



Stephen J. Connolly
Executive Director

TO: Board of Supervisors
FROM: Stephen J. Connolly
DATE: October 23, 2014
RE: OIR Activity Report

I. Discipline Process: 2014 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 and make recommendations as they unfold.

As of the end of September, 85 new Internal Affairs investigations had been initiated in 2014. Three quarters of these related to allegations of on-duty misconduct, while off-duty issues comprised one quarter.

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

- *In late 2013, the Department initiated an investigation into a male deputy's allegedly improper relationship with a female former inmate; the Department eventually established that the deputy had violated the fraternization policy and terminated his employment. At the time, the Department evaluated other claims involving female inmate workers, but implicated parties denied knowledge or participation. Those claims recently resurfaced when one of the former inmates was arrested by another agency, and provided incriminating evidence regarding these relationships. Two civilian jail employees resigned as a result of the investigation; OIR has recommended significant discipline for a deputy who has a lesser role in the matter, and the final outcome of that case is pending.*

- *A jail deputy is currently the subject of a criminal investigation based on an off-duty incident at a bar. He and his companions were involved in a physical confrontation with bar security after complaints about the deputy's interactions with a female customer. In a separate incident, another deputy is currently on administrative leave as the result of an off-duty bar incident in which he allegedly grabbed a female patron by the neck and lifted her off the ground. Possible criminal charges in both cases are pending.*
- *A civilian employee, who worked in the jails and had been with the Department for several years, applied for a sworn position and went through the relevant background process. At that time, several discrepancies emerged between acknowledgements he was currently making and prior statements from earlier background-related interviews. Though some of the conduct at issue was questionable, more troubling was the lack of truthfulness revealed by the investigation. OIR's recommendation was for discharge; the final outcome is pending.*
- *An inmate alleged that a deputy had injured his eye by pushing his head against the wall while admonishing him for inappropriate behavior in the chow hall. The inmate did in fact have a minor laceration on his face, and no force had been reported. The involved deputy denied causing any injury but acknowledged giving the inmate an unnecessary tap on the head prior to sending him on his way. Though the evidence was inconclusive as to the cause of the inmate's injury (and though his own statements were contradictory at times), the deputy's choice to touch the inmate at all was recognized as having been improper. He received low-level discipline as a result.*
- *A woman contacted the Department to complain about a car stop during which a deputy had allegedly searched her inappropriately before allowing her to leave. Investigation revealed that the deputy had not logged the call, and his PVS camera did not record sound or the critical moments of the encounter (since the search took place outside the camera's view). Nor had he called for back-up. While these facts were problematic, the two parties (and the witness passenger in the complainant's car) did not have significantly different versions of events. In fact, the complainant amended her initial statements in ways that made the deputy's comments and instructions less questionable. In short, the evidence indicated that the officer had not mistreated the citizen, but also established several ways in which his protocols were ill-advised, from both an officer-safety and a risk-management perspective. He received minor discipline.*

OIR also monitors the Department's citizen complaint review process – which tracks the intake and initial assessment of public feedback. So far in 2014, 124 new complaints have been entered into the system. The cities in South County that are patrolled by the Department generated 60% of the complaints, while the rest were distributed among North Operations and other units.

While these cases sometimes rise to the level of a formal misconduct investigation by Internal Affairs, the majority do not.¹ This is true for a few reasons. First, the nature of the allegations tends to be less serious (minor discourtesy or unprofessionalism being the leading sources of complaints in this process). Though these complaints often have merit and are corroborated by the unit level's inquiry, the problematic behavior falls short of a formal policy violation and is addressed through different means.² Second, the unit level review is often able to determine that the allegations are not supported by the evidence – which is often comprised of definitive recordings.

OIR's access to the Department's new computer database allows it to monitor these complaints as their evaluation is unfolding, and to interact with individual city chiefs and captains with questions and recommendations. The database also provides opportunities to look for trends and study aggregate information. (For example, the pace of new citizen complaints at the start of this year is up by a significant percentage, compared to the last few months of 2013.)

OIR's goal in this process is to make sure that each case receives an appropriate review and subsequent response. While a percentage of the complaints are clearly invalid, most of them offer the Department a useful opportunity to assess and adjust deputy performance, even if the deficiencies or performance lapses at issue are not at the level of a formal policy violation. OCS D has improved in recent years in terms of timely, thorough review, as well as in taking more complete advantage of these opportunities for improvement.

