determined by the jail staff; however, maybe it might best begin with the arrestee/intake/booking process through the initial classification, inmate, housing, transportation and facility exit;
2. It is recognized that there are multiple facilities and that separate tours will be necessary for the TRP to conduct a reasonable review of all of the areas. As necessary, this will be addressed during the on-site visit;
3. Given that this review is to focus on the "Use of Force", each facility should be prepared, during the visit, to walk and talk the assessor through all the processes associated with that facility and a force incident, as well as giving a historical perspective of the level of UOF events at that facility over the last several years;

Noon: Time will be needed for lunch.

1:00 – 4:45 PM: Continuing tours, inspections, and site reviews as deemed appropriate which may include:

1. Staff interviews;
2. Inmate interviews, where appropriate;
3. Services staff interviews, as deemed necessary, like medical staff.

4:45 – 5:00 PM: Conduct first day's de-briefing, if appropriate and time allows.

Thursday, November 10, 2016:

(Special Note: This day will be filled with interviews. The plan proposed is only a draft so is very flexible. Please build these persons into the plan in any manner that fits the person to be interviewed schedule. Thanks):

6:30 AM: Observe morning inmate movement to court, general transportation operations, and then continue tours and inspections as deemed appropriate;

8:30 AM: It seems that at this point detailed staff interviews would be of value to assess specific areas of interest, and then, to include tour continuation if needed, including:

1. Discussions with different site manager/supervisor's including booking, classification, inmate discipline, and special facility site staff like administrative segregation, medical/mental health units, suicide monitoring, detox, and the mental health operations;
2. Discussions with specialty staff including human resources and background units, internal affairs, the training unit, and any specialty investigative units relative to allegations of UOF and their associated responsibilities;
3. Discussions with contractor/vendor staff if they have been determined to have information of value, such as medical;

Noon: Lunch with the jail management staff (on or off site, as deemed appropriate).

1:00 – 3:00 PM: Continue any follow-up tours as may be deemed appropriate, and address further discussions, to include:

1. Interviews with appropriate county/city leadership to include the commissioners, county executive, and others;
2. Discussions with ancillary persons, as may be deemed appropriate, to include the Chief of Police, Judiciary, District Attorney, Public Defender, Criminal Justice Coordinating Council members, Union Leadership, and others that may be deemed appropriate;

4:00 – 5:00 PM: Conduct second day's de-briefing, but, given the holiday the next day, it is recognized that this will be considered the general "out-briefing" normally scheduled for the last afternoon.

7:30 PM: Possibly consider an evening activities review in booking and other appropriate areas (TBD).

Friday, November 11, 2016:

8:30 AM: Conduct a special de-briefing with the Sheriff (location to be determined).

10:00 AM: Continue the assessment, inspection, and review of items noted above and address any specialty items as may be deemed appropriate to include:

1. Have available for assessment the training curricula for UOF at the Academy, and In-Service, Supervisory and Management Training Programs;
2. Have available for assessment the training curriculum for the UOF investigators;
3. Have collected for review 3-5 videos of UOF events;
4. Have collected for review 5-10 UOF event's (as developed by MCSO staff) complete documentation packages from the incident to determination of reasonable or unreasonable/excessive UOF. If there is one which was deemed unreasonable, it would be of value to assess the discipline process documentation as well;

Noon: TRP to lunch.

1:00 – 3:00 PM: TRP to complete any final assessments and prepare for any final discussions, if deemed appropriate.

3:00: Visit expected to conclude and TRP will exit.

Note that the above is very general and is subject to revision throughout the on-site review.

Attachment IX

Materials Request

In an effort to conduct a comprehensive review of the Multnomah County policy, procedures, practices, and training regarding reasonable and appropriate "Use of Force" (UOF) actions, the following items, materials, and information is respectfully requested (Note: Clearly, some has already been sent via the "Dropbox". Thanks):

