

# Office of Independent Review **First Report**



OCTOBER 2002



# Contents

PART ONE	<hr/> The OIR Model	<i>1</i>
PART TWO	<hr/> Impact on Investigations	<i>5</i>
PART THREE	<hr/> Impact on Policies and Practices	<i>31</i>
PART FOUR	<hr/> OIR Challenges	<i>55</i>
PART FIVE	<hr/> Outreach to Civil Rights Groups and the Community at Large	<i>57</i>

# Foreword

by Michael J. Gennaco

Chief Attorney, Office of Independent Review

The controversial arrest of Donovan Jackson in Inglewood on July 6, 2002, captured on videotape and publicized around the country, brought issues of excessive force and officer misconduct back to the forefront of public consciousness. The primary focus has been on the Inglewood police officers, two of whom have been indicted for their actions on that day. However, two of the involved officers were LASD patrol deputies who initially detained the teenaged Jackson and his father. This meant it was both necessary and appropriate for the Los Angeles Sheriff's Department to open its own investigation into the incident, which in turn meant that there was a role for the new Office of Independent Review.

OIR is a one-year-old oversight body designed to ensure the integrity of LASD's internal misconduct investigations. As Chief Attorney of OIR, I have monitored the ensuing events very closely. I have also had a unique vantage point for assessing the revived public debate about the ability of police agencies to police themselves and the value of independent police oversight.

LASD's internal investigation of the Inglewood incident began within minutes of its occurrence. Supervisors responded to the scene and interviewed witnesses and the detainees themselves before the videotape had received its first airing on the local news. On the morning of July 8, when LASD executives first met to assess the existing evidence and receive a briefing from criminal and internal affairs investigators, two OIR attorneys actively participated in the proceedings and conveyed investigative recommendations. In doing so, they brought an independent perspective to the table and helped to focus the goals of LASD's investigation. OIR's presence and its involvement helped ensure that LASD's priorities were not damage control or cover-up, but rather a comprehensive determination of the facts, an objective assessment of the deputies' conduct, and a review of any policy and training issues that might be implicated.

That investigation is ongoing. While it is premature for me to comment on its particulars, I can say that OIR's role in this case has continued to be an active one, and that LASD's efforts have been consistent with OIR's goal of thorough, fair, and effective scrutiny. Since that July 8 meeting, OIR has influenced investigative decisions, reviewed interviews for thoroughness and objectivity, suggested areas of additional inquiry, and identified additional policy issues. OIR will ultimately share with LASD, the Board of Supervisors, and the public at large its views about the propriety of the deputies' actions and any policy, training, or other issues raised by the incident.

Since the Inglewood incident, I have watched with great interest as the concern about police issues has made its way through the courts, the news media, and the public forums sponsored by community leaders. I have had the opportunity to speak with many of those leaders, and to attend public discussions where local residents have called for more law enforcement accountability. Significantly, one of the proposals to emerge consistently was the call for more civilian oversight. Citizens, politicians, and activists alike argued for that reform measure, citing the additional scrutiny it would provide and the public confidence it could help restore.

To its credit, LASD and the County Board of Supervisors had, of course, already taken such a step. My expectation is that OIR's presence and its ongoing influence into this matter and others will reinforce the growing recognition that meaningful civilian oversight can and does make law enforcement better. Few incidents will have the notoriety of the Jackson arrest, but the daily opportunities to affect this Department are all, in their own fashion, significant.

In the brief period of our existence, I have seen a number of ways in which OIR has made a difference in how LASD has viewed or handled a particular case or policy problem. I trust that the protocols and relationships that have been established will continue to produce positive results. For me and for the attorneys who serve as my colleagues at OIR, these developments are heartening, and they testify to the strength of the model that was created just a year ago.

\* \* \* \*

We began our operations in October of 2001 with a clear mandate: to enhance the integrity of the LASD through meaningful civilian participation in and review of its internal investigations process. Created by the Board of Supervisors at the request of Sheriff Lee Baca, OIR has been given not only a prominent role to play in evaluating LASD's response to misconduct allegations, but also the tools to do so effectively. These tools included resources, complete access to Department

records and personnel, the full support of LASD management, and the independence to represent the interests of the people of Los Angeles County without bias or inhibition.

At its onset, OIR recognized the potential pitfalls of voicing opinions about LASD without the support of a strong foundation based on knowledge of how LASD functions. Accordingly, OIR spent many hours listening to executives, rank-and-file employees, specialized units, and employee organizations to acquire a working knowledge of the organization and how it approaches the work it is entrusted to perform. This approach of “listening and learning first” has continued to dictate how OIR operates once a case-specific or systemic issue is identified—ask questions, think through and develop recommendations, and return to the original sources to devise implementation strategies. OIR has found that a commitment to “getting it right” is essential to establishing credibility when it seeks to affect specific cases and pursue broader changes.

