



Stephen J. Connolly
Executive Director

TO: Board of Supervisors
FROM: Stephen J. Connolly
DATE: Friday, January 25, 2013
RE: OIR Activity Report

I. Discipline Process: Cases and Trends

One of OIR's core functions continues to be the monitoring of all Sheriff's Department's Internal Affairs investigations into allegations of misconduct. 2012 saw a significant reduction in the total number of new cases, from last year's 251 down to 189. Even more noteworthy is the gap between the 2012 caseload and the total for 2009, which was 364.

This phenomenon does reflect a reduction in allegations of misconduct, which is an encouraging development. However, it is also partly attributable to accounting practices and new Department protocols. These include refinements in the OCSA Commendation and Complaint system for intake and assessment of public feedback, along with the "Decentralized Discipline" process that gives each unit direct responsibility for the initial triage and review of complaints.

Accordingly, some matters that would have counted as Internal Affairs cases in 2009 (thus contributing to the high volume) are now addressed through other means and never make it to a full and formal investigation. This can include low-level concerns that may be legitimate, but do not rise to the level of a policy violation (such as minor discourtesy).

A complaint from the last quarter of 2012 offers an example of how the system now works. A man wrote a detailed letter to the Sheriff to complain about the Department's handling of a call for service at his home. The deputies were responding to a 911 call regarding alleged domestic violence involving the boyfriend of the complainant's granddaughter. The man believed the deputies had been overly aggressive in their entry into the home and initial handling of the call, and had been rude and unprofessional in their dealings with him in the aftermath of their arrival.

This complaint was evaluated and routed to the relevant city for an initial review of the facts. While the allegations involved significant performance issues relating to both tactics and general conduct, the Department utilized both the 911 records and the audio recordings by involved deputies to evaluate whether a basis for further investigation existed. OIR had the opportunity to monitor that inquiry and to listen to the relevant recordings, and concurred with the Department's conclusion that the deputies' actions had indeed been warranted by the circumstances, and that the charges of unprofessionalism were not supported by the tapes.

If that initial review had been inconclusive, or had in fact substantiated any or all aspects of the complaint, then the unit would have forwarded the case to Internal Affairs for a full, formal investigation. This "triage" approach has improved the timeliness and efficiency of the investigative process. At the same time, complaints are getting appropriate consideration, and the Department is responding to public feedback in ways that are reasonable and constructive.

The total number of citizen complaints from 2012 that were processed through the Commendation/Complaint system was 128. 41 of them were ultimately referred to Internal Affairs for further investigation.

A further breakdown of last year's 189 Internal Affairs cases includes the following:

- The number of investigations generated by personnel from Patrol Operations was the same as the number that came from Custody Operations employees: 73.
- On-duty allegations were responsible for 169 of the cases, with the remaining 20 relating to allegations of off-duty misconduct.
- 16 allegations were investigated and reviewed for possible criminal prosecution.

Among the noteworthy administrative investigations reviewed by OIR in the last several weeks are the following:

An investigation into a pattern of inappropriate on-duty contacts with prostitutes by a patrol deputy involved the review of dozens of recordings from that officer's car surveillance camera. That investigation is complete, and OIR has recommended discharge for the subject deputy. Additionally, however, one of the recorded incidents involved potential misconduct by a back-up deputy, who allegedly disregarded contraband he found in a search of a female detainee's possession and deferred to the other deputy's handling of the stop. That prompted a second investigation, which is now complete, and OIR has recommended a "sustained" determination. The final outcome is pending.

A female deputy recently left the Department after approximately one year of employment. As part of her “exit interview,” she made several allegations about mistreatment by senior deputies at her work assignment, a pattern of hazing that she believed constituted a hostile work environment. The Department has initiated a personnel investigation and, in the interim, has re-assigned some of the named parties and taken a division-wide look at the potential issues of “culture” raised by the allegations.

An off-duty deputy is alleged to have threatened another adult in the context of a dispute at a youth sports event. After being suspended from the league, the deputy allegedly returned to the field on a later date in spite of the restriction, and was less than cooperative with the responding deputy who handled the call for service. Though the conduct did not rise to the level of possible criminality, the Department initiated an administrative investigation. That investigation is complete, and OIR has recommended a “sustained” determination with discipline for violation of the Department’s standard of conduct.

