



Stephen J. Connolly  
Executive Director

**TO: Board of Supervisors**  
**FROM: Stephen J. Connolly**  
**DATE: Thursday, December 15, 2011**  
**RE: OIR Activity Report**

## **I. Discipline Process: Year to Date**

As you know, the Office of Independent Review monitors all of the Sheriff Department's administrative investigations into employee misconduct. This includes assessment at various phases, from initial complaint through resolution, and involves OIR input regarding both the thoroughness of the case investigation and the appropriateness of the outcome.

With less than a month remaining in 2011, the Department has opened 227 new misconduct cases so far this year. Further statistical details include the following:

- 156 generated internally by OCSD administration, vs. 71 resulting from external allegations of misconduct.
- 104 cases involving Custody personnel, 85 from Patrol, and 38 from other divisions (including 8 from the Coroner's Office).
- 26 cases involving allegations of off-duty misconduct
- 201 involving allegations of on-duty misconduct
- 12 cases involving allegations of criminal misconduct.

From a recent high of 366 cases in 2009, this year's estimated final total of 250 continues a steady decrease in administrative investigations. As discussed in previous reports to your Board, this is partly a function of the Department's new protocols that have re-structured the citizen complaint process.

Instead of all complaints immediately becoming official Internal Affairs cases, the "unit of origin" now conducts the initial assessment of the allegations in terms of both level of seriousness and level of available corroboration. (This process is tracked in a

database to which OIR has access in “real time,” which facilitates questions or recommendations about individual cases. It also helps ensure the legitimacy of individual outcomes.) Many cases are resolved without a referral to Internal Affairs – and a formal administrative investigation – becoming necessary.

So far in 2011 (the first full year of the “Commendation/Complaint” system), the database has captured 111 complaints. (The Department has received a slightly higher number of public commendations.) Twelve have resulted in referrals to Internal Affairs after completion of the initial assessment. Other noteworthy totals include the following:

- 22 of the complaints dealt with OCSD service practices or policies, as opposed to allegations of individual officer misconduct.
- In 29 instances, the Department found that the conduct of involved employees, while not rising to the level of a policy violation, nonetheless warranted documented counseling or training. The Department keeps a record of these events as a way to monitor and improve performance. OIR has made several of these recommendations, which the Department has generally accepted.
- In 37 instances, the Department was able to determine that “No Further Action” was necessary based on a review of the available evidence (most commonly audio or video recordings of the relevant encounters).

This approach to intake and initial triage has several benefits. It allows Internal Affairs to focus on the more serious disciplinary matters, engages unit supervisors in the process of responding to public feedback, and creates a number of different efficiencies. Certainly, 2011 has seen a significant reduction in the amount of time it takes from incident to resolution. Additionally, Internal Affairs has reduced its average length of investigation by some 20%.

Among the cases OIR has reviewed in recent months are the following:

*An anonymous informant sent a letter to the Board of Supervisors alleging that an OCSD supervisor used a Department helicopter to take his “girlfriend” on a “joy ride.” The Department opened an Internal Affairs investigation into the claims. The final outcome of the investigation is still pending, but the evidence has emerged that the passenger was another Department member, that no romantic relationship was involved, that the flight fell within the responsibilities of the supervisor and that the appropriate logs were completed. Nonetheless, it appears that steps could have and should have been taken to eliminate questions or misunderstandings before they arose. At OIR’s request, the Department is reviewing its protocols for the formal authorization of “ride-alongs” in order to help ensure that no future issues of this nature occur.*

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*An inmate alleged that he was repeatedly mistreated by deputies because of his bisexual status; allegations included physical and verbal abuse, and an incident in which he was punitively left in a cold cell for an extended period, in waist chains and without the proper clothes. Though there were credibility problems with some of the inmate's statements, the investigation did reveal that two deputies had brought him to a holding cell for a contraband search and left him in chains and without jail issue clothing for nearly two hours. The deputies maintained that the deviation from normal practice was not intentional. Nonetheless, OIR recommended discipline for the involved personnel for their negligence. Two deputies ultimately received low-level discipline.*

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*A female motorist was pulled over by a deputy for a traffic violation. In the course of writing her a citation, the deputy recognized her as a celebrity, and began to ask her about her career and her personal life. He also joked with her about telling his co-workers that he had given a ticket to someone famous. Later that day, while off-duty, the deputy went to the woman's home and sought to speak with her. She was not there, but he spoke with another resident and left a business card. Through her manager and then a lawyer, the woman eventually contacted the Department to express her concern about this off-duty outreach. The Department initiated an investigation into the actions of the deputy, who asserted that he had merely wanted to apologize for some of his comments during the traffic stop. While his explanation was credible and corroborated by other evidence, OIR has recommended significant discipline due to the poor judgment and the concerns that arise when law enforcement makes unauthorized use of private information. The final outcome is pending.*

