



Stephen J. Connolly  
Executive Director

**TO: Board of Supervisors**  
**FROM: Stephen J. Connolly**  
**DATE: Tuesday, February 28, 2012**  
**RE: OIR Activity Report**

## **I. San Clemente Officer-Involved Shooting**

On the morning of February 7, the Orange County Sheriff's Department experienced its first fatal officer-involved shooting in more than three years.<sup>1</sup> As you know, the case has become a focus of considerable media attention and public concern. This stems in part from the fine reputation of the Marine who was killed, and the sad circumstance of his children's involvement. While the use of deadly force always warrants careful attention, the controversial circumstances related to this incident will be a special test for the thoroughness and legitimacy of the various review processes.

Those processes have begun in earnest. On the morning of the shooting, Department personnel immediately notified the District Attorney's Office, which took control of the official investigation in keeping with established protocol. As with other officer-involved shootings, and deaths connected to law enforcement contact throughout the County, the District Attorney's Office leads the fact-gathering in an effort to ensure the investigation's independence and objectivity. The D.A. will then make a formal determination regarding the legality of the officer's actions.

A decision from the District Attorney's Office typically takes several weeks or even months in a case like this. Certainly, it has already accumulated a significant amount of relevant information, but its file will not be complete until it can incorporate related forensic evidence and follow any remaining investigative leads.

When it does issue its findings, the District Attorney's Office will be able to draw on the statements of involved OCSO personnel who cooperated fully with the investigation and voluntarily gave interviews on the day of the incident. This includes

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<sup>1</sup> The previous case occurred in December of 2008, and involved the death of an apparently suicidal woman who was brandishing a firearm in front of her home.

the deputy who fired his weapon. Additionally, the review will utilize physical evidence from the scene, as well as audio and video recordings that were captured by the Department's in-car camera systems. These recordings should provide a valuable independent basis for determining what occurred and why.

As the District Attorney's investigation moves forward, the Sheriff's Department is also moving forward with its own administrative proceedings. The Department has provided full access to OIR as it undertakes this analysis. As with any event of this seriousness, the Department has initiated its "Critical Incident Review" protocol to evaluate the incident from a number of perspectives. These include questions not only of individual performance and accountability, but also tactics, policy, training, and equipment.

This evaluation takes time to do well and fairly, especially given the deference it properly shows to the D.A.'s inquiry. One related matter, however, that has already been addressed is the Department's problematic release of information in the initial days after the shooting. For example, the Department took nearly twenty-four hours to confirm to the media that Sgt. Loggins had died, and spent days releasing facts in a staggered manner that raised as many questions as it answered. Perhaps most problematic was the release of a statement that the deputy had fired out of fear for his own safety – an assertion that had not, apparently, been made by the deputy. That was subsequently corrected to reflect the deputy's actual explanation: that he had perceived a threat to the welfare of the children in the back of the vehicle. The change, however, intensified the suspicion and concern that some members of the public already felt.

The misinformation about the deputy's account seems to have been an honest – if unfortunate – mistake. (It apparently arose not from any change in the deputy's statements, but in the transfer of information from investigations to the Department's press officer.) Nonetheless, it reflected a dynamic of ambiguity and inefficiency in public communication that the Department had to rectify.

The origins of the dynamic are understandable. Within the Sheriff's Department, any push for transparency and release of information must accommodate an appropriate respect for the District Attorney's Office as the "lead" investigating agency, as well as a necessary emphasis on confidentiality in pending investigations. Additionally, it is typical for preliminary information and understandings to evolve in the initial hours and days after a critical incident, and avoiding the premature or erroneous release of "facts" is a priority worth honoring.

In this case, though, halting communication within the Department dovetailed with the absence of a clear vision for effective outreach to the public in the days after the shooting. The results were disappointing. Information came out slowly, inaccurately, or both, thereby exacerbating public perception of an incident which on its face was tragic. Moreover, the Department missed an opportunity to educate the public regarding the rigorous and multi-faceted scrutiny the case was (and is) in fact receiving.

The circumstances of this incident are inherently controversial, and the final outcomes regarding accountability and potential reform remain to be seen. But if the Department had taken a different and more effective approach to the first days, it might have increased the public's understanding of the process, and by extension its confidence.

OIR has discussed this issue with the Department, and is encouraged by the swift response that the administration has already implemented: namely, a re-structured approach to community outreach (including media relations) that will facilitate the clear and timely release of appropriate information about critical incidents. By centralizing existing components under one command, the Department has established lines of responsibility and has given proper attention to the public's need for appropriate transparency. Further a new process has been established to review newsworthy information at the management level, and to provide regular briefings that will ensure a shared understanding of evolving situations.

Meanwhile, the Department will continue to focus on the substantive questions arising from the case, and look for ways to improve or adjust or reinforce its practices going forward. OIR will monitor that ongoing effort, and will provide future updates to your Board as it progresses.

## **II. Discipline Process: Cases and Trends**

OIR continues to monitor all administrative investigations, as well as the Department's Commendation/Complaint process for the tracking and resolution of public feedback. Previous reports have discussed the Department's new emphasis on "de-centralized discipline." Responsibility for the intake, triage, and resolution of lower level allegations of misconduct is delegated to the units of origin. The computer database tracks progress of cases and allows for input by OIR and the relevant chains of command.