II. Deputy-Involved Shootings: Update

The Sheriff’s Department ended 2012 with a total of four shooting incidents, with the most recent occurring in September (a non-hit in the city of Dana Point). This is a comparable total to recent years. As discussed in previous reports, each shooting is the subject of a multi-faceted review process. This includes a formal criminal investigation, with an evaluation from the District Attorney’s Office as well as an administrative review that looks at individual performance issues as well as systemic lessons that might benefit the Department as a whole.

The Department also does a formal review of all unintentional discharges. There have been four of these events since the beginning of December, including one in which the involved employee inadvertently injured himself (though not seriously). Given the potential seriousness of such an event, the Department reviews each incident for risk management, training and accountability, and maintains records accordingly. As a result of these incidents, a Training Bulletin from the Range Master is being distributed to remind personnel of proper handling and safety measures.

In the fall, the Department recognized that “weapon-mounted flashlights” were overrepresented in the last few years’ worth of data involving unintentional discharges. This meant that the proportion of incidents in which the involved gun featured a flashlight on the barrel was greater than the proportion of officers who carry such a weapon (which is optional). There was concern that a “pressure switch” feature for the flashlight increased the likelihood of a mistaken or accidental trigger pull; the relevant holsters and wiring were also assessed as possible factors that might warrant intervention.

Accordingly, the Department temporarily restricted use of the weapon-mounted flashlight while the Training Division conducted a review. While this caused some consternation among the deputies, because of the tactical advantages and efficiency that the weapon provides, OIR believed the caution was appropriate. The review was completed several weeks later. Use of the light-equipped guns was re-authorized, but with new qualifications and requirements that enhance training and address the potential issues within the design of the systems.

This pro-active response will ideally improve performance and limit the Department's risk going forward. It is an example of the potential benefits of the kind of scrutiny that the Department now regularly gives to its critical incidents.

III. Escape from Musick Facility

On December 20, an inmate escaped from the James A. Musick Facility by clearing the razor wire of an inner perimeter fence after dark and then making it over a second fence at the edge of the compound. He was apprehended six days later after extensive efforts by OCSD criminal investigators, and is back in custody. The escape was the second of the year from the Orange County jail system. (It followed an escape from the Theo Lacy Facility in January; that inmate was also re-arrested within days of getting away.) It was the first such event at Musick since January of 2011.

Musick is a minimum-security institution, where inmates have greater freedom of movement and less stringent housing environments than the other Orange County jails. The obvious potential for issues that are inherent in this approach is offset by the Department's classification process, which takes pains to ensure that the inmates who are housed there are low-level, non-violent offenders. In terms of their profile, these offenders are neither a high risk to escape, nor a significant threat to the public in the rare event that an escape does occur. (The inmate in the December incident, for example, was in custody for theft.) Additionally, the relative appeal of the environment has been a deterrent to misconduct of any kind; Musick's numbers for force incidents and inmate discipline issues are consistently, and by a large margin, the smallest among County facilities.

Nonetheless, the escape is problematic on its face, and an occasion for the Department to conduct an internal review to look at whether deficient employee performance or systemic flaws were a factor in what happened. That process has already begun. In fact, based in part on voluntary statements made by the inmate after he was captured, and explaining his specific method of escape, the Department has already made adjustments to the physical plant at Musick in order to heighten security.

Per the usual protocol, OIR will have the chance to participate in the formal "Critical Incident Review" that will look at all aspects of the case and determine whether additional action items are warranted.

IV. Video Recording Policy

At the end of last year, the Fullerton Police Department revised its policy to require officers to give an interview or write a report *prior to* the viewing of any available recorded evidence from an incident under review. This stemmed from an issue that arose in the Kelly Thomas case, which had occurred in July of 2011. The involved officers – several of whom face pending criminal charges – had the opportunity to review surveillance tapes before committing to statements about the use of force incident – a practice that was criticized as a “double standard” that undermined the integrity of the investigation into their conduct.