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*A man complained that he had been roughly escorted from a courtroom without cause. The Department's initial review of the complaint resulted in a recommendation that the involved deputy receive a commendation based on his handling of a volatile and uncooperative citizen. OIR found this result puzzling, and asked the Department to revisit the allegations and interview additional potential witnesses to the encounter with an eye toward investigating the complainant's claims. The Department did conduct significant further review. While the complainant's claims were not ultimately substantiated, he contacted OIR to express his appreciation that the matter had been taken seriously.*

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*A man contacted OIR to express his frustration over the Department's handling of a criminal fraud investigation in which he was the alleged victim. He claimed the Department had mishandled the case and was not responsive to his requests for specific steps to be taken. The case involved a financial dispute with a neighbor. OIR discussed*

*the matter with OCSD personnel familiar with the case. OCSD's position was that it had conducted due diligence on the case, that the elements of a crime had not been established, and that the complainant's recourse was in the civil system. Nonetheless, OCSD responded to the complainant's concerns and desire for a "second opinion" by packaging the case for a formal presentation to the District Attorney's Office. The allegations of an inadequate investigation are currently the subject of an Internal Affairs review.*

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*A woman accused handling deputies of being "rude, threatening, arrogant and condescending" in the context of a traffic stop for a driving infraction. The sergeant who first reviewed the available recording of the stop found that the deputies had acted appropriately; however, his supervisor -- the city chief -- had a different perspective. OIR reviewed the inquiry and concurred with the recommendation of counseling for two different comments that, while not egregious, fell below the Department's standards for courtesy and professionalism.*

## **II. Use of Force Review: Policy Update**

In my October 2011 Report to the Board, I mentioned a concern about the number of incidents from patrol that did not receive a full supervisory review. Nearly half of the force cases from a recent review period had fallen into the "No Supervisory Analysis Required" ("N.S.A.R.") exception that had been built into the evaluation protocol.

The exception was originally designed in 2009 for instances of reported force that were minor on their face and lacking in factors such as injury to or complaint of pain by the subject. (A quick and routine takedown, for example, to subdue a resistant subject who then cooperated, would constitute a potential N.S.A.R scenario.) It was also intended as a hedge against concerns that the volume of force reports would consume too much supervisor time, at the expense of other useful and necessary activities.

In an effort to assess the reasons and potential consequences of this high number of exceptions to the most thorough practice, OIR conducted an audit of the more recent N.S.A.R. cases. The audit reinforced three planks of a recommendation to the Department that it eliminate the N.S.A.R. category:

- The volume of total force cases was fewer than had been anticipated in 2009; on average, each patrol sergeant has only had to handle one or two per month. This gave less impact to the original "strain on resources" rationale.

- In practice, the existence of the exception was creating confusion and inconsistency in how cases were handled in different locations and by different personnel; occasionally, the exception was being overused.
- Even the “routine” cases offered a forum for constructive criticism of tactics, communication, or decision-making that was sometimes being missed – or at least not documented.

After discussion of the issue with OIR, OCS D Field Operations executives made the decision to end the N.S.A.R. designation and require full supervisory workups of all cases. OIR considers this a positive reform. It is also a reminder that effective policy and procedure evolves on a steady basis, in response to new information or changing circumstances. The Department’s flexibility in this regard is commendable.

### **III. Video Review: Policy and Training**

To an increasing extent, the on-duty actions of OCS D officers are recorded and preserved through a variety of technological means. These recordings have evidentiary significance in a variety of contexts, including any criminal prosecution or civil litigation that may arise from the event in question.

In last summer’s Fullerton Police Department force incident that resulted in the death of Kelly Thomas, involved officers reportedly reviewed the available recordings of the encounter with Mr. Thomas *prior to* completing their reports. This fueled public skepticism about the integrity of the review process. The practice struck some people as an unfair, insiders’ advantage that allowed officers to “get their stories straight” in a way that would not be available to the general public.

On the other hand, law enforcement refutes this perspective with a number of counter-arguments. One, for instance, is that the recordings speak for themselves as evidence of what occurred, and viewing them doesn’t change what happened. Moreover, it is difficult to base a rule on the rare situation when the police are the focal point of scrutiny and possible criminal charges. In more routine situations (such as a DUI arrest), the importance of accuracy within an officer’s criminal report militates in favor of using the recording as a tool. Moreover, this “due diligence” helps avoid the scenario where defense or plaintiff’s attorneys exploit honest (and often irrelevant) factual mistakes in an effort to undermine the integrity of officers.<sup>1</sup>

The issue is both interesting and multi-faceted. Accordingly, OIR evaluated the current policies and practices of the OCS D in an effort to ensure that the pros and cons were being weighed clearly and effectively. OIR learned that there was no specific

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<sup>1</sup> Interestingly, OIR has recommended discipline in more than one administrative investigation in which deputies failed to prepare for court testimony by reviewing available recorded evidence, thereby compromising their own effectiveness on the stand and undermining the relevant prosecutions.

