



Stephen J. Connolly
Executive Director

TO: Board of Supervisors
FROM: Stephen J. Connolly
DATE: March 31, 2015
RE: OIR Activity Report

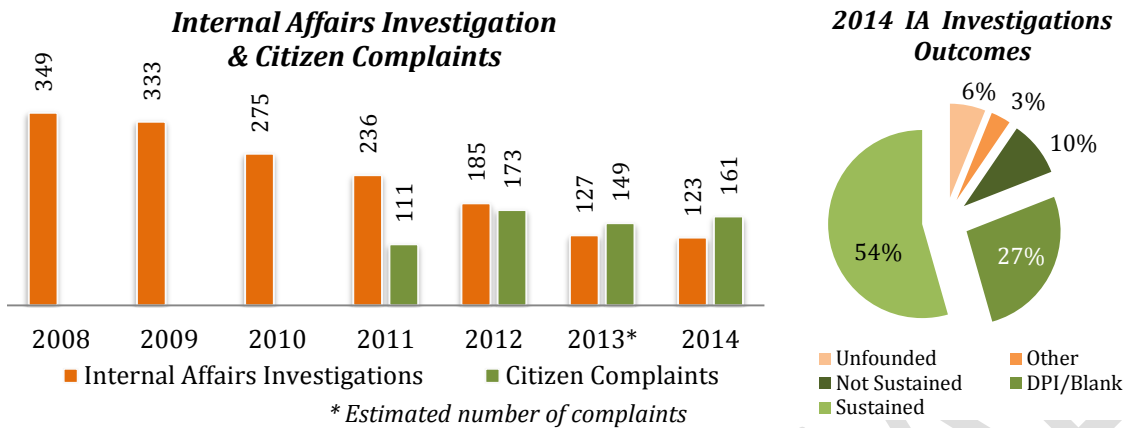
I. Discipline Process: Cases and Complaints

OIR continues to review and monitor all allegations of employee misconduct directed against Sheriff's Department personnel. OIR's goal is to ensure that the investigations are thorough and outcomes are legitimate. It tracks cases from beginning to end, and has the opportunity to raise questions with investigators and make recommendations as the cases unfold.

OIR also consults with Department decision-makers regarding outcomes. While the Department retains final authority over all personnel matters, it has made interaction with OIR part of its process and incorporates its outside perspective into each disposition. OIR's access and independence give it a foundation to offer meaningful input before the final resolution of administrative cases.

In 2014, the Department initiated 123 new Internal Affairs cases. Most of these were generated by Department management, while some began as citizen complaints. Other citizen complaint cases, which were less serious in nature or which were refuted by the evidence during the initial phase of the review process, were resolved without becoming formal investigations.

The following chart also shows the effects of the transition made by the Department in 2011 to a new "de-centralized discipline" approach that calls for external complaints to go through an initial review by the involved unit. While that new process contributed significantly to the reduction in the total number of IA cases in recent years, the combined numbers (284 for last year) also constitute a significant decrease from the high of 349 in 2008.



Among the notable cases from the last few months are the following:

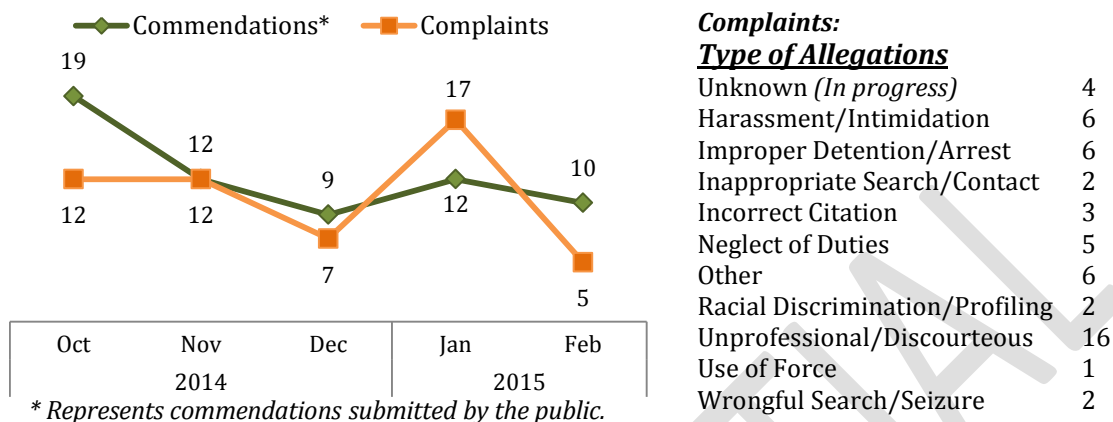
- A deputy who was working overtime in patrol on a drunk-driving suppression team, instead of in his usual investigative position, chose to initiate his own involvement in a high speed pursuit near the end of the shift. He neglected to put out the proper notifications or to engage his car's recording system – which he later acknowledged he was not sure how to use. Though the suspect was eventually apprehended by other officers without any injuries or property damage, the deputy's lack of regard for proper protocols created serious risk management concerns. OIR recommended significant discipline, and the final disposition is pending.*
- A male patrol deputy arrested a female probationer on a drug charge. While her case was still pending, he engaged in lengthy series of inappropriate text messages with her, and met her once socially. The relationship came to the Department's attention through the Probation Department, which found the text messages after seizing the woman's phone in the context of a separate arrest. The Department put the deputy on administrative leave as it conducted its investigation. Although there was no indication that the deputy engaged in coercive behavior or that the relationship ever extended beyond flirtation, it obviously raised several concerns. OIR recommended further investigation regarding possible examples of similar conduct in the deputy's past, and the Department pursued this but found nothing further. Nonetheless, the tentative recommendation is discharge, and final disposition is pending.*
- A female motorist complained to the Department about the lack of cooperation she got from a deputy responding to a minor traffic accident that she had been involved in. The deputy was not discourteous, but he refused to write an official report for the accident as requested. This was*

not only questionable from a “customer service” perspective, but it also was a violation of Department policy, which calls for reports to be written under such circumstances. After consultation with OIR, the Department contacted the woman to address her concerns and initiated a personnel investigation.

- *Two deputies were transporting a female inmate to the jail from state prison in a Department van. At some point in the trip, which lasted several hours, the inmate (who was handcuffed) broke through some faulty paneling and was able to gain access to the equipment bag of one of the deputies, which was stored in the rear of the vehicle. She found a knife that she then put in the pocket of her jail-issued clothing. When they arrived at the jail, the inmate proceeded into the booking area, where a search revealed the knife. It was confiscated without incident. The inmate was charged criminally for her actions, but an administrative investigation was conducted as to the deputies’ performance. It was determined that the van was one of several with a design defect that allowed for relatively easy access to the “secure” storage area; that issue has been addressed through the installation of a sheet metal barrier. The deputies were interviewed about their level of attentiveness and the advisability/necessity of having the knife at all. Though there was clearly no intentional misconduct, OIR has recommended minor discipline for the lapse in effective control over the inmate.*
- *An off-duty deputy “keyed” the vehicle of another person when he saw it parked outside the home of his ex-wife. Police became involved, but the deputy failed to notify the Sheriff’s Department of the incident as required by policy. He acknowledged the act to authorities and was able to avoid criminal charges by reaching a civil compromise with the other party. Nonetheless, in part because of a prior incident that had resulted in significant discipline, OIR recommended a “sustained” finding and a substantial suspension. The final outcome is pending.*
- *Jail deputies initiated a cell search that led to a force confrontation with one inmate. Though the injuries were not significant, the videotape of the incident suggested that the deputies sensed that the inmate was combative before opening his cell and were provoking the confrontation; it turned out that the inmate had been verbally belligerent with the deputies earlier that day. OIR recommended that the Department consider a criminal investigation into potential assault charges. The Department concurred, and that review is pending.*

The following chart tracks recent events captured in the Department’s “Commendation and Complaint” database. In spite of minor fluctuations, the totals from the past few months are consistent with the latest trends over time. Nonetheless, OIR

reviews these materials cumulatively to look for noteworthy developments in terms of individual performance, categories of alleged problems, or locations.



II. “Jailhouse Informants” Controversy

In January of 2014, the Public Defender’s Office filed a motion that exceeded 500 pages and alleged comprehensive misconduct by the District Attorney’s Office and several law enforcement agencies – including the Sheriff’s Department. The specific context was the pending trial of Scott Dekraai for multiple murders during an infamous mass shooting incident in the city of Seal Beach. The allegations, though, extended to a range of felony cases that the Public Defender claimed had been undermined by improprieties in law enforcement’s use of so-called “jailhouse informants.”

