

OIR Perspectives

December 2004

Issue 2



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QUESTIONING ASSUMPTIONS: AN EVIDENCE BASED APPROACH TO ALLEGATIONS OF POLICY VIOLATIONS

In our three years of existence, we have had the opportunity to review the disciplinary processes of LASD in many ways. Principally, we have been involved in oversight of investigations into allegations of LASD policy violations, which have run the gamut from allegations of minor failures to abide by internal procedures to serious allegations of corruption and abuse of authority. As independent reviewers, we have a unique perspective.

To the extent that we are familiar with law enforcement as former prosecutors, defense attorneys and civil attorneys, our past experience has served us well. When we are unfamiliar about certain aspects of law enforcement, or have questions about tactics or training, we rely upon knowledgeable members of the Department to educate us about how things work. The Department has been very helpful in pointing out to us how policing works in the real world, and we have benefitted from their knowledge.

At the same time, to the extent that we are outsiders, and not part of law enforcement and its culture, this has also benefitted us. Our outsider status allows us to approach allegations relatively free from assumptions that would naturally occur to us if we were part of the Department. For example, when Department decision-makers are confronted with a fact scenario that they have seen or heard about before, they may assume that since A and B occurred, therefore, based on their past experience, it follows that C also occurred. This tendency to rely on one's past experience is natural; after all we are human beings who learn from our experience. Assumptions based on past experience, however, are only that. Past experience assumptions cannot predict how every single incident plays out. Every incident is unique and does not fall into a neat and convenient category.

Due to the uniqueness of every incident, past experience assumptions should not drive an entire investigation. All potential relevant theories should be explored, including theories that may implicate or exonerate the subject. The investigation should not merely attempt to fill in the blanks of a foregone conclusion. Nor should a failure to pursue all relevant lines of questioning be used as an excuse to replace facts with assumptions where further investigation could potentially answer the unresolved question. For example, where an investigation has not inquired into the reasons why a deputy took a particular course of action, decision-makers may be tempted to merely assume that a deputy took the course of action for X reason. Rather than resolving an investigation by relying on potentially faulty assumptions, however, the decision-makers should simply request that the investigator ask the deputy the reason behind the course of action. Past experience assumptions should not drive an investigation or take the place of fundamental investigation.

Once an investigation is as thorough and complete as possible, past experience assumptions also should not replace principled, rigorous analysis of the facts. A wise man once said that facts are stubborn things, and he was right. Unsupported assumptions not based in fact should not be used to rationalize away relevant, significant and compelling facts. As we have seen, when the Department questions its own assumptions and takes an open-minded approach to these allegations, the resulting investigations are evidence-driven and its decisions principled ones based on a neutral weighing of the facts.