Having spent a year learning how LASD works, evaluating its practices, and reviewing its misconduct investigations, my colleagues and I have obviously developed a number of initial impressions. Our hope is that the entirety of this report reflects and substantiates those impressions, but a few central questions seem worth addressing at the outset.

With regard to the treatment of employee misconduct, does LASD hit the mark every time? Of course not. With 8,000 sworn peace officers and a total of 16,000 employees, it is a daunting task to properly address, investigate, and resolve allegations of wrongdoing. It is also true that a possibility of bias, conscious or unconscious, may color the decisions of law enforcement officials who are evaluating the actions of their colleagues in a dangerous profession. LASD, however, has recognized the existence of that potential conflict and enlisted the assistance of independent reviewers who are not influenced by relationships or assumptions when evaluating facts.

The insularity commonly associated with law enforcement does not permeate LASD—on the contrary, and as best exemplified by its chief executive, it takes the initiative to reach outward in seeking to make itself better. To this day, heads of other law enforcement agencies often bristle at “outsiders” looking over their shoulder. LASD, however, has challenged independent eyes to do so—not to prove that all is perfect, but rather to garner assistance in making LASD better.

Is discipline meted out within LASD? Yes. Well over one hundred employees received official discipline in a three month period analyzed by OIR this year. Ten of those employees were terminated as a result of their actions. At least thirty of the employees disciplined were supervisors. More complex questions such as whether the raw numbers of those sanctioned accurately reflect the actual frequency of misconduct of LASD employees, are more difficult to answer. As detailed in this report, what OIR can say is that in the individual cases it has reviewed to date, the outcomes reached by LASD were supported by the evidence.

Are the investigations thorough? The investigative packages reviewed by OIR have demonstrated a commitment to uncovering the facts. In its first year, OIR has endeavored to take advantage of that commitment and contribute to the development of investigative reports that will better withstand internal and external scrutiny. Because OIR does not have its own investigators, it relies on the LASD investigative structure currently in place. Based on its productive relationship with the investigators, OIR is confident that such reliance will not be misplaced.

Has LASD been receptive to proposed systemic reform? Here, OIR's answer is a resounding yes. Whether it is the case specific investigations themselves or more far-reaching policy, practice, and training issues, OIR can say that LASD has been receptive to its questions, willing both to listen to OIR's recommendations and to work with OIR in implementing them. It is this dynamic that has caused the reforms reported below to emerge. More can be done and should be done—OIR is committed to working with LASD and others to continue to identify issues and improve the organization.

Have there been growing pains? Yes, but not to the point of impairing LASD's operations or compromising OIR's mission. Whenever a new entity is grafted onto an existing structure there is necessarily going to be need for discussion and refinement of protocols. To date, LASD and OIR have managed to work through those situations constructively, resulting in an even healthier relationship.

Finally, does civilian oversight make a difference? It does when it is meaningful and has credibility both within and outside the organization. In the report that follows, we explain what we believe is required for civilian oversight groups to be meaningful and achieve that credibility.

\* \* \* \*

In order to enhance public confidence in the handling of allegations of misconduct and to provide an accounting for the resources expended in furtherance of this effort, we felt it important to report to the public our initial assessment of the way in which internal investigations are being conducted, and how OIR has begun to have an impact on such investigations. Accordingly, what follows is OIR's first public report to the Board of Supervisors and the people of Los Angeles County. The report describes OIR's unique model and how it works. More importantly, it reveals what that model has yielded in its first year of operation. We are encouraged by the impact OIR has made thus far, and we are eager to continue to build on that foundation.

OIR extends its thanks to the countless persons who have assisted us in our first year of operation both within and outside LASD. From its origin, OIR has recognized the need to reach out to civil rights leaders and the community at large and listen to those voices speak to the issues they have confronted. Public defenders, defense attorneys, prosecutors, and judges have also raised valid concerns with us. To all who have provided their time and expertise, we are deeply appreciative—the initial successes of OIR would not have been achieved without your assistance.

On behalf of the attorneys of OIR, I welcome you to review this report and to share your feedback with us. We also intend to provide periodic updates, reports and information via our web-site at [www.laoir.com](http://www.laoir.com). In the meantime, we will continue our efforts, and we expect that our next public communications will bring word of further positive developments for OIR, LASD, and the County as this police oversight model continues to move forward.





# PART ONE The OIR Model

**T**HE FORMATION of the Office of Independent Review began with an idea from Sheriff Lee Baca. He recognized civilian oversight as a means to help improve both the quality and objectivity of LASD's internal investigations of officer misconduct and the public's understanding of that quality and objectivity. OIR was created with the support of the Board of Supervisors and input from Special Counsel Merrick Bobb (a nationally recognized expert in civilian oversight and longtime advisor to the Board regarding LASD issues) and organizations including the Asian Pacific American Legal Center, the NAACP, the American Civil Liberties Union, and the Mexican American Legal Defense and Education Fund.