The issues are complex, and even after numerous hearings and the passage of some fifteen months, many of the basic facts and interpretations remain disputed. However, it is also true that the District Attorney’s Office has acknowledged fundamental problems in its system for utilizing informants and for meeting its discovery obligations to the defense in cases that involved informant participation or testimony.

The Sheriff’s Department is, of course, the agency responsible for running the jails and controlling the movement of inmates. This included the informant inmates who provided law enforcement with evidence about incriminating statements that their “neighbors” in jail had made about their own pending cases. (The informants had various self-interested motivations for cooperating with authorities.) OCSD regularly coordinated with investigators from different agencies and the District Attorney’s Office to facilitate the acquisition of this evidence through the strategic housing of these informants.

At the risk of oversimplifying a very complicated situation, it can be said that the problems raised by the Public Defender fall into two major categories. One was that, in some cases, the informants – while acting as agents for law enforcement – had violated

the rights of criminal defendants by effectively questioning them about their crimes on behalf of the government, and outside the presence of their attorneys.¹ The other was that law enforcement had failed to meet its obligations to produce information related to the informant program to defense attorneys. These lawyers (often from the Public Defender's Office) were entitled to know about it as a basis for potentially challenging its value or legitimacy.

Soon after the January 2014 motion in the Dekraai case raised these issues, the Sheriff's Department identified and moved to address several systemic problems arising from its role in the process and the actions of its personnel. The Department did not believe there had been any *intent* to deceive or wrongly withhold information. However, it recognized serious shortcomings in its current system. Most glaring were failures to properly document OCSA activities in the handling of jailhouse informants, and an ill-fated reliance on the requesting agency and/or the District Attorney's Office to organize and/or present information to the defense when appropriate.

The Department also identified inadequacies in its training and preparation of the classification deputies for the responsibilities of handling informants. Accordingly, the Department moved swiftly to institute new protocols and to refine its agreements with outside agencies that are designed to prevent a recurrence of these troubling information gaps.

OIR monitored these reforms and believes they are responsive to the concerns raised by the Public Defender. From a systems perspective, the new approach constitutes a significant improvement.

Meanwhile, the court in the Dekraai case moved forward with hearings specifically related to allegations of informant-based misconduct against Dekraai. They continued even after Dekraai pled guilty last May to all the murder counts in the Seal Beach case. This is because the "penalty phase" of that case still needs to be litigated.²

In August of last year, the court ruled on the Public Defender's request to remove District Attorney's Office from the case and to eliminate the death penalty as an option in the Dekraai case. The court determined that widespread systemic problems had been exposed and acknowledged. The judge also noted that he was troubled by what he perceived to be the "credibility challenged" testimony of several (unnamed) law enforcement witnesses. However, he took pains to distinguish the larger problems from their specific ramifications in the Dekraai case. There, the court held, the evidence suggested that it was "more likely than not" that the Sheriff's Department had not

¹ While it is legal for such informants to serve as passive "listening posts" for the receiving and subsequent sharing of unsolicited statements, it is not permissible for them to provoke the incriminating testimony through their own questions.

² Because evidence of Dekraai's culpability for the murders seems to have been overwhelming, some observers have questioned why law enforcement would even bother with use of a jailhouse informant in this case. However, testimony related to his state of mind, level of remorse, etc. could potentially be relevant to the penalty phase of the proceedings.

improperly manipulated inmate movement in order to house an informant near Dekraai. It denied the motions to remove the District Attorney's Office and to remove the death penalty from consideration.

At this point, OIR encouraged the Department to review the information produced from the hearings and evaluate whether performance issues by specific deputies warranted further administrative investigation and accountability. The Department assigned an Internal Affairs investigator to begin assembling and reviewing materials from the various hearings. Two potential issues were at stake: the possibility of misconduct in the handling of informants by jail deputies, and the possibility that one or more deputies had given false or misleading testimony about those practices during the Dekraai hearings.

While that process began to unfold in the fall of 2014, the Public Defender's Office continued to pursue related issues across a range of connected felony cases. As it did so, it discovered further information about the jailhouse informant system and the jail classification process in general. In the Public Defender's view, some of the new material it began to receive cast doubt upon – or even directly contradicted – testimony from Sheriff's Department deputies in the Dekraai hearings.