Among the recent complaint cases and outcomes monitored by OIR are the following:

- *A citizen expressed frustration with the Department's handling of a "loud party" call for which he was the complainant. He believed the Department had been unresponsive, causing him to make multiple calls about the same concern. The review indicated that communication issues between him, Dispatch, and the responding deputies had indeed created inefficiencies. Furthermore, the problem was likely to recur in the absence of clear explanations to future reporting parties about their*

¹ According to Internal Affairs own records, 18 of its 2014 cases were generated through citizen allegations.

² These could include documented counseling, or tailored training (as in the case of two traffic enforcement deputies who were directed to attend a program on effective communication).

options for “disturbing the peace” situations. The Department addressed the issue through briefing and training for Dispatch personnel.

- *A mother complained about a traffic stop that had involved her daughter, claiming that it was an improper detention and that an inappropriate search had occurred. The mother, however, had not been present, and further investigation and review of the PVS recording established a valid basis for the initial detention, and a consent by the daughter to the search, which had been conducted in keeping with policy and training.*
- *A motorcycle deputy pursued two brothers who were speeding on surface streets in separate cars, as if racing, and eventually pulled them over. The deputy was upset by the reckless conduct of the young men and the danger to which they had exposed him during the high-speed pursuit. However, he allegedly directed some of this frustration inappropriately at the parents of the drivers, who responded to the scene. His verbal contentiousness made a negative impression on the mother, who eventually complained to the Department. Because of the deputy’s history of similar complaints, the case was referred to Internal Affairs.*

II. Deputy-Involved Shooting

Thus far in 2014, the Sheriff’s Department has been involved in one shooting incident – the non-fatal wounding of a South County resident during a call for service in late June. Deputies responded to a domestic violence call from concerned neighbors at approximately 10:30 PM; they arrived to see the male suspect inside his apartment, facing his wife and holding a gun. They were unable to secure the suspect’s cooperation verbally, and believing the wife to be in immediate danger, the deputy fired three rounds through a window. After the suspect went down, the deputies were able to make entry, secure the weapon, and take him into custody without further incident. The man was hospitalized with non-life-threatening injuries. He has been charged with multiple felony counts in conjunction with the incident, and court proceedings are pending.

Meanwhile, the review of the shooting itself has been proceeding along parallel tracks. The District Attorney’s Office responded that night to begin its formal review of the deputy’s use of deadly force. It has yet to issue its final decision, but that process routinely takes several months. More immediately, the Department initiated its Critical Incident Review (“CIR”) process, which OIR monitors at every stage.

Several useful reminders emerged from the CIR analysis, which involves participation by OIR, County Counsel, and various subject matter experts within the Department. Importantly, and within weeks of the shooting itself, that information was disseminated throughout the Department in a form of a training bulletin by the S.A.F.E.

Division. This effort to provide feedback in a broader way constituted a new and valuable step in the way OCSD evaluates and learns from critical events.

III. Department of Justice Jail Investigation: Update

The United States Department of Justice (“DOJ”) inquiry into the County jails, which began in late 2008, remains open. However, as described extensively in a recent “OIR Activity Report” to your Board, the range of pending issues has narrowed considerably over time. This is attributable to the Department’s internal progress and its responsiveness to the various DOJ recommendations that have emerged during the process. In March of 2014, the DOJ sent a letter outlining six specific areas of remaining concern. The Department – along with the County Health Care Agency where relevant – has made progress in addressing each one.

More recently, the DOJ asked the Department for clarification regarding a couple of the remaining issues, including the carotid control hold. The formal DOJ position is that the hold is unduly dangerous, and it is not approved for use in federal facilities. Accordingly, the DOJ has urged the Department to eliminate it. Under California training standards, however, the hold is authorized, and many local agencies – including OCSD – retain it as a force option.

In deference to the ongoing DOJ concerns, the Department revisited the value of the carotid hold in 2013. While recognizing the legitimacy of the DOJ concerns, it determined that, in practice, the hold was used only selectively, had significant situational benefits in both patrol and the jail environment, and was the subject of appropriately rigorous training. Accordingly, it declined to follow the recommendation that would have prohibited use of the hold in anything other than a deadly force situation.