Department policy to address the question. In practice, there appears to be inconsistency as to how regularly and under what circumstances officers view recorded evidence prior to report writing. Moreover, OIR has encountered individual examples of reports that blur the distinction between the writing deputy's personal observations and impressions, and those facts that he or she knows from other sources (such as the reports of other participants.)

OIR has worked with the Department on a two-pronged response:

1. The development of a policy that sets forth the authorization, rationale, and potential exceptions for the practice of video review.
2. The development of training curricula and bulletins that clarify the purposes of video review and the difference between objective facts and subjective perceptions for purposes of report-writing and/or testimony.

The Department's proposed approach shows a grasp of both practical advantages and public concerns regarding this question. OIR will continue to monitor the developments as the Department directs more attention to the relevant protocols and training.

#### **IV. OIR Jail Assessment: New Project**

In recent months, several news articles have described allegations of serious deputy misconduct in the Los Angeles County jails. Many of the incidents involve allegations of excessive and/or unreported force. A picture has emerged of a culture that has regressed in terms of accountability and professionalism in dealing with inmates, and of an executive leadership that had become detached from the realities at the "ground level."

There are many distinctions between circumstances in the respective jail systems, and respective Sheriff's Departments, of Los Angeles and Orange Counties. It is also the case that many of the underlying factors in Los Angeles (such as a massive hiring push a few years ago that resulted in a temporary lowering of qualification standards for new deputies) are not relevant here. Nonetheless, there are lessons to be learned from the struggles of another large agency with custody responsibilities.

With that in mind, OIR plans to devote the next several weeks to a "pro-active" audit of current jail practices in key areas. These include the following:

- **Use of Force:** While the Department has an effective review protocol for these incidents (as does Los Angeles County), OIR will look at a range of cases from each jail facility for purposes of "quality control" and potential recommendations. Focal points will include the objectivity and effectiveness of interviews with involved inmates, the correlation between available recorded evidence and the relevant reports, and the extent to

which broader issues of training, tactics, equipment, etc, were considered and addressed in the review.

- **Supervision:** Effective supervision, particularly at the sergeant level, is a critical component in establishing the appropriate culture within a custody setting. OIR will evaluate staffing levels and sergeant responsibilities in an effort to evaluate the current focus on risk management, training, and holistic accountability.
- **Inmate Complaints:** OIR continues to encourage the Department to develop more thorough and consistent processes for handling inmate complaints of staff misconduct. While the new inmate grievance system has greatly improved the intake of allegations, and while serious issues receive prompt and appropriate attention, the lower-level allegations (comparable to the discourtesy claims that commonly emerge from the Commendation/Complaint system) are addressed inconsistently, and not always tracked effectively for purposes of enhancing accountability and individual performance. OIR has recommended importing as many features of the Commendation/Complaint protocol into the custody environment as are workable, and that process is underway.

## V. Critical Incident Updates

OIR continues to monitor the Sheriff's Departments critical incidents from an early stage, and participates in briefings at the scene in order to become familiar with the known facts and identify potential administrative issues. I have "rolled out" to three events since my last report to your Board:

- A deputy-involved shooting in San Juan Capistrano that occurred in late November. The suspect was slightly wounded. The deputies were responding to a call for service in a residential neighborhood that involved a dispute between a mother and her adult son. A team of deputies ultimately made entry into the residence; one shot at the man in response to the ongoing threat he presented. He was allegedly armed with a knife. The shooting is being assessed for legality by the District Attorney's Office, with investigative assistance from Sheriff's Department Homicide. OCSD will also look at the case internally through its "Critical Incident Review Board" protocol.
- An inmate suicide that occurred in late October. This was the first suicide in the County jails since 2010 (which had three). The act took place in the dayroom area of a housing module in the Central Jail, and involved an attempted hanging that ended in a fatal fall. As with all in-custody deaths, the District Attorney's Office is handling the formal investigation into the circumstances. OCSD is also reviewing its administrative practices to ensure that proper protocols were observed in the classification, housing,

and monitoring of the inmate, who had been in custody for 3 days when the incident occurred.

- A deputy-involved shooting in Lake Forest that occurred in mid-December. The suspect, who had allegedly committed an armed robbery of a business before fleeing on foot, had been pursued by a store security guard for a short distance before ending up in a residential neighborhood. An Investigator, who happened to be in the area, struck the suspect with at least one round, but the injuries are not life-threatening. No one else was injured. The District Attorney's Office took the lead on this shooting investigation, in keeping with the established protocols.

The review of all three events is pending.

## **VI. Closed Session**

OIR has now prepared memos for two cases that have reached the Closed Session agenda for a decision by your Board. From my perspective, this practice has been helpful as a means of furthering OIR's access to relevant materials from the litigation arena, and its protocol of regular interactions with OCSO Risk Management. I welcome any input you may wish to offer as to how the process might be refined for upcoming cases.

## **VII. Conclusion**

Thank you for your attention to this memorandum. Please feel free to contact me at your convenience regarding these contents or other matters related to my responsibilities.

Best regards,

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