

Office of Independent Review *Second* Annual Report

Michael J. Gennaco
Chief Attorney

Robert S. Miller
Benjamin Jones, Jr.
Deputy Chief Attorneys

Ray Jurado
Ilana B.R. Rosenzweig
Stephen J. Connolly
Attorneys

Angie Calderon
Patricia Umana
Chanelle Moore
Professional Staff

4900 South Eastern Ave.
Suite 204
City of Commerce
California 90040
Telephone: 323-890-5425
Fax: 323-869-0715
www.LAOIR.COM

OCTOBER 2003



Contents

	Foreword	<i>i</i>
<hr/>		
PART ONE	Shootings and Significant Force	<i>1</i>
<hr/>		
PART TWO	Addressing Misconduct: Investigations, Outcomes, and Discipline	<i>21</i>
<hr/>		
PART THREE	Issues of Misconduct: Categories and Reform Efforts	<i>43</i>
<hr/>		
PART FOUR	OIR Perspectives	<i>81</i>
<hr/>		
APPENDIX A	OIR's Attorneys	<i>86</i>
<hr/>		
APPENDIX B	LASD/OIR Working to Achieve Systemic Change—Year Two	<i>89</i>
<hr/>		

Foreword

by **Michael J. Gennaco**

Chief Attorney, Office of Independent Review

On a recent commute to the Office, I heard a radio news report about a deputy-involved shooting that had occurred in the pre-dawn hours. While the publicized details were still sketchy, I knew that one of my colleagues would have responded to the scene, and when I arrived at work and switched on my computer, an internal memorandum was already waiting for me from the OIR attorney who was on-call and had rolled out.

That same morning, I met with an Internal Affairs investigator who was handling a case with allegations serious enough to merit a potential discharge. He told me that he had located a key witness we had both decided was central to the overall strength and completeness of the investigation. I also received a call from an LASD captain about a completed file we had both been reviewing, and I offered him my assessment of the key issues and my recommendations about how the matter should be resolved.

Between those contacts with LASD personnel, I reviewed a proposed policy modification written by an OIR attorney which dealt with the way LASD addressed criminal investigations. I later talked with a plaintiff's attorney about his concern regarding medical services issues in the jail. And before I left the Office, I e-mailed representatives of the Board of Supervisors about another incident—one I found out about that day and that involved several potentially significant issues. Finally, on my way home, I traveled to a patrol station to learn about particular issues of concern to the station supervisors and to answer questions at a station briefing for patrol deputies.

In all, it was a fairly typical day in the life of an OIR attorney. Each communication, each review, and each new project comprised a different means of achieving the fundamental ends that have defined OIR's mission for two years now. Our goals are simple:

- to ensure the protection of individual rights;
- to bring more accountability to law enforcement;
- to increase the public’s confidence in law enforcement officers;
- to guarantee the integrity of the criminal justice process; and
- to promote fairness for all participants in the disciplinary process, including the officers facing allegations of misconduct.

Achieving those goals through meaningful action is, of course, more complex, but we value the range of opportunities we have each day to influence LASD in service of them. By observing the investigative process first-hand, helping to shape internal investigations, assessing the evidence and surrounding factors in an internal investigation to render a disciplinary recommendation, developing training, ensuring that allegations of misconduct are appropriately handled, or proposing improved policies and procedures and systemic reform, OIR can and does have a direct impact on LASD’s own efforts to enhance the Department’s effectiveness and integrity.

In our First Report, we explained how and why OIR began, and attempted to give some insight into our various protocols and the rationales behind them. In this Second Annual Report, we will somewhat shift our focus. While our own work, our observations, our accomplishments, and our frustrations remain the prism through which we pass information to the public, our main emphasis this year is our assessment of the Los Angeles County Sheriff’s Department. In particular, we seek to provide readers with both a better sense of the misconduct issues that confront LASD and a candid analysis of how LASD handles those issues.

Having said that, though, I should make clear that OIR will still be featured prominently in the discussion. This is because the presence and the active involvement of this Office have become very much intertwined with LASD’s handling of officer misconduct. Unlike the critic who merely offers a “thumbs up” or “thumbs down” appraisal after the fact, OIR is committed to getting in early and often, wherever its impact can be the most productive. OIR’s oversight extends from the opening of a new case all the way to its resolution. The protocols we have established in this regard, with the support of the Los Angeles County Board of Supervisors and the full co-operation of LASD, are distinctive in the field of civilian review of law enforcement. The dividends have been distinctive as well.

Where other models of oversight might only see the finished product, and have limited recourse if they disagree, OIR gets involved from the beginning — evaluating the allegations, contributing to the plan of action, ensuring collection of all

relevant data, performing final “quality control”, and then offering a studied analysis of the results and their significance. Just as importantly, OIR has the opportunity to apply the lessons of each past investigation and thereby enhance the future effectiveness of the process. It can also use the results, and the information that emerges along the way, as the basis for recommending changes in the way LASD does business.

OIR’s model also avoids the disparate results that sometimes emerge from the shadow investigations conducted under other approaches in other agencies around the country. These clashing outcomes can result when one side brings a more rigorously critical eye, while the other maintains control of the best information. While OIR and LASD may disagree about final outcomes, our model at least ensures that the investigation is strong and that the playing field for assessing the facts is a level one.

As this report will show, OIR’s protocols have also been modified and refined during our second year, as we too learn from our past and find ways to refine our approaches. For example, OIR has increased its routine monitoring to include all investigations involving misconduct allegations made by members of the public, and all investigations based on allegations of excessive force. With regard to the actual imposition of discipline at the end phase of appropriate cases, OIR has devised protocols to ensure that we will be able to monitor and offer input on the process for as long as necessary, up to and including employee appeals to the civil service system.

The passage of time has been instructive in other ways as well. OIR has been present long enough to have seen internal investigations go through the entire cycle, from inception through the decision-making and grievance process. Thus, as this report will further explain, OIR has begun to learn the challenges and influential circumstances that can affect outcomes differently at the different stages. In particular, OIR has created checks to ensure that the principled decisions are not undermined by last-minute developments or hasty settlements that are reached behind closed doors.

Yet another development as a result of OIR’s emergence into its second year, is the deepening familiarity among OIR attorneys with LASD misconduct, internal investigative issues, and disciplinary sanctions. As a result of seeing the same types of cases repeatedly, OIR has been able to help LASD ensure consistency in case investigation, disposition, and discipline.

OIR has also heightened its ability to prioritize, and to focus on the types of misconduct that, in our view, impact most deleteriously on the public. Those categories consist of misconduct involving abuse of power, violence, and breach of the public trust. What makes sworn employees of LASD unique is the awesome authority, power, and trust afforded them. It is when that authority is abused (through wrongful force or other disregard of individual rights) or when integrity failure occurs (such as through false statements in police reports or Department investigations) that LASD's status in the community is most compromised, and when OIR's mission is most directly implicated.

With regard to the search for truth, OIR is particularly interested in improving the system so that incidents under review will be completely and accurately conveyed by witnesses to the events. With regard to civilian witnesses, sometimes there exists reasons to fabricate or exaggerate allegations of misconduct against LASD personnel. Deputies who are facing scrutiny for potential misconduct may also have reasons to offer a distorted description of events. OIR's goal is to foster a system in which both civilian and LASD witnesses alike do not feel constrained to shade the truth. With particular regard to LASD witnesses, OIR is hopeful that the disciplinary system will be eventually perceived as fair by all parties, so that deputies will not feel pressure to provide "stock" and incomplete answers about their own acts or acts of their colleagues. To the degree that such phenomena may occur because deputies distrust the process, OIR is intent on working with LASD leaders to bring more employee confidence to the system.

The Second Report allows us a further opportunity to provide transparency and knowledge to the general public about a process that has traditionally occurred behind closed doors. In my view, that tradition of secrecy has contributed to distrust among the general public about the fairness and integrity of the system and resulted in skepticism about law enforcement officials being able to effectively police their own. Accordingly, this report endeavors to answer questions about the interesting wrinkles in the system itself, in order to provide a more complete backdrop for the public to understand what happens and why.

The Report offers a couple of new features this year. First, readers will notice a number of "Frequently Asked Questions"—and their answers—interspersed throughout the following pages.

These “FAQ’s” are meant to shed light on basic features of the systems we work within, and the results those systems produce. Also, there are subsections entitled “OIR Issues/Concerns.” These step away from the concrete descriptions and explanations that make up most of the Report, and include some editorializing about trends or trouble spots that have caught our attention and that we will be watching closely in the coming months.

Put simply, the Second Report hopes to provide readers with the answers to these basic questions:

- How is LASD doing in the post-OIR era?
- How is OIR helping to make LASD better?

We expect those answers to continue evolving over time, and will try our best to ensure that the evolution is a favorable one. In the meantime, we offer this progress report. With it, we offer our sincere thanks to the many individuals, both inside and outside LASD, who have assisted or supported our work in the past twelve months. And we extend a sincere invitation to interested members of the public, to feel free to contact us at any time with their responses and suggestions as we move forward.

FAQ:

“What are the primary functions of LASD in the County?”

LASD is one of the largest law enforcement agencies in the United States, with approximately 8,000 “sworn” employees (peace officers) and thousands of professional civilian employees who also help the Department function on a daily basis. Most of these officers serve in one of three major divisions. First is patrol, where deputies enforce the laws in the streets of the County’s unincorporated areas, and in the cities and towns that have “hired” the Department to serve as their local police. Next is custody, where deputies maintain security in the county’s different jail facilities. Finally, the deputies in court services work as bailiffs, transport prisoners to and from court, and help maintain security and order throughout the county’s numerous courthouses.

PART ONE

Shootings *and* Significant Force

OIR's Roll-Out Protocol: The Importance of Monitoring Force

The use of force by police officers is the most significant, and sometimes controversial, exercise of police authority. Because the repercussions as a result of the exercise of that authority may include death or serious injury, an objective analysis of each use of force by a peace officer is essential. Because of a series of high profile controversial shootings and major uses of force, in Southern California and throughout the country, that have raised significant questions about the validity of the force used, there is an undercurrent of skepticism about the ability of police agencies to objectively analyze their own major force incidents. Moreover, because the force at issue, particularly with shootings, usually occurs as a result of a split-second decision, the careful and dispassionate dissection of the incident is especially difficult to do fairly and well.

The community's legitimate interest in the objective assessment of such cases is one of the founding principles that shaped the creation of OIR and the development of its protocols for review. OIR takes special care to ensure that it involves itself in the assessment of force at the earliest possible stage.

LASD deputies, like other peace officers, are authorized to use force and are called upon to do so on a regular basis. They need to protect themselves, and the public, from individuals who are uncooperative, unstable, violent, heavily armed, or all of the above. Since last October's First Report, two LASD deputies were killed in the line of duty, and dozens more received injuries at the hands of assaultive suspects. The dangers are real. Furthermore, LASD commits significant resources to the ongoing training and monitoring of deputies, to ensure that their tactics are sound, and that their deployment of force is measured and proportional.

On the other hand, the gray areas, and the potential for abuse, are born of the same power and discretion that officers necessarily possess. An officer-involved shooting that results in the suspect's death or serious injury will inevitably raise concerns, and the public has an understandable need to know whether the shooting was legally justified, and what responsive steps were taken if it was not. However, force need not be lethal, and injuries need not be severe, for the involved individuals and the public at large to have an interest in officer accountability and appropriate agency review.

Because of the importance of force issues, OIR adopted a protocol that allows it to review all officer-involved shootings, both hit and non-hit, as well as those uses of force that lead to significant injury and/or hospitalization of the involved civilian. An OIR attorney is on-call at all times, and receives notification in the immediate aftermath of a major force incident. OIR lawyers roll to the scene of all shootings in order to get a first-hand look at the scene and to become aware at the earliest possible point of issues that may be emerging in the investigation, or may merit further attention. These issues are not just limited to the propriety or legality of the force (as important as those are). Tactics, training, and policy are all subject to scrutiny. OIR's initial impressions also help it to assess these important aspects of the event.

In short, each shooting and serious force incident merits close examination because of its inherent importance. Even when there is no question about the justification for the force, or no reason to believe that the officer acted maliciously or

FAQ:

“ What happens when a person makes a complaint about wrongful force or other misconduct? ”

Anyone can make a complaint regarding how they were treated by an employee of LASD by calling the station where that employee is assigned, the Internal Affairs Bureau, or by making a complaint to the station watch commander. Once a complaint is made, it will be investigated by a supervisor at the respective station, or by an investigator from Internal Affairs. While the investigation is pending, the complainant can call the assigned supervisor or investigator for information concerning the status of the investigation.

Typically, the amount of time it takes to complete an investigation depends on its complexity, the number of witnesses required to be interviewed, and the workload of the assigned supervisor or investigator. On average, final disposition of complaints may take anywhere from three months to more than one year, again depending on the above factors, to be completed. LASD contacts the complainant at the end of the process, and provides information as to the outcome. The details are limited, however, because of protections of officer privacy that are mandated by state law.

inappropriately, LASD uses these incidents as a forum for assessing whether improvements in training and tactics are needed for the involved officer or the Department as a whole. OIR fosters that effort and actively monitors and participates in the LASD review mechanisms.

C A S E

An OIR attorney rolled out to a late-night deputy-involved shooting scene involving two deputies who separated during a foot pursuit of armed suspected gang members. Both deputies ended up shooting at separate suspects. One suspect was injured. After conferring with his colleagues, the OIR attorney determined that one of the deputies had been involved in two other recent shootings. Both incidents were still being reviewed. While recognizing that each shooting incident could be justified in isolation, OIR met with the station captain and recommended immediate assignment change and close mentoring in order to disrupt any high-risk patterns that might be developing. Then, after a fourth incident and again at the urging of OIR, LASD instituted a more formal mentor development plan for this deputy, including rotation through non-patrol assignments.

C A S E

Within minutes of a deputy-involved shooting, OIR was notified and rolled to the scene. OIR participated in the scene debriefing of the incident. OIR reviewed the investigative reports and consulted with the area captain prior to the shooting review a few days later. At the shooting review, while OIR agreed with LASD that the shooting was in policy, OIR recommended station training regarding the tactics leading to the shooting. One of the shooting deputies admitted that his placement of his car placed him and his partner in harm's way. At OIR's behest, the station training personnel formulated a training module for all patrol deputies as a result of this shooting incident and the shooting deputy was part of the training team. The training module consisted of a complete and detailed analysis of the shooting and lessons to be learned. (See the outline of the training module at inset on p.4.)

LASD Review of Force

Hit Shootings and the District Attorney Review Process

Hit shootings, that is, deputy-involved shootings where a deputy wounds or kills another person, are investigated by the LASD Homicide Bureau. After completion of the Homicide investigation, the District Attorney's Office evaluates the evidence to determine whether there was any criminal use of force by the deputy.

C A S E

OIR rolled out to a non-hit shooting in which only one round had been fired. In following up on the case, OIR learned that the shooting deputy's duty weapon had been altered to make the trigger less resistant. This was an apparent violation of LASD policy. Though LASD investigators initially viewed this solely as an administrative matter, OIR believed that it could have significance in terms of the deputy's intent and the possibility of an accidental discharge. OIR pushed for further questioning of the deputy and a presentation of the relevant evidence to the District Attorney's Office. LASD agreed to take this step, thus ensuring a more complete and legitimate assessment of possible criminality.

This protocol does not assume that a crime has occurred, or make automatic suspects of officers whose jobs include the authority

Deputy-Involved Shootings/ OIR Attorney Roll-outs

October 1, 2002 to September 30, 2003

Hit Shootings	29
Non-Hit Shootings	25
OIR Shooting Roll-outs	54

to use force. The protocol is, however, meant to reflect the need for serious accountability in the face of these potentially or actually lethal exercises of police authority. The completion of a Homicide investigation file, including witness statements, physical evidence, medical reports, and other relevant factual material, helps ensure a thorough

Deputy Involved Shooting

Date: February 2nd, 2002

Station Debriefing

- I. Deputy involved shooting
 - A. Mental preparation prior to the incident
 - B. Running various scenarios through head
 - C. Discussing scenarios with partners
- II. The incident leading to the shooting
 - A. The radio call/subject last seen direction and description
 - B. L-tac traffic/Dep. involved in a foot pursuit
 - C. Our thoughts upon approach of foot pursuit
- III. Area of occurrence
 - A. Our approach/observations/tactics
 - B. Considerations/Officer safety/
Safety of residents
- IV. Arrival at the location
 - A. Observations
 - B. Thoughts
 - C. Approach
- V. The shooting itself
 - A. Placement of vehicle/cover
 - B. Observations
- VI. After shooting
 - A. Containment of crime scene
 - B. Investigation, what to expect

review. Moreover, the District Attorney's application of an independent legal analysis provides a further layer of scrutiny and minimizes the potential that bias will taint the legitimacy of the findings.

Other Significant Force

Non-hit shootings and use of force incidents are not routinely referred to the District Attorney's Office, unless they raise a potential question of a criminal nature. Because OIR evaluates these incidents from the outset, it can urge that a case be sent to the District Attorney that would not otherwise receive criminal consideration.

Regardless of whether Homicide and/or the District Attorney's Office reviews a use of force, all hit shootings, non-hit shootings, and uses of force that result in significant injury also receive a preliminary investigation by the Internal Affairs Bureau. The results of this investigation are presented to a panel of three LASD Commanders at a proceeding called Executive Force Review. The Executive Force Review Committee decides whether an incident shows some evidence of internal policy violations and merits full formal investigation for possible administrative discipline or, conversely, requires no further inquiry. Just as importantly, the panel brings its expertise to bear on each incident in order to determine whether it suggests a need for training and/or a learning opportunity for the involved deputies and the Department as a whole.

OIR recognizes the vital significance of this initial review and actively participates in every Executive Force Review. This process often entails conferring with the case investigator, the tactics and training staff, and the unit commander of the deputy in question.

FAQ:

“ How can LASD's own people do an objective job of investigating a shooting by one of their fellow officers? ”

For several reasons, it is a challenging task for LASD to investigate objectively another LASD member regarding a shooting. While LASD internal investigators make efforts to remain objective, they know of the dangers that law enforcement officers confront on-duty, and this may lead to biased perspectives or premature conclusions about a shooting incident. Such biased perspectives or premature conclusions could undermine the level of objectivity of the investigators. Thus, the role of the independent monitor is important to ensure that objectivity is maintained in all internal investigations of deputy-involved shootings.

C A S E

OIR rolled to a hit shooting in which a distraught and apparently unstable suspect was killed after threatening deputies with a knife. When it was time to present the case to the Executive Force Review Committee, OIR agreed that the force was in policy but raised a number of questions about tactical and procedural alternatives. After further inquiry, LASD and OIR learned, for example, that the LASD “Mental Evaluation Team,” which might have been useful under the circumstances, would not have had time to respond because of the rapid unfolding of events. However, the Committee did agree with OIR that the deputies’ search of the suspect’s apartment after the incident should be addressed at the station as a training issue, since the legal justification for the search was ambiguous.

Revisions to Policy and Practices Relating to Force Issues

Handcuff Project

OIR continually examines internal investigations with an eye toward systemic issues that might warrant recommendations for LASD reform. For example, this past year OIR was involved in a disciplinary case which caused LASD to remove from operation one of the three brands of handcuffs it previously deployed in the field.

A man arrested for lewd conduct was observed in LASD custody two days later with lacerated, infected wrists. The man complained of excessive force pursuant to his arrest. He claimed that the injuries to his wrists were caused as a result of handcuffs being placed on him too tightly. This complaint gave rise to an investigation into the actions or omissions of the arresting deputies, the jailer deputy, and the custody assistant responsible for fingerprinting.

The investigation revealed that two LASD patrol deputies had observed a man engaged in lewd conduct in a park. The deputies handcuffed him and took him to the station for booking. During the ride to the station, the arrestee struggled with the handcuffs in the back seat. At one point, one of the deputies tightened the handcuffs. After booking, the arrestee complained to the jailer deputy of pain in his wrists. The jailer did not seek medical attention for the arrestee. Two days later, while preparing to take the arrestee to court, station personnel discovered that he had infected lacerations on both wrists.

The investigation was presented to the District Attorney’s Office, which reviewed the excessive force allegations and declined to file criminal charges, citing insufficient corroboration to the arrestee’s claims. The matter was then referred to LASD

for an administrative investigation. OIR concurred with LASD's recommendation that the excessive force charges as to the arresting deputies and the custody assistant be unresolved. There was no indication in the instant case that the tightening of the handcuffs was punitive rather than precautionary. Moreover, there was significant objective evidence that the arrestee actively struggled with the handcuffs. There was also insufficient physical evidence to substantiate the arrestee's allegations of excessive force during his arrest. The arrestee's account of the incident was particularly undermined by the arrestee's level of intoxication when arrested.

OIR and the unit commander did, however, agree that the jailor deputy had shown inadequate care for the inmate by failing to seek medical attention for him. The jailor deputy received a suspension as a result of this policy violation.

In discussing the resolution of the case with OIR, the unit commander observed that the handcuffs used on the arrestee appeared to have relatively sharp edges. OIR encouraged the unit commander to determine whether the sharp edges were peculiar to the pair in question or common to the brand. The unit commander enlisted the assistance of the Field Operations Support Services Bureau to survey handcuffs currently in use in the LASD. They determined that the brand of handcuffs in question had significantly sharper inside edges than the other two brands employed by LASD personnel. OIR recommended to LASD that it recall the approximately 1,000 pairs of the sharper-edged handcuffs still in use by LASD personnel and exchange them for pairs from the other two brands currently in LASD inventory. LASD further agreed with OIR's recommendation that the sharper-edged handcuffs no longer be authorized for use by LASD employees.¹

LASD executives agreed with OIR that this was a low cost prophylactic measure that was likely to help reduce injuries in the field and in the jails. In addition, the elimination of the handcuff brand with non-profiled inside edges could well reduce complaints from arrestees about inappropriate use of handcuffs by deputies as well as a reduction in claims and lawsuits alleging similar improprieties. A cursory search by OIR of claims and lawsuits revealed at least nineteen instances in which allegations of injury due to placement of handcuffs were made by complainants. (See examples, below).

