



Stephen J. Connolly
Executive Director

TO: Board of Supervisors
FROM: Stephen J. Connolly
DATE: Monday, April 29, 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. In the first quarter of 2013, 38 new investigations were initiated. The following additional statistics pertain to these cases:

- 35 of the new cases related to on-duty conduct, while only 3 related to off-duty allegations.
- 29 of the new cases were initiated by Department executives, and the remaining 9 originated from outside complaints.
- 1 of the new cases has been referred for criminal investigation based on the nature of the allegations.

Meanwhile, the Commendation/Complaint system continues to serve as a means for evaluating and processing citizen complaints quickly and efficiently. Individual units throughout the Department continue to have "first line" responsibility for intake and initial inquiry into new complaints. 18 new complaints entered the system in the first quarter of the year.

Among the noteworthy administrative investigations reviewed by OIR in the last several weeks (including cases which originated last year) are the following:

While investigating a discrepancy between a patrol deputy's daily log and other accounts of his activity, supervisors reviewed PVS recordings from the deputy's car on the day in question. Among the issues that were discovered was the fact that, at one point at the beginning of his shift, the deputy apparently drove on the freeway at speeds exceeding 100 mph just to get to his assigned area. This conduct became part of the investigation.

OIR has repeatedly encountered citizen complaints that relate to unsafe driving by the deputies, particularly with regard to speed. In conjunction with other aspects of the case, OIR has recommended formal discipline for the driving offense, and is encouraging the Department to supplement its recent "Safe Driving" initiative with a new emphasis on disciplinary consequences.

Last fall, an officer from another agency raised a concern about how he and his partner had been treated at a Sheriff's Department facility. He alleged that, after mildly objecting to loud and unprofessional banter that he overheard while waiting to process an arrestee, he was subjected to hostility from multiple deputies that exacerbated the problem and reflected an unsettling "This is our house" mentality. Though one deputy eventually acknowledged making some of the initial vulgar comments, others not only denied hearing or recalling what was said (or otherwise engaging in unprofessional behavior), but also faulted the visiting officer for his attitude. The Department's investigation included witness statements and surveillance video that corroborated the complaining officer's claims. It also called into question the veracity of several deputies who were subjects of the investigation. OIR has recommended significant discipline for seven of the involved parties, and the Department has moved forward with suspensions; in one instance it also released a deputy who was still a probationary employee.

An off-duty deputy was the subject of a complaint from the clerk at a pharmacy, who alleged that the deputy behaved strangely and belligerently when unhappy with the quality of service he was receiving. The clerk asserted he had identified himself as a deputy by showing his badge, and had made statements about his ability to pull her over when she left work. Some of the encounter was recorded by surveillance video, and another employee was witness to part of it as well. Based in part on a past history of disciplinary concerns with this employee, the Department placed him on administrative leave from duty and conducted an investigation into possible criminality. It has now determined that no criminal charges are applicable, but the administrative investigation continues with the deputy back at work.

A deputy responded to a call for service from a homeowner regarding disposal of a gun that a relative with a criminal history had left behind. The deputy mishandled the call, taking only part of the weapon with him and failing to book even that piece into evidence. He then initially misrepresented his actions when confronted by a sergeant. Though the Department was eventually able to collect the remainder of the gun from the homeowner, and the deputy acknowledged his mistake and provided the additional piece, the Department nonetheless placed him on administrative leave and initiated an investigation into his conduct. That investigation is complete. Although the deputy accepted responsibility, several factors militated against leniency in the case. These

included past history of misconduct, as well as the significance of his failing in judgment and the compounding of that by false statements to his sergeant. OIR has recommended discharge, and the final determination is pending.

II. Deputy-Involved Shootings: 2013 Update

The Department's first officer-involved shooting of 2013 occurred in the early morning hours of February 23rd. The incident began at a McDonald's in Stanton and ended in Anaheim after a vehicle pursuit. The 40 year-old male suspect in the case suffered a grazing wound to his left arm from the single shot fired by a deputy; the suspect also had minor head injuries for reasons that were not initially determined. He was taken into custody and was hospitalized for a short time before being medically cleared. The District Attorney's Office has filed a variety of felony charges against the suspect, and is also evaluating the use of deadly force by OCSD in keeping with the usual protocol.

OIR sent a representative to the scene in keeping with its own usual practice, and received the initial briefing as to the circumstances behind the shooting. The involved deputies and sergeant responded to a call of a man, passed out inside of a running vehicle, stopped in the drive thru lane of a McDonald's restaurant. Deputies attempted to wake the driver, by using verbal commands and then banging on the vehicle. The suspect, who appeared to be intoxicated, eventually woke up and began yelling profanities as the uniformed deputies. Unable to obtain compliance from the suspect and fearing that the suspect would drive off, deputies began breaking out the passenger side window in order to gain access and disable the vehicle.