Nonetheless, the Department did see room for revising its policy in ways that reflected the DOJ belief that the carotid control hold constitutes a “higher level” of force than other forms of controlling force, such as pepper spray. In response to the most recent communication from the DOJ, the Department altered its policy to include a higher threshold for deployment, and additional cautions regarding individuals whose physical or medical status may make them especially vulnerable to complications. OCSD also imposes higher training standards on its personnel as a prerequisite for use of this technique.

The handling of this issue reflects the Department’s attempt to balance its own philosophies and practices with responsiveness to challenges and constructive criticism. Throughout the DOJ’s lengthy investigation, this approach has helped the Department make numerous reforms that are more likely to endure because of the Department’s own engagement and “ownership” of the changes. OIR is impressed with the latest evolution in the Department’s carotid control policy, as well as the mindset that produced it.

IV. Body-Worn Cameras

Within the last year or two, “body-worn” cameras for police officers have moved closer to the mainstream of law enforcement. This trend has been driven by technological advances as well as favorable feedback from early-adopting agencies.³ The momentum towards implementation has clearly intensified, however, in the wake of the Ferguson, Missouri officer-involved shooting that occurred in August.

That event has resonated throughout the country as significantly as any law enforcement controversy in recent memory. It is, of course, difficult to know how the presence of a camera might have altered that encounter in the first place. Certainly, though, a recording would have comprised valuable objective evidence for an investigation that is likely to be disputed regardless of outcome. That reality gave body-worn cameras new prominence in the conversation about reactions to Ferguson and the benefits of various possible reforms.⁴

Interestingly, the concept of body-worn cameras for law enforcement is widely supported across the range of potential stakeholders. Officers recognize the evidentiary value of the recordings, as well as insulation they potentially provide against unwarranted complaints or even civil liability. At the same time, civilian advocates (including the ACLU) believe the cameras will help regulate officer behavior and promote accountability.

The Sheriff’s Department is differently situated in this arena than many agencies around the country. This is because its vehicles have already been equipped for several years with cameras and audio equipment that accomplish many of the same goals as body-worn camera systems. In performing its monitoring role since 2008, OIR has reviewed “Patrol Video System” (“PVS”) recordings in dozens of instances relating to critical incidents and allegations of misconduct, and can attest to their evidentiary value.

That said, there are obvious limitations to “dash-cam” systems that relate to their fixed perspective; as soon as the action moves away from the patrol car (as in a foot pursuit, or any encounter inside a building) the picture is lost, and audio reception can be compromised as well. The body-worn cameras would obviously supplement the PVS in significant ways, and could have applicability to the jails as well as patrol.

The Sheriff’s Department has decided to move forward in evaluating the viability of body-worn cameras. Before the end of the year, it will have conducted a pilot program involving a small number of cameras deployed by volunteering deputies at different

³The City of Rialto, California, garnered considerable attention last year when it reported large drops in both force incidents and complaints after equipping its department with individual cameras.

⁴ The cities of Fullerton and Anaheim recently authorized the purchase and use of cameras throughout the patrol operations of their respective police departments. While this step happened to occur after the Ferguson shooting, both cities had been considering adoption for some time – partly in response to recent critical incidents that had proven controversial in their own jurisdictions.

locations throughout the County. The participants will be guided by current PVS policy as well as additional guidelines tailored specifically to the body-worn technology.

The pilot program seems like an excellent first step – and a way for the Department to evaluate some of the important questions that the camera system may implicate. Cost, storage, and supporting infrastructure will all require practical consideration. Just as importantly, the pilot will provide a chance to evaluate substantive questions that may arise, especially relating to privacy rights and the impact of cameras in settings such as individual residences, or in contexts such as victim interviews. OIR is monitoring the project, and will have the opportunity to contribute to the Department’s decision-making and policy development.

V. “Jailhouse Informants” Controversy

For much of this calendar year, the local justice system has been working through significant allegations of misconduct that were raised by the Office of the Public Defender in conjunction with the Scott Dekraai murder case. Dekraai’s lawyers submitted an extraordinary motion in January of this year. At a length of nearly 500 pages, it asserted widespread and systemic wrongdoing by County prosecutors, as abetted by a range of law enforcement officials, in the handling of informants who provide testimonial evidence against a range of felony suspects.