¹ Approximately 1,975 of the sharper-edged handcuffs had been issued to LASD personnel during the mid-1980's.

Selected Lawsuits Related to Handcuff Injury Allegations

Date Filed

11-06-1997

Cause of Action

(P) Personal Inj-Other
(S) Civil Rights
(S) Excessive Force

Allegations

Plaintiff alleges he and a coworker were pulled over because they were suspected in a robbery. The officers allegedly put the handcuffs on too tightly when plaintiff was fully cooperating and no force was needed.

Dispo

Closed: Settlement

Date Filed

02-25-1998

Cause of Action

(P) Personal Inj-Other
(S) Assault & Battery
(S) Civil Rights
(S) Excessive Force
(S) Failure Summon Med Aid
(S) Harassment-Other
(S) Intentional Inflict. of Dist.
(S) Negl. In Emp. Train & Re
(S) Negligence
(S) Negligent Infliction of Dist.

Allegations

Plaintiff (Pro Per) alleges excessive forces was used when his handcuffs were too tight causing a blood infection, surgery and permanent emotional damage.

Dispo

Closed: Settlement

Date Filed

09-14-1998

Cause of Action

(S) False Arrest & Imprisonment
(S) Assault & Battery
(S) Civil Rights
(S) Excessive Force
(S) Intentional Inflict. of Dist.
(S) Negl. In Emp. Train & Re
(S) Unlawful Detention

Allegations

Plaintiff alleges that on April 4, 1998 she was falsely arrested on the Metrolink train at Union Station by a Deputy Sheriff. She further alleges she was injured by the handcuffs, which were too tight.

Dispo

Closed: Settlement

Date Filed

09-09-1999

Cause of Action

(P) Excessive Force
(S) Assault & Battery
(S) Civil Rights

Allegations

Plaintiff alleges that on 8/8/96 Deputy Sheriffs hog-tied him to concrete floor with steal chains next to vomit and cock-roaches. Plaintiff also alleges that his left wrist was bleeding from handcuffs that were put on him too tight. Plaintiff also alleges that a Deputy Sheriff kicked him in the groin and stomach and also stomped on his back. Plaintiff further alleges that a Deputy Sheriff dropped him from mid-air onto a wood bench.

Dispo

Closed: Settlement

Date Filed

11-03-2000

Cause of Action

(P) Excessive Force
(S) Intentional Inflict. of Dist.
(S) Negligence
(S) Negligent Infliction of Dist.
(S) Personal Inj-Other
(S) Unlawful Detention

Allegations

Plaintiff alleges being placed in handcuffs by sheriff's employees and requested that the handcuffs be loosened because they were too tight. Plaintiff further alleges the handcuffs were left on tightly for an unreasonable length of time resulting in uncontrolled tremors to right hand. Plaintiff further alleges being arrested on a warrant that should have been taken out of the system.

Dispo

Closed: Settlement

It was also discovered that LASD had sufficient stock of handcuffs to replace the sharper-edged brand handcuffs immediately. A department-wide broadcast was sent to each LASD employee setting out parameters of the exchange and announcing that the sharper-edged brand handcuffs were no longer authorized for use by LASD employees.

In this case, OIR and LASD worked together in identifying a problem that transcended the facts of the investigation, and in finding a workable solution that could well reduce future allegations of mistreatment.

Duties of Deputies as Witnesses

An important aspect of a deputy's job is observation and recollection of events. For instance, for officer safety reasons deputies must be aware of their surroundings and events occurring around them. This perceptiveness also enables deputies to be better crime-fighters by identifying suspicious conduct more frequently. Deputies must also be able to recall and describe what they witnessed, often in a court proceeding. If deputies cannot recall and describe the events leading to an arrest, the individual they arrested will likely go free.

Because of the importance of these skills, deputies receive formal training at the Academy. In addition, informal training occurs between Field Training Officers and Trainee deputies.

Unfortunately, in use of force reviews and administrative investigations, OIR has found instances where deputies stated they did not observe events occurring immediately around them or could not recall significant events. In some situations, the deputy could offer no reasonable explanation for the lack of observation or recall. This tends to prompt the suspicion that the deputy is being less than candid in order to protect himself or a colleague. However, it is very difficult to prove as false a deputy's representations about what he did or did not observe, or does or does not recall.

At the very least, however, these seemingly inexplicable gaps in knowledge or recall implicate other performance issues that merit LASD response. When a deputy cannot explain his failure to observe or recall an event, and it is an event that a competent deputy would be expected to observe or recall, the deputy's performance has fallen below the standard expected of LASD deputies. After all, deputies are hired and trained to be professional witnesses. Accordingly, skills of observations and recollection are critical to competent deputy performance.

Thus, based on its review of several significant cases in which this problem emerged, OIR suggested to LASD that the observational and recall capabilities expected of a competent deputy should form a benchmark for each case, and that the failure to meet that benchmark should constitute a Performance to Standards policy violation. LASD adopted OIR's recommendation in several cases involving both lack of observation and lack of recall.

C A S E

A videotape of an incident showed a deputy within a few feet and facing towards a commotion involving a juvenile in handcuffs and other officers. The activity included a punch and other conduct by the officers as well as the officers shouting words loudly enough to be recorded by a video camera from across a street. The deputy stated that he did not see, hear, or otherwise observe any part of the commotion. The deputy surmised that he may have been distracted by looking on the ground for a flashlight. The videotape, however, revealed the deputy locating the flashlight before the commotion occurred. Other officers stated they saw and heard parts of the commotion. OIR concluded, and LASD agreed, that this failure of observation, along with several others during the incident, demonstrated a failure to perform to the standards expected of an LASD deputy.

C A S E

Deputies recently received discipline for failure to recall information regarding a significant event. The deputies had arrested two juveniles and took them to the station for booking. Sometime during the booking process the deputies left the juveniles in the station to respond to another call. The juveniles then escaped. The deputies responded to the radio traffic about the escape and helped to capture the juveniles. There was an immediate supervisory inquiry, during which the deputies identified a call for service as the reason they left the juveniles at the station. Approximately six months later it was pointed out to the deputies that their initial explanation did not jibe with their activity logs. The deputies then each wrote a memorandum using the date of the original incident and providing a different call for service as the explanation for why they left the juveniles. The deputies were interviewed approximately three months after they wrote those memoranda. At that time, they could not recall which call for service caused them to leave the station, when they left the station, that two other deputies had assisted them with the booking of the juveniles and even completed some of the handwritten forms, or even whether the memoranda were written on the original incident date, which they bore, or six months later when the supervisor asked for

them. Given that the escape of a prisoner is a significant event, that the deputies were on notice from the first day that there was an inquiry, and that the amount of time that had passed, nine months, was not very long considering that deputies sometimes have to testify in criminal proceedings that are much further removed in time, OIR and LASD agreed that the deputies had failed to recall events a competent deputy would be expected to recall and therefore violated the Performance to Standards policy.

Improving Force Investigations

In the course of monitoring the various force incidents and investigations that involve LASD, OIR has come across a number of procedural issues with potential implications for the legal soundness and/or the thoroughness of the review efforts. Accordingly, OIR worked with LASD to identify the areas of concern and to work out solutions as needed.

1. LASD Use of Force Reporting Procedures

One question that arose early in OIR's review of a high-profile incident was whether LASD policy required that a deputy make a report to a supervisor whenever he witnessed a use of force by employees of another law enforcement agency. In that case the deputies had reported the force they witnessed. However, some LASD managers expressed the opinion that LASD's current force reporting policy did not require deputies to report force that is used by another agency. During this same time, in another investigation, deputies who witnessed force used by individuals who were not members of the department but were volunteers working with LASD, asserted that the force reporting policy did not require them to report that force they witnessed. In addition to this perceived ambiguity in the policy, OIR was concerned by the fact that even if a report of such force were made to a supervisor, the policy left it to the discretion of the supervisor whether the deputy should write a report regarding what he witnessed.

One goal of LASD's force reporting policy is prompt notification and evaluation of uses of force. To achieve that goal, the LASD policy contemplates that involved and witness deputies will inform their supervisors about both what they did and what they witnessed, and write appropriate reports. Where only LASD is involved in the use of force, this policy results in LASD having a complete record of the incident. Where other entities are involved, however, LASD is not guaranteed a complete record and thus may not be able to fully evaluate the

event. Without a report from a deputy, LASD must rely on the outside individual's recollection of and documentation of the force used. LASD, however, has no control over the quality of these reports. They may be incomplete or inaccurate. Even if complete, the reports written by employees of other agencies may not be available to LASD.

OIR discussed its concerns about the policy with various members of LASD. As a result, OIR concluded that the LASD force reporting policy should be modified to require, without ambiguity, that deputies report all force they witness, including force used by other law enforcement agencies (in joint operations with LASD) and by individuals working with LASD. OIR also concluded that it should be mandatory that a deputy who witnesses force used by another agency document what he observed. LASD has agreed to modify policy to reflect these changes and the process is underway.

2. Unit Level Administrative Investigations and Supervisory Reviews

OIR's review of a patrol station's use of force inquiry also revealed that several issues that OIR had previously raised and addressed with IAB, needed to be raised with the units, which are often entrusted with responsibility for certain administrative investigations and reviews. As reported last year, OIR worked with IAB to address the issue of surreptitious recording during non-criminal investigations, such as administrative investigations, force or service comment reviews, and other types of inquiry. During the past year, OIR and IAB also discussed the legal limitations on interviewing individuals in custody as part of a force review or other administrative investigation. As a result, IAB adopted certain practices. The units, however, had neither been informed of nor adopted these practices. OIR therefore made several recommendations as detailed below.

Surreptitious Recording in Non-Criminal Investigations

One question that arises in any investigation is whether LASD can record the interviews. A non-criminal investigation, such as a force review, presents special considerations. California Penal Code Section 632 makes it a crime to use listening devices or recording technology to eavesdrop on or record a "confidential communication" without the consent of all parties to the communication. Exceptions exist for law enforcement to eavesdrop on and/or record such communications, but only if the recording or eavesdropping is part of a criminal investigation. Subsequent case law has made it clear that the exception for law enforcement does not apply for intra-departmental administrative investigations or inquiries.

This means that if a deputy is having a “confidential communication”² and is not conducting a criminal investigation, the deputy needs the permission of all parties to the communication to record it. While arguments may be made regarding whether a communication is a “confidential communication,” particularly if the interview is conducted in public, at a police station, or in a jail, to avoid violation of the Penal Code, OIR concluded it would be best for LASD to take a conservative approach. Therefore, OIR recommended that when interviewing an individual for an administrative purpose, whether an administrative investigation, a force review, or any other matter, the following practices regarding tape recording should be followed. First, the interviewer should obtain the permission of the individual before recording the interview. Second, if the person interviewed requests not to be recorded, the interviewer should not record the conversation. IAB adopted these practices. A department-wide directive is being written to require that all other units adopt them as well.

Fifth and Sixth Amendment Rights in Non-Criminal Investigations

Another issue previously addressed with IAB is what, if any, limitations do the Fifth and Sixth Amendment and *Miranda* place on the ability of LASD to interview individuals who are in custody about uses of force. During reviews of uses of force, and other administrative reviews, it is sometimes important to interview witnesses who are also in custody, either newly arrested, pending trial, or post-conviction. Because these witnesses are in custody and/or may have pending charges, their Fifth and Sixth Amendment rights may be implicated when they are interviewed.

OIR and IAB agreed on procedures to protect against allegations that rights were violated. When interviewing a witness who is in custody, IAB informs the witness about the purpose of the investigation. If the witness invokes his right against self-incrimination, to remain silent, or to be represented by counsel, the interview ceases. Although the purpose of the interview is administrative, such an invocation is to be given the same effect for purposes of the administrative investigation as if it were made during the course of an interview about a criminal matter. OIR recommended that these same procedures apply to interviews conducted at the unit level. LASD agreed to include this in the department-wide directive being written.

²The California Supreme Court has held that the standard for whether a conversation is confidential is whether one of the parties has an objectively reasonable expectation that the conversation is not being overheard or recorded.

Interviewing Minors in Non-Criminal Investigations

The third limitation that IAB follows and that OIR recommended should be extended to the units is a voluntary limitation on interviewing minors who are witnesses to incidents that are being investigated internally.³ There is no legal requirement that LASD obtain the consent of a parent prior to interviewing a minor who may be a witness to an event that is part of a non-criminal investigation. Nonetheless, it has been the recommended practice for IAB that, when practicable, LASD obtain parental consent. OIR recommended that where a minor is a witness and the parent is present, consent to the interview be obtained from both the minor and the parent. If there is no parent present, the minor may be interviewed without parental consent. As with the preceding two recommendations, LASD agreed to address this in a department-wide directive.

Custody Training Initiative

A significant portion of LASD's responsibilities involve its control of the County jails, which incarcerate an inmate population that routinely exceeds 20,000 people. The staffing needs are so great that LASD assigns new deputies to a significant tour of duty in one or more of the jails before sending them to patrol. Needless to say, the inherent tensions can make it a challenging first assignment.

The use of force by deputies, in self-defense and as a means of controlling resistive or assaultive inmates, is a reality and a necessity in the jails. Moreover, LASD monitors force in the jails by standards comparable to those it applies to deputies encountering the public on the streets, and follows the same basic reporting and documentation protocols.

At the same time, however, the possibility of inappropriate or excessive force also lies distinctly within the unique dynamics of the custody setting. The combination of adversarial relationships, daily friction, and imbalances in power and authority provide the ingredients for abuse, and it is important that inmates have meaningful recourse in situations where they believe that deputies have violated their rights.

Force incidents involving significant injury to the inmate typically receive careful scrutiny from the Internal Affairs Bureau, as part of LASD's roll-out and

³This policy does not affect interviews of minors relating to criminal investigations.

Executive Force Review protocols (See Part One, above). However, a number of cases emerge each year in which inmates allege force that was never reported, and that did not result in serious physical harm. These complaints are handled by supervisors at the jail facilities themselves. Beginning in the summer of 2002, OIR began to develop concerns about the quality of those initial inquiries, and the legitimacy of the findings that emerged from them.

Some of the impetus came from a civil lawsuit in which the plaintiff was a former inmate at an LASD jail facility. He alleged that an LASD deputy had injured his neck by twisting it during a “search” in retaliation for a minor rules violation. When a federal jury found the deputy liable and awarded punitive damages against him, OIR decided to research the original incident (which had occurred in 1999) in more detail.

What OIR learned was the inmate had complained and had sought medical attention at the jail at the time of the incident, and that LASD had conducted an inquiry. Unlike the jury three years later, however, LASD had determined there was no evidence supporting the inmate’s claims. Supervisors did not even open a formal administrative investigation against the deputy, and he did not receive any discipline in connection with the case.

In reviewing the materials produced by this inquiry (which included several written reports and videotaped interviews with the complainant and inmate witnesses), OIR recognized several issues that undermined the inquiry’s effectiveness. These included leading questions, biased interpretation of inmate statements, “chilling” of the complaining inmate, and failure to explain or account for the inmate’s physical signs of injury (which, though minor, were verified by the medical records).

Apart from the issue of whether the deputy in the lawsuit actually did use inappropriate force, the appearance of bias weakened the LASD effort to the point that it became counterproductive. Indeed, the plaintiff’s lawyer later revealed to OIR that he considered LASD’s own investigation, which *exonerated* the deputy, to be central to the strength of the former *inmate’s* case at trial.⁴

OIR found comparable reasons for concern in surveying more recent incidents and inquiries that have begun with inmate complaints of wrongful force. OIR

⁴This assessment of the trial differed considerably from that of the LASD’s own analysts, who attributed the defeat to a difficult forum and a “runaway” jury that was seemingly predisposed against law enforcement.

developed a presentation for LASD executives and illustrated its points about the need for more thoroughness and objectivity by incorporating actual examples from LASD files. One significant issue is a lack of training for supervisors at the jail facilities regarding how to conduct objective and thorough force investigations. Accordingly, OIR produced a training bulletin that addresses some common shortcomings in direct and practical ways. OIR has also accepted invitations from individual facilities to discuss these issues with the supervisors who actually handle the inquiries.

To: Custody Division Supervisors
From: Office of Independent Review
Date: June 2003
Re: Guidelines for Unit-Level Inquiries into Inmate Complaints

In addressing possible misconduct and protecting against civil liability, LASD relies on its facility supervisors to conduct inquiries and investigations that are thorough, fair, and effective in determining the truth. The following reminders are intended to promote this result in practical ways:

1. Make the interview *conditions* consistent with **Objective** truth-seeking:
 - Unless security issues dictate otherwise, inmate complainants and witnesses should be not be handcuffed.
 - Inmates should be seated and reasonably comfortable.
 - LASD personnel should also be seated, at a reasonable distance from the testifying inmate.
 - Interviewer should confirm that the camera is operating properly (batteries, lens cap, etc.) before beginning the interview.
 - Interviewer should begin by establishing the inmate's condition and ability to participate. ("Do you feel okay? Are you able to answer some questions about the incident? Is there anything you want to tell me or ask me before we begin with the interview?")
 - Interviewer should explain, on camera, the basic purpose of the inquiry, and should emphasize the Department's intent: to gather all the relevant evidence and then assess it in order to determine what occurred.
2. Remember that the interview phase is about gathering evidence, not proving a particular theory.
 - Ask open-ended questions and obtain the inmate's version of events in as much detail as possible. ("Go ahead and tell me everything about this incident, and please try to be as specific and detailed as you can be.")

continued

- Avoid “leading” questions that put words in the mouth of the inmate witnesses. (“So, you thought that the [complaining inmate] was a little bit out of control on the way to the library area, and not really cooperating with the deputies?”)
 - LISTEN to what the inmate is saying. Be prepared to pursue an unexpected or surprising piece of information.
 - Ask follow-up questions as needed for clarification and additional detail, bearing in mind the specific facts in dispute for the particular incident.
 - Avoid coercive techniques (“We can prosecute you for lying, you know”) or expressions of skepticism (“I’ve been in this business a long time. Are you trying to tell me the deputies yanked you out of that line for no reason at all?”)
 - Avoid re-stating the inmate’s testimony unless there is a need to do so (e.g., for clarification). When re-stating, be as accurate as possible (as opposed to “shading” or “spinning” the testimony).
 - Use any prior statements (such as a written complaint by the inmate) as a possible means of refreshing the inmate’s recollection, clarifying discrepancies, or otherwise making the inmate’s information more complete.
 - End the questioning by asking if there’s anything else the inmate wants to add. (“That’s all for my questions. Do you have anything else that you think I should know, that we haven’t already covered?”)
 - Give the inmate an opportunity, on camera, to comment or inquire about the way the interview process has been handled and or the investigation as a whole. (“Is there anything you’d like to say, or ask, about this process, or the way you’ve been treated since you made your complaint?”)
3. Present the gathered facts in a balanced and comprehensive way.
- Decision-makers should have a complete summary of the evidence as the basis for their conclusions.
 - Investigators must be careful not to tailor their presentation (or omission) of material in order to promote a particular outcome.

Selected Cases Involving OIR Review

The bulk of OIR’s work continues to be assessment of individual cases for investigative quality, thoroughness, and objectivity, so that appropriate outcomes and fair, meaningful disciplines can occur. To date, OIR’s attorneys have reviewed over 300 cases. The following chart contains examples of a particular category of case: shootings and major force incidents. Selections from other categories appear in Part Three of the Report. A comprehensive listing of cases reviewed by OIR since its First Report is available on the OIR website, www.LAOIR.com.

Selected Shooting and Major Force Cases

Allegations or Synopsis

Deputies mishandled detention of suspect, allowing him to flee. Deputies then used poor tactics in the ensuing foot pursuit, primarily because of their decision to split. One deputy then used a backup weapon in shooting suspect, who died.

OIR Recommendation

Investigation: Adequate
Charge: Appropriate
Findings: OIR concurrence
Discipline: OIR concurrence

Result

Founded for both

Discipline

Subject (1): 10 days for performance to standards.
Subject (2): 15 days for performance to standards and use of weapon with which he had failed to qualify. Both suspensions subsequently reduced per settlement agreements,

Related Civil/Criminal

Rejected by D.A. based on self-defense.

Allegations or Synopsis

Deputy and partner engaged in a car pursuit of a speeding car. At the conclusion of the short car pursuit, there was a foot pursuit. During the foot pursuit, a suspect pointed a firearm at Deputy. Deputy shot the suspect.

OIR Recommendation

Investigation: Adequate. Case presented at Executive Force Review. Panel concluded no policy violations, but possible pursuit/separation tactical issues should be addressed through training. OIR concurred and will monitor "mentor development plan" to be implemented.

Result, Discipline

N/A

Related Civil/Criminal

D.A. declined to file criminal charges because it concluded that Deputy acted in self-defense.

Allegations or Synopsis

Deputy (1) allegedly used force and failed to report it, failed to properly secure the arrestee in patrol car with a seat belt, failed to secure the arrestee while the deputy responded to an emergent call for assistance, and knelt the arrestee in head while the arrestee was handcuffed without provocation. Deputy (2) allegedly failed to properly secure the arrestee in his patrol car with a seat belt, failed to secure the arrestee while the deputy responded to an emergent call for assistance and failed to report force used by Deputy (2).

OIR Recommendation

Investigation: Thorough
Charges: Adequate after extensive discussion with Advocacy, Unit and Division
Findings: LASD concurrence
Discipline: LASD concurrence

Result

Deputy (1): Founded for Force, Safe-guarding Persons in Custody, Performance to Standards
Deputy (2): Founded for Safe-guarding Persons in Custody

Discipline

Deputy (1): 30 day suspension
Deputy (2): Written Reprimand

Related Civil/Criminal

D.A. declined to file charges

Allegations or Synopsis

The Deputies were called to the location because the suspect was acting bizarrely and was assaulting motorists in their cars. Deputy (1) was the first deputy to the scene and detained the suspect at gunpoint. Deputies (2) & (3) responded to assist, also drawing their guns. The suspect ran at Deputy (1) and all three deputies fired believing that the suspect was trying to take Deputy (1)'s gun. Suspect was killed.

OIR Recommendation

Investigation: Thorough. At Executive Force Review, panel requested IAB investigation with OIR concurrence. Additional areas were addressed during the IAB investigation as requested by OIR.