In response, the suspect drove ahead and attempted to flee, almost striking the sergeant and crashing into a McDonald's sign before turning onto Beach Blvd against traffic. The suspect was driving erratically, at approximately 35 mph, with two deputies in pursuit in separate vehicles. At some point during the pursuit, the suspect allegedly attempted to assault the deputies by swerving his vehicle into theirs. One deputy fired one round in response as they drove, apparently grazing the suspect in the wrist area. The pursuit lasted for a total of 2.5 miles. It was terminated when a deputy performed a "pit maneuver" on the suspect's vehicle – causing it to spin out after a collision and then come to a stop. The suspect was subsequently taken into custody after a significant use of force; he ended up with facial fractures from the incident and was briefly hospitalized.

The Department's "Critical Incident Review Board" evaluated this case earlier this month, with OIR in attendance. Video recordings from all the involved Department vehicles have provided considerable relevant evidence and helped in the assessment of potential issues. These issues encompass the whole event – not just the shooting – and OIR will participate in the various aspects of the Department's ongoing review and policy evaluation.

Since the time of my last report, the Department also finalized a special project that involved a collective evaluation of eleven officer-involved shootings. OIR

participated in this committee and contributed to its recommendations. By looking at a larger number of incidents in order to assess possible trends, commonalities, and lessons to be learned, the Department hoped to emerge with insights that might enhance preparedness for these lethal force encounters.

The project utilized a variety of tools and approaches. One of these was a factual comparison of the shootings across forty-one different “incident variables”; these included factors such as age and race of suspect, time of day, years of experience by involved deputy, number of rounds fired, presence of backup, and time of engagement with the suspect. Another was a set of survey questions regarding tactics, threat assessment, and risk management that was completed for each incident by a panel of evaluators from across the Department. (OIR also participated, as did a representative from County Counsel.) The responses were compiled and used to compare the shootings for common strengths and potential points of improvement.

After reviewing the results and discussing their significance, the committee produced a training bulletin that discussed five key factors relating to officer safety and incident management, and which was recently distributed throughout the Department. Additionally, it developed several focal points for training that have been incorporated into new scenarios.

The Department has averaged only about three shooting cases per year since 2008. Nonetheless, the seriousness of the use of deadly force warrants the Department’s careful scrutiny for each of these events. The candid and constructive analysis by the committee was an additional way to help improve the Department’s effectiveness and safety in this important arena.

III. Escape from Theo Lacy Facility

After two escapes in 2012, the Sheriff’s Department experienced its first escape of this year in the early morning hours of March 1. An inmate left his housing area after the morning count, in a line of others who were authorized to leave their barracks to get medical treatment elsewhere in the complex. Jail staff realized there was an issue at the time of the next count later that morning, and put the facility into lockdown. Later that afternoon, after an extensive search of the jail itself, they confirmed he had apparently gotten away. The Department’s criminal investigators initiated their search for the man, whom they found the following morning in Oceanside and recaptured without further incident.

While the Department had immediately begun to retrace what occurred, the inmate’s cooperation with investigators after being arrested provided valuable additional information – and helped the Department take immediate steps to correct structural deficiencies that had enabled the escape. (These steps included placing additional concertina wire atop strategic locations along the fence line, as well as reconfiguring the fences themselves to make them more difficult to climb. Four days after the escape, I had the opportunity to tour the facility and see the changes firsthand.)

Prior to clearing the fences, the inmate needed to slip out of his assigned barracks in the first place – a deficiency in vigilance that could and should have been avoided but was not decisive by itself.¹ A considerable amount of inmate movement throughout the facility occurs each day for a variety of reasons, and they also have periods of outdoor recreation – the key is whether they are monitored or escorted appropriately in light of their classification status. Along those lines, this incident did expose an interesting scheduling issue: while the inmates’ medical call routinely occurred in the very early morning, deputies were not posted to monitor the outdoor areas until later in the day. That gap has already been rectified.

One question that arose quickly was whether the inmate had been brought to County jail as a function of “AB 109” realignment of the state prison system. This effort to address prison overcrowding has had a number of implications for local law enforcement, including the introduction of several hundred state prisoners into the Orange County Jail system, in the year and a half since it took effect. However, the escaped inmate was not at Theo Lacy pursuant to AB 109. Additionally, the Department determined that the inmate’s housing assignment in a barracks setting, as opposed to a more restrictive cell environment elsewhere in the facility, was also appropriate given his criminal history and other known considerations.

The Department’s “Critical Incident Review” process occurred earlier this month, with OIR in attendance. While it appears that no policy violations by personnel were at issue in the escape, the case has intensified Departmental efforts at improving its security protocols. One feature of this project is an “Assessment Team” that is led by a lieutenant. That group is currently conducting exercises and evaluations throughout the Custody Division to look for practical opportunities to further strengthen infrastructure and operations.

IV. Department of Justice: Ongoing Investigation

As reported previously to your Board, the federal Department of Justice investigation into the County jail system, which dates back to 2008, is once again in an active phase after several months of apparent dormancy. The DOJ announced in December its plan to return to Orange County for a third site visit. (The most recent was in September of 2010.) That visit occurred from April 23rd through the 26th. For several weeks, the Department had been preparing for the inspection and responding to the DOJ’s preliminary requests for information.