Those contributing to OIR's model were determined to provide OIR with every opportunity to succeed. In his fourteenth semi-annual report, Special Counsel Merrick Bobb referred to OIR as having the potential to become "the gold standard" of civilian oversight, "a national model, incorporating all the strengths of civilian review and civilian participation without the weaknesses." OIR's initial accomplishments and its solid foundation for the future are attributable to several distinctive factors.

The first is the commitment of significant resources by the Board of Supervisors. OIR has six full-time attorneys with extensive backgrounds in civil rights and criminal law issues. In addition, OIR has the support staff and other resources necessary to fulfill its function professionally. In contrast to other models that rely on part-time or volunteer overseers, the full-time status of OIR attorneys ensures complete dedication to the tasks of oversight, without conflicting demands. OIR attorneys are committed to developing a deeper familiarity with LASD, a more complete knowledge of police policies and practices, and a greater expertise regarding best practices for addressing officer misconduct. This greater knowledge means that OIR's ultimate recommendations are well-grounded and

more likely to withstand both internal and external scrutiny. The availability of six full-time attorneys also enables OIR to have meaningful involvement in all phases of investigations. Finally, the full-time status of the attorneys ensures greater availability for members of the general public and for LASD personnel who wish to bring their concerns to OIR. Ultimately, this allows OIR to have a more meaningful impact.

A second critical component is the unqualified backing of Sheriff Baca. Numerous other experiments in civilian oversight have foundered because of resistance by members of the law enforcement agency. In contrast, Sheriff Baca has repeatedly pronounced his support of OIR and its functions, both publicly and within LASD. The Sheriff has backed up his words with actions. He meets with OIR weekly. The one-on-one meeting allows OIR to discuss its activities of the past week, to share its assessments—both positive and negative—about the LASD response to specific alleged or actual misconduct, and to learn the Sheriff’s perspective on policy initiatives being considered by OIR. The meeting also provides the Sheriff an opportunity to discuss with OIR any relevant issues that may have come to his attention. The regular access provided OIR by the Sheriff has important symbolic significance as well: in the eyes of LASD’s leader, OIR’s mission is a consistent priority. The commitment by the Sheriff to OIR’s free examination of LASD processes and traditionally internal decisions, and his eagerness to hear and incorporate OIR’s perspective, have set a tone that resonates at all levels of LASD. Moreover, while the Sheriff has unwaveringly expressed support for OIR, he has also recognized the need for OIR to retain its independence from LASD and has not attempted to influence OIR’s decisions in any way.

The third factor that is essential to OIR’s effectiveness is unfettered access to LASD materials. To date, OIR has received without question any LASD-generated document it has sought. In addition, OIR has full and complete access to LASD’s computer-based employee tracking system. Finally, OIR is permitted, and in fact strongly encouraged, to attend any LASD-chaired meeting in which misconduct and related issues are discussed. This lack of obstacles stands in marked contrast to the experience of many other oversight groups, whose good intentions have been thwarted by incomplete information. OIR’s ability to review all LASD documents and attend the most sensitive meetings helps ensure that our assessments and recommendations are based on all the facts, and that we become aware of critical issues and incidents as they emerge.

A feature that facilitates OIR's access and the overall efficiency of its operations is the fourth major asset to the model: our physical proximity to the LASD units whose responsibilities most directly relate to our mission. Though OIR's offices are self-contained and on a separate floor, they are located in the same building as the investigators who conduct criminal investigations of LASD employees and the investigators who conduct administrative investigations of LASD employees. Also nearby is the Homicide Bureau, which investigates officer-involved shootings, the Civil Litigation Unit, which investigates allegations of civil liability, and the Advocacy Unit, which defends LASD administrative determinations in subsequent hearings. Thus, the documents and people with the critical core of information necessary for OIR to perform our analysis and review function are immediately available. This proximity has paid dividends not only in terms of practicality, but also as a way of readily establishing OIR as a recognized part of the review process when officer misconduct is at issue.

Another critically important feature is the support of the Board of Supervisors. The Board has traditionally played an active role in questioning LASD's policies and procedures and in managing civil litigation that arises from allegations of misconduct. Because of the attorney-client relationship between OIR and the County, OIR is able to share sensitive information with the Board on a confidential basis. Moreover, LASD is well aware of this relationship and recognizes the duty and responsibility of OIR to regularly report to the Board. Accordingly, the dynamic the Board has created and the Sheriff has acknowledged allows OIR's voice to resonate loudly and effectively.