Charges: Appropriate

Findings: OIR concurrence

Discipline: OIR concurrence

Result

Deputy (1): Founded for Performance to Standards. Unresolved for Use of Firearms & Deadly Force.

Deputies (2) & (3): Unresolved for Performance to Standards and Use of Firearms & Deadly Force.

Discipline

Deputy (1): 15 days

Deputies (2) & (3): N/A

Related Civil/Criminal

D.A. declined prosecution on basis that the deputies' expressed fear of immediate life threatening danger to Deputy (1) was reasonable.

Allegations or Synopsis

Deputies tackled an inmate who was running toward a group of inmates, possibly to attack them, used excessive force to subdue him, and may have struck him after he was handcuffed. One deputy coerced the inmate into signing a false statement about the injuries. Another deputy threatened witness inmates if they cooperated with investigations.

OIR Recommendation

Investigation: Adequate

Charges: Appropriate

Findings: OIR Concurrence

Discipline: LASD concurrence

Result

Deputies (1), (2) & (6) unresolved for Force and Failure to Report Force. Deputy (3) Unfounded as to Force, Founded for Failure to Report Force. Deputy (4) unfounded for Force, unresolved for Failure to Report Force, founded for Obstruction of an investigation. Deputy (5) unresolved for Withholding Medical Attention.

Discipline

N/A for deputies (1), (2), (5) & (6). 5 day suspension for Deputy (3). Discharge for Deputy (4).

Allegations or Synopsis

Deputy (1) responded to "911 hang up" call. Upon his arrival, he heard a woman screaming for help. He knocked on the door several times and was told to leave by a male, while the woman was still yelling for help. He attempted to force entry into the apartment. Assisting Deputy (2) arrived and was finally able to kick open the front door. Deputies saw a male standing in the living room holding a shotgun pointed at them. Deputy (1) was standing behind Deputy (2) and was able to back out of the suspect's line of fire. Deputy (2) fired one shot and then followed Deputy (1). The shot missed the suspect.

OIR Recommendation

Case presented to Executive Force Review. Panel found use of force to be within policy. OIR concurrence.

Result, Discipline, Related Civil/Criminal

N/A

Allegations or Synopsis

Deputy arrested suspect for providing alcohol to minor and transported Suspect to Station for booking. Once at the station and inside the booking cell area, Deputy unhandcuffed the suspect and began to search him. Suspect quickly spun toward Deputy who used a control hold on Suspect's left arm, taking him to the floor. Later, Suspect complained of pain to his left arm. He was taken to Medical Center and treated for a fracture. The force incident was captured on the jail video tape, which corroborated deputy's statement.

OIR Recommendation

Investigation: Adequate. Case presented to Executive Force Review Committee. Panel concluded force within policy and fracture unintentional. Commended station for implementing special training to address a cluster of recent force incidents resulting in fractures. OIR concurred.

Result, Discipline, Related Civil/Criminal

N/A

PART TWO

Addressing Misconduct: *Investigations, Outcomes, and Discipline*

Overview of OIR's Review Protocol

The core of OIR's mandate remains the same as when the Office was first created more than two years ago: ensuring that LASD's internal response to allegations of officer misconduct is thorough, fair, and effective. OIR's actual experience in those two years has shaped its day-to-day approach to the achievement of that goal. Simply put, OIR learns of relevant incidents and allegations as they originally develop and then provides its input and recommendations as needed at every subsequent stage until resolution —and beyond, if systemic changes or policy reforms seem advisable.

P H A S E O N E :

Making Investigations Better

OIR recognizes that the course of an investigation is often defined by what happens at the outset, in terms of basic decisions about how to proceed: Should this matter be investigated at all? If so, should it be handled by the LASD's criminal investigators, or as an administrative matter? If administrative, should it be handled at the unit, or by the Internal Affairs group? What time constraints should investigators be aware of? What should the strategy of the investigation be? Who are the key witnesses?

OIR tries to learn about and assess each new case as early as possible, in order to make recommendations and offer its perspective as LASD makes these critical early decisions and proceeds from there. OIR also consults regularly with investigators to check the progress of the case and discuss problems or factual issues that arise. This involvement often has a significant influence on how the investigations unfold.

CASE

OIR monitored an investigation by the Internal Criminal Investigations Bureau (“ICIB”) into an allegation that a sergeant stole county property, i.e., a desk. The OIR attorney met with an ICIB lieutenant and investigator regarding the progress of the investigation. Because there was some reason to believe that if the suspect sergeant learned of the criminal investigation, the sergeant might cause the disappearance of the desk, the OIR attorney persuaded the ICIB lieutenant and investigator to obtain a search warrant for the sergeant’s house before interviewing two critical witnesses, including the commander. In addition, OIR advised the ICIB lieutenant and investigator on the timing of conducting these witnesses’ interviews and on the inclusion and form of several of the interview questions. ICIB followed OIR’s suggested approach and obtained the evidence it needed to move forward.

CASE

A deputy had been accused of falsifying a police report, improper entry into and search of a residence, and coercing an arrestee to give the deputy consent to search the residence. The allegations were first reviewed criminally. The District Attorney declined to file criminal charges. Therefore the allegations were forwarded to IAB for review. Normally, under the Peace Officer Bill of Rights, LASD would have had a year from the District Attorney declination to complete its investigation and give notice of any discipline. LASD was proceeding as if it had that complete year.

In this case, however, OIR discovered that the deputy might be able to argue that part of the one year period ran before the criminal investigation commenced, and therefore LASD might have less than a year to complete the investigation. OIR brought this potential argument to the attention of IAB and the Advocacy Unit, which serves as LASD’s internal

FAQ:

“What are the top three types of policy violations committed by deputies? What is the range of discipline for each category?”

Deputies are disciplined most frequently for “preventable traffic collisions,” and for failure to attend mandatory firing range testing, usually receiving a 1 or 2-day suspension. But, for more serious policy violations the top three categories are:

- 1. Performance to Standards, which includes such things as negligent handling of prisoners or evidence, constitutional violations, endangering yourself or other officers, improper procedures or incompetent report writing.**
- 2. Conduct Toward Others, Derogatory Language, which includes all levels of discourtesy towards members of the public, fellow LASD employees or jail inmates.**
- 3. Off Duty Misconduct, which includes misuse of position or authority as well as standard law-breaking, such as drunk driving and spousal battery.**

The great majority of founded cases end in a written reprimand or a suspension without pay at the short and moderate range (1 to 15 days). For more significant misconduct within each of these categories, the standard discipline may go up to and include discharge.

legal advisor for internal investigations. Advocacy agreed and calculated a revised investigative deadline for LASD. LASD then moved swiftly to meet this revised deadline, ensuring that a procedural technicality would not preclude discipline from being imposed if appropriate.

CASE

A deputy was responsible for supervising the United States Marines who were volunteering as counselors for an LASD at-risk youth program called "VIDA" (Vital Intervention and Directional Alternatives). The Marines had ordered a Muslim youth participant in the VIDA program to stand in a circle. The other VIDA participants formed the circle around the Muslim youth, and the Marines, who had fashioned a shirt into a turban, placed the turban on the youth's head. While wearing the turban, the youth stood or knelt in the circle, and the other VIDA participants chanted a phrase referring to "selling Allah a dime bag" or "Allah needing to supply them with a dime bag." This incident lasted for several minutes while the deputy who was the subject of the administrative investigation either watched and failed to stop it or left his position and was thus not able to stop it.

At the unit level, the captain conducted an administrative inquiry of the incident and originally concluded that a full investigation was not necessary. OIR, which had been following the matter closely, disagreed. The OIR attorney conferred with the regional commander and chief and discussed several issues regarding the inadequacy of the inquiry conducted and argued for the necessity of a full administrative investigation of the incident. After several such meetings and telephone conversations, the regional chief requested that IAB conduct a full administrative investigation.

During the administrative investigation, OIR continued to actively monitor the matter. OIR formulated the critical questions for the interview of the subject deputy, requested additional witness interviews and ensured that IAB forwarded the completed investigation to the unit captain and the regional chief in a timely manner. The subject deputy eventually was disciplined as a result of the investigation.

FAQ:

“ Can LASD impose discipline for conduct that falls below acceptable standards of competence, even when the deputy’s lapse is not malicious? ”

If a deputy fails to perform his or her duties consistent with expected standards of competence, the acts or omissions may constitute a violation of departmental policy. The policy that is often implicated is termed “performance to standards”. The theory behind such a disciplinary action is that certain minimal standards are expected of trained law enforcement officers and if certain behavior falls below those standards, a disciplinary action may be appropriate. The penalty for a violation of performance to standards may be as significant as discharge, depending on the nature of the violation. In one recent three-month period, 45 LASD employees were disciplined for violations of this policy provision.

Achieving Appropriate Dispositions

Once an administrative investigation into misconduct is complete, the OIR attorney who has followed the case now assesses all the accumulated evidence, reviews additional relevant factors (such as the employee’s previous disciplinary history) and develops recommendations that he or she then shares with the LASD decision-maker. There are two basic issues: First, what policy violations, if any, have been established by the facts in the case? Second, what specific form should the discipline take if there is a violation?

As discussed extensively in the First Report, OIR’s interactions with LASD decision-makers are based on a “consensus” model. OIR certainly listens as well as talks, and the goal is to share ideas, discuss issues, and answer questions until both sides agree on the appropriateness of the result. In most cases, the process works well and produces fair results. When differences of opinion remain, OIR goes “up the chain” within LASD—up to and including the Sheriff—in an effort to make sure its views are known and considered.

CASE

In an administrative investigation alleging that a deputy engaged in oral sex with a female while on duty, and instructed the female to provide sexual favors to a civilian ride-along, the OIR attorney met with the investigator and developed an investigative plan. OIR reviewed the investigative file for completeness and objectivity and reviewed the charges.

At an executive meeting, OIR led a discussion detailing the evidence corroborating the various allegations, and expressed its view that the proof was sufficient. Eventually, the executives concluded that the charges should be founded in all respects.

FAQ:

“What are the different ways that LASD can sanction a deputy whose misconduct has been established?”

The available forms of discipline are:

- **Written reprimand [placed in permanent record].**
- **Suspension without pay for 1 to 30 days.**
- **Withholding or elimination of standard pay increase.**
- **Removing from bonus position.**
- **Demotion.**
- **Discharge.**

In the first 6 months of 2003, 17 employees were discharged from LASD. During the same periods in 2002 and 2001, LASD discharged 6 and 5 employees respectively.

CASE

An administrative investigation was conducted into allegations that a deputy sheriff had engaged in serious off-duty misconduct. The allegations included that the deputy: participated in a fight at a party at a private hall; attempted to break into the hall's office to retrieve his duty weapon after the fight erupted; went with certain family members to the home of a relative of one of the participants in the fight; watched the deputy's brother stab the fight participant and did not stop his brother or take any police action; forced his way into the house with his family; witnessed his family assault the relative; took a skateboard and hit a friend of the stabbing victim to stop him from intervening; and pulled the phone cord out of the wall to prevent the residents from calling the police. The subject then allegedly failed to report those incidents to his supervisor and made false statements in the investigation by denying he was present at the house.

OIR discussed the investigation, appropriate charges, findings and discipline in a lengthy meeting between OIR and the Captain, the division Commander, IAB and Advocacy. The result of the meeting was the recommendation that the charges relating to the conduct after the party, failure to report that conduct, and false statements be founded and the discipline be discharge. The subject was discharged and appealed to the Civil Service Commission.

Contract counsel hired to represent the county at the Civil Service Commission was concerned about the strength of the case, because two of the four witnesses who placed the subject at the house had not been located. OIR attended a meeting with counsel, Advocacy, and the division Commanders where LASD initially advised Counsel that it should settle the case because of the perceived problems of proof.

When, at a later point, OIR re-emphasized the principles behind the initial decision to discharge, the Chief agreed with OIR that if the Civil Service Commission determined the evidence was insufficient, it should be that commission, not LASD, who reinstated him. OIR also worked directly with IAB in encouraging the search for the two missing witnesses. These efforts succeeded; the witnesses were located and eventually testified at the Civil Service Commission hearing.

FAQ:

“ Does OIR ever make a recommendation to LASD that is more favorable to the deputy subject of the investigation than LASD's initial position? ”

Yes. A part of OIR's responsibility is to review the consistency and fairness in the results of investigations. Therefore, if OIR perceives that a result suggested by LASD is inappropriate or too severe, OIR will recommend a different result. To date, in the several cases where OIR has expressed these views, LASD has agreed and imposed the lesser sanction.

CASE

OIR monitored an administrative investigation of two deputies who were involved in a traffic stop and who engaged in misconduct which resulted in the unlawful confiscation, or “purchase,” of a civilian’s motorcycle. In this incident, Deputy A stopped the civilian, a physician visiting from Chile, for riding a motorcycle on the sidewalk and without a motorcycle helmet. The day before this traffic stop, the civilian, who spoke very little English, had purchased the motorcycle for more than \$1,500.00 from a dealership. Deputy B assisted Deputy A in Spanish/English translation. Both deputies were on-duty, in uniform and driving separate marked sheriff patrol cars. During the traffic stop, Deputy B purchased the motorcycle from the civilian for \$300.00. While on-duty and in uniform, Deputy B transported the motorcycle to a private residence and conducted personal business to consummate the “sale” and registration of the motorcycle.

The case was presented to the District Attorney’s Office. Although the District Attorney’s Office declined to file extortion charges against Deputy B on the basis of insufficient evidence, it found Deputy B’s conduct to be unethical and unprofessional. OIR began monitoring this case when the IAB investigator began the administrative investigation, and during this time the OIR attorney recommended that the investigator interview additional witnesses. At the request of the Advocacy Unit and the regional commander, the OIR attorney also made recommendations regarding the drafting of the potential charges.

Ultimately, OIR conferred with the station captain about the appropriate findings against both deputies and the range of discipline that should result. LASD eventually decided on significant consequences for both deputies, a result OIR endorsed in light of the evidence and seriousness of the misconduct.

PHASE THREE:

Making Recommendations in Policy & Training

Investigations into alleged misconduct are certainly important in terms of addressing wrongful actions from the past. However, in OIR’s view, each case also has the potential to influence LASD’s future, by revealing systemic flaws or gaps in policy or officer training that can be identified and corrected on a going-forward basis.

CASE

An inmate scheduled for court appeared to be ill. The nurse and deputy who observed him allowed him to be readied for court. After appearing to sleep peacefully for some time

while awaiting transportation, the inmate died. In the subsequent investigation, the deputy asserted that the nurse had rendered an opinion that he understood to mean the inmate was approved for transportation to court. The nurse said that she had in fact suggested that the inmate should go to the clinic, but had not taken action to implement that. The lack of documentation of either the nurse's or deputy's processing decisions regarding the inmate's welfare hampered the LASD's ability to determine which employee was at fault and to impose discipline. The OIR attorney met with command staff of the custody division and medical services bureau and recommended that a new, clearer policy be developed concerning the documentation of responses to "man down" calls and the respective responsibilities of sworn and medical staff. A new policy addressing these issues was developed and implemented with OIR input.

County of Los Angeles Sheriff's Department Medical Services Bureau

Policy # **207.8**

Effective Date: **5-19-03**

Subject: **Response to Medical Emergencies and "Persons Down"**

Revised:

Unit Commander: **Rod Penner**

Chief Physician: **John Clark**

Purpose: To define the responsibility of Medical Services Bureau Healthcare Professionals when notified of an emergency medical situation involving an inmate.

Policy: Medical Services Bureau Health Care Professionals will respond and initiate emergency medical care to inmates in or on the premises of custody facilities.

Performed By: Registered Nurses Physicians

General Instructions: It is the intent of Medical Services Bureau that Licensed Vocational Nurses not be dispatched as the sole responder to medical emergencies. However, circumstantially, Licensed Vocational Nurses may respond to and render emergency care within their scope of practice until personally relieved by appropriate authority and may accompany other disciplines as a co-responder.

While this policy is intended primarily to address emergency response from outpatient clinics, it is incumbent upon Medical Services Bureau staff to aggressively respond to declared medical emergencies in or near the various facilities and to render care and treatment to the best of their ability, within their scope of practice. They are to remain with the patient until personally relieved by competent medical authority.

continued

Once a request for emergency response has been received and initiated by Medical Services personnel, Medical Services personnel will determine the disposition of the patient. In no case will custody personnel cancel a request for service.

When staff are presented by Custody with an inmate for medical evaluation, who is not a "person down" or whose condition is not emergent in nature, it is their responsibility to follow through to insure appropriate disposition or follow up.

Any variances to this Policy will be immediately reported and documented to the on duty Supervisor or designee.

- Procedure:**
- A. When notified of a medical emergency, employee will:
 - 1. Ascertain the location and nature of the emergency, i.e. loss of consciousness, seizure, bleeding, or other illness or injury, if known.
 - 2. Registered Nurse will respond with, at least, an emergency bag, and a gurney if needed, to the site of the emergency.
 - B. Upon arrival at the emergency, the Registered Nurse will:
 - 1. Assess the patient for patent airway, breathing, and circulation.
 - 2. Initiate CPR, if indicated.
 - 3. Begin wound management, including possible head and spinal trauma, if indicated.
 - 4. Transport to Clinic for further evaluation and treatment,
 - 5. Request for additional nursing and/or physician staff and/or equipment support, and/or EMS response to emergency site.
Note: Transport to an acute care hospital may be initiated from the site of the emergency.
 - 6. Remain with and render appropriate level of care until relieved by competent medical authority.
 - 7. Document the circumstances of the emergency, including, but not limited to, nature of illness or injury, patient's condition upon arrival, patient's statement, actions taken, including vital signs and final disposition of patient, in the patient's medical record.
 - 8. Complete other notification/documentation, as required.

**Equipment/
Supplies:** Emergency bag
Gurney or wheelchair
Other emergency equipment as indicated

Documentation: In the medical record and other notification/documentation as required.

Reference: California Code of Regulations, Title 15, Article 10, Section 1200, a, First Aid and Emergency Response. Custody Division Policy 5-03/090.00, Ambulance and Paramedic Services

During OIR's second year, it advanced a number of policy initiatives and reforms. Several of these are discussed below in Part Three.

Systemic Reforms Related to the Investigation Process

Along with the substantive reforms mentioned above, and delineated more fully in Part Three, OIR made a number of recommendations relating to the means by which LASD carries out its investigations and reviews of possible misconduct.

IAB Statute of Limitations Issues

As OIR progressed through its second year, it came across several cases in which LASD had miscalculated the one-year statute of limitations period within which deputies could be disciplined.⁵ In some instances, this miscalculation prevented LASD from meeting the time requirements and thereby eliminated the ability to impose discipline in those cases.

Even in cases in which the statute of limitations date is not miscalculated, OIR has found too many cases in which the investigation is completed just days before the one-year mark. This suggests the potential for last-minute rushes that might impair the ability to pursue otherwise viable leads, or to do investigative follow-up in crucial areas. In short, the quality of the investigation may suffer. Moreover, the investigators' supervisors at IAB become constrained in their ability to ask for further investigation or refinement of the materials in the case file.

This problem has possible ramifications for the decision-making process as well. OIR has noted repeated frustration expressed by LASD supervisors and executives when they are forced to assess a file within days of the one-year statutory period for discipline. The decision-makers often would like further investigation or information based on their own initial reactions to the evidence, and the timing issues sometimes prevent this from occurring. Certainly, the personnel responsible for preparation of disciplinary charges and serving the subject deputies with notification letters would also prefer to do their jobs without the burden of an urgent deadline.

⁵Under the Public Safety Officers' Procedural Bill of Rights Act, notice of any discipline resulting from investigation of officer misconduct must be provided to the officer "within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation." California Government Code Section 3304(d).

OIR's role in the process also becomes more difficult when investigations are only completed with days to go on the statutory clock. A thorough review and careful consideration of the file, as well as the opportunity to raise issues that might require further investigation—two aspects of OIR's work that are critical to achieving its mission—obviously depend in part on a reasonable time period in which to work. Quite simply, the repeated phenomenon of internal investigations being completed at or near the statutory time deadline threatens the professionalism of the results, and warranted OIR's inquiry into why it was recurring and how it could be addressed.

In essence, a major problem in meeting the statutory time line stemmed from the lack of a cohesive standard as to what constituted "notification" for purposes of establishing the start of the one-year limitations period. For example, some investigators used the date when they were assigned the case, despite the fact that sometimes months had passed on the one-year clock before the case was assigned to them. Others used the date when the case file was delivered from another unit to IAB, also despite the fact that months had also usually elapsed before this happened. Others relied on a date that had been assigned to the file by a Commander or Chief, without knowing why that date had been chosen, or even if they did know, without questioning whether an earlier date was a more appropriate or accurate date. For example, a station Captain may have been aware of potential misconduct for a few weeks, but did not refer the case for investigation. When the supervisor did so, the date of the referral would be used as the "department notification date," instead of the date of actual knowledge. The correct date for the beginning of the one-year period was the date of actual knowledge, not the date of referral. As a result, the IAB investigator's one-year date, based on the date of referral, could result in a miscalculation.

In other instances of inaccurately calculated dates, investigators relied on the date the Los Angeles County District Attorney declined to prosecute a case, yet failed to take into account time that had elapsed before a case became a criminal investigation, or relied on an incorrect "declination to prosecute" date.⁶ To add to the potential for inaccuracy, once a statute of limitations date had already been calculated, it was possible for an investigator unilaterally to change the "department notification date" to add more time to the clock by merely requesting that another date be entered into the database that kept track of the one-year dates. This could be

⁶Under the Public Safety Officers' Procedural Bill of Rights Act, statute of limitations is tolled for the period of time during which a case is being criminally investigated. California Government Code Section 3304(d)(1).

done without consulting a supervisor. In sum, in individual cases, LASD's calculation of the one-year limitations date was potentially fraught with mistakes, and generally the manner in which the dates were set lacked a uniform standard. OIR discovered at least three cases where the statute of limitations period had lapsed.