This process has had a number of positive influences since it began in November of 2010. These include a greater level of engagement by local supervision and a heightened efficiency in the completion of inquiries. Not only do the local commands process their own matters much more quickly than would Internal Affairs, but the re-distribution of the workload has allowed IA to complete its investigation of more serious matters at a more timely pace.

The protocol has yielded other results as well. For one thing, it provides a built-in forum for evaluating employee performance. Most of the complaints do not rise to the formal discipline process (either because the conduct at issue is of lesser severity, or because the allegations are not corroborated by available evidence), and many of the inquiries effectively exonerate the employee. However, the process frequently leads to the identification of a training or counseling issue that is documented and directed at longer term improvement.

Additionally, the complaint review process for patrol often begins with an assessment of available recorded evidence from the patrol vehicle surveillance (“PVS”) systems and microphones that deputies are required to utilize under policy. In 2010, the Department switched over to more advanced technology in this arena. This was in an effort to eliminate the equipment glitches that created legitimate obstacles to – as well as convenient excuses for – not capturing certain encounters. In conjunction with the overhauled equipment, the Department ramped up its policy expectations and began a move toward more rigorous enforcement.

The Commendation/Complaint process has shown the utility of the recordings, both in refuting inaccurate allegations and in establishing reasons for further Departmental intervention. In several instances, the review process has revealed – apart from the substantive issue of the complaint – that the involved deputy is out of compliance with the PVS policy. This has led to a reiteration of the expectations and a shift from documented counseling to the imposition of actual discipline. In fact, four cases in recent weeks have resulted in formal discipline for PVS violations, and more are pending.

OIR’s vantage point as a reviewer of all the complaints has also allowed it to identify developing trends, and bring them to the attention of the Department’s command staff. A recent example involves separate cases in which supervisors, in the process of assessing a complaint through review of PVS recordings, noted music emanating from patrol cars in the background. The music, which sounded like it was coming from a car radio, obscured the ability to track the citizen encounter in some instances; in each instance, it also suggested a potential issue regarding professionalism and public impression. OIR discussed the issue with Patrol Operations executives, who subsequently addressed it within their command.

The following are synopses of other recent cases monitored by OIR:

*As described in a previous OIR report, publicized allegations of an inappropriate use of a Department helicopter prompted an Internal Affairs investigation into possible misconduct. Though the most serious allegations (that a supervisor took his “girlfriend” on an unauthorized ride-along) were refuted, the investigation did reveal errors in judgment and deviations from normal protocol. OIR has recommended discipline in connection with the case; the final outcome is still pending. Meanwhile, the existence of additional tensions and disputed incidents within the unit has emerged from the investigation. The Department is currently reviewing those additional allegations, and assessing its staffing and resources in conjunction with the helicopter program.*

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*An inmate received a minor head injury after being pulled from a holding cell and pushed against the wall. No force had been reported; when the inmate complained, the*

*Department pulled surveillance video and was able to find the relevant encounter. The subsequent investigation turned in part on the deputy's claim that he did not know the inmate had been injured, and did not believe his physical contact with the inmate (which he acknowledged and attempted to explain as a security issue) constituted reportable "force" within the Department's definition. Because of questionable tactics, a past history of misunderstanding regarding reporting expectations, and the force itself, OIR recommended that the allegations be sustained, with a suspension. The Department concurred.*

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*In a case that received significant media attention, a female jail deputy is alleged to have engaged in sexual misconduct with an inmate. The Department acted on information from the inmate himself, and moved quickly to conduct a criminal investigation. Earlier this month, the deputy was arrested and relieved of duty behind the allegations. The Department is advancing its administrative process even as it works with the District Attorney's Office on a possible prosecution. Additionally, the Department is assessing the deputy's employment history, back to the time of her hiring, in an effort to determine whether potential "warning signs" were missed. This is an effort to make relevant adjustments in its practices going forward.*

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*A civilian employee, with a recent history of off-duty criminal misconduct (terrorist threats) that resulted in a lengthy suspension, is currently the subject of two additional cases. One is for off-duty misconduct relating to alleged threats that were captured on a recorded line; the other is for an on-duty confrontation with another employee. The employee is currently on administrative leave as the investigations draw to a close; OIR has recommended termination in light of the troubling allegations and the past history.*

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*A patrol deputy was accused of significant policy violations and poor judgment in the context of two separate incidents. The first involved allegedly showing his backup weapon to three detained subjects on a car stop, and joking with them that he had found it during his search of the vehicle. The second involved allegedly transporting a newly arrested individual to the scene of a second call for service, and ultimately releasing that first individual while handling the second case. Both cases came to the Department's attention internally, as a result of concerns expressed to supervisors by peer deputies. The involved deputy was placed on administrative leave pending the outcome of the investigations, which are complete and waiting for disposition.*