OIR RECOGNIZED immediately that its own effectiveness—and its credibility—as a monitor of LASD required a foundation of basic knowledge of and familiarity with LASD's workings. OIR accordingly familiarized itself with LASD's patrol and custody functions through visits to each of the patrol and custody facilities, ride alongs with deputies on patrol, and meetings with command staff. OIR met with many of LASD's special teams to gain a better understanding of their functions and the resources they provide to LASD, including the Mental Evaluation Team, Special Enforcement Bureau, Crime Lab, Employee Support Services, LASD Ombudsperson, and the tactical training team at Laser Village. OIR also attended various types of LASD meetings, including the Executive Planning Council, to familiarize itself with the business of LASD.

OIR learned about the computer databases and other resources that can assist in identifying potential areas of concern and investigating allegations of misconduct. OIR additionally sought information on innovative projects undertaken within LASD that relate to areas of OIR interest. As a result OIR has been briefed on LASD's bias based policing studies, and projects to streamline citizen complaint review, and OIR has monitored a pilot program for a Regional Force Review Committee.

Finally, OIR continues to seek information about practices at other law enforcement agencies and oversight entities through organizations such as the National Association for Civilian Oversight of Law Enforcement, Police Assessment Resource Center, and Americans for Effective Law Enforcement.

Finally, and most importantly, OIR's independence is central to its strength. OIR has been given free reign and full independence to assess LASD. OIR's attorneys work closely *with* LASD on a daily basis, but it is critically significant that we do not work *for* LASD. OIR is not a part of LASD's chain of command. Nor are OIR attorneys employees of the County. Accordingly, OIR is not subject to managerial or other coercive influences that might compromise our views and undermine the rigorous oversight role with which we have been entrusted. Instead, we are an independent body with contractual obligations to objectively review and improve LASD policies, practices, and procedures relating to allegations of employee misconduct.

# Impact on *Investigations*

## Case One

*Late one Friday afternoon in the summer of 2002, Sheriff Baca contacted an OIR attorney to share a concern and make a request. The concern stemmed from the possibility that one of his deputies had used force inappropriately the night before, during a traffic stop. The request was for OIR to play an active role in the earliest stages of the investigation, when LASD officials would begin to define LASD's response to this potentially serious matter.*

*By Sunday morning, the OIR attorney had taken a number of steps to review the incident, to discuss his perspective and his recommendations with investigators and LASD officials, and to ensure that the possible misconduct would receive thorough, fair, and effective scrutiny. These steps included traveling with criminal and internal affairs investigators to a Sheriff's station on Sunday morning to view a videotape of the incident that a bystander had provided. The video showed the deputy pushing or slapping the face of a detainee, a possibly unnecessary use of force. The tape raised issues of possible criminality as well as violations of policy, and both needed to be promptly addressed.*

*After consulting with both criminal and internal affairs investigators, OIR obtained a commitment from the criminal investigator that he would present the tape to the District Attorney's Office first thing Monday morning for a prompt assessment of prosecutorial merit. Before leaving the Sheriff's facility, the OIR attorney discussed the matter with the facility Captain, who concurred with the proposed course of conduct.*

*When this had been accomplished, and the District Attorney had determined that the evidence did not appear to warrant criminal prosecution, the focus turned to the administrative*

*arena. After consultation with the facility Captain and internal affairs, OIR recommended that the administrative investigation of potential policy violations be handled by internal affairs itself, and not at the facility level as LASD investigators had originally contemplated. LASD adopted this approach. The investigation is ongoing as of the writing of this report, and OIR continues to assess its progress.*

## **Case Two**

*As the process neared completion, OIR reviewed an internal affairs investigation of an allegation a deputy had lost or stolen a portable computer belonging to a person arrested. The deputy had stopped and arrested an individual, impounding his vehicle and its contents. The arrestee later complained that his portable computer, which was in his vehicle, was missing. The deputy never mentioned the computer in his reports and denied any recollection of the computer. LASD first launched a criminal investigation of the arresting deputy. The District Attorney declined to file a theft charge against the deputy. LASD therefore began an internal affairs investigation. OIR's review of the internal affairs investigation revealed that it had focused solely on the issue of whether the deputy had failed to properly safeguard evidence confiscated from the arrestee. It had not addressed whether the deputy lied when he denied recollection of the computer.*

*OIR therefore requested that the investigation be expanded to determine whether the deputy had made false statements about his recollection of the computer. Internal affairs agreed to pursue this issue, obtained copies of the deputy's statements, and is currently completing the requested investigation.*

## **Case Three**

*While monitoring an internal affairs investigation, OIR learned that internal affairs investigators did not intend to interview a civilian witness to an alleged false arrest. The witness had testified in a trial that he had heard a deputy threaten to falsely arrest a suspect for a narcotic offense and then saw the deputy carry out the threat. OIR discussed with internal*