CASE ONE

Alleged Misconduct: A deputy was alleged to have stolen money from minors while he detained them. On two separate dates, a deputy stopped two groups of juveniles to investigate them for speeding and possession of alcohol, respectively. The deputy did not log the speeding incident, in violation of LASD policy, and did not arrest any of the minors. After the speeding traffic stop, one of the minors stated that he was missing money from his wallet. After the possession of alcohol stop, three of the minors stated that they were missing money from their wallets. None of the minors could account for how the money came to be missing, but each stated that he remembered that the money was inside of his respective wallet when the deputy, out of their view, searched the wallets for identification.

Statute of Limitations Issue: ICIB investigated the allegations. The matter was presented to the District Attorney, who declined to prosecute. Instead of relying on the date of the declination of prosecution, the investigator relied on a subsequent and inaccurate "department notification date." As a result, the statute of limitations was violated.

Result: Regardless of the result of the Internal Affairs investigation, the deputy could not be disciplined because of the failure to complete the investigation within the required one-year period.

CASE TWO

Alleged Misconduct: It was alleged that a deputy was working a second job during hours he was also claiming to be performing his deputy duties. The unit had no record of any request to work the second job. In addition, there were allegations that the deputy may have inappropriately obtained compensation for his second job from an individual who was not responsible for paying his salary. In an unrelated matter, it was alleged that the deputy had hazed a trainee.

Statute of Limitations Issue: The unit performed an initial investigation of the allegations. After several months, the unit determined a criminal investigation was warranted. ICIB performed an investigation and presented it to the District Attorney's Office. The District Attorney declined to file criminal charges. The allegations were then forwarded to IAB to perform an administrative investigation. The IAB investigator assumed that the one year period in the statute of limitations did not commence until the DA declined to file criminal charges. However, some portion of the time during which the unit was investigating the allegations and prior to ICIB being asked to perform a criminal investigation did, in fact, count against the one year period. By the time this mistake was identified, the one year statutory period had elapsed.

Result: Regardless of the result of the Internal Affairs investigation, the deputy could not be disciplined because of the failure to complete the investigation within the required one-year period.

C A S E T H R E E

Alleged Misconduct: Within a three-month period, a deputy allegedly acted unprofessionally during three contacts with a local police department. During the first contact, the police responded to the deputy's home to investigate a 911 hang-up call related to a possible assault on his girlfriend. The deputy was allegedly evasive regarding the circumstances surrounding the call. The second contact involved the deputy allegedly being verbally abusive to police when he was cited for speeding. In the third contact, police investigated a loud music call at the deputy's residence, and the deputy allegedly avoided speaking to the police, remaining inside his residence.

Statute of Limitations Issue: The investigator calculated the correct statute of limitations date. However, the investigator delayed in interviewing witnesses, which caused the statute of limitations date to pass.

Result: Regardless of the result of the Internal Affairs investigation, the deputy could not be disciplined because of the failure to complete the investigation within the required one-year period.

In order to address this problem from a policy perspective, OIR recently recommended that IAB discourage the use of the “department notification date” to calculate the beginning date of the one-year period. OIR consulted with IAB on this issue, and IAB recently instituted a new directive, found below. Instead of relying on the notification date, the directive instructs investigators to use the date of the incident as the presumptive date, which is a much more conservative and certain date for purposes of calculating a statute of limitations period. The directive takes into account other legitimate and legally justified bases to begin calculating the one-year date after the incident date. For example, where an LASD employee engages in misconduct that could not have reasonably been discovered by LASD, because, for example, the employee covered up his misdeeds, the directive allows use of the date of the discovery of the misconduct as the beginning of the one-year date. In addition, in cases in which the District Attorney has declined a criminal filing, the investigator must consult with an IAB lieutenant and the Advocacy Unit in calculating the one-year deadline. Finally, in all cases, IAB investigators, within ten days of being assigned a case, are required to calculate the one-year deadline, and this date cannot be modified without consultation with an IAB supervisor and the Advocacy Unit. In sum, the directive sets forth a conservative, uniform standard by which the one-year calculations should be made, and will foster the goal of timely and effective completion of the investigation in all cases. (See directive, below.)

FAQ:

“How Long Does it Take to Discipline a Deputy?”

Assuming there is sufficient evidence that an allegation is founded, it may take anywhere from a few months to close to two years from complaint to imposition of discipline. Usually, the length of time it takes depends on how quickly the investigation was completed, and whether or not the deputy appeals the discipline decision. If the investigation was completed within a few months, and the deputy does not appeal the discipline, the discipline could be imposed within two-four months. If the investigation takes longer, and the deputy appeals the discipline, it could take anywhere from six months to two years. A quicker resolution is obviously preferable in some ways for both sides—the deputy does not have the allegation “hanging over him” and LASD’s response has a greater resonance if closer in time to the incident. However, these values must be balanced against the need for thorough investigations and the importance of honoring the deputies’ procedural rights.

IAB Statute of Limitation Policy

All Internal Affairs Bureau ("IAB") investigators shall use the incident date as the presumptive start date with which to calculate the Peace Officer Bill of Rights' one-year statute of limitations period for completion of administrative investigations. The "department notification date" is no longer to be the presumptive start date in calculating the statute of limitations IAB deadline. Within ten days of being assigned a case, the investigator shall calculate and note in the case file the one year statute of limitations IAB deadline. The PPI System should be updated with a data field "one year statute date" so that it is formally documented in a place other than on a piece of paper in the investigator's possession.

In cases which have been submitted to the District Attorney for consideration of a criminal filing and rejected, the investigator shall consult with a lieutenant of IAB and the Advocacy Unit in calculating the one year IAB deadline. Such consultation will be noted in the investigative file. This documentation should be in the form of a memorandum, including the IAB #, to file from the investigator. That document should then be inserted into the "Miscellaneous Documents" section of the final original case.

In cases where discovery by the Department of the allegation of misconduct "by a person authorized to initiate an investigation of the allegation" is so far removed from the incident date to make it impracticable to use one year from the incident date as the IAB deadline, the investigator shall discuss the facts of the case with a lieutenant of IAB and the Advocacy Unit before calculating the IAB deadline. Such consultation will be noted in the investigative file. This documentation should be in the form of a memorandum, including the IAB #, to file from the investigator. That document should then be inserted into the "Miscellaneous Documents" section of the final original case.

In cases where there may be other legal bases for revising the IAB deadline, (e.g., subjects have signed written waivers of the statute of limitations; the investigation is a multijurisdictional investigation; the investigation involves more than one employee; the investigation involves an employee who is incapacitated or otherwise unavailable; the subject is named as a party in related civil litigation; or the investigation involves an allegation of worker's compensation fraud) and it is impracticable to continue to use one year from the incident date for the IAB deadline, the investigator shall discuss the bases for the revision of the IAB deadline with a lieutenant of IAB and the Advocacy Unit in recalculating the IAB deadline. Such consultation will be noted in the investigative file. This documentation should be in the form of a memorandum, including the IAB #, to file from the investigator. That document should then be inserted into the "Miscellaneous Documents" section of the final original case.

Upon calculation of the statute of limitations deadline, the IAB investigator shall notify IAB personnel responsible for tracking investigations and the OIR of the calculated IAB deadline.

Modification of any previously calculated statute of limitations deadline shall not be undertaken without consultation and agreement of a lieutenant of IAB and the Advocacy Unit. Such consultation will be noted in the investigative file. This documentation should be in the form of a memorandum, including the IAB #, to file from the investigator. That document should then be inserted into the "Miscellaneous Documents" section of the final original case.

This unit order provides guidance in the formulation of an internal IAB deadline for purposes of case management only and does not establish any individual rights, entitlements, defenses or privileges, and no employee of LASD may rely on it for any such purpose. It is merely an internal IAB policy, and is not in itself a limitations period, or an interpretation of the law.

OIR is also aware of at least one case where a lapse in the statute of limitations was caused by inattentive monitoring of the case by the unit. When an investigation is completed with more than one month left on the one-year clock and sent from IAB to the respective unit for review, LASD supervisors and executives should have sufficient time to review the file and make recommendations on whether the charges should be founded or not, and if founded, what the discipline should be. However, OIR has seen at least one instance where even though supervisors and executives have been given more than a month to review a case, they have failed to complete their review within the one-year period.

C A S E

Allegations: A male deputy was alleged to have used and failed to report force during a contact with a female inmate. The inmate alleged that the deputy twisted her arm when she refused to accompany him to her work assignment. The subject deputy and a deputy witness denied using force on the inmate, and as such, claimed there was no force to report.

Statute of Limitations Issue: IAB finished the investigation and forwarded the file to the unit approximately seven weeks before the one-year period expired. The unit captain reviewed the file, met with OIR, and determined, due to conflicting evidence, that the incident was unresolved. However, the letter required to be served before the period of limitations expired advising the deputy of the decision was not timely served on the deputy.

Result: The expiring of the statute of limitations did not affect discipline, since no discipline would have been imposed due to lack of sufficient evidence to sustain the policy violations.

FAQ:

“ What types of on-duty misconduct have resulted in the criminal investigation of deputies? ”

There are several types of allegations of on-duty misconduct which have resulted in criminal investigations of deputies. The criminal investigations of deputy alleged on-duty misconduct include the alleged planting of guns or drugs on arrestees, the release of confidential information for either personal gain or to unauthorized persons, driving under the influence, the use of excessive force, the failure to report uses of force, writing and/or filing false police reports, the commission of perjury in court proceedings, the making of false entries in LASD time records, the theft of firearms, money or drugs from LASD facilities or crime scenes, the furnishing of contraband to inmates, and sexual contact with inmates, persons in custody or prostitutes.

This case may be indicative of yet another weakness in the system once IAB completes an investigation—the potential for a case to get “lost” once it is sent to be reviewed by the respective unit with insufficient monitoring to ensure no lapse of the statute of limitations.

While in this case, no discipline would have resulted, the mere lapse of the statute of limitations has implications in the monitoring of the process. OIR will continue to monitor whether this lapse was aberrant or suggestive of a deficiency requiring a systemic “fix.”

ICIB Compelled Witnesses Project

In a joint project, OIR and ICIB drafted a document to assist ICIB in dealing with deputy witnesses who declined to participate in ICIB interviews regarding potential criminal conduct by another member of LASD. This joint project resulted largely from an actual case where deputy witnesses who were not the targets of the criminal investigation refused to talk with ICIB. After learning about the case, ICIB and OIR worked together to draft language which allowed ICIB investigators to compel deputy witnesses to speak with them. This language was then developed into the ICIB witness admonishment. The compelled witness document recognizes the rights of witness deputies not to incriminate themselves, yet allows LASD to obtain information from the deputies in order for LASD and the District Attorney to better assess criminal allegations against the subject deputy before a filing decision is made. ICIB and OIR representatives presented this project to the District Attorney’s Office, and the District Attorney’s Office lent support to the concept. Since the development of the compelled witness document, in at least one instance an ICIB investigator has used the document to compel a deputy witness to provide information surrounding the alleged criminal conduct. (See admonishment form, below.)

ICIB: Limits on Locator Information During Discovery

As a part of its on-going dialogue with ICIB’s command staff regarding the different components of effective investigation techniques, OIR has worked with ICIB to reduce the opportunities for intimidation or harassment of, or retaliation against, witnesses in internal criminal cases against LASD personnel. In July 2003, ICIB established new procedures relative to the disclosure of detailed

Internal Criminal Investigations Bureau Witness Admonishment

I am _____ and this is _____ of the Internal Criminal Investigations Bureau which is commanded by Captain Art Ng.

This investigation concerns: (Explain allegation/reason for investigation) _____
You are about to be interviewed as a WITNESS as part of this official Los Angeles County Sheriff's Department criminal investigation. Your status as a witness means that the investigators do not possess any information that would indicate that you have committed a crime.

Do you have a Policy and Ethics Chapter of the Manual of Policy and Procedures? () Yes () No

Are you familiar with its contents? () Yes () No

As a witness in this case, you are specifically reminded that Sheriff's Department Policy and Ethics Sections 3-01/040.70 and 3-01/040.75 require you to make full, complete, and truthful statements. You retain the right to remain silent, and you are welcome to the presence and assistance of counsel, if you desire. You are hereby notified that although you have the right to remain silent, a failure or refusal to answer questions directly related to this criminal investigation may result in discipline up to and including discharge.

Because you are being required pursuant to Policy and Ethics Sections 3-01/040.70 and 3-01/040.75 to provide witness statements in response to questions asked of you today, your statements or information gained by such statements cannot be used against you in any subsequent criminal proceeding. However, your statements may be used against you should an administrative investigation be ordered in the future by Department management based on your actions or should you provide false and/or incomplete statements during this interview.

You are being required pursuant to Policy and Ethics Sections 3-01/040.70 and 3-01/040.75 to provide witness statements as a result of your decision not to provide voluntary witness statements in this criminal investigation. The Department's decision to require you to provide statements is based on an assessment of the particular needs of this case and is not a matter of routine practice. The Department consulted with the Justice System Integrity Division of the Los Angeles County District Attorney's Office before taking this action.

You have the right to have an attorney or representative of your choice, who is not involved in this criminal investigation, present with you during your interview.

You are ordered not to discuss the facts of this investigation or any of the issues discussed during your interview with anyone other than your attorney or designated representative.

The above admonition has been explained to me and I understand its contents. I understand that I am considered a witness and not a subject of this criminal investigation and that this is not an administrative investigation.

Date: _____ File Number: _____

Interviewee: _____
(Signature) (Print)

Investigator: _____
(Signature) (Print)

Attorney/Representative: _____
(Signature) (Print)

Internal Criminal Investigations Bureau

October 6, 2003

Line Procedures

Unit Order: 2 - 22

Subject: Redacting Personal Information from Reports

Purpose: The purpose of this order is to provide guidelines intended to shield persons who are contacted during confidential Internal Criminal Investigations Bureau (ICIB) investigations from intimidation, harassment or retaliation.

Scope: During an investigation, ICIB investigators routinely contact many people, both within and without the Sheriff's Department. Typically, personal identifying information is gathered during an interview (i.e., gender, race, birth date, addresses and telephone numbers). This information is used to identify persons contacted and to provide a means for locating them in the future. On occasion, however, this information has been used in an unauthorized manner by persons outside ICIB to intimidate, harass or retaliate. To prevent this, the following procedure has been established.

Policy: Incident and supplementary reports generated by ICIB investigators shall limit identifying information to first name, middle name, last name, suffix (if applicable), gender, race and age. The employee number shall also be included if the person is a Department member. More detailed identifying information shall be maintained in the investigative file or on a separate confidential supplementary report.

In addition, all reports and notes submitted for prosecution, including those written by personnel outside ICIB, shall have personal identifying information (other than first name, middle name, last name, suffix, gender, race and age) completely redacted from them.

When conducting audio or video tape recorded interviews, care shall be taken to avoid having the interviewee provide detailed identifying information on tape. It is sufficient to have the person state their first, middle, last name and suffix (if applicable).

DETAILED PERSONAL IDENTIFYING INFORMATION SHALL NOT BE PROVIDED TO THE DEFENSE TEAM UNLESS ORDERED BY THE COURT OR AGREED UPON BY THE DISTRICT ATTORNEY'S OFFICE.

personal identifying information for witnesses. While OIR participated in the discussions regarding these new procedures, ICIB's command staff spearheaded this new policy. Typically, during the course of an ICIB investigation, LASD gathers personal information on witnesses (e.g., gender, race, date of birth, addresses and telephone numbers) to identify adequately the witnesses and to provide a means for locating them in the future. However, because there have been allegations that persons outside ICIB have used this information to contact witnesses and to intimidate, harass, or retaliate against those witnesses, ICIB's

command staff agreed to establish new procedures to prevent the possible unauthorized use of this personal information.

The new directive is not intended to prevent deputy criminal defendants or their representatives from talking with witnesses, should the witnesses be willing to do so. Rather, the directive is intended to have such attempts at communications undertaken under the supervision of the District Attorney's Office or the court.

Internal Investigations: Training Program on Deputies' Rights

The County of Los Angeles recently settled a lawsuit that had been filed by two LASD deputies. The issues in the suit revolved largely around LASD's internal investigation into possible job-related misconduct by the two deputies and others. The deputies alleged that LASD's tactics had infringed in various ways on their legal rights. Accordingly, one component of the settlement was a commitment from LASD that it would provide its executives, supervisors, and investigators with a training program that would explain the state, constitutional, and employment law rights of LASD employees who are suspected of misconduct.

Because the relevant law and its application have considerable gray area, the litigants sought an independent third party to provide the training when devising the plan during settlement negotiations. The federal judge handling the suit praised everyone involved for the solution that emerged: namely, that OIR would work with the parties to create a mutually acceptable curriculum and then provide the training.

For its part, OIR welcomed the opportunity to take a leading role in the training sessions. Not only did the curriculum concern subject matter that corresponded well to our attorneys' legal training and professional experience, but it also fit with OIR's commitment to ensuring the fairness and objectivity of internal investigations relating to officer misconduct. OIR recognizes that efforts by LASD investigators to bring rigor and effectiveness to their work must not impinge upon the accused deputies' civil rights and other recognized protections.

OIR devised a proposed curriculum during the settlement process. In doing so, it consulted with interested parties from the litigation itself, from the Internal Affairs and Internal Criminal Investigations Bureaus, and from the Los Angeles County District Attorney's Office in order to ensure that all perspectives were fairly and accurately represented.

OIR's hope is that the training, set to begin in the fall of 2003, will enhance the effectiveness as well as the fairness of LASD's internal investigations. Equipped with a clear understanding of the rights at issue and the parameters of acceptable techniques, investigators are likely to proceed more confidently and efficiently in their fact-gathering, and with less likelihood that the evidence they do obtain will be forfeited on legal grounds. OIR looks forward to conducting the training sessions as an additional means of ensuring the integrity of LASD investigations of misconduct.

Update on Civil Claims Reform

As detailed in OIR's First Report, a major project of OIR's first year was reviewing and suggesting improvements to LASD's handling of the complaints of misconduct it receives in the form of a government civil tort claim. LASD had treated these civil claims as a litigation matter that could be surrendered to attorneys and often performed much less thorough investigations into the allegations than a pure citizen complaint or administrative investigation would have received. In addition, LASD simply failed to investigate a large number of these civil claims.

A little over a year ago, LASD adopted new procedures for its review of civil claims. The procedures set standards for an investigation and assigned responsibility for tracking the timeliness of responses. They also required that the unit commander consider whether the allegations made in the claims warranted a formal administrative investigation or suggested the need for a change to policy or training.

As part of the new procedures, OIR began receiving the completed claim response memoranda from the units after the reviews of the civil claims. OIR has reviewed more than 320 claim responses. OIR's review of the unit's responses to civil claims shows a marked improvement in the investigations being performed. On occasion, OIR has identified continuing deficiencies in the investigation. However, in the vast majority of cases, OIR has found that the unit performed a comprehensive investigation and the unit commander sufficiently considered whether the claim presented any issues requiring redress through policy or training.

Where OIR has seen a pattern in claims that a unit commander has not noted, OIR has raised those issues with the unit commander. For instance, a station had several claims relating to responding to the wrong address for calls. This was particularly problematic in cases where the call involved domestic violence and therefore the officers must verify the safety of everyone at the residence. The OIR attorney

reviewing the claims responses raised with the unit commander the need for his staff to be alerted to this problem and ensure supervisors explain to the affected individuals what occurred, how the mistake was made, and why the officers did what they did.

The timeliness of claim responses has also, generally, improved. OIR performed an audit and determined that the majority of the units were providing claim responses in a relatively timely manner. A handful of units, however, continued to have a large backlog of claims for which they had not provided responses. OIR brought this backlog to the attention of the individual units, the Risk Management Bureau, and the Undersheriff and has received assurances that those units will eliminate that backlog. OIR is also working with the Risk Management Bureau to insure that accurate information regarding outstanding claim responses is readily available to each unit.

After the implementation of this new procedure, several units had specific questions regarding application of the procedure to specific types of claims. OIR answered those questions directly when possible. When the questions presented broader issues, OIR worked with the relevant units in LASD to resolve the questions. For instance, the review of claims arising out of deputy involved shootings presented a special issue for the units. Under LASD protocols, the investigation and review of all deputy involved shootings is performed by Homicide and/or Internal Affairs. The units play no role except to facilitate the gathering of information. The units also do not have access to the investigation materials until late in the process. The units therefore did not have information necessary to respond to those claims. OIR worked with IAB and Homicide to develop procedures for the units to obtain the available information and gather additional information where necessary, without interfering with the IAB or Homicide investigation.

Based on the past year's experience, it appears that the new claim review procedures are a success. Most of the units are giving claims the appropriate attention. In addition, the Risk Management Bureau has focused more attention on claims. A Sergeant and a Lieutenant are assigned to review claims, and lawsuits, to identify any policy and training issues, and ensure appropriate changes are implemented.

Issues of Misconduct: *Categories and Reform Efforts*

On-Duty Misconduct

Unreported or Excessive Force

A critical focus of OIR is the monitoring of investigations relating to the use of force. OIR has paid particular attention to those incidents where LASD personnel have failed to report the use of force or have used excessive force. In addition, OIR has attempted to ensure that inappropriate uses of force are properly categorized as such, rather than having their significance obscured in personnel records behind more generic labels of misconduct. Finally, OIR has been vigilant about recommending additional discipline where deputies are not candid about their uses of force.

Timely reporting of uses of force and intolerance for excessive force increases public safety of citizens who are contacted by LASD and impacts positively on internal and external perceptions of such contacts. The following examples illustrate these important issues:

C A S E

Patrol deputies initiated a traffic stop, and an area resident videotaped the stop. While being searched by one of the deputies, one of the occupants of the car turned his head around behind him and towards the deputy and said something to the deputy. The deputy responded by lightly slapping the occupant on the side of the face and telling the occupant to look straight ahead while the deputy also pointed with his hand straight ahead of the occupant. The videotape also showed the deputy putting his body between the occupant and the patrol car, and it was alleged that the deputy kicked the occupant at that point. The deputies involved in the traffic stop did not formally document the traffic stop or the slap. The videotape was provided to LASD and an administrative investigation was begun.