The allegations are complex and cut across numerous pending cases. In essence, the Public Defender’s Office claims that the District Attorney has been directly or indirectly involved in two major categories of wrongdoing: the improper acquisition of incriminating statements, and the improper withholding of evidence related to that acquisition from the lawyers of implicated defendants. The Sheriff’s Department’s primary involvement in the allegations is connected to its role in running the Orange County jails. The Department has acknowledged facilitating contact between informants and inmates who were in OCSD custody. The legal propriety of these contacts, and the Department’s scrupulousness in documenting and disclosing its actions, have been the subject of scrutiny and challenge as part of hearings that have gone on for several months.

Scott Dekraai has been in Sheriff’s Department custody since his arrest on the day of the shootings in October of 2011. It was the use of an informant in building the criminal case against him that initiated the Public Defender’s January motion.

Earlier this year – after the controversy had first emerged – Dekraai pled guilty to killing his ex-wife and seven other people. This was not a major surprise, insofar as the evidence against him was, by all accounts, overwhelming from the outset. Nonetheless, his sentence – which could be the death penalty – has yet to be determined, and proceedings related to that issue are ongoing. It is in that context, and in cases that have

subsequently been connected to the informant program, that the story continues to garner considerable attention and concern.

In the immediate aftermath of the Public Defender's initial motion in January, the Sheriff's Department initiated an internal assessment of its practices regarding "jailhouse informants" in general and the Dekraai case in particular. The ongoing proceedings in criminal court have been a source of important information and a basis for the Department's internal framing of issues for follow-up.⁵

OIR has met with OCSD executives about this issue on several occasions since the issue first emerged. As is often the case when addressing significant matters, the Department has proceeded along two tracks: an examination of possible systemic deficiencies and an evaluation of possible individual performance issues as raised by the Public Defender. As both inquiries have progressed, they have done so with deference toward the court hearings in the Dekraai matter and related cases, which have included considerable fact-finding and testimony involving OCSD personnel. The Department has sought to rectify procedural problems on a going-forward basis without interfering in the court review of prior practice or specific events.

The judge in the Dekraai case issued a major ruling in early August that featured findings relevant to the OCSD concerns. He determined that the original placement of an established informant in the cell adjacent to Dekraai had been a function of actual happenstance, and that it had been on his own initiative that the informant had first interacted with Dekraai. This, however, did not end the inquiry. Instead, the court found significant impropriety in the way the informant's past history and obvious self-interest were withheld from the defense, in violation of the prosecution's disclosure obligations under the law.⁶

OCSD's role as the custodian of the informant – and the entity most knowledgeable about his past – implicated the Department in the judge's analysis. The published ruling found fault with the involved deputy's reticence and passivity in communicating with the prosecution team, suggesting that it was negligent at best and "conspiratorial" at worst. These are questions the Department's internal review will assess in further detail.

Meanwhile, as the hearings have revealed and as the District Attorney's Office has acknowledged, major deficiencies existed in the way that the actions of "jailhouse

⁵ For example, OCSD has obtained transcripts from the testimony by Department members in the various hearings related to the informants issue. The review of those materials will be a foundation for possible further inquiry and investigation, a process that OIR is actively monitoring.

⁶ The judge also held that the informant had gone beyond the permissible functions of a "listening post" in acting on behalf of the government, and that the evidence he had acquired from Dekraai was therefore ineligible for use by the prosecution. This was a point that the District Attorney's Office had already conceded, and an outcome that was already assured as a sanction for the broader misconduct discussed above.

informants” were regulated, documented, and disclosed. Those issues extend beyond the Dekraai case, and are likely to figure in a number of significant criminal cases in the near future.

To its credit, the Sheriff’s Department quickly recognized the need to initiate systemic reforms in the aftermath of the Public Defender’s January motion. Its deputies in the classification unit, who are sometimes relatively inexperienced, had been coordinating with outside law enforcement agencies to facilitate the strategic placement of informants. They were not, however, uniformly well-versed in their obligations under case law, or organized in their record-keeping and disclosure of their actions. While the use of informants is a legitimate, established, and effective tool, it comes with limitations and obligations to the defense that must be honored.

In the spring, the Department created a new agreement form with outside agencies that helps to define responsibilities and ensure accountability when it comes to the use of informants within the jail. It has also revised its internal policy for the development and deployment of confidential informants in the context of its own criminal investigations. These reforms will help to address some of the uncertainty and poor communication that reflected so poorly on law enforcement in the context of the Dekraai hearings.

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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