*affairs the relative importance of the witness to the investigation. The witness was the only civilian who allegedly witnessed the deputy's threat. Due to the witness's importance, OIR persuaded internal affairs to conduct the interview.*

*The witness proved difficult to locate. The investigator did not know the witness's true name because the witness had given a false name and date of birth when he testified. Over a number of months, OIR continually monitored internal affairs' efforts to find the witness. The investigator, through diligent and resourceful detective work, was able to cross-reference his aliases and determine the true name of the witness. Using this true name to search a computer database, the investigator found that the witness was temporarily in custody in a remote county jail facility. There was a time constraint. The interview had to be conducted quickly because within a matter of days the witness was due to be sent to a distant state prison. On a moment's notice, the investigator accompanied by an OIR attorney drove to the county jail facility. The witness voluntarily consented to the interview, which continued for several hours late into the night.*

*The investigator and the OIR attorney questioned the witness about the allegations and probed potential issues of bias. The interview uncovered key evidence. This evidence allowed the fact-finder to weigh the credibility of the witness and to better assess the case as a whole.*

These scenarios demonstrate how OIR inserts itself into LASD's review and decision-making mechanisms to offer its recommendations and promote fair and effective results. During this first year, OIR created the day-to-day procedures that ensure OIR receives notice of important incidents and has an opportunity in the review process to voice its recommendations.

In addition to the direct examples in this section, OIR's presence as an added layer of scrutiny has an intrinsic influence on the investigative process. The prospect of effective monitoring alone helps to make investigators and decision-makers more conscious of the need for thoroughness and careful analysis, and thereby enhances the quality of the results.



## I. Liaison Assignments

Early on, OIR determined that its ability to review LASD's treatment of allegations of misconduct would be enhanced by assigning each LASD facility to an OIR attorney. We therefore divided the twenty-three patrol stations, seven custody facilities, thirty-four court facilities, and numerous specialized units, with an OIR attorney taking responsibility for assignments arising from his or her designated units. This responsibility has a few different components.

For example, OIR's attorney liaison with East Los Angeles station serves as OIR's main representative there. He has visited the station on a number of occasions, has met a number of the deputies, has participated in "ride-alongs" on patrol shifts, and has cultivated a working relationship with the unit's command staff. In the process, he has developed a familiarity with the station and the area it serves that provides him additional insight into the distinct challenges that the station may be facing at any time. The liaison attorney for East Los Angeles has primary responsibility for monitoring and reviewing investigations resulting from allegations of misconduct or significant uses of force by that station's personnel. As part of that review, he discusses the administrative investigations and resulting disciplinary decisions with the Captain, providing OIR's insights. His knowledge of the station, and their awareness of him as the particular individual they can contact with questions or concerns, is designed to bring focus, continuity, and efficiency to OIR's work.

The chart on the following page lists the liaison assignments of OIR's attorneys.

## II. OIR's Review Framework

OIR also established a basic framework for identifying and responding to incidents that merit LASD investigation. OIR identified various internal and external sources of information regarding such incidents and established procedures for OIR to receive notice of them.

Once aware of an incident, OIR focuses on the type of review LASD undertakes. LASD supervisors must decide whether and, if so, how to investigate the incident. LASD may choose between: (1) a non-disciplinary review; (2) an administrative investigation by the unit or by internal affairs, which could lead to discipline; or (3) a criminal investigation.

# Attorney Liaison Assignments

## FIELD OPERATIONS

F.O.R. I	Attorney
Altadena	Ray Jurado
Crescenta Valley	Ilana Rosenzweig
East L.A.	Ray Jurado
Lancaster	Rob Miller
Malibu/Lost Hills	Ben Jones
Palmdale	Rob Miller
Santa Clarita Valley	Stephen Connolly
Temple	Rob Miller

F.O.R. II	Attorney
Carson	Stephen Connolly
Compton	Stephen Connolly
Century	Rob Miller
Lennox	Ilana Rosenzweig
Lomita	Ben Jones
Marina del Rey	Ben Jones
West Hollywood	Ilana Rosenzweig
Community College	Ilana Rosenzweig
Metrolink	Ben Jones
Transit Services	Rob Miller

F.O.R. III	Attorney
Avalon	Ben Jones
Cerritos	Ilana Rosenzweig
Industry	Ray Jurado
Lakewood	Stephen Connolly
Norwalk	Ray Jurado
Pico Rivera	Rob Miller
San Dimas	Ben Jones
Walnut/Diamond Bar	Ben Jones

## ADMINISTRATIVE SERVICES DIVISION

Bureau	Attorney
Personnel	Ben Jones

## CUSTODY DIVISIONS

Facility	Attorney
North County Correctional Facility	Stephen Connolly
Medical Services	Ben Jones
Men's Central Jail	Rob Miller
PDC North/South/East	Stephen Connolly
Mira Loma Detention Center	Ilana Rosenzweig
Twin Towers Correctional Facility	Ray Jurado
Inmate Reception Center	Ray Jurado