During that investigation, the deputy insisted that he had not touched the face of the occupant of the car. Numerous attempts were made to contact the occupant of the car through a relative, but he refused to be interviewed by the Internal Affairs investigator. Therefore the videotape became the key record of what had occurred. OIR and LASD were in agreement that the videotape showed contact between the deputy's hand and the occupant's face, but was inconclusive on whether there was a kick. There was also agreement that the deputy's conduct in slapping the occupant's face was improper. There were discussions, however, about what the proper policy violation should be. Because the amount of force in the slap was minimal, there was a question whether it was an unreasonable and unreported use of force or an "attitude adjustment" that violated LASD's policy on conduct towards others.

Ultimately OIR and LASD reached agreement that although minimal, it still fell within LASD's definition of force and should be labeled as such. Because of the minimal force used, the unreasonable force alone, had it been reported, would have resulted in minimal discipline. The discipline, however, increased first because of the failure to report the force, and second, and most significantly, because of the deputy's denial of the use of force in the administrative investigation. This resulted in a finding that the deputy had made false statements, which dramatically increased the appropriate level of discipline.

CASE

A VIDA deputy attempted to escort a disruptive VIDA participant from a classroom. A teacher had asked the participant to leave; however, the participant refused to leave and turned to walk in a direction away from the exit. The deputy grabbed the back of the participant's shirt in an effort to stop him. The participant became more agitated and turned around with fists clenched. Fearing a fight, the deputy placed his forearm across the participant's chest and pinned him to the wall. The participant continued to struggle and the deputy placed him in a headlock. The deputy told the participant that it was a felony to strike an officer and the participant quickly calmed down. The deputy released his grip. With his mother, who witnessed this incident, the participant then left the location.

Several days elapsed before this incident came to LASD's attention. Through an intermediary, the participant and his mother reported this incident to LASD. LASD commenced an internal investigation into the deputy's conduct. The teacher, who witnessed the deputy's use of his forearm, stated that the deputy placed the participant in a "headlock" and that the deputy acted with the proper restraint. The deputy denied placing the student in a headlock, but admitted he used his forearm to pin the student to the wall. He conceded,

however, that he violated the policy requiring him to immediately notify a supervisor of his use of force. OIR discussed the investigation and the results with appropriate LASD personnel. As a result of the investigative findings, LASD determined that the use of force, including the headlock, occurred and that under the circumstances, it was an appropriate use of force. LASD also determined that the deputy violated the policy requiring immediate notification to a supervisor of a use of force. LASD suspended the deputy without pay or benefits. The deputy's failure to acknowledge and accept responsibility for the headlock was a factor in the level of discipline imposed.

False Statements/Integrity

The credibility of sworn personnel and other employees is a crucial indicator of the health of a law enforcement agency and of the public confidence that it enjoys. Peace officer integrity is central to the legitimacy of our justice system, which relies heavily on officers' accounts of how events transpired or evidence emerged or investigations unfolded. Accordingly, LASD personnel who make false statements in official documents or reports, or to supervisors, strike at the public's confidence in a particularly insidious way. In this type of case, the false statement is the central misconduct and the basis for the investigation. There is also a second category of false statements, where an underlying event, such as a questionable use of force, triggers an investigation, and then the employee makes false statements to investigators in the course of this investigation. OIR makes a special effort to monitor LASD's response to both types of allegations involving false statements, and has encouraged LASD to give these issues special emphasis when establishing charges and deciding on appropriate discipline.

C A S E

Based on several past contacts with an OIR attorney, a patrol station recently sought input regarding a unit level investigation that would not otherwise have been subject to OIR review. The case involved a deputy who was conducting personal business on duty while claiming to be at court. The OIR attorney studied the file and offered his perspective about the seriousness of the policy violations at issue. The attorney also reviewed the deputy's prior disciplinary history, and identified another significant case in which the deputy's judgment and unwillingness to accept responsibility were problematic. For these reasons, OIR recommended a significantly longer suspension than it otherwise would have suggested, and LASD adopted that recommendation.

CASE

Allegations arose that a trainee patrol deputy falsified police reports and that the field training deputy took no remedial action upon learning of the false reports. After the criminal process was complete, LASD began its administrative probe.

At the behest of OIR, the investigation was expanded to ensure thorough consideration of allegations that, during the incident investigation, the field training deputy had improperly searched and threatened the female arrestee. OIR contacted the arrestee's attorney and arranged and participated in the IAB interview of her. OIR also participated in the formulation of questions for the two deputies' interviews. After reviewing the tape recordings of the initial deputies' interviews, OIR prepared additional questions and requested that the IAB investigator re-interview them.

OIR also searched the administrative history of the field training deputy and learned that another female arrestee had similarly complained of an inappropriate search several days prior to the incident in question but that the complaint had not been resolved due to failure to locate that complainant. OIR requested the IAB investigator conduct a more comprehensive search for the second complainant. This resulted in the location and interview of the second complainant.

OIR participated in the formulation and review of the appropriate charges against the two deputies. Based on OIR's recommendation, LASD determined that the charges should be founded against the deputies and discharged both of them.

Deputy credibility is inherently challenging to evaluate in force investigations. Sworn personnel are often the only witnesses to the incident other than the arrestee, against whom criminal charges are usually pending. It is therefore necessary to evaluate rigorously the statements of all deputies who are involved in a force incident.

FAQ:

“ Do deputies automatically get discharged for making a false statement, and if not, what types of deputy false statements make a deputy eligible for discharge? ”

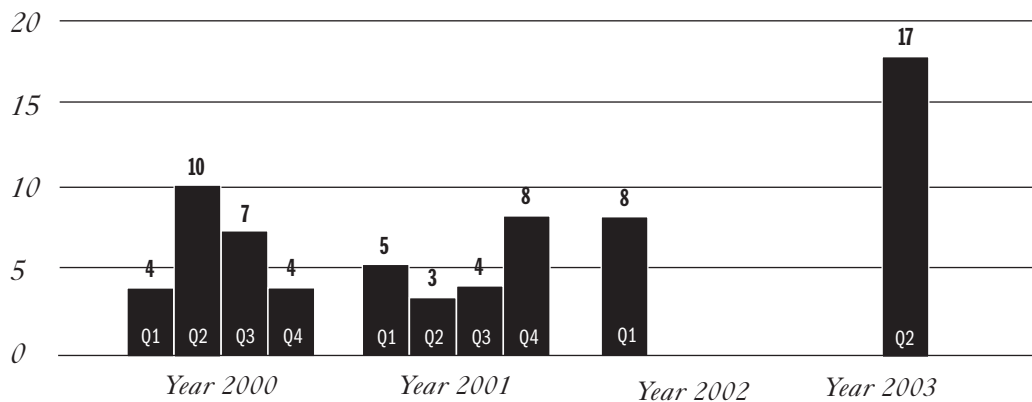
By and large, the disciplinary system for public employees does not provide for “automatic” discharges. Only in rare and extreme cases, such as a finding of criminal guilt for felony perjury, will discharge flow rather automatically. In most cases, however, whether a false statement will lead to discharge will depend on a totality of the circumstances.

In reviewing force incidents during the year, OIR has encountered instances where deputy statements to LASD investigators appear to be scripted, implausible or clearly contradicted by the physical evidence. This sometimes occurs even where the totality of the evidence suggests that the use of force was justified and within policy.

Whether false statements are generated by a fear of acknowledging even minor lapses in patrol tactics or decision-making or by a distrust of the internal investigative process, the result is the same. The deputy compromises the process and his or her own integrity. Additionally, the deputy often creates a serious disciplinary matter out of a minor one.

To address this, OIR has on many occasions urged discipline decision-makers to view misrepresentation about an incident as a separate violation above and beyond the use of force itself and to formally charge the employee in question with false statements whenever appropriate. As the following graph shows, the LASD has recently shown an increased willingness to emphasize integrity by imposing discipline for false statements.

Founded Charges of False Statements or Falsification of Official Documents



Number of Employees Disciplined Per Quarter

This graph is derived entirely from the available Quarterly Administrative Discipline Report (QDR) data for the years 2000, 2001, 2002, and 2003, recorded shortly after the end of each quarter. The missing quarters from 2002 and 2003 reflect periods for which the Report was not prepared.

CASE

In a crowded bar, an off-duty, out of uniform deputy and an extremely drunk patron began fighting. A fellow off-duty deputy joined the fray and struck the patron several times with his fists. This second deputy also grabbed a beer bottle to use in the fight, but none of the witnesses could tell whether he had struck any blows with it. The fight was broken up by bar employees. Both deputies left the bar without waiting for police to arrive, despite the patron's obvious need for medical attention, and went home without reporting the incident to their station watch commander, as required by LASD policy. An OIR attorney reviewed the investigation file, listened to the taped interviews of the witnesses and later conferred with LASD. The first deputy had retired during the investigation. OIR agreed with LASD that the second deputy's fighting might have been justified as self-defense on behalf of the first deputy, and that it could not be proven otherwise. But OIR pointed out that despite this, the second deputy was responsible for making a false statement to his supervisors and the internal affairs investigators when he denied any participation in the fight. OIR reviewed the second deputy's disciplinary history and reached agreement with the LASD that a lengthy suspension would be an appropriate level of progressive discipline.

CASE

A jail inmate attempted to attack a group of rivals but was tackled by a deputy before he could reach them. Other deputies came to the first deputy's aid and subdued the inmate. The inmate was injured during the incident and received medical attention. LASD internal criminal investigators rolled out to the scene immediately and began interviewing the involved personnel and witness inmates. Just before the inmates were interviewed, an involved deputy took some of them aside and made it clear that he viewed this investigation as a threat to his job and that he would do what was necessary to save his job and warned them against offering any information to the investigators. After reviewing the dozens of witness statements, OIR agreed that there was insufficient basis to conclude that this deputy had used excessive force. However, OIR suggested that the allegation of witness intimidation was equally grave in this circumstance and that the evidence, while entirely dependent on inmate statements, was unusually credible and consistent. LASD eventually agreed with OIR and decided to discharge the deputy.

CASE

Four off-duty deputies went to an all-night fast food restaurant after attending a sporting event. A patron, who at first appeared friendly toward the deputies, became angry and

belligerent and took a swing at one of them. The four deputies quickly subdued him, then after a brief pause, three of them attacked him as he lay on the floor. They renewed the attack again after another pause. The only other patrons present were night shift public maintenance workers. One of them asked the deputies to stop and was rebuffed and physically threatened by one of the deputies. Uniformed deputies arrived and allowed the injured patron to leave without identifying or questioning him. The four off-duty deputies later stated that the injured patron had actually escaped their grasp before uniformed deputies had arrived. The injured patron was never found or identified.

The OIR attorney conferred closely with the internal affairs investigator during the final stages of the investigation (the case had actually originated two years before OIR's creation), and became convinced that the civilian witnesses were credible despite minor inconsistencies, and that the violations were viable despite the lack of an identifiable victim. Logically, this meant that the four deputies—who minimized the physical altercation and insisted that the patron had run away before any uniformed deputies arrived—had made false statements at every step of the investigation. Given the significance of the incident, these false statements justified discharge. Before making its recommendation, OIR conferred again with the internal affairs investigator as well as with the Advocacy Unit and found that there was strong agreement over the basic questions of deputy integrity. During the pendency of the case, one of the deputies had retired. LASD ultimately decided to discharge all three of the remaining deputies.

Sexual improprieties | Inappropriate Physical Contact

Wearing a badge is a privilege that brings with it awesome authority. When an officer uses the authority of the badge to attempt to obtain or to obtain favors, he brings discredit upon himself and LASD. When an officer uses the badge to commit misconduct of a sexual nature, however, he not only brings discredit, but seriously undermines the public trust in law enforcement. As OIR enters its third year of existence, it has recognized that allegations involving on-duty sexual conduct merit special concern for this reason.

Even when the allegations involve apparently consensual acts while on-duty, they reflect a troubling lack of judgment and a disregard for the proper status and responsibilities of a peace officer. Other investigations have raised even graver concerns, from deputies allegedly engaging in improper relationships with minors, to deputies using their patrol cars to follow women. OIR will continue to monitor these cases with a watchful eye, and where the evidence supports it, make discipline recommendations that are commensurate with the seriousness of the allegation.

C A S E

An administrative investigation alleged that a deputy used his patrol car, while on-duty, to follow a woman to her home out of the County, entered her home, asked if anyone was home, checked the apartment for occupants, gave the woman his name and phone number, hugged the woman, and smelled her hair. The woman and the deputy had never seen each other before. The woman was frightened by the deputy's behavior. OIR reviewed the IAB investigation to ensure that it was objective and complete and participated in the review of the administrative charges. LASD concurred with OIR that the case should be founded and that the deputy should be discharged.

Unauthorized Pursuits

According to LASD policy, deputies can engage in high-speed vehicle pursuits with the permission of their supervisor, usually the station watch commander. LASD policy restricts the circumstances under which any deputy can initiate a pursuit to the following: where the violator clearly exhibits an intention to avoid apprehension and the reasons for the intended stop involve a serious crime, e.g. robbery, assault with a firearm, or drunk driving where the suspect's driving presents a clear and present danger to the public. The pursuing deputy must inform his watch commander of the circumstances surrounding the pursuit, and the watch commander determines whether to continue or terminate the pursuit based on a number of factors, including the nature of the crime and whether there is a clear and unreasonable danger to the deputy or others. Due to concerns for the safety of law-abiding motorists and pedestrians, LASD does not authorize pursuits for low-level crimes such as possible grand theft auto, or traffic violations.

A vehicle pursuit is one of the most dangerous situations in which a deputy may be involved. For this reason, it is imperative that the deputy and the watch commander thoroughly assess the circumstances before beginning or authorizing a pursuit.

C A S E

A deputy began following a vehicle containing an occupant who refused to stop. The vehicle was not speeding, was not an immediate danger to others, and apparently was not attempting to flee, or avoid apprehension. The vehicle had expired registration tags and the deputy suspected that the vehicle might be stolen. The watch commander

initially authorized a pursuit for a few minutes, and thereafter terminated the pursuit. Under the above policy, the watch commander should not have authorized the pursuit at all, since the underlying reason for the pursuit was due to a Vehicle Code Violation, (the expired tags), and a possible grand theft auto. The watch commander admitted the mistake, and received discipline that was mitigated by his admission.

Selected On-Duty Disciplinary Cases

Allegations or Synopsis

Sergeant joins pursuit by other police agency though ordered to stay out, violates Code 3 policy, and fails to order deputies to desist.

OIR Recommendation

Investigation: At OIR request, additional witnesses interviewed.
Charges: At OIR request, charges added.
Findings: LASD concurrence
Discipline: LASD concurrence

Result

Founded

Discipline

Demotion

Allegations or Synopsis

Deputy falsified information on police report regarding basis for the arrest and who made the arrest.

OIR Recommendation

Investigation: Thorough
Charges: Appropriate
Findings: LASD concurrence
Discipline: LASD concurrence with original recommendation of discharge; however, OIR does not concur with LASD post-Skelly settlement of 25-day suspension.

Result

Discharge approved at Case Review. Letter of intent issued for discharge. Without consulting OIR, LASD reduced discipline after Skelly hearing to 25-day suspension.

Discipline

25 day suspension

Allegations or Synopsis

Deputy (1) stopped and inappropriately searched female detainee. Deputy (1) learned that Deputy (2) falsely claimed to have made the arrest, yet took no immediate action to correct the false report. Deputy (1) made false statements to supervisors about the arrest. Deputy (2) prepared a false police report. Deputy (2) made false statements to supervisors about the arrest. Deputy (2) failed to properly secure arrestee in back of radio car.

OIR Recommendation

Investigation: Thorough. Per OIR request, arrestee interviewed, subject deputies reinterviewed and additional potential victim located and interviewed.
Charges: Appropriate. OIR suggested additional charges. LASD agreed.
Findings: OIR concurrence
Discipline: OIR concurrence

Result

Founded for both as to all charges.

Discipline

Discharge for both.

Selected On-Duty Disciplinary Cases

Allegations or Synopsis

Deputy (1) allegedly coerced suspect into signing a consent to search waiver after deputies illegally searched the location. Deputy (2) allegedly falsely documented the events in the arrest report, at the direction of Deputy (1). Both Deputies (1) and (2) then testified regarding the events repeating the alleged falsities.

OIR Recommendation

Investigation: Adequate
Charges: Appropriate after some discussion.
Findings: OIR concurrence
Discipline: OIR concurrence

Result

Deputy (1): Founded for Performance to Standards, Duties of Deputies, Reporting Information, Obedience to Laws, Regulations & Orders, False Statements, False Information in Records and False Statements in a Departmental Investigation. Unresolved for Warrantless arrest in Dwellings.

Deputy (2) Founded for Performance to Standards, Duties of Deputies, and False Statements in a Departmental investigation. Unfounded for False Statements in Records and Performance to Standards relating to courtroom testimony.

Discipline

Deputy(1): Discharge
Deputy (2): 15 days

Allegations or Synopsis

Deputy (1) took the complainant, a trustee, to a location on county property, kissed the complainant and requested the complainant perform oral sex on Deputy (1). Deputy (1) with or without the complainant engaged in sexual activity on county property.

On several occasions, Deputy (2) tried to kiss the complainant and engaged in inappropriate touching of complainant's body.

OIR Recommendation

Investigation: Thorough
Charges: Appropriate
Findings: LASD concurrence
Discipline: OIR concurrence

Result

Deputy (1): Founded as a general behavior fraternization, and/or performance to duty; obedience to laws, regulations and order; failure to make statements and/or making false statements during LASD internal investigations: and general behavior, performance to duty, and/or performance to standards.

Deputy (2): Unresolved as to all charges.

Discipline

Deputy (1): Discharge
Deputy (2): N/A

Off-Duty Misconduct

As law enforcement officers, sworn personnel are granted certain authority and privileges, even in their off-duty hours. They are allowed to carry concealed handguns. They have the power to take police action while off-duty if they observe the commission of a crime and there is immediate danger to persons or property. Additionally, LASD may order employees to resume on-duty status immediately in case of local security problems or major disasters, among other reasons.

Consequently, LASD employees are required to adhere to many Department policies even when they are off-duty, and out of uniform. There are many reasons why LASD is interested in the conduct of employees, even when off duty. Some off-duty conduct is prohibited because it is an abuse of the powers employees have, such as the improper use of confidential information contained in law enforcement databases or the use of a deputy sheriff badge to obtain special treatment. Other conduct results in discipline because it calls into question the fitness of the deputy to perform as a deputy. For instance, deputies may be disciplined who violate criminal laws—even if there is no criminal prosecution—or demonstrate a lack of self-control leading to violence. Similarly, a deputy who refuses to participate in another agency’s criminal investigation relating to events off duty may be disciplined. Finally, some off-duty conduct is prohibited because of its effect on the community reputation of LASD or the need for unbiased policing. For instance, deputies are not allowed to associate with individuals who are under criminal investigation or indictment.

Serious off-duty misconduct, such as conduct that impacts LASD’s operation or the employee’s ability to perform competently, may result in discharge of the employee. The most frequent off-duty incidents that lead to discharge or significant discipline involve alcohol abuse or domestic violence. These types of misconduct are likely to be repeated unless the underlying behavioral issues are addressed. Consequently, OIR welcomes LASD’s increasing use of disciplinary settlements that impose counseling and treatment requirements in addition to suspensions without pay and other traditional punishments. However, the use of such customized conditions of settlement imposes an acute need on LASD to follow up systematically to ensure that employees actually comply with any special counseling, training, therapy or performance conditions, and that they are informed and believe that failure to do so will result in further discipline.

This is the best way that LASD can demonstrate to its employees that its disciplinary system is fair but firm. This also maximizes the remedial effect of “creative” discipline. For these reasons, OIR instigated a full reorganization of the system for monitoring compliance with these settlements. This is discussed more extensively below, beginning on page 62.

OIR has also encouraged LASD to consider an employee’s full history with regard to these problems, and the employee’s amenability to remediation, rather than imposing cookie cutter standardized discipline in this area.

CASE

A deputy and his wife argued at a restaurant. Both were drinking. They continued the argument in the parking lot. The wife scratched the deputy who pushed her to the ground. He may have kicked her. The wife recanted all her statements, indicating she was concerned the deputy would lose his job.

The OIR attorney reviewed the deputy’s entire disciplinary history including the archived files of the prior founded disciplinary matters. These showed a pattern of alcohol abuse by the deputy coupled with extremely poor judgment. Prior discipline included a 30-day suspension. The OIR attorney brought this to the captain’s attention and urged that the Department should consider discharging the deputy based on this pattern and the principle of progressive discipline. Based on OIR’s raising of the issue, LASD more closely considered the deputy’s past history and focused attention on alcohol issues. The final disposition in this case, imposed by the chief through a settlement agreement, was a 20-day suspension plus extensive alcohol and anger counseling conditions and a no alcohol requirement.

FAQ:

“ What types of off-duty deputy misconduct can lead to Departmental discipline? ”

A deputy can receive discipline for many non-criminal acts, such as:

- **Unauthorized use of department position or uniform.**
- **Carrying an unauthorized weapon off-duty.**
- **Inappropriate involvement in neighborhood or business disputes.**
- **Road rage incidents.**
- **Failure to notify the Department of an off-duty incident involving violence or the police.**
- **Attempting to intervene inappropriately in a law enforcement matter.**
- **Deceitful business transactions.**

Most potentially criminal acts are also subject to potential discipline, regardless of prosecution or conviction.

Typical incidents would include:

- **Disorderly in public.**
- **Off-duty drunk driving.**
- **Battering a spouse.**
- **Violating a court order.**

Selected Off-Duty Disciplinary Cases

Allegations or Synopsis

Deputy at a party allegedly engaged in off duty fight with brother and attempted to break into office to retrieve his weapon during fight. After party, deputy allegedly accompanied brother, father, and friend to home of person involved in fight and stood by while brother stabbed that person, prevented others from assisting person stabbed, chased person stabbed into home without permission to enter, and hit person who came to aid of the stabbed person.

OIR Recommendation

Investigation: Adequate, but could have been better. It was delayed and ran out of time so forced to rely on statements gathered by LAPD.

Charges: Appropriate. OIR collaborated with Advocacy and LASD to craft.