In November of 2014, the Public Defender's Office filed a request for a supplemental hearing in the hope that the court would reconsider its August rulings in light of new evidence. The judge re-opened the matter for additional presentation of evidence and argument; this included testimony from Sheriff's Department personnel who had been involved in the initial proceedings.

On March 12, the court issued a "supplemental ruling" that affirmed its preservation of the death penalty as a possible consequence for Dekraai. However, the court also took the extraordinary step of recusing the District Attorney's Office as the prosecutor for further proceedings in the Dekraai case. It issued this sanction in response to "serious, continuing discovery violations." Moreover, within his written analysis, the judge pointedly concluded that two deputies had "either intentionally lied or willfully withheld evidence" in the course of their testimony.

The impacts of this decision are not completely defined. At a subsequent hearing on March 26, the State Attorney General's Office announced its intention to appeal the court's recusal action on behalf of the District Attorney. But it also said it would be conducting an investigation into the underlying issues of a clearly flawed discovery process.

The impacts for Sheriff's Department personnel are also open-ended; presumably, the Attorney General inquiry will include an evaluation of the disputed aspects of deputy testimony and the possible applicability of criminal charges. Meanwhile, the Sheriff's Department intends to move forward with its administrative review of individual performance issues.

Certainly, a lack of training and proper protocols contributed to the breakdowns that the Dekraai litigation has highlighted, and to which OCSD personnel contributed as facilitators of the informant program. These deficiencies – for which Department management has acknowledged responsibility – did a disservice to the justice system and have had negative implications across several cases. But the court’s findings that there was dishonest testimony *about* these deficient practices have a different character. These assertions raise officer integrity issues that merit the Department’s closest attention.

OIR has been tracking these proceedings, and believes that the Department has framed issues appropriately for further investigation and review. It will continue its monitoring efforts in the weeks ahead.

III. Deputy-Involved Shootings: Update

The Department has not had an officer-involved shooting since the June 2014 incident discussed in the last OIR Activity Report. This was the non-fatal wounding of a South County resident during a call for service at his home in response to domestic violence incident. A deputy fired at him through the window of the home when he saw the man pointing a gun at his wife; deputies then took him into custody without further incident.

The man subsequently pled guilty to felony charges. Recently, the District Attorney’s Office completed its review into the legality of the officer’s actions, and found the shooting to have been justified. Now the case is being assessed administratively regarding the performance of involved officers – the final phase of the review process that begins at the time of the incident.

The June incident was the only case of the calendar year for OCSD; in 2013, there were three shooting incidents, which was itself a slight decrease from 2012 totals. On its face, this reduction is a positive trend. And while it is important to note that officers are not in complete control of the variables associated with shootings – suspects sometimes take actions that make deadly force not only justifiable but necessary – the Department continues to make training a priority in terms of fundamental, practical tactics for its patrol officers.

IV. Department of Justice Jail Investigation: Update

OCSD continues to wait for the finalization of a federal Department of Justice review into the County jails that dates back to 2008. In recent months, the initially wide-ranging investigation into jail policies and practices has narrowed into a handful of remaining issues. Since 2015 began, that list has shrunk even further, and lately the exchanges between the parties have focused solely on one remaining concern: the carotid control hold.

The DOJ does not authorize use of the carotid hold for federal jail facilities; its position is that the risks of injury related to grappling in the head and neck area of a subject outweigh the benefits of the technique as a force option. (The highly publicized death of Eric Garner in New York City last year during an arrest for a minor violation reflected some of the concerns associated with the carotid hold.) Accordingly, it has consistently urged the Department to consider eliminating the hold.

For its part, the Department has sought to be responsive to DOJ concerns while preserving the carotid for use by its personnel. It has several reasons for maintaining this stance. The fundamental one, though, is that it believes that the carotid hold, when properly trained and applied, is both safe and effective in overcoming resistance. It has committed to maintaining a prerequisite of initial and refresher training for its personnel, and can point to recent history in showing very limited but effective deployments of the hold in force situations.

Importantly, though, the Department also made a significant policy adjustment in recent weeks. It elevated the threshold for authorized use of the hold to situations in which the subject is actively combative or assaultive (as opposed to not merely resisting). This elevates the carotid above other control holds used to gain compliance. It restricts the potential scenarios in which deputies would be allowed to use the hold, while remaining consistent with recent history as to the force incidents in which the hold has actually been deployed.