## DETECTIVE DIVISION

Bureau	Attorney
Commercial Crimes	Ilana Rosenzweig
Family Services	Ilana Rosenzweig
Narcotics	Ray Jurado

## SPECIAL OPERATIONS DIVISION

Bureau	Attorney
Reserve Forces	Stephen Connolly
Safe Streets	Stephen Connolly
Special Enforcement	Stephen Connolly

## TECHNICAL SERVICES DIVISION

Bureau	Attorney
Communications & Fleet Management	Rob Miller

While reforms adopted as a result of Kolts Commission recommendations have provided protocols and guidance to address these issues, OIR plays a role in ensuring these protocols are followed and incidents and allegations of misconduct are appropriately handled. As part of this responsibility, OIR will often make recommendations regarding the best investigative approach. As a result of these discussions, LASD has revisited decisions about the type of inquiry to be undertaken and adopted OIR's recommendations.

*A videotape of an incident in an LASD jail showed a supervising officer using potentially unnecessary force on an inmate. Shortly after the incident, OIR viewed the videotape and discussed the matter with investigative decision-makers. Based on these discussions, OIR was able to ensure that the use of force first received a criminal investigation, before being investigated by internal affairs. The District Attorney's Office ultimately declined to prosecute the officer for his conduct. Within days of the incident, however, the supervisor resigned from LASD.*

Once the proper type of review is identified, OIR's focus shifts to the quality of LASD's scrutiny. During an investigation, LASD decides which witnesses and other evidence to pursue, what issues need to be addressed, and when all relevant information has been gathered. Depending on the precise allegation or issue, OIR's involvement may vary. For instance, as described below, OIR has established specific procedures for responding to officer-involved shootings, force reviews, criminal investigations, and internal affairs investigations. Through the resolution of the particular matter, OIR makes recommendations regarding approaches, outcomes, and discipline.

In accomplishing these tasks, OIR has adopted a "consensus" model that shapes our various interactions with LASD. This approach is consistent with the reality that OIR was not created to usurp the existing LASD systems and obligations, but rather to enhance them.

Under the consensus model, OIR uses our access to develop an independent perspective on the best course of action. We then work with LASD decision-makers, explaining our views, asking questions, and adapting our position where appropriate, based on new information from LASD's personnel as well as outside sources. OIR's objective is to use candid dialogue as a means of promoting mutual understanding and, ideally, agreement.

“Consensus” does not mean compromise. A constructive tension between OIR and LASD is as healthy as it is inevitable, and occasional disagreements are a byproduct to be expected. Views can and do diverge regarding the necessity or adequacy of a given investigation, the outcome as dictated by the evidence, and the appropriate discipline for a particular violation. OIR is committed to resolving those disagreements by sharing its perspective at each level of LASD’s hierarchy and with the Board of Supervisors.

To date, the consensus model has been a productive one. The decisions that have emerged from each individual case have been consistently principled and supported by the totality of relevant information.

### **III. Internal Review**

LASD’s internal review procedures provide OIR with valuable information about incidents requiring OIR attention. OIR therefore established procedures to ensure its prompt and reliable access to that information. For instance, both internal affairs and criminal investigators notify OIR whenever an investigation of employee misconduct is opened. In addition, taking advantage of LASD’s existing force notification policies, OIR is notified of officer-involved shootings and other significant uses of force. These force notifications often require immediate response and, because LASD operates around the clock, can come at any time. At least one OIR attorney is available at all times. That “duty” attorney is routinely contacted by LASD to respond to officer-involved shooting scenes or other significant events. To date, OIR has received prompt notice of new investigations and OIR attorneys have “rolled out” to the scene of more than 37 different force incidents.

OIR responds to the information it receives from each of the distinct internal review mechanisms in a different manner; however, the common goal in each situation is ensuring an appropriate level of inquiry and a thorough review of all potential issues.

#### *A. Officer-Involved Shooting Review*

Because of the heightened importance to the public, and OIR, when an officer uses deadly force, OIR’s active involvement in LASD’s review of officer-involved shootings begins within minutes of any shooting. The duty attorney is notified after a shooting and immediately responds to the location. This attorney personally inspects the physical location, with similar lighting and environmental conditions

as at the time of the shooting, hears preliminary briefings from LASD officials, and participates in a walk-through of the scene that includes a description of events based on the investigators' initial understanding.

These first-hand observations give OIR the knowledge necessary to evaluate effectively subsequent evidence gathered about the shooting, including statements by witnesses, as well as to raise any questions and concerns about the shooting. OIR's involvement at the earliest stages of the investigation enables OIR to recommend pursuing specific inquiries before opportunities are lost.