Findings: LASD concurrence

Discipline: LASD concurrence

Result

Founded as to conduct after party when stabbing occurred. As to other allegations insufficient evidence to find misconduct occurred. Deputy successfully appealed to the Civil Service Commission

Discipline

Discharge—overturned by the Civil Service Commission

Allegations or Synopsis

Deputy, after months at home (IOD), misrepresented his condition to his supervisor as totally disabling. Surveillance showed that during this period, he sold foodstuffs from his car, despite being ordered not to do so.

OIR Recommendation

Investigation: Thorough. OIR requested supplemental interview to determine whether Subject had made false statements to a supervisor.

Charges: Appropriate

Findings: LASD concurrence

Discipline: LASD concurrence

Result

Founded

Discipline

Discharge

Allegations or Synopsis

Subject is alleged to have placed his hand over his 3-year old daughter's mouth, causing asphyxia, but no serious injury.

Subject pled no contest to misdemeanor corporal injury to a child.

OIR Recommendation

Investigation: Adequate

Charges: Appropriate

Findings: OIR concurrence

Discipline: OIR concurrence

Result

Founded as to Family Violence and General Behavior

Discipline

Discharge

Allegations or Synopsis

Deputy allegedly displayed his duty weapon in a threatening manner during an off-duty dispute.

OIR Recommendation

Investigation: Thorough

Charges: Appropriate

Findings: LASD concurrence

Discipline: LASD concurrence

Result

Founded for "General Behavior"

Discipline

5 day suspension

Allegations or Synopsis

Female subject allegedly scratched her husband.

Child witness and subject claim it was accident.

OIR Recommendation

Investigation: Adequate

Charges: Appropriate

Findings: OIR concurrence

Discipline: N/A

Result

Unresolved

Discipline

None

Reforms in Policy, Procedures, and Training

Reform Relating to Courtroom Presence of Off-Duty Deputies

A multi-count case was prosecuted by the District Attorney's Office based on a patrol deputy's allegations that his training officer made false statements in arrest reports and fabricated probable cause for arrests. The trial resulted in an acquittal, but revealed some shortcomings in LASD personnel policies. After the trial, OIR conferred with the trial Deputy District Attorney, who pointed out that large numbers of uniformed deputies had attended the trial off-duty as spectators, sat together, and may have raised the spectre of intimidation of jurors and prosecution witnesses.

OIR examined LASD's existing written policies and learned that there was no explicit policy regarding wearing uniforms in the courtroom while off-duty. LASD has agreed in principle to implementation of a policy (developed with OIR's input) that will provide guidance to deputies regarding attending a court proceeding in uniform. Implementation is currently in progress.

Reform Requiring Witness Notification to LASD

In the same false statements case, OIR noted that the prosecution had received late notice of deputies who had not identified themselves to LASD as witnesses for the defense. Moreover, OIR found that the policy requiring employees to notify their supervisors when contacted by the defense in criminal cases was ambiguous. OIR worked with LASD to draft simple policies that provide LASD employees clear guidance on their notification responsibilities when approached by the defense in a criminal matter. LASD has agreed in principle to implement that policy, and implementation is currently in progress.

LASD Reduction of Discipline Without OIR Consultation: Problem & Reform

In the course of monitoring misconduct investigations and consulting with unit captains and LASD executives throughout the discipline decision-making process, OIR observed a troubling trend. Following the final discipline recommendation by the unit commander and its approval by the division chief or even in certain cases by the most senior executives of LASD, in certain cases discipline would be

significantly reduced. This would often be done unilaterally by the division chief following a due process meeting between the chief, the employee, and the employee's representative. Sometimes a reduction appeared to be appropriate, as when the employee apprized LASD of new information about the case, or showed a strong commitment to accept remedial conditions (such as alcoholism counseling or specialized training) in exchange for an incremental reduction in punishment. But, on several occasions, OIR discovered that discipline was greatly reduced at the last minute, for no documented reason and without any dialogue with OIR or Internal Affairs.

The following case is illustrative of the phenomenon: Two patrol deputies responded to a call regarding a man who had been threatening to commit suicide. In accordance with their training, after making contact with the man, the deputies then called a specially trained deputy and asked what they should do. The specially-trained deputy was on-duty, but was giving a friend a ride home to Orange County in a county vehicle. The specially trained deputy told the patrol deputies that his response time would be delayed, so the deputies should take the man to their station lockup, and the specially trained deputy would respond to the station to evaluate him. When they reached the station, the patrol deputies informed the jailer that the man was suicidal, and that the specially trained deputy, who was on his way, told them to bring the man to the station. The deputies also took the man's belt and shoes, and advised the jailer to watch him closely. The deputies did not safeguard the man's property, however, including a backpack, a suicide note, and a piece of rope. The deputies may have left the property at the scene, and the deputies may not have informed the jailer of the rope.

The jailer did not advise the watch commander that a suicidal person was being detained at the station holding cell. The jailer watched the man for a while, but then left him alone and went to the front desk to process a bail bond. The jailer did not ask anyone to watch over the man in his place. During this ten-minute period while no one was observing him, the man hung himself by tying his shirt to the wire mesh ceiling of the holding cell. Five months later, the man died from complications stemming from the self-inflicted injuries caused by hanging. After the incident, the station instituted a station order requiring that suicidal detainees be constantly monitored, and that a watch commander be notified whenever such individuals are brought into the station.

During the administrative investigation, OIR requested that LASD interview the specially trained deputy's sergeant to try to determine whether the deputy's late response to the suicide call was a failure to meet the standards expected of a specially trained deputy at the time of the incident. The sergeant, nevertheless, stated unequivocally that the specially trained deputy's decision to postpone his duty in favor of taking the friend home fell below the standard of performance.

At the conclusion of the investigation, OIR consulted with LASD concerning the potential charges and the appropriate level of discipline. After extensive discussions with the Captains of the station and of the specially trained deputy about the discipline of their respective personnel, OIR and the Captains agreed that the following findings and discipline were appropriate:

- Against the specially trained deputy—charges of use of a county vehicle outside county limits, transporting unauthorized persons in a county vehicle, and failure to perform to standards would be founded and the deputy should receive a ten-day suspension.
- Against the two patrol deputies—charges of failure to safeguard persons in custody and failure to safeguard property would be founded and each deputy should receive a two-day suspension.
- Against the jailer—charges of performance to standards, obedience to law and regulations, and failure to safeguard a person in custody would be founded. However, OIR and the jailer's Captain did not reach a consensus with regard to the appropriate level of discipline for the jailer. The Captain advocated a fifteen-day suspension. OIR initially saw the jailer's actions as worthy of discharge because OIR believed that he had violated a station order specifically requiring constant monitoring of suicidal detainees and notification of a watch commander and because of his prior disciplinary record.⁷

By subsequently meeting with the Captain's Commander, OIR learned that the station order was not in effect at the time of the incident. As a result, OIR revised its recommendation from discharge to thirty-days suspension. OIR also

⁷In addition to this case, the jailer had three prior founded administrative investigations. In 1999, the jailer had suffered a prior founded charge stemming from his erroneous release of the wrong inmate into the community and received a two-day suspension. The jailer also received a 1993 five-day suspension for false statements, (he had called in sick, but was determined to be out-of-state), and a 1994 written reprimand for performance to standards (the facts of this case were unavailable).

recommended that LASD should, if feasible, seek to transfer the employee from his current position as a jailer to a position in a larger custodial facility, where the employee would have less responsibility and receive greater supervision. At this meeting, the Commander and the Advocacy Unit agreed with OIR's revised position of thirty-days plus transfer.

Up to this point, this case was exemplary of the productive working relationships that have evolved between OIR and LASD. As this case shows, OIR and LASD were able to engage in a candid dialogue about the appropriate charges, the disposition of the investigation and the level of discipline. Moreover, as a result of this dialogue, this case also evinces how OIR can learn from LASD supervisors about important facts that may cause an appropriate reevaluation of OIR's initial recommendation. However, in this case, when the four subjects contested their discipline, LASD's dialogue with OIR ended.

As a result of the grievances, LASD reduced the discipline of each of the four subjects without any consultation with OIR. Instead of thirty days and a transfer, the jailer received a five-day suspension (with three days held in abeyance) and no transfer. The specially trained deputy received a one-day suspension instead of ten days. Each patrol deputy's discipline was lessened from a two-day suspension to a written reprimand. OIR was not informed about the reasons for any of these reductions.

At about the time that the above-described case was concluding, OIR became aware of two additional cases in which disciplinary decisions were greatly reduced and LASD employees were reinstated. In the first case, a patrol deputy falsified information on a police report regarding the basis for the arrest and the person who made the arrest. The matter was first presented to the District Attorney and the deputy pleaded no contest to the criminal charges. At the conclusion of the Internal Affairs investigation, LASD concurred with OIR that the charges of false statements should be sustained and that the deputy should be discharged. However, after the due process hearing was conducted and without consultation with OIR, LASD decided to reinstate the deputy and impose a 25 day suspension instead.

The third case involved an LASD security officer who had applied for a position as custody assistant. During that application process, the employee provided answers inconsistent with those on his previous application to become a security officer. The employee was eventually charged with falsifying his pre-investigation questionnaire by omitting his past narcotic use (one use of marijuana and one use

of cocaine) and understating the number of times he paid for the services of a prostitute (in Tijuana and Nevada). The employee was also charged with paying for sexual relations while an employee. At the conclusion of the Internal Affairs investigation, LASD concurred with OIR that the charges for false statements, false information in records and immoral conduct should be sustained and that the employee should be discharged. However, after the due process hearing was conducted and without consultation with OIR, LASD decided to reinstate the employee and impose a suspension instead.

The results of these three cases underscored a significant area of concern to OIR. They demonstrated that mechanisms needed to be improved so that OIR could be assured a voice into the decision-making process after the original disciplinary levels had been set. Otherwise, as these three cases demonstrate, any effect OIR may have had on internal investigations and their outcomes was subject to being essentially eviscerated at the end of the administrative process. In these cases, once the original disciplinary levels were determined, OIR was, in effect, shut out of events and discussions that significantly modified those disciplinary outcomes. OIR received no information as to why the disciplinary levels were reduced nor had any opportunity to assess any new information that may have provided a basis for those reductions. In short, in these cases, OIR is unable to state whether the reductions were appropriate or not because the dialogue that OIR has trumpeted as occurring in the beginning of the process did not occur when the ultimate discipline was determined by LASD executives.⁸

Results such as this seemed to undermine the checks and balances built into the LASD disciplinary system as well as the candid exchange of views that OIR undertook with executives on every serious case. OIR concluded that it needed to create a reliable mechanism assuring it a voice in the decision-making process even after the original disciplinary level had been set. In order to continue to play an important role as an independent outside voice in disciplinary decisions, OIR needed to preserve its opportunity to consult with LASD from the beginning of the matter to its true final conclusion.

LASD was very receptive to OIR's concerns. As a result of discussions in June of 2003, LASD and OIR adopted the following cooperative paradigm:

⁸OIR has also found it difficult, in cases where disciplinary levels have been reduced, to even learn after the fact the bases for those decisions. For example, in these three cases, OIR is unaware of the existence of any reasons in writing for the reductions in discipline.

OIR/LASD Cooperative Paradigm

- I. The following paradigm is intended to enhance the communication streams between the Chiefs, Assistant Sheriffs, and the Undersheriff of LASD and the Office of Independent Review (“OIR”) regarding internal investigations. OIR’s role in these matters, as in all internal disciplinary decisions, is consultive only. Nothing in this paradigm is intended to eliminate the ultimate decision-making authority of LASD regarding disciplinary matters.
- II. Whenever a Chief of the Department is contemplating a reduction in discipline or a modification of the case findings from founded to unfounded in a case where:
 - (1) the initial disciplinary determination is to seek discharge (“discharge case”); or
 - (2) it has been designated as “exceptional” by OIR;that Chief shall, before making such a modification or conveying any intent to modify the determination to the employee or the employee’s representative, consult with:
 - (1) an Assistant Sheriff or the Undersheriff; and
 - (2) OIR.
- III. In discharge cases in which the Chief of the Department is considering modifying the determination from founded to unfounded, before making such a modification the Chief will first:
 - (1) refer the evidence that forms the basis for the modification of the determination to the Internal Affairs Bureau (“IAB”) for evaluation of the evidence; and
 - (2) upon review of the IAB evaluation, prepare a written memorandum articulating the bases for that change in disposition.
- IV. In all other cases when a case is changed from founded to unresolved, documentation listing the new evidence must be attached.
- V. Exceptional cases are cases in which the initial disciplinary determination is less than discharge but the case has a potentially high profile or there exist otherwise exceptional circumstances about the case. With concurrence of the Assistant Sheriff or the Undersheriff, OIR will designate cases as such.

OIR has requested that cases be deemed “exceptional” when the matter involves a supervisor as the subject of the investigation, resulted in death or serious injury, is of particular interest to the public, or in which there is related civil litigation. Since the implementation of the paradigm, OIR has been regularly consulted by LASD executives seeking to modify original disciplinary levels. Since the paradigm went into effect, OIR remains vigilant for a repeat occurrence where significant discipline is modified without consultation with OIR.

LASD also requested that OIR discuss the new protocol and the principles behind it at its summer executive conference in June 2003. OIR took this occasion to hold a workshop on the thorny issues of administrative justice and to gather opinions and input from the entire executive staff. The workshop covered issues that arise in the late stages of many serious cases, and allowed all participants to candidly discuss the issues in an effort to develop “best practices” for LASD executives.

The fact that OIR can raise these issues directly with LASD policy makers and engage them in candid dialogue is a unique feature of our oversight model. These exchanges, were instructive to OIR as well, and will hopefully lead to better crafted decisions from LASD managers.

In order for OIR to continue to play an important role as an independent outside voice in disciplinary decisions, it must have an ability to consult with LASD from the beginning of the matter to its conclusion. While recognizing its advisory role and respecting the ultimate authority of LASD to impose discipline, OIR believes that its role as an advisor cannot be accepted throughout the process and then ignored at the very end of that process. The creation of the LASD-OIR cooperative paradigm and the willingness of LASD to allow OIR to lead a discussion on disciplinary decision-making provide assurances that LASD does indeed understand this principle and is confident that OIR’s will continue to effectively participate in cases from “cradle to grave.”

Settlements

Disciplinary cases of a serious nature that do not merit discharge often result in settlement agreements. A settlement agreement is a contractual agreement reached between LASD and its employee that resolves a policy violation committed by the employee. Oftentimes, the settlement agreement consists of some measure of formal discipline and a remedial provision (such as alcohol counseling, anger management, leadership school, or force training) designed to

address the root cause of the behavior that led to the allegation.

The theory is that the remedial provisions of settlement agreements will reduce the risk of future misconduct and document that LASD attempted to address the behavior should future misconduct occur. Just as importantly, the employee must admit and confront his or her misconduct under this approach, and must actively participate in its remediation in exchange for a reduction in punishment. OIR supports this type of resolution, and in fact has recommended particular remedial provisions in the context of appropriate cases. Unfortunately, however, OIR discovered this year that LASD had no effective system in place to ensure compliance with the conditions imposed in its settlement agreements.

OIR first discovered the lapse in January of this year when reviewing an internal investigation involving a deputy who was involved in an off-duty incident involving alcohol and a public altercation with the deputy's spouse. OIR determined that the case was especially grave when it discovered that the deputy had two prior founded disciplinary cases involving alcohol. In advising the LASD regarding the appropriate level of discipline, OIR attempted to discover whether the deputy had fulfilled the mandatory counseling and the no-alcohol conditions of his previous disciplinary settlement agreement. LASD was unable to produce this information.

LASD and the deputy ultimately came to a new settlement that included a long suspension and extensive counseling and no-drinking provisions. This time, however, OIR ensured that the new settlement agreement required documentary proof of compliance with the counseling conditions and placed the burden on the employee to provide this documentation. Moreover, the inability of LASD to effectively monitor the remedial conditions in the older agreement caused alarm bells to go off for OIR that there might be a systemic monitoring problem. As a result, OIR decided to conduct an audit of other similar settlement agreements.

In the Spring of 2003, OIR designed and completed a survey of 19 randomly selected settlement agreements expiring between 2000 and 2002. The audit revealed that nine cases had either no compliance with the remedial conditions or no documentation that demonstrated that compliance had been achieved. The policy violations in these cases included use of unreasonable force, false statements to supervisors, off-duty disorderly conduct, derogatory remarks, and being under the influence of alcohol on duty.

OIR determined from its survey that remedial measures designed to benefit employees and prevent misconduct were not being effectively monitored for compliance. Moreover, the OIR audit was difficult to conduct. OIR attorneys needed to make numerous inquiries to learn whether there were records demonstrating compliance. As the results of the audit show, in almost half the cases, those inquiries for records proved fruitless.

Selected Cases from OIR Settlement Conditions Audit

CASE ONE

Transgression: Deputy Under Influence of Alcohol While on Duty

Settlement Agreement: In exchange for agreement to reduce 15 day suspension to 5 days, employee agreed to attend 2 AA meetings per week for one year.

Result of Audit: Settlement agreement expired without any attempt to ensure compliance. Four days after expiration of agreement, deputy reported to work with alcohol on his breath. Deputy admitted that he had failed to comply with the remedial conditions of the expired agreement.

CASE TWO

Transgression: Deputy Involved in Disorderly Conduct Involving Alcohol

Settlement Agreement: In exchange for agreement to reduce 12 day suspension to 6 days, employee agreed to attend an 8 hour critical decision making course and an 8 hour anger management course

Result of Audit: No documentation indicating that courses were taken. Employee's training records do not reflect completion of either course.

CASE THREE

Transgression: Civilian Employee Supervisor Found to Have Failed to Properly Supervise Subordinates, Safeguard Money/Property of Inmates, and Make Full Disclosure to Internal Affairs

Settlement Agreement: In exchange for agreement to reduce 4 day suspension to 2 days, employee agreed to complete 80 hour “Supervisory Course for Civilians” and to provide proof of completion to supervisor.

Result of Audit: No evidence that employee completed course. Employee’s training records do not reflect completion of course.

CASE FOUR

Transgression: Deputy Used Unreasonable Force, Failed to Make Complete Statements to Supervisors, and Placed False Information in Records

Settlement Agreement: In exchange for agreement to reduce 15 day suspension to written reprimand, employee agreed to complete an 8 hour Force Training course.

Result of Audit: There is no record of compliance with this condition.

CASE FIVE

Transgression: Deputy Made Derogatory Remarks to a Colleague About Fellow Employee

Settlement Agreement: In exchange for agreement to reduce Discharge to 30 day suspension, employee agreed to 8 hours of anger management training, counseling sessions, 8 hours of training at the Museum of Tolerance, and a verbal apology and that employee demonstrate compliance to supervisor.

Result of Audit: There is no record of compliance with these conditions.

CASE SIX

Transgression: Custody Assistant Sent Threatening E-Mails to Another Employee Through the LASD Computer System

Settlement Agreement: In exchange for agreement to reduce 10 day suspension to 6 days, employee agreed to attend an anger management course within 3 months.

Result of Audit: There is no record of compliance with this condition.

OIR also found that the settlement agreements themselves were not easily retrievable. For example, it required four full days for an OIR clerical employee to locate and retrieve the 32 currently open settlement agreements with remedial measures. It was also discovered that settlement agreements often did not travel with the employee to different assignments. The audit revealed that compliance issues arose most frequently when an employee changed assignment or there was a change in supervisor.

As a result of the audit, OIR recommended certain remedies be undertaken to improve the monitoring of settlement agreements. They are as follows:

- Standardized language is to be included in all settlement agreements imposing a duty on the employee to convey periodically to LASD proof of compliance with remedial measures.
- One unit within LASD is to be designated to serve as a central repository of settlement agreements and all documentation related to settlement agreement compliance.
- One unit within LASD is assigned to create a tickler calendar system to monitor compliance and provide periodic reminders of the need to check on compliance to supervisors of employees prior to expiration of settlement agreement.
- One unit within LASD is to contact an employee supervisor when an employee is in non-compliance.

Consequences are to be imposed for non-compliance with remedial settlement conditions or for failure to provide documentation.

In August of 2003, all of the OIR-initiated recommendations to improve the compliance monitoring were adopted by LASD.

In addition, OIR retrieved the extant settlement agreements with remedial settlement conditions. OIR located thirty-two existing settlement agreements with remedial measure requirements. OIR requested LASD to specifically notify the supervisors of these employees of any pending compliance requirements. This notification project was completed in September 2003.

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT
"A Tradition Of Service"

DATE: July 30, 2003

OFFICE CORRESPONDENCE

FROM: WILLIAM T. STONICH, **TO:** ALL CHIEFS, COMMANDERS,
UNDERSHERIFF CAPTAINS, AND DIRECTORS

William T. Stonich

SUBJECT: COMPLIANCE AND TRACKING OF EMPLOYEE SETTLEMENT
AGREEMENTS CONTAINING SPECIAL ACTIVITY REQUIREMENTS

When an employee and the Department reach a settlement agreement that modifies disciplinary action and then requires the employee to perform a special activity (e.g., to conduct briefings, to attend special training or counseling sessions, etc.) it is crucial that the Department track and document the employee's compliance with the agreement. A recent audit revealed that no Department-wide system existed to effectively track and monitor special settlement agreements.

The Risk Management Bureau (RMB) was tasked with developing a tracking system to assist all Unit Commanders with monitoring the compliance of special settlement agreements. Effective immediately, RMB will work with individual Unit Commanders to track, document, and store proof of compliance with settlement agreements. Unit Commanders must provide written notification to the Captain of RMB once their employees have completed the special activities mandated of them.

NOTE: RMB's settlement agreement tracking system will only be used to track compliance with settlement agreements that require employees to complete special activities. Agreements that only reduce an employee's intended discipline, or hold part or all intended discipline in abeyance, will continue to be monitored by Internal Affairs Bureau.

Should a Unit Commander fail to provide RMB with notification of compliance with a special settlement agreement, RMB personnel will contact the unit and request proof of completion. RMB will provide units with a copy of the special settlement agreement upon request. Once compliance is obtained, RMB will ensure the unit's written notification of compliance is placed in the corresponding administrative investigation case file.