OIR has consulted extensively with the Department on this issue. Law enforcement agencies around the country are split as to when and whether they authorize the carotid control hold. The Sheriff's Department, as a large agency with its own training division and a commitment to "best practices," has determined that the hold conforms to California state standards and – with appropriate safeguards – is an asset to its ability to safely resolve physical encounters. OIR defers to this assessment. At the same time, it believes that the Department's new approach is a productive step in bringing it closer to the DOJ's preferred position, and it will work with the Department to monitor the enforcement of the new policy and standards.

V. Force Review Process

The Sheriff's Department recently compiled a detailed report based on 2014's cumulative statistics for uses of force. OIR monitors this process and offers feedback to the Department as it considers systemic reforms as well as individual case outcomes.

As depicted in the chart below, the Department increased its total number of force incidents significantly in 2014, going from 588 the previous year to 732. Both the Patrol and Custody/Courts Divisions saw a rise, though it more marked in the jails, where a growth of more than 25 % occurred. While the numbers are noteworthy, they do not reveal much by themselves; the Department's challenge is to further evaluate in an effort

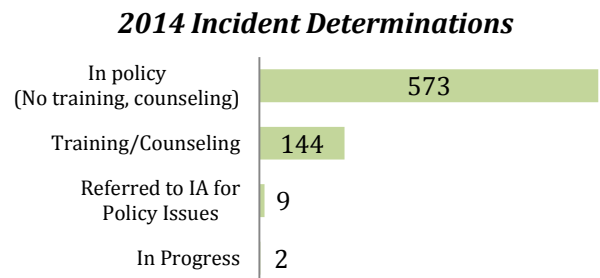
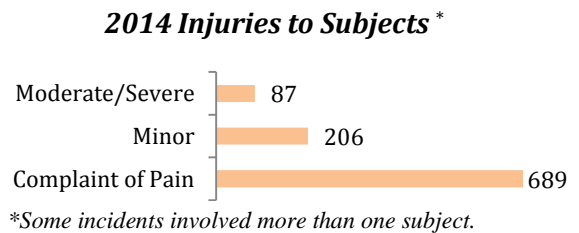
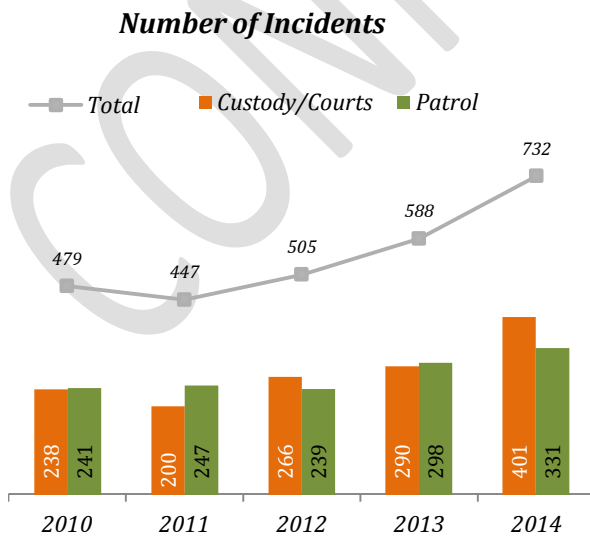
to explain why the increase is happening, whether intervention is needed, and what form that intervention might take.

Some of the changes are explained straightforwardly: for example, “forced medications” of inmates in the jails are now documented and reviewed as force incidents if the deputies are involved in overcoming the subject’s resistance. These were formerly treated as medical aid events and not counted. The Department also continues to experience a “culture shift” in which even minor force events are acknowledged and reported more consistently and rigorously than in the past.

It is also important to note that the vast majority of the incidents are minor in nature and do not result in injury to the subjects or involved employees. “Hands on” control holds and takedowns continue to be the leading types of deployed force; as the chart indicates, less than 10% of cases involved even moderate injury. While nine cases were referred to Internal Affairs for further investigation after the initial supervisory analysis, not all of these issues involved allegations of excessive or otherwise improper force.

Interestingly, an identified training or counseling topic was documented in about 20% of the incidents. This suggests that the evaluating supervisors are moving beyond the “bottom line” assessment of whether the force was “in policy,” and instead viewing the events holistically and with a critical eye.

The Department’s capabilities for data acquisition and compilation have never been better, and the new automated force reporting system has a great deal of potential. OIR encourages OCSD to take further advantage of technological progress and utilize the information for heightened levels of analysis and reform.



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

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