OIR continues to be involved in each stage of LASD's review to ensure scrutiny of all issues raised by the shooting, including those of training, tactics, and officer misconduct. Within days of a "hit" shooting, OIR attends and participates in an executive review of the incident that is chaired by the Undersheriff and offers an early opportunity for LASD to order an immediate administrative investigation of specific officer conduct. OIR consults with the investigator as the investigation progresses and then reviews the completed investigation. Finally, OIR again weighs in when the Force Review Committee, a panel of Commanders that considers training, tactics, and potential misconduct, makes the key determination whether the shooting was within policy or was potentially out of policy and requires an administrative investigation. When the evidence accumulated about a shooting does not raise sufficient questions to suggest an internal affairs investigation, but raises issues of training, tactics, or deputy safety, OIR recommends that the relevant LASD units address these issues before leaving the incident behind.

Importantly, the Force Review Committee has modified its protocols to accommodate and formally integrate OIR's review function. Prior to the meetings themselves, an OIR attorney presents questions, concerns, and impressions to the investigator and to the individual Committee members. This helps ensure that OIR's perspective will receive full consideration as part of the formal presentation and decision. Additionally, this dynamic often leads to productive discussion and action among OIR attorneys, Committee members, investigators, training division personnel, and the unit commanders from the patrol stations or jails.

Over the past year OIR has witnessed the effect of our involvement on the investigations and evaluations of officer-involved shootings. Some examples are clear.

*A deputy fatally shot an individual who was behaving erratically in public and brandishing a knife. Per OIR procedures, an OIR attorney rolled out to the scene immediately after the shooting to assess the situation. After the District Attorney determined the shooting was legally justified, OIR reviewed the investigation for potential policy and training issues. At LASD's review of the shooting, OIR identified several questions about both the shooting and LASD's handling of its aftermath that the investigation left unanswered. These questions included whether less lethal alternatives might have been available, such as requesting the Mental Evaluation Team, or whether there was sufficient communication between the responding deputies. The LASD panel of executives agreed to order further inquiry into the matters raised by OIR.*

Some examples are more subtle. Commanders have begun to initiate general discussions about issues OIR has previously raised with them. Additionally, investigators have begun to discuss cases with OIR before the Committee's meeting to assess whether any additional investigation is needed.

### *B. Force Investigations*

As with officer-involved shootings, OIR's duty attorney receives immediate notification after non-shooting force incidents that involve significant injury to the suspect, or otherwise suggest particular cause for concern. The attorney can then respond to the scene of the incident and begin monitoring the investigation from its outset. As with an officer-involved shooting, this allows the attorney to observe the physical location and develop preliminary impressions. Importantly, early notification allows OIR to make early recommendations regarding the course of the investigation.

*Early one weekend morning, the duty OIR attorney was informed that internal affairs was investigating a use of force that had just occurred and had been videotaped. Because of the early notification, the OIR attorney was able to express concerns about obtaining witness interviews before their statements could be tainted by any broadcast of the videotape and request that all witnesses be interviewed as promptly as possible. Internal affairs responded by assigning additional investigators to the investigation and completed its canvass of witnesses within the first 24 hours.*

# OIR Oversight: IAB Investigations



Once internal affairs completes its investigation of these significant uses of force, OIR reviews the investigation, raises any legal or evidentiary issues, and when appropriate requests further investigation. When the investigation is complete, the force is reviewed by the same Force Review Committee that scrutinizes shootings, for the same purpose. And just as with shootings, OIR plays an active role.

*At a force review, the investigator presented this summary of events from the deputies' perspective: While on patrol late one night, deputies observed a man look towards them and then make furtive motions with his hands in his waistband. The deputies stopped him, and patted him down for weapons. During that pat down, one of the deputies discovered a baggie of what looked like rock cocaine. The deputy set the baggie aside. When the deputy was momentarily distracted the man grabbed the baggie, swallowed it, and tried to run away. The deputies grabbed the man and he became very combative. A struggle on the ground ensued, eventually resulting in the man being subdued by several deputies through the use of flashlight blows, pepper spray, and a hobble restraint.*

*Based on those facts, the Force Review Committee initially concluded that the level of force used was reasonable given the arrestee's assaultive behavior. No questions were raised about the credibility of the deputies' version of events. OIR observed, however, that the medical treatment requested by the deputies for the arrestee was not consistent with the deputies' purported observation that the arrestee had eaten a baggie of suspected rock cocaine. OIR recommended further investigation on the medical treatment issue so that the case could then be reevaluated to determine whether the deputies' lack of medical concern impacted on the deputies' credibility. After discussion, an investigation was ordered, focusing beyond the conventional use of force issues to the questions of credibility. As a result of this, the deputies were referred for a formal disciplinary investigation for failure to meet LASD standards for medical referral and booking.*