The Sheriff’s Department reviewed this issue at the urging of the OIR. There are certainly two sides to the argument: the public skepticism and concern that arises in a troubling case like the Kelly Thomas matter is balanced against the standard law enforcement situation, in which the reliance on recorded evidence improves the accuracy of reports and helps strengthen criminal investigations. Moreover, unlike Fullerton, the Sheriff’s Department has patrol car cameras and extensive video surveillance in the jails, which it utilizes as part of its regular course of business. OCSD also has several internal review mechanisms that are designed to ensure that serious, extreme cases such as the Kelly Thomas use of force would be subject to different protocols

In addition to these safeguards, OIR recently worked with a committee of Sheriff’s Department captains to craft a new policy that would better accommodate the balance between law enforcement efficiency and public concern. While OCSD continues to authorize the review of its own video and audio materials prior to report writing in the standard situation, the new policy limits the potential for abuse. It requires that such review is documented as part of the reporting process (for purposes of transparency and accountability) and expressly prohibits “huddling” of involved officers for purposes of reviewing the evidence or discussing it collectively prior to the preparation of reports.

The new policy works in conjunction with the Department’s critical incident protocols and its ongoing relationship with the District Attorney’s Office (which takes the investigative lead in all in-custody death cases and officer-involved hit shootings). Together, these measures should protect the integrity of these important investigations while preserving the appropriate use of video evidence as a resource.

V. Department of Justice: Ongoing Investigation

The Civil Rights Division U.S. Department of Justice has had a review of the Orange County Jail system pending since 2008. The stated goal, pursuant to federal statute, has been to determine “whether there are systemic violations of the United States Constitution in the conditions at OCJ.” As has been the case in Orange County, such inquiries are typically comprehensive and wide-ranging. They cover issues of force, discrimination, medical and mental care, and the general standards of the facilities.

Depending on the complexity of issues, level of cooperation with the subject agency, and other factors, DOJ's protocol in these investigations can and does vary. It generally involves an extensive document review and at least one site visit. The "end game," however, is fairly standard: a report of findings, which either closes the investigation or features a set of recommended/required actions that the DOJ deems necessary for the agency to achieve Constitutional compliance. The agency's reaction to that report then dictates the final stages of the case.

The Orange County version of the process has been slightly unusual, in that the DOJ has already visited twice (most recently in September of 2010), but has not yet issued a report. Now, after an extended stretch with no active communication from Washington, the Civil Rights Division has announced its intention to return for another visit in order to check on the status of OCSD reforms. That visit is likely to occur in the spring, and is likely to be preceded by conference calls and documents requests that will give further focus to this next phase of the inquiry.

Interestingly, the pendency of the DOJ investigation has coincided with a period of significant internal transition and reform within the Sheriff's Department itself, beginning of course with the appointment of Sheriff Hutchens in 2008. The Department has intensified its review systems for use of force, critical incidents, and officer misconduct, and has a newly collaborative relationship with County partners within the Health Care Agency.

The County's creation of OIR as an independent monitor has also been relevant to the DOJ assessment of the jail system. The Civil Rights Division has cited civilian oversight as indicia of a local agency's commitment to transparency and accountability -- factors that help promote and justify public confidence.

OIR has encouraged the Sheriff's Department to take a proactive and cooperative approach to the ongoing investigation, and the Department has already embraced this philosophy with good results. Relative to the first visit in early 2009, for example, the DOJ team's feedback during the September 2010 "exit interview" was largely positive. And, where issues were identified, the Department moved quickly to address them.

An example of this is the inmate grievance process, which has undergone a significant overhaul since the DOJ team cited it as a concern in 2010. The grievance system is a way for inmates to communicate issues, problems, or complaints across a range of subjects. Written messages are submitted, assessed, and processed through to resolution. Among the changes adopted by the Department are the following:

- Conversion from multiple forms for different categories to a standard form that encompasses all potential issues and removes the "guesswork" for inmates.
- Increased availability and security of the forms in response to inmate claims of impediments to proper notification of supervisors.
- Creation of a database to allow for centralized tracking and review of individual grievances.