1. A copy of any legal statutes, under Oregon law, associated with the reasonable and/or unreasonable use of force, relative to any officer/s and/or other staff involved in the correctional environment;
2. A copy of any rules and/or regulations, associated with the use of force, relative to policies, procedures, and/or practices, under the Oregon Model Jail Standards, if they exist;
3. A copy of any Oregon, and/or other applicable, case law appropriately associated with UOF and Multnomah County and/or applicable to its operation;
4. A copy of any Multnomah County Charter language, ordinances, and/or other local legislation applicable to the operation of the jail, and specifically, use of force in the jail;
5. If the MCSO is operating under ACA Accreditation Standards, or is anticipating meeting such standards, please include a copy of those expectations relative to UOF;
6. Copies of the following: MCSO Table of Organization; each facilities Table of Organization; the demographics of the staff generally, and specifically, relative to each facility; the 2015 – 2016 budget; the approved staffing levels relative to actual existing staffing; the overtime budget specifically and its situation in this fiscal year; and information on any staffing/funding concerns surrounding UOF;
7. An outline of the present demographics of the jail inmate population to include ethnicity, ages, sex, and, this coupled with, classification information and facility locations to include ADP for the years 2011 – 2016 and any associated admissions, release, and average daily population data;
8. Copies of the following: the Professional Standards of Conduct for employees of the MCSO; any General Orders (GOs) regarding the UOF to include the UOF Matrix used by the department; any UOF report writing requirements including Hudson vs MacMillian expectations, if noted; any associated SOPs to include "less – than – lethal" actions like OC spray, tazers, etc.; any policy, procedure, and/or practice identifying the internal review

mechanisms for a facility's UOF event assessment; and any associated policies, practices, and/or procedures using video/audio recordings of UOF events;

9. Copies of any rules and/or requirements relative to the hiring practices of new recruits and/or the promotion of existing staff regarding background requirements, polygraph results, and/or violent behaviors determinations, such as, domestic violence, juvenile violent gang history, or other;
10. Copies of the training curriculum (inclusive of testing requirements) associated with UOF for those in the recruit Academy, for those in in-service training, supervisor/promotional training, and manager/administrator training. Further, if this training includes de-escalation practices, Crisis Intervention Training (CIT), and/or scenario training, copies of this curriculum should be included as well;
11. Copies of actual UOF reports (3-5 from minor to serious) from each facility and a listing of all UOF reports, whether given as a sample or not, for each facility over the last 18 months back to January 1, 2015 (Note: In this listing, any reports which included a requirement for serious medical care for staff and/or inmate is to be highlighted.). If possible, it would be of value, to have these reports chart the location, day of the week, shift, and time of these events, if that is available;
12. Any information and data regarding how the MCSO tracks UOF events system-wide and the officer involvement levels, whether manual or automated, with copies of the same for the last 3 years;
13. Information and data regarding custody interface with medical and mental health services before, during, and following Use of Force events. Specifically examining protocols regarding response actions for unique events like in-custody death and SIDS, as well as morbidity data. Information and data regarding mentally ill inmates including forced medications, restraint events, etc. (ADP, frequency and volume of force events);
14. Copies of any legal actions associated with UOF events and/or pending legal actions regarding individuals, class actions, consent decrees (CRIPA) over the last 10 years, if available. This may be especially important, if there were any subsequent actions requiring compliance by the MCSO, and the review of how compliance may have been met;
15. Copies of any previously prepared formal reports, either internally or externally, regarding UOF and the MCSO relative to recommended actions and compliance with the same;
16. Copies of any public media departmental releases and public newspaper/media/blog reports over the last 3 to 5 years, especially if they are recent or if they have been "resurrected by the press" from the past regarding allegations of unreasonable UOF events, and please included any editorials, if applicable;

17. Information on any action taken or action proposed by the MCSO to mitigate any issues surrounding UOF events over the last 18 months to include disciplinary actions, criminal inquiries and/or investigations, criminal complaints filed and/or adjudicated, and/or voluntary personnel actions, like resignations;
18. Given that the MCSO includes two different facilities, it seems that it would be of value to also have a short historical perspective and chronology of each of the facilities, their present design (linear versus direct supervision), as well as the future construction and/or Master Planning Proposals. Please include any information on any present and/or future video monitoring capabilities;
19. There are also a couple of questions to which answers might facilitate our understanding of the present status of the MCSO staff and personnel issues surrounding unreasonable UOF events. Specifically:

Does the MCSO have access for staff to psychological assessment teams?

Does the MCSO have peer mentoring programs to possibly help staff who have personal issues?

Can a staff member voluntarily seek, in a confidential manner, mental health assistance should the employee believe they might be moving toward violent tendencies?
20. As a last item, could you please include copies of the MCSO Statements of Vision, Mission, and Core Values and information on how these are conveyed to new employees, as well as how these are reinforced/supported with existing/permanent staff?

Clearly, this request requires a great deal of information being gathered. Please understand that it is easy for me to make a list of materials, but some of the information requested may be unrealistic. The expectation is to have gathered only those materials that are readily available. Unless it is extremely easy, I do not expect that you need to initiate a new project or an ancillary material gathering mechanism, if it does not presently exist.

I sincerely appreciate anything you might be able to do and would hope, if possible, to provide these items in the "Dropbox" by November 1, 2016. Further, if possible, in a printed binder format on-site during our visit.

Thank you.