Please direct any questions about this directive to Sergeant Ron Gilbert at Risk Management Bureau, (323) 890-5420.

WTS:DWW:REG:rg
c: Assistant Sheriffs

The Revival of the “Quarterly Discipline Report”

The LASD imposes formal discipline on approximately 250 employees per quarter. In previous years, the disciplinary cases had been collated in a list issued quarterly to executive staff, but this practice was discontinued in 2001. OIR examined prior editions of the Quarterly Disciplinary Report and concluded that the document was a helpful guideline for all participants in the administrative discipline system. It provided an invaluable department-wide baseline for consistent, proportional discipline. OIR met with Internal Affairs personnel and proposed a streamlined format that would reduce preparation time. OIR then urged the executive staff to start to issue the Quarterly Disciplinary Report once again and to expand the distribution of the report to all Captains. As of the second quarter of 2003, the report has been revived and distributed. OIR believes it will enhance the fair administration of discipline.

The following excerpts from the April/May/June 2003 Quarterly Discipline Report are typical of the way violations and punishments are described:

- One deputy was discharged for interfering with a criminal investigation by making threatening statements to witness inmates, and for lying during the internal investigation.
- One deputy was discharged for preparing a supplemental report containing false statements, for failing to report the use of force during an off-duty incident, and for lying during the internal investigation of the incident.
- One deputy was given a 30-day suspension for using unreasonable force against an unknown citizen, for failing to report his use of force, or log his backseat detention of the citizen, and for lying during the internal investigation.
- One sergeant was given a 15-day suspension for using profane and demeaning language toward a subordinate and for lying during the investigation of the incident.
- One deputy was given a 15-day suspension for driving while under the influence of alcohol and for neglecting to notify his unit commander of his arrest.
- One sergeant was given an eight-day suspension for utilizing the Department’s MDT to send inappropriate messages to supervisor and subordinate personnel,

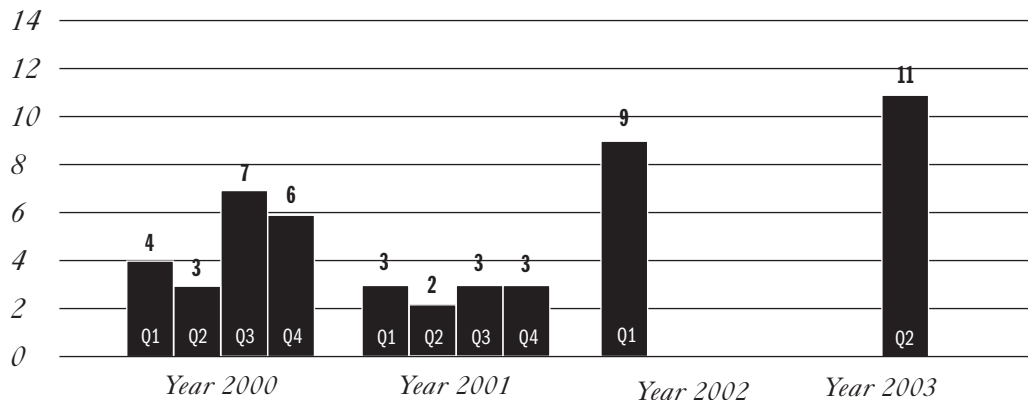
and for attempting to persuade a subordinate not to pursue an investigation regarding the identity of the person sending the messages.

- One deputy was given a three-day suspension for blocking an intersection for approaching radio cars without evidence that public safety would be enhanced by doing so, and without a coordinated effort between himself and other deputies.
- One deputy was given a three-day suspension for placing a K-10 (Keep-away) inmate into a cell with other inmates, causing the K-10 inmate to be assaulted by the other inmates.
- Two deputies were given one-day suspensions for attempting to remove a recalcitrant inmate from his cell without first notifying and receiving approval from a supervisor, and for using derogatory language toward the inmate.

In addition to reviewing the Quarterly Discipline Report, LASD also prepared graphs that compared disciplines handed down in 2003 to previous quarters. OIR worked with LASD to refine some of those graphs, which are included below.

LASD Disciplinary Actions as Reported by the Quarterly Disciplinary Report

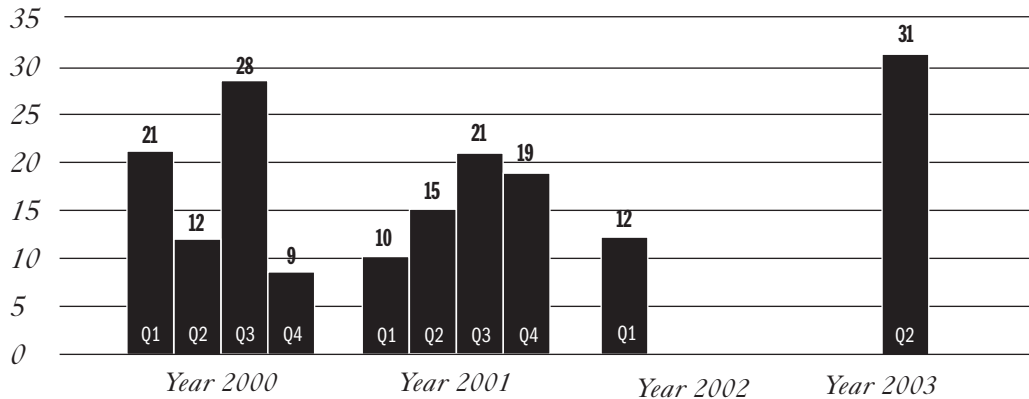
Discharges



Number of Discharges Per Quarter

Because no Quarterly Disciplinary Reports were issued between the first quarter of 2002 and the second quarter of 2003, that data is unavailable and does not appear.

Moderate-Term Suspensions (6-15 Days)*

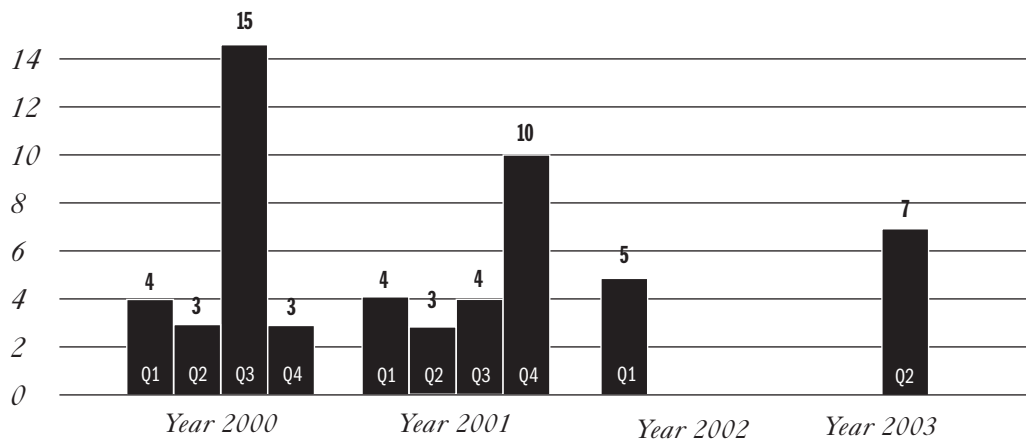


Number of Moderate-Term Suspensions Per Quarter

* Excluding discipline for preventable traffic collisions or failure to qualify at shooting range.

Because no Quarterly Disciplinary Reports were issued between the first quarter of 2002 and the second quarter of 2003, that data is unavailable and does not appear.

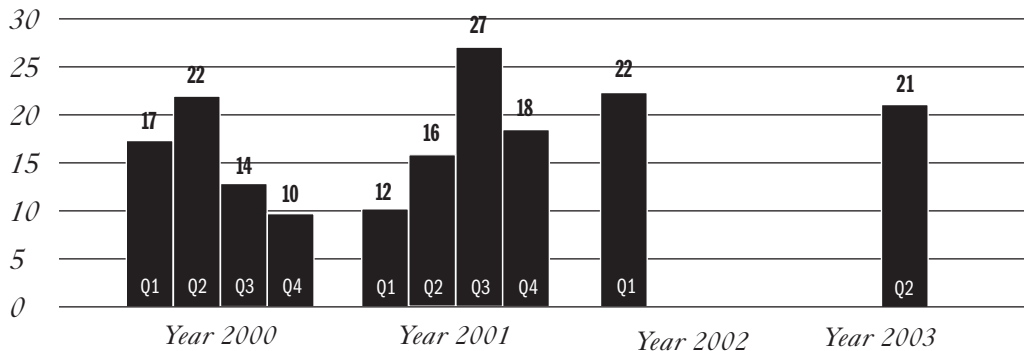
Use of Unreasonable Force, Failure to Report Force or Obstructing Force Investigation



Number of Founded Cases Per Quarter

Because no Quarterly Disciplinary Reports were issued between the first quarter of 2002 and the second quarter of 2003, that data is unavailable and does not appear.

Sworn Supervisors



Number of Sworn Supervisors Disciplined Per Quarter

Because no Quarterly Disciplinary Reports were issued between the first quarter of 2002 and the second quarter of 2003, that data is unavailable and does not appear.

Applying COPS Reforms to Local Station Activities

Last year's "First Report" discussed several systemic reforms that occurred in LASD at OIR's recommendation, after a civil rights lawsuit prompted an extensive OIR review. Many of these involved the COPS Bureau, and related to a new surveillance policy. The policy was intended to improve the training, accountability, and effectiveness of officers conducting surveillances as part of planned operations. (See "First Report," Part II.B.)

As the "First Report" went to press last fall, OIR was working with LASD to ensure that the principles of the new COPS surveillance policy would be applicable to all officers in patrol stations who were doing work similar to the specially designated COPS deputies. These included the "Special Assignment Officers" ("SAO's"), COPS analogues who are funded from a different source but whose mission is a directed response to community-generated issues of concern.

OIR is pleased to report that an appropriate version of the surveillance policy is now in place at each patrol station. In keeping with its protocols, OIR consulted interested parties in the three different Field Operations Regions to gain more

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

OFFICE CORRESPONDENCE

DATE March 28, 2003
FILE NO.

FROM: CECIL W. RHAMBO, CAPTAIN
COMPTON STATION

TO: ALL PERSONNEL
COMPTON STATION

STATION ORDER NO. 00-00

SUBJECT: STATIC SURVEILLANCE OPERATIONS PROCEDURES

PURPOSE:

Surveillance operations are an important tool for the prevention of crime, the apprehension of criminals and the maintenance of safe communities. This order has been developed to improve officer safety by promoting consistency, enhancing accountability and standardizing many aspects of "static surveillance" operations.

This order defines "static surveillance" operations and provides operational guidelines for personnel when conducting same.

SCOPE OF ORDER:

This order applies to all Compton Station personnel.

ORDER:

There are two basic types of surveillance, static (fixed post) and mobile. This order applies only to pre-planned static surveillance operations and does not impact short duration "site surveys," containments, general patrol activities nor spontaneous posting of personnel at fixed locations (i.e. the immediate placement of a unit at a fixed location in response to a crime broadcast).

Static Surveillance defined: A covert observation of person(s), places, vehicles and/or activities of suspected or known criminal offenders from a fixed location.

When a surveillance is necessary, the personnel involved shall complete an operations plan outlining the surveillance in its entirety. Once completed, the operations plan shall be approved by the Unit Commander.

The operations plan should include all appropriate information pertinent to a safe and successful operation. Examples of such information would include photographs (when available) of known suspects and undercover personnel (wearing the clothing they will be deployed in), and known hazards in and around the area to be surveilled. This material may be included with the plan in the form of attachments.

The on-duty Watch Commander, Watch Deputy, and all personnel participating in the surveillance operation shall be briefed as to the contents of the operations plan and shall be provided a copy of said plan. It is recommended that all on-duty patrol personnel, including supervisors, be briefed regarding the type and duration of the operation being conducted.

A surveillance log shall be maintained. The log shall include all pertinent data related to the operation including start/end times of the surveillance, use of video and audio tapes, and all contacts by undercover personnel as well as detentions or arrests related to the operation.

The use of video and or audio recording devices is strongly encouraged during all surveillance operations.

A supervisor at the rank of Sergeant or above, if not physically present at the surveillance, shall be available to immediately respond in the event of a problem or significant incident.

The operations plan and log shall be retained in the original case file under the file number assigned to the operation. When arrests are made, team members and detectives are encouraged to provide these documents to the District Attorney at the time of filing.

information about tailoring the guidelines to meet their particular needs. Each Region adopted a “baseline” version of the policy, and then instructed the individual stations to issue their own unit directive that would either adopt those features or build upon them. The end result is a flexible approach that captures the spirit of the reforms while recognizing the dictates of practicality and accommodating the diverse character of the County’s SAO’s.

The Fourth Amendment and Door Knocks

OIR’s review of a lawsuit that resulted in significant liability for the County revealed a common practice by deputies called a “door knock.” In the typical door knock, a deputy approaches a residence and knocks on the door hoping that a person she is looking for will open the door. The goal of the door knock may be to continue an investigation by getting someone inside the residence to voluntarily agree to be interviewed. Alternatively, the goal may be to get someone inside to exit the residence voluntarily in order to be arrested. Sometimes, a deputy approaches a door knock with a mixture of both of these goals. In either event, the deputy must rely on gaining the compliance of the person sought. Unless the deputy also has a warrant, the deputy cannot enter the residence to interview or arrest without consent.

Door knocks, when done properly, are a legal and effective tool for law enforcement. However, if not done carefully, a door knock can result in either an actual violation of the Fourth Amendment, or an allegation of such a violation. In a lawsuit OIR examined, it appeared the involved deputies had complied with the relevant policy and available legal guidance. Nonetheless, the plaintiffs were able to convince a jury that the law had been violated and received a significant damage award.

Based on this experience, and noting that allegations of violations of the Fourth Amendment are frequently made in litigation against LASD, OIR recommended that LASD issue a training bulletin to help deputies avoid some of the pitfalls of a door knock. OIR worked with the Advance Officer Training Unit to create a briefing to be distributed by the Field Operations Training Unit to address OIR’s concerns. Simultaneously, the Field Operations Training Unit worked on a separate briefing addressing other elements of this same issue, for which OIR provided input.



Los Angeles County Sheriff's Department Training Bureau

Weekly Briefing

Field Operations Training Unit

VOLUME 2003 NUMBER 10

DATE: April 28, 2003

"Knock and Talk" - Ramey Issues Researched by: Sgt. Mark Richards, AOT

SCENARIO:

At shift change you are told by the off going deputy that he just finished handling a felony battery call that has a named suspect. Due to the seriousness of the crime and his belief the suspect may return, the deputy asks you to do some follow-up and attempt to arrest the suspect.

After contacting your field sergeant and other units and formulating a plan of action to ensure a safe operation, you drive to the suspect's house to make the arrest.

FACTORS TO CONSIDER:

What should have been some legal considerations discussed during your planing phase, specifically entry into a house to make an arrest?

DISCUSSION:

Probably the most important legal factor(s) that should be considered revolve around the Fourth Amendment to the Constitution and deal with search and seizure issues. In California the *People v. Ramey* case would be the most logical case to consider. In this scenario we must look at two factors: 1) How will I get the suspect into a "public place" to make the arrest or how will I legally get into the house to make the arrest? If forced to go inside the house, you must be familiar with the three ways you can legally enter a house. We will call these the "Keys to the Castle." The "Keys" are: 1) consent, 2) exigent circumstances, or 3) with a warrant. Additionally, consent can be verbal or implied, and it can be revoked at any time. As far as exigent circumstances, remember you can not create your own exigency. In this scenario you do not have a warrant nor will exigent circumstances exist, specifically Fresh Pursuit, so you are forced to do a door knock.

approve entering, by all means enter and make the arrest. Here you did not misstate your reason for entering and they did not give the consent because of deception. You had a legal right to be where you were.

Always remember that even though your actions or statements were legal, take the Upon doing the door knock, the front door could be answered by the suspect or somebody else. If the suspect answers the door you might ask him to step outside. If he does, he is now in a public place and a legal arrest can be made. The purpose of *Ramey* is to protect a person inside the house. If he refuses to exit, just remember you cannot enter a house without one of the "Keys."

If the door is answered and you request consent to enter, you cannot misstate your reason for requesting that consent. For example if you ask to come inside for the purpose of talking to the suspect, the arrest cannot take place inside the house without a warrant. Once you contact the suspect do not arrest him inside the house but ask him to step outside (front porch or front yard) and make the arrest there. Remember *Ramey's* purpose is to protect the sanctity of the house, a person's castle. Once outside the house you are now in a public place and *Ramey* does not apply. Just remember *do not* exert authority in asking the person to step outside. This should be a request and free from any actions that maybe seen as coercive.

Now if you go to the front door and tell them you are there to make an arrest and they proper steps to ensure that you will be able to prove this to a judge and jury.

People v. Ramey (1976) 16 Cal. App. 3rd 263
People v. Tillery (1979) 99 Cal. App. 3rd 975
People v. Green (1983) 146 Cal. App. 3rd 369
People v. Jackson (1986) 187 Cal. App. 3rd 499
USA v. Cormier (2000) 9th Circuit

These briefings focused on several important issues. First, they addressed the basic limitations imposed by the Fourth Amendment on entering a person's residence. Second, they identified several pitfalls when seeking voluntary compliance. Specifically, the briefings alerted the deputies that they cannot misrepresent their purpose in seeking consent. For instance, if they really intend to arrest someone, they cannot state that the reason they want the person to exit the residence is to be interviewed. In addition, the briefings highlight for the deputies several factors a plaintiff may use to argue there was coercion, such as how the deputy is standing and speaking when seeking consent. In response to the litigation OIR examined, the briefings also emphasized that it is not always enough to do everything properly, it is also important to be able to prove everything was done properly. The briefings identified several means for documenting that consent was voluntary. Finally, one of the briefings specifically addressed the use of Ramey warrants. These are warrants for arrest that can be obtained before criminal charges are filed and allow the deputy to enter a residence to arrest a suspect, thus avoiding the issues that normally arise in a door knock.

OIR was impressed with the efforts of LASD in creating these training briefings. These are complex areas of law and LASD gave them thoughtful consideration. OIR is hopeful that these briefings will assist some deputies. OIR also intends to use briefings such as these in the future to assist deputies where OIR identifies an area that repeatedly presents problems for deputies even though existing policy and formal training are appropriate.

“OIR Issues/Concerns”

Civil Service Commission and Appeals

After LASD has determined that a case should be founded against an employee and after the employee has exercised his informal rights of appeal, in cases involving more than six days discipline, the employee may choose to appeal his case to the Civil Service Commission. The Civil Service Commission consists of five persons, each one appointed by a County Board Supervisor. Ordinarily, once an appeal is taken, the Commission refers the matter to a Hearing Officer for fact-finding.

At the hearing, both LASD and the employee offer evidence. Usually, the employee is represented by an attorney funded by an employee union. LASD is represented at the hearing by either the Advocacy Unit or a contract law firm.

The Hearing Officer determines whether the disposition decision and discipline is supported by the evidence produced at the hearing and makes a recommendation of his findings to the Civil Service Commission. Both parties have the right to object to the recommendations of the Hearing Officer and appeal the matter to the Commission. In addition, if unsatisfied with the final determination by the Commission, either party can also appeal the determination to Los Angeles Superior Court.

As OIR has begun to follow cases that are appealed to the Commission, it has been able to formulate initial observations about how the Civil Service process influences LASD disciplinary decision-making. On the one hand, it is entirely appropriate for LASD to take Civil Service into consideration. It is sound practice for LASD to consult with LASD's Advocacy Unit about whether the proposed disciplinary decision can be upheld in Civil Service, in light of past precedent and other relevant insight into the Commission's likely perspective; OIR makes those same consultations, and benefits from them. However, OIR is eager to ensure that speculation about grievances and appeals should not become the tail that wags the dog of principled responses to misconduct. Accordingly, OIR has developed a few important principles that it applies to its recommendations in this regard. OIR makes a fundamental distinction between dischargeable offenses and transgressions that warrant discipline less than discharge. A decision to discharge an employee means that LASD has

FAQ:

“ What percentage of policy violation investigations involve misconduct by supervisors or management personnel? What were the top three types of policy violations which resulted in such investigations? ”

Employees with the rank of sergeant or higher make up 19.5 % of the sworn personnel. Excluding preventable traffic collisions and failures to qualify with a firearm, these supervisory personnel accounted for 12 % of cases where discipline was imposed in the second quarter of 2003. Considering that supervisors' very status is a reflection of their strong work history and adherence to policy in the past, it is not surprising or unreasonable that a smaller percentage of them have been subjected to discipline than the employee population as a whole. Nonetheless, the raw figures show that, unlike some popularly held beliefs, LASD does discipline supervisors.

LASD executives are subject to the same policies, requirements, and obligations as any other member of LASD. Moreover, in recognition of the special sensitivities and “chain of command” dynamics involved when an allegation of misconduct involves a supervisor, LASD has special protocols that involve centralized investigations (through IAB) and careful assignment of decision-making responsibilities. This is done to insulate the process from improper influences that LASD recognizes could be a factor in the disciplining of high-level figures. OIR makes a special effort in cases involving supervisors or executives, to ensure that the subjects' status does not compromise the integrity of the investigation or outcome.

found that the employee can no longer function as a trusted member of its department. Based on that premise, LASD should persevere in attempting to achieve that result, unless there are compelling reasons, such as new facts, to modify its decision. This should be the approach even if the speculation is that the Civil Service Commission may not support such a strong step. In other words, in OIR's view, if LASD finds that there is sufficient evidence in the internal investigation to warrant discharge of an employee, it is preferable to remain firm and have the Civil Service Commission return the employee to his position than for LASD to do so out of fear that the Commission might.

A different situation exists when LASD decides to impose discipline less than discharge. The sanction may be a significant one, but the necessary implication is that LASD has determined that the employee can nonetheless continue to be a valued member. In these cases, OIR takes the position that greater flexibility is appropriate, and it supports LASD's consideration of approaches that result in constructive settlements and avoid some of the risks and uncertainty of the grievance and appeal process.