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*Multiple employees at one of the jails are alleged to have been derelict in the performance of their required safety checks during at least one overnight shift, and to have attempted to falsify the mandatory logs in an effort to cover for this misconduct. While it is encouraging that the Department became aware of this issue when another concerned employee came forward to a supervisor, the allegations are a reminder of the need for continued vigilance regarding safety check compliance. OIR worked with the Department last year in clarifying ambiguous policy language and processing several separate Internal Affairs investigations, some of which resulted in discipline. Nonetheless, the new case illustrates the importance of continued emphasis in this area.*

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Another noteworthy case which was recently completed involved the OCSD Regional Training Academy. The Academy, which is certified to provide peace officer training to new recruits according to California state standards, confronted allegations in the fall regarding possible cheating among the then current class (which was the first to include deputy recruits in more than two years). The issue concerned “study guides” that were freely circulated among recruits through computer files. The “guides” had been created over the course of several years and passed down through the classes. They included versions of actual test questions that were still utilized within the state’s official curriculum.

Once the information came to the Department’s attention, it took several steps to address the problem. One of these was immediate self-reporting to POST, the governing body for training and certification of California peace officers. The Department worked closely with POST on assessing the scope of the problem and the continuing viability of the pending class. OIR had the opportunity to closely monitor these discussions and the subsequent investigation.

Internal Affairs investigators determined that the practice of information-sharing was relatively open and widespread. The first priority became to accumulate all relevant materials from the recruits. Then investigators conducted well over a hundred interviews with recruits and Academy staff.

The key issues ended up being the scope of the study aid’s use (it was considerable) and the extent to which the recruits knew or should have known that the materials were not permitted. The latter was the more difficult question. However, the recruits convincingly denied having “guilty knowledge” about the significance of the study aids. Interestingly, the overt and widespread dissemination of the guides actually reinforced this claim, even as it highlighted the need for clarifications and reforms.

Two recruits were dismissed from the Academy in connection with the case – not for their original use of the materials, but for related integrity transgressions that emerged during the investigation. There were also three other significant systemic outcomes. First, the Department has taken steps to eliminate all known sources of past materials

over which it has control (including share drives on Department computers). Second, the Department has updated and reissued its relevant policies and training bulletins in an effort to ensure to limit the potential for any future misunderstanding or ambiguity about what is authorized. Finally, the state Commission on Peace Officer Standards and Training (“POST”), which provides learning content and testing materials to academies throughout California, has taken steps to update its content and render older materials obsolete.

The case was troubling to Department officials on several levels, especially since new recruits are often assumed and expected to be on their ethical “best behavior” as they go through the training process. Fortunately, OCSD made an effort to explore the allegations and address concerns proactively once they arose. Its transparency in dealing with POST also helped provide necessary reassurance to that organization. Most importantly, as new classes of recruits continue to work their way through the process, the Department has made necessary adjustments to prevent recurrence of this problem.

### **III. OIR Jail Assessment: An Update**

In my last report (December 2011), I discussed an audit of the County jails that OIR planned to undertake, with an emphasis on three key areas. These included Use of Force, Supervision, and Inmate Complaints. That project is not yet complete, but there have been significant developments in the last several weeks.

One of these is the further refinement of the Department’s new inmate grievance process. At OIR’s request, the jails have expanded the relevant computer database in order to allow for more detailed information when the issue concerns an allegation of staff misconduct. The changes have both a procedural and a substantive component: new dialogue boxes guide the inputting supervisors through the requisite steps and allow for enhanced tracking of the grievance all the way through resolution. The boxes also reflect two new components: the requirement that a lieutenant receive notification and “sign off” when the grievance relates to a personnel issue, and the inclusion of new resolution options (including counseling/training, or referral to Internal Affairs) that correspond to the Commendation/Complaint system. These changes will help ensure that the handling of these inmate allegations promotes accountability and corrective action to a greater extent than in the past.

OIR’s Use of Force Audit began with the review of 25 full force packages, chosen by OIR as a representative sampling from the total number of incidents in the second half of 2011. OIR looked at the cases for the effectiveness of the supervisory interviews, the completeness and legitimacy of the analysis, and the correspondence between available video evidence and the accompanying reports. The goal of the audit was to provide a “quality control” assessment. Overall, the sampling of cases suggested that the process is working well, but OIR intends to make specific recommendations to OCSD and share the results with your Board in a subsequent report.

#### **IV. Critical Incident Updates**

In early January, the Department experienced its first escape from the Theo Lacy facility in more than 20 years. The inmate was at large for approximately 24 hours before the Department found and re-arrested him.

The escape exposed vulnerabilities in the jail's physical plant that are in the process of being rectified. These included the kitchen window through which the inmate initially left the building, and which had not been reinforced in spite of increased access by inmate workers and problematic sightlines. The Department's full Critical Incident Review Board process is scheduled to convene in early March to assess remedial measures that have already occurred and identify additional action items as needed.

#### **V. Closed Session**

OIR continues to track the Department's risk management process, and meets weekly with a representative from the SAFE Division regarding pending cases and new incidents that may have a risk management component. Though there have not been any OCSD cases presented for closed session consideration by your Board since my last report, I anticipate that one or more matters will be placed on the agenda in March, and I look forward to sharing my perspective as per our protocol.

#### **VI. 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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