### *C. Criminal Investigations*

When LASD initiates a criminal investigation of an LASD employee, OIR receives a description of the alleged criminal conduct. OIR then monitors the progress of the criminal investigation, again attempting to ensure a fair, thorough, and effective investigation of the allegations. Because the District Attorney will ultimately decide the result of the investigation and is the primary legal advisor to LASD on criminal matters, OIR's role with criminal investigations is slightly different than with other internal LASD reviews. OIR attempts to tailor its review of these matters to complement the District Attorney's function. OIR focuses on ensuring those cases that should be referred to the District Attorney's Office are submitted and are done so in a timely manner. Moreover, with its substantial prosecutorial experience, OIR provides input upon request regarding investigative strategies and remains available to criminal investigators for consultation regarding pending criminal cases. When appropriate and necessary, OIR facilitates cooperation with other law enforcement agencies. Finally, OIR assesses the quality of completed internal criminal investigations and recommends investigative strategies or techniques to enhance future investigations.

OIR plays another critical role when a criminal investigation of employee misconduct does not result in a prosecution by the District Attorney. Because the decision not to pursue criminal charges does not address whether there are policy violations deserving an administrative investigation, OIR ensures such issues are addressed.

*Criminal investigators had investigated, for possible prosecution, a citizen complaint that confidential information about a crime victim had been leaked by LASD personnel. OIR agreed with the determination that the alleged misconduct was not criminal. OIR, however, expressed concerns about the propriety of the conduct and recommended administrative scrutiny. The unit commander evaluated the facts and, taking into consideration OIR's perspective, requested an administrative investigation into whether the employee actions may have violated LASD policy regarding confidential information.*

## D. *Internal Affairs Administrative Investigations*

OIR's role in administrative investigations, like its role in the other internal review mechanisms, begins with early notification of the allegations, and proceeds through decisions regarding the conclusion of the investigation. There are many junctures in internal affairs investigations that can affect their quality and outcome. The goal of OIR's protocol is to provide effective input at each such juncture without impeding the pace of the investigation and ultimate resolution. This includes providing input as the involved parties in the chain of command are formulating positions on a case. As of the beginning of September 2002, OIR had commenced this oversight of 144 investigations.

### 1. **Initiation of Investigation**

OIR is notified when internal affairs receives a request for an investigation. At times, OIR is aware of these requests for investigation before they are formally made because OIR participated in the shooting review, force review or criminal investigation that precipitated the request. In other instances, OIR is aware of the request for an investigation because OIR has actually caused LASD to initiate the investigation based on information it has received through civil claims and lawsuits, or public and private attorneys. At the outset of an investigation, the OIR attorney may confer with the investigator to learn the known circumstances of the case and to discuss investigative strategy and the most urgent sources of evidence.

*Allegations were made that a volunteer in an LASD youth program had used force on a minor. Upon learning of the allegation, and to determine whether it was an isolated incident, LASD promptly conducted interviews of as many participants in the program as it could over a weekend. After the interviews were completed, OIR reviewed them. Due to time constraints, the interviews were short. In some cases, participants referenced potentially important incidents, but because the investigators had so many people to interview, they did not ask follow-up questions. OIR discussed with LASD how to best address those incidents. OIR recommended, and LASD agreed, that the interviews that raised potentially important incidents would be forwarded to the involved patrol station to conduct a further inquiry, including a more in-depth interview of those participants who mentioned possibly troubling incidents.*

## 2. Pendency of Investigation

During the pendency of the investigation, the OIR attorney meets with investigators as needed to discuss the scope and focus of the investigation and any legal problems encountered.

## 3. Completion of Investigation

OIR obtains a copy of the investigation file upon its completion and reviews it, including associated audio or video tapes, for thoroughness and fairness. If OIR identifies any issues regarding completeness of the investigation, including unaddressed allegations, incomplete interviews, or missing evidence, OIR will request further investigation. If OIR identifies any issues of fairness in the investigation, OIR will either attempt to address them through the current investigation or through a systemic change to LASD training, policy, or practice.

*Statements in an interview of an involved supervisor identified two witnesses to potential employee misconduct that internal affairs had never interviewed. OIR learned that internal affairs had consciously decided not to interview these witnesses because they allegedly had revealed their knowledge to their supervisor “in confidence.” Instead, internal affairs was prepared to rely on the hearsay account by the supervisor of what the witnesses had told him. This reliance may have undermined the integrity of the investigation. OIR explained this concern to internal affairs, which then agreed to interview the two additional witnesses.*

When the investigation is complete, the OIR attorney meets with the assigned member of the Advocacy Unit to discuss which potential policy violations should