OIR has tracked the progress of the investigation since it began more than four years ago. It has worked with the Sheriff’s Department to address previously identified

¹ OIR learned that the inmate went out in the company of other who did have the required permission to leave the barracks for a medical visit. While this was obviously problematic, it was apparently the function of a deficient protocol rather than an act of negligence by particular employees. That issue has been addressed.

areas of concern on the part of DOJ, and has had the opportunity to participate in the preparations for the next visit – which the Department hopes will culminate in a favorable final report for the County. (To date, the DOJ has yet to make the public report of findings and recommendations that typically marks the climactic stage of its investigations, though it often leads to further interaction with the local jurisdiction.)

As I wrote in my previous report to your Board, OIR has had an active role in working with the Sheriff's Department to implement relevant reforms and respond constructively to the range of identified issues. Since the last visit in 2010, the Department has continued to make “across the board” progress in the enhancement and utilization of its internal review systems. These are all directly or indirectly relevant to DOJ concerns. Among the most significant developments since the 2010 site visit are these specific improvements:

- A revamping of the inmate grievance system to make it more accessible for the inmates, efficient for processing and tracking and responsive to a greater of possible issues (including complaints of staff misconduct.)
- Facility upgrades related to disability requirements.
- A structural overhaul of Correctional Medical and Correctional Mental Health, to greatly improve coordination and facilitate patient care.
- A revision of the carotid control hold policy, to ensure that its risks are appropriately accommodated through training requirements and an elevated threshold for use.

OIR had the opportunity to attend the introductory session with the visiting team on April 23, as well as that team's “exit interview” on April 26. In between, OIR met with representatives of that team for an individual interview regarding civilian oversight of the Sheriff's Department.

Many of the initial comments offered by the DOJ team on April 26 were favorable, acknowledging the progress that has occurred throughout jail operations since the investigation began in 2008. The team also provided notes and recommendations across a spectrum of individual issues. While waiting for the DOJ's formal written assessment, which may take additional months to complete, the Department and HCA will take a pro-active look at reform ideas that can and should be addressed promptly.

V. Probation Department: Incident Reviews

As you know, since 2010 OIR has operated under a contractual relationship with your Board that authorizes the monitoring of selected “administrative investigations, significant uses of force, and/or other critical incidents” involving the Probation Department. In coordination with Probation, and at your Board's direction, I am currently reviewing two separate events:

- The incident involving two minors having sexual relations in Unit T of Juvenile Hall, which occurred in February of 2012.
- The escape from the Youth Guidance Center in March of 2013 that preceded a traffic accident in Nevada – a crash was allegedly caused by the escapee and resulted in five deaths.

Unit T Investigation

OIR has previously reported on the evolving stages of the investigation and discipline process in the case involving the male and female minor. The personnel accountability portion of the case is now complete, except for the remaining appellate rights of those individuals who wish to grieve the discipline they have received.

The discipline investigation had three somewhat distinct phases. The first revolved around staff members who had been on duty during the time of the initial incident in Unit T. The second revolved around staff whose potential lack of appropriate due diligence in conducting safety checks on prior occasions came to light as a consequence of evidence-gathering in the first case. The final phase of the investigation involved accountability issues for supervisors who had responsibility over the Unit and the relevant employees – not for direct wrongdoing, but for a possible failure to establish and monitor expectations with sufficient rigor.

As you know, that process resulted in significant discipline for numerous personnel. There were ultimately six discharges and nine suspensions; four other potentially implicated employees also left the Department through retirement or resignation before the investigations were finalized.

For more than a year now, the Department has also been involved in evaluating its policies and practices in order to address systemic issues that were exposed or at least suggested by the serious lapses in staff effectiveness. By last June, for example, the Department had decided to completely separate the male juveniles from the females in terms of housing locations, regardless of the classification issues and complexities that caused the use of limited co-ed dorm assignments in the past.² A significant amount of targeted training and re-emphasis of fundamental care responsibilities has also occurred.

OIR will meet presently with Probation to assess the other changes that have been implemented, and to offer additional recommendations as needed.

Youth Guidance Center Escape

After coordination with the Probation Department and your Board, OIR has begun monitoring the Department's administrative response to the escape incident from March. OIR's attorney-client relationship affords it the opportunity to review otherwise

² It should be noted that, although there was of course the single female in Unit T at the time of the sexual incident, she had her own individual cell within the larger dormitory setting.

confidential files and records, in its capacity as an advisor to the Department.³ OIR is well-aware of the public concerns – as articulated by your Board – that also emerged as a result of the tragic accident in Nevada. The investigation will assess Probation’s actions before, during, and after the escape.

As always, the focus of the review is two-pronged. The initial issue relates to accountability for involved personnel in terms of possible policy violations or other performance deficiencies. The additional attention is on reform, as dictated by the systemic or protocol changes that seem necessary or advisable in light of what occurred.

OIR will continue to be in contact with your Board as the case unfolds.

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,

Stephen J. Connolly
Executive Director, Office of Independent Review

³ In this case, that confidential material also includes potentially relevant information from the involved juvenile’s case file. OIR’s formal request for limited access to those records is currently pending in the Juvenile Court.