Additionally, OIR advocated for heightened incorporation of allegations of staff misconduct into the grievance process. Instead of its previous practice of segregating such complaints under the theory that the grievance process was reserved for “conditions of confinement” issues, the Department agreed to include staff misconduct as an additional category on the new forms. It also agreed to a heightened level of review for the resolution of those complaints: while sergeants are responsible for the initial inquiry into allegations, the cases require a lieutenant’s approval before they can be closed out in the system. This protocol ensures the legitimacy and thoroughness of the Department’s response to these inherently sensitive claims. Inclusion in the database also enables Department management to monitor these issues from a cumulative perspective, and to intervene as warranted.

The new grievance system went online in May of 2011. In December, OIR attended a Custody Division staff meeting which looked at aggregate statistics from the first eighteen months. The Department had processed a total of 1531 grievances across a range of categories. (These range from “Mail” and “Shower” to the more substantive “Medical,” “Housing,” and “Classification.”) The grievances are evenly distributed among the various facilities, in proportions that are roughly consistent with their size and populations.

Of the 1531, 57% are related to medical issues; this is the largest area of concern by a significant margin. “Staff Misconduct” constitutes the second largest category, at 12%, and “Food Services” is third at 10%. The new system has promoted greater efficiency and well as accountability in addressing these and other concerns. Several of the staff misconduct allegations have been forwarded to Internal Affairs for further review and monitoring by OIR. OIR also has the opportunity to periodically survey the effectiveness and legitimacy of the Department’s response to those complaints that are resolved at the division level.

The Department looks forward to showcasing the inmate grievance system at the time of the DOJ’s return visit. A successful resolution and conclusion of the ongoing federal investigation is, of course, the Department’s goal. In the meantime, though, it is using the incentive of the ongoing inquiry to continue pushing forward with the refinement and maintenance of its reforms and review processes. This has been constructive in its own right, and OIR will continue to work with the Department in the development and monitoring of these systems.

VI. Probation Department: Incident Review

For nearly a year, the Office of Independent Review has been monitoring the Probation Department’s response to a large and significant investigation into staff diligence at the Juvenile Hall facility in Orange. The case began after a highly publicized incident of sexual activity between a male and female juvenile in one of the cells, and

over a period of a few hours when staff theoretically should have become aware of the issue as part of its routine monitoring protocols.

The Probation Department responded quickly and assertively, identifying a total of sixteen employees as being potentially implicated in a pattern of failure to do required checks, and allegedly falsifying the records that document those checks and when they occur. The allegations covered the day of the original incident, but widened as the investigation revealed that the relevant unit had experienced similar misconduct on prior recent occasions (though, thankfully, without the negative consequences).

The initial investigation was thorough, comprehensive, and reasonably fast-paced; the process has lingered for the last several months for reasons related to the due-process and appeal rights of the involved personnel, and the bureaucratic complexities involved in administering serious discipline in the County system. Of the sixteen officers who were placed on administrative leave, two left the Department on their own accord at an early stage of the process. As the investigation unfolded, the evidence indicated that the misconduct of four of the remaining fourteen was at a lower level of seriousness. They returned to work and ultimately received discipline in the form of suspensions.

The Department initially determined that the performance issues of the other ten officers warranted termination. The resulting notification led to the standard appellate process for such cases, which begins with an internal hearing for the affected employee and an executive for the Department. That process has been occurring over the course of the last several weeks, and should be finalized within days. The Department has moved ahead with discharge proceedings against six of that group, has brought three back (with significant suspensions) based on their showing of lesser culpability, and is still considering the case of one.

OIR has monitored the investigation and consulted with the Department about its progress as it has unfolded through its different phases, and has concurred with the various outcomes. The current focus is on possible accountability issues at the supervisory level. While none of the relevant and direct supervisors for the unit was on duty on the day in question, the investigation suggested they may have fallen short of expectations in allowing problematic work habits to go unchecked or uncorrected. Two of them retired from the Department last year. The investigation against another is complete, with OIR having recommended a low-level suspension; and the Department is presently considering action against at least one other individual.

Additionally, and importantly, the Department continues to consider policy changes and new protocols that may help limit the likelihood that such an incident will recur in the future; some are already in place.

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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,

Stephen J. Connolly
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