While LASD must make principled decisions and honor its own careful analysis of appropriate outcomes, the reality of the Civil Service Commission's influence can not be ignored. When the Commission overturns a strong case, and returns a problem employee to the ranks of active deputies, then LASD's strength is undermined. Moreover, if LASD executives view the Civil Service process as arbitrary or weighted to the advantage of the employee, concerns about possible reversal could lead to an excess of timidity before the Commission even acts. Clearly, it is important for LASD to remain true to its core principles and standards, particularly with regard to discharge cases. At the same time, though, the County grievance process must also be principled, balanced, and fair in order for the system to have true integrity.

Misapplication of the "Good Guy" Principle

A fair disciplinary process will not be affected by the popularity of the employee. Unfortunately, it is a frustration expressed by both the public and rank and file officers that a so-called "good guy defense" protects officers who are well-liked or friends of the executives so that they are not disciplined as severely as other officers. Conversely, it is perceived that officers who are disliked are disciplined much more severely. In order for OIR to achieve its goal of promoting the thorough, fair and effective review of allegations of misconduct, OIR has to ensure that the good guy defense is not misapplied, resulting in biased decisions.

Avoiding inappropriate use of the good guy defense first requires a recognition of the subtle differences between considering whether someone is a good guy, i.e. a friend, and considering whether he is a good employee. It is appropriate, and in fact legally required, for LASD to consider in deciding on discipline whether the employee is a good employee. In addition, it is appropriate to consider factors, such as truthfulness and acceptance of responsibility, that might also be characteristics of a “good guy.” However, it is inappropriate to use this as a guise for really considering how well-liked the employee is. Similarly, a decision maker must distinguish between a bad employee and a disliked employee. This is difficult because often employees who perform poorly and require extra attention become disliked for these reasons. It is therefore often difficult to state with certainty that the process has been biased by the popularity of the subject deputy.

Nonetheless, OIR uses its knowledge of decisions reached and discipline imposed in similar cases to attempt to ascertain whether there is any inappropriate bias entering into the process, whether favorable to or against the deputy subject. When OIR perceives that the outcome LASD is suggesting is out of proportion to other incidents, OIR will recommend a different outcome, regardless of whether OIR can determine with certainty that the discrepancy is the result of the popularity of the subject deputy.

C A S E

A supervisor was accused of making a comment that allegedly belittled the efforts of some of the employees working for him. The supervisor readily admitted making the comment and recognized it was an error in judgment to make it. He explained it was a misdirected attempt at humor. LASD considered various levels of discipline including demotion of the supervisor. OIR concluded that a demotion would be disproportionate to the discipline imposed on others for similar conduct and instead recommended that the supervisor receive a suspension. Ultimately LASD did impose the suspension for a length of time consistent with OIR’s recommendation.

Update on Relations with County Counsel | Civil Litigation Issue

In its First Report, OIR reported that the differing views between itself and County Counsel on OIR’s access to civil litigation materials had deleteriously impacted on

information access during its first year. While all of those issues have not been resolved, OIR has continued to review claims, lawsuit complaints, and claims responses to learn about issues rising out of the civil litigation arena.

Moreover, County Counsel has welcomed OIR's attendance at Critical Incident Analyses, an important development initiated by LASD. The Critical Incident Analysis ("CIA") protocol was created by the Risk Management Bureau of LASD. The CIA provides an opportunity for LASD to conduct a "round table" discussion of pending litigation at an early point in its history. The CIA is intended to facilitate the sharing of information about the incident that gave rise to the litigation among all interested parties with the goal of helping LASD formulate the best litigative plan to defend the lawsuit and identify any training or policy issues requiring remediation. OIR regularly attends these discussions and has provided information about any ongoing administrative investigations into the matters and corrective systemic reforms that have been recommended or envisioned by OIR. The discussions provide an important forum for LASD to critically examine litigation in the early stages of the lawsuit and also help OIR advance its mandate of ensuring fair and consistent internal investigations as well as systemic reform.

OIR applauds LASD for origination of the CIA concept and appreciates the recognition from County Counsel that OIR has an important role to play at such discussions.

FAQ:

“ Whenever the County loses or settles a lawsuit, is a deputy disciplined? ”

Not necessarily. There are many reasons why a deputy may not be disciplined whenever the County loses a lawsuit or settles one. Discipline is imposed only when there has been a violation of a policy. A jury verdict finding liability, or a decision to settle a case, does not always mean there was a policy violation. Also, LASD has a limited period of time in which to discipline a deputy for a policy violation. The lawsuit may be resolved after that period is over. In that situation, even if the lawsuit has revealed a policy violation, LASD may be unable to impose discipline. Sometimes deputies resign or retire prior to the imposition of discipline.

OIR's goal is for LASD to promptly evaluate every lawsuit to determine whether there are any potential policy violations that could result in discipline, and to perform a timely investigation where such potential policy violations exist.

PART FOUR OIR Perspectives

Now that we have been reviewing the work of the LASD for two years, it is important to provide our overall assessment of how well its internal mechanisms handle allegations of misconduct. However, this evaluation is made with the understanding that the largely positive remarks made here are in large part a result of the review and input afforded OIR into the disciplinary process. In other words, it is the very fact that LASD has embraced and accepted OIR's role in the investigative and disciplinary review process that results in a largely positive assessment of those processes overall.

LASD Appropriately Handles Serious Allegations of Misconduct

In order to ensure an effective internal investigative process, allegations of misconduct must be appropriately handled. LASD has myriad options through which to respond to misconduct allegations ranging from a criminal investigation to an informal adjudication. While the ability to handle misconduct in a variety of ways provides LASD important flexibility to address the particular claim of misconduct depending on the nature and seriousness of the allegations, the discretion afforded supervisors also provides an opportunity for potential abuse or disparate treatment of similar incidents.

LASD policy deems that the allegations of misconduct with potential criminal implications are to be investigated by the internal criminal investigations unit. Allegations of misconduct indicating serious policy violations are to be investigated by the centralized Internal Affairs Bureau ("IAB"). Approximately 200 cases per year are investigated by IAB. OIR systemically monitors and reviews virtually all internal criminal and IAB cases. Since OIR has been involved in review of such cases, OIR has found that, in most cases, LASD has directed serious misconduct allegations to the proper investigative unit and the allegations were provided the appropriate level of investigative scrutiny.

As an independent monitor, an important role of OIR is to see that all serious allegations of LASD employee misconduct receive the proper levels of investigative review. As OIR is informed of serious allegations of misconduct, it reviews the allegations and considers independently how the allegations should be investigated. At times, this independent review results in an OIR recommendation that serious allegations of misconduct be redirected to a higher level of scrutiny not initially envisioned by LASD supervisors. For example, when allegations of employee misconduct reveal potential criminality, OIR ensures that those allegations are investigated as an internal criminal matter and presented to the District Attorney for review. As another illustration, when OIR learns of an allegation of misconduct, either through a claim, a lawsuit, or another source, that has not resulted in an IAB investigation but merits one, OIR will request LASD to initiate such an investigation. Yet another occurrence of OIR input into investigative decision-making is to request that a matter be investigated by the centralized IAB as opposed to the unit in which the allegation of misconduct occurred. Thus, OIR plays a prominent role in recommending that serious misconduct allegations be redirected to a higher level of scrutiny. To date, when OIR has made such a recommendation, LASD has agreed to undertake the increased level of investigative review. Accordingly, OIR can confidently say that with regard to allegations of serious misconduct that it directly becomes aware of and is able to closely monitor, LASD provides the appropriate level of investigative scrutiny.

Summary of OIR Review of Internal Investigations		
February to April 2003 ⁹		
Cases Completed:	75	
Founded Cases:	52	69%
Unresolved Cases:	20	27%
Unfounded Cases:	5	6%
Total Discipline Imposed:		
58 Employees		
Discharge	16	
Demotion	4	
20-30 Days	3	
10-15 Days	15	
1-9 Days	15	
Letter of Reprimand	5	

⁹The total number of cases completed and the number of employees disciplined do not reflect all administrative cases and discipline imposed during this three-month period. Rather the statistics reflect the number of cases and amount of discipline in the cases closely monitored by OIR. Accordingly, the actual total number of cases and discipline imposed by LASD would be in fact higher than depicted in this table.

LASD Internal Affairs Investigations Are Typically Sufficient and Objective

The most recent three-month reporting period of OIR activity revealed that during that period, OIR monitored 125 ongoing and completed administrative investigations. In assessing the quality of the completed investigations, OIR found 20 investigations to be thorough and 39 to be adequate. OIR found that while six investigations were adequate, improvement was called for in those investigations. OIR found three investigations to be inadequate. OIR requested additional investigation in nine of the completed cases reviewed. In numerous on-going investigations, OIR requested specific investigation and follow-up.

OIR has found that, by and large, the investigators assigned to IAB are dedicated and talented individuals in search of the truth. There are, however, certain issues calling for improvement that have arisen in isolated cases: a failure to complete the investigations within the one year statutory requirement, a failure to complete the investigation so that careful deliberation on the merits of the case can be undertaken by OIR and LASD decision-makers, staffing levels that strain the investigators' abilities to perform superior work, a reluctance or inability by investigators to ask subjects of the investigations difficult questions, interview techniques that assume certain facts without obtaining such facts from the witnesses, the inability to deal effectively with attorneys representing the subject employees, violations of statutory privacy provisions, the inability to identify and address all potential policy violations, and undue delay in attempting to locate certain witnesses. With regard to LASD inquiries that do not rise to the level of an administrative investigation, OIR has reviewed selected custody facility level inquiries and detected some deficiencies in interviewing techniques which resulted in investigative packages that gave the appearance of bias. (See "Custody Training Initiative" in Part One, above).

In each occurrence in which case specific issues have arisen as described above, OIR has discussed the matter with the investigator and/or supervisor in order to prevent a reoccurrence. With regard to more systemic issues, OIR continues to work with LASD on training and protocol development intended to improve the investigative processes.

The close scrutiny with which OIR monitors ongoing IAB investigations enhances the investigative quality of those investigations. In monitoring the cases, OIR attorneys are available to discuss the investigative strategy with the

investigator. Topics of discussion often include the identification of investigative leads, potential witnesses, documentary and tangible evidence, and the development of questions for witnesses and subjects. At the completion of the investigation, an OIR attorney reviews the raw investigative data and listens to interviews to assess the thoroughness and objectivity of the investigation. If that review determines that additional investigation is warranted, OIR will request that the additional investigation be undertaken before the file is forwarded to the LASD decision-maker. OIR has found that the IAB investigators are extremely receptive to our recommendations and input.

Thus, the relatively high marks given to LASD by OIR regarding the quality of the completed investigations as described above are in significant part a product of OIR's ability to provide meaningful input at all stages of the investigative process.

LASD Disciplinary Decisions Are Typically Consistent and Fair

In assessing LASD disciplinary decisions, OIR considers whether the disposition decision is supportable by the evidence and the level of discipline is uniformly applied to employees. OIR has evaluated the disposition decisions reached by LASD in significant internal investigations and has found those decisions in the vast majority of the cases were supportable by the investigative evidence. OIR has also found the levels of discipline in the founded cases to be consistent in the vast majority of the cases reviewed.

A major reason that OIR has found LASD's disciplinary decisions consistent and fair is OIR's systemic consultive role in the shaping of those disciplinary decisions. Before LASD reaches a disciplinary determination, OIR offers recommendations on disposition outcomes with regard to all of the investigations it closely monitors. In the founded investigations, OIR also makes recommendations regarding the appropriate level of discipline before LASD reaches a final determination. OIR has found that it is during this critical formulation stage of LASD's decision-making where its influence has been most acute.

In the most recent three-month reporting period of OIR activity, LASD accepted OIR's recommendations in 21 cases, OIR accepted LASD's initial determination in 34 cases, and OIR disagreed with LASD in one case. With regard to the level of discipline imposed on founded cases, LASD accepted OIR's recommendations in 16 cases, OIR accepted LASD's initial determination in 27 cases, and OIR disagreed with LASD in one case.

As an independent outside entity with attorneys trained in analytical skills, OIR is able to provide an important resource to LASD in the objective assessment of that evidence. As a monitoring body that reviews the investigations department-wide, OIR is able to provide an independent perspective with the gained knowledge of how similar cases have been treated throughout LASD. OIR continues to be encouraged with regard to the receptivity of LASD to its recommendations on disposition outcomes and levels of discipline. While disagreement in some cases is inevitable, OIR has found that the discussion itself results in a more principled decision founded on evidence.

The most recent reporting period is also instructive in showing that a good deal of significant discipline is imposed by LASD. As the chart demonstrates, in the most recent three-month reporting period, over two-thirds of the cases were founded against the employee and 58 employees were disciplined, including 16 discharges and 4 demotions:

OIR's Attorneys

Michael Gennaco

Mr. Gennaco is the former head of the Civil Rights Section of the United States Attorney's Office and a long-time federal prosecutor of police misconduct and other civil rights violations.

"While my former position was certainly rewarding, I often felt frustrated that the federal criminal statutes were ill-equipped to deal with the vast majority of police misconduct. In our present position, I am fortunate to have five attorneys working with me who have been given license to address a full panoply of potentially wrongful or negligent acts. As a federal prosecutor the only device I really possessed was the sledgehammer of a potential criminal prosecution — the OIR attorneys have been provided a complete set of tools to address all manner and type of misconduct of an organization with 16,000 employees. The results we have been able to forge with those tools in two short years has been remarkable."

Ray Jurado

Mr. Jurado has years of trial experience as both a state and federal prosecutor, as well as civil litigation experience. He graduated from Yale University and the UCLA School of Law.

"What we bring to the table is what any good prosecutor does, a fair and balanced perspective."

FAQ:

“ Why does it matter that all of OIR's members are attorneys? ”

OIR's lawyers have an attorney-client relationship with the County, which allows them to engage in confidential and privileged communications with County officials—including members of the Los Angeles County Sheriff's Department. This relationship is critical to preservation of the access that OIR has to LASD records, meetings and personnel. In turn, that access is critical to OIR's ability to provide legal advice and to monitor and make meaningful contributions to LASD internal reviews. Additionally, the legal training and experience of OIR's six members serves them well in assessing the strength of investigations. It also helps them contend with the legal issues that routinely arise in the context of their monitoring role.

Benjamin Jones, Jr.

Mr. Jones, a Deputy Chief Attorney in OIR, is a graduate of the University of Virginia and Boston University School of Law. Before joining OIR, Mr. Jones served more than ten years as an Assistant United States Attorney in the United States Attorney's Office for the Central District of California in Los Angeles, California, and as a federal prosecutor, he prosecuted civil rights violations, domestic and international terrorism and violent crimes. Prior to public service, Mr. Jones was a litigator with the law firm of Mintz, Levin, Cohen, Ferris, Glovsky & Popeo, P.C., for several years, and tried cases, including lawsuits involving civil rights violations, in both state and federal courts.

“A hallmark of OIR and its mission is its ability to monitor and, where necessary and appropriate, impact the Department's internal investigative processes, training and policies, to enhance the integrity and thoroughness of those processes, to increase the public's confidence in the Department's provision of unbiased and uniform treatment of, and safety and protective services to, County residents and Department personnel and to assist in the formulation of adequate internal policies. When OIR exercises independently and judiciously this ability at the critical points of an internal investigation or the creation or implementation of a policy or training procedure, OIR can help the Department improve the organizational culture and reduce future incidents of misconduct.”

Stephen Connolly

Mr. Connolly is a graduate of Holy Cross College and Loyola Law School. He worked in private practice as a defense lawyer at the law firm of Kirkland & Ellis before joining OIR.

“I don't have to get a captain to change his mind about a decision in order to feel like OIR's involvement has made an investigation better or stronger. We often agree in the first place, for one thing, and there have certainly been occasions where the captain's perspective or insight has influenced *my* view of the right result. So my focus is on the process — on making sure that all the questions get asked and all the facts get considered thoughtfully. When that happens, the right result is going to follow, and I really appreciate OIR's opportunity to contribute to that.”

Ilana B.R. Rosenzweig

Ms. Rosenzweig is a graduate of The College of William and Mary and the University of Michigan Law School. She practiced law at Munger, Tolles and Olson LLP and taught at UCLA School of Law before joining OIR.

“OIR does not simply point fingers and place blame. Rather, when OIR identifies potential issues, it consults with LASD to verify the concerns and to devise a solution, and then works with LASD to implement the solution. This emphasis on solutions is the aspect of our work I find most rewarding, and is one of the strengths of OIR.”

Robert Miller

Robert Miller spent several years as a prosecutor in the Los Angeles County District Attorney’s Office, specializing in felony trials and environmental law. He graduated from Stanford University and UCLA School of Law.

“OIR does oversight in real time, not after the fact. If I had to pick the one feature that makes us effective, that would be it.”

APPENDIX B **LASD/OIR**

*Working to Achieve
Systemic Change—Year Two*

OIR Identification of Systemic Problem	OIR Recommendation	LASD Response	Implementation of OIR Recommendation
Brand of handcuff in use by LASD with sharper inside edge	Consider removing this brand of handcuff from use	This brand of handcuff no longer authorized for use / existing handcuffs of this brand removed from field and replaced with handcuff brands with less sharp inside edges	YES, See pp. 6-10
Deputies failed to observe or unable to recall significant events on duty	Failure to observe or inability to recall considered a performance to standards policy violation	LASD command staff agreed to consider such deficiencies as violations of LASD policy	YES, See pp. 9-10
No straightforward policy for LASD deputies regarding obligations to report force used by fellow law enforcement agencies in joint enforcement operations	Devise a straightforward policy outlining how to report force used by another agency in a joint enforcement operation	LASD command staff agreed to work with OIR to adopt such a policy	YES, Policy adaptation in progress. See pp. 11-12
No guidance to LASD units regarding limitations on surreptitious recording in non-criminal investigations	Provide such guidance to units	Unit commander's letter developed by LASD with input from OIR to provide guidance on this issue	YES, Distribution of unit commander's letter imminent. See pp. 12-13
No guidance to LASD units respecting Fifth and Sixth amendment rights in non-criminal investigations.	Provide such guidance to units	Unit commander's letter developed by LASD with input from OIR to provide guidance on this issue	YES, Distribution of unit commander's letter imminent. See pp.13-14

OIR Identification of Systemic Problem	OIR Recommendation	LASD Response	Implementation of OIR Recommendation
No guidance to LASD units regarding interviewing juveniles in non-criminal investigations	Provide such guidance to units	Unit commander's letter developed by LASD with input from OIR to provide guidance on this issue	YES, Distribution of unit commander's letter imminent. See p. 14
Interviewing techniques by custody supervisors giving rise to the appearance of bias in force investigations	Develop training curriculum and training bulletin to improve interviewing techniques	OIR and LASD developed training curriculum and training bulletin	YES, See pp. 14-17
No clear policy existed regarding the documentation of "man down" calls and respective responsibilities of sworn and medical staff in the jails	Develop a clear policy outlining documentation requirements and duties	LASD worked with OIR to develop a clear policy	YES, See pp. 27-28
Statue of limitations for completion of administrative investigations violated resulting in inability to impose discipline	Develop a protocol to lesson the likelihood that there will be a violation of the administrative statue of limitations	IAB worked with OIR to develop a protocol	YES, See pp. 29-35
LASD witnesses in an internal criminal investigation would decline to submit to interview	Develop a protocol to protect the Fifth Amendment rights of the LASD witnesses but allow LASD to obtain information from the witnesses	Protocol developed by LASD with input from OIR	YES, See p. 36
Home address and phone number of civilian witnesses provided to LASD criminal defendants resulting in home visits by LASD defendants and representatives of defendants	Develop a protocol whereby LASD criminal defendants would still have potential access to civilian witnesses but privacy rights of civilian witnesses are honored	Protocol developed by LASD with input from OIR	YES, See pp. 36-39
No clear guidance to investigators regarding rights of LASD employees during internal criminal investigations	Develop a training curriculum and protocol to provide clear guidance to ensure respect for rights of LASD employees	OIR worked with LASD and ALADS to develop training curriculum and protocol	YES, See pp. 39-40

OIR Identification of Systemic Problem	OIR Recommendation	LASD Response	Implementation of OIR Recommendation
No clear guidance to LASD personnel regarding courtroom presence of off-duty deputies in uniform	Develop a clear policy regarding the wearing of uniforms to court by off-duty LASD personnel	LASD worked with OIR to develop clear policy	Yes, policy modification in progress. See p. 56
No clear guidance to LASD personnel regarding notification responsibilities when contacted by representatives of criminal defendants	Develop a clear policy outlining such notification responsibilities	LASD worked with OIR to develop clear policy	YES, policy modification in progress. See pp. 55-56
No protocol in existence to allow OIR to maintain consultive role with LASD throughout disciplinary process	Develop protocol to ensure OIR would maintain consultive role	LASD worked with OIR to develop such a protocol	YES, See pp. 56-62
Settlement agreements not effectively monitored to ensure employee compliance with remedial conditions	Improve monitoring system to ensure compliance of remedial conditions by LASD employees	LASD worked with OIR to improve monitoring system	YES, See pp. 62-67
Quarterly discipline report no longer prepared	Revive preparation and dissemination of quarterly disciplinary report	LASD worked with OIR to revive report	YES, See pp. 68-71
COPS reforms requiring surveillance policy not applied to Special Assignment Officers	Develop surveillance policy for Special Assignment Officers	LASD worked with OIR to develop policy	YES, See pp. 71-72
Insufficient guidance provided to LASD deputies regarding use of "door knocks"	Develop training bulletin to explain legal constraints of such a practice	LASD worked with OIR to develop such a bulletin	YES, See pp. 73-75

Captain Mike O'Brien of LASD passed away on July 24, 2003. We knew "O.B." well from his tenure as a lieutenant at the Internal Affairs Bureau—a position he filled with equal measures of toughness, integrity, and commitment to LASD's ideals. "Old school" though he was in many respects, O.B. welcomed our arrival to the scene in 2001 and greatly facilitated our initial efforts. He kept in touch even after his promotion to Captain and his transfer this spring, and we marveled at the tenacity with which he kept working through his illness for as long as possible. We will miss our spirited exchanges with him and will remember the high standards he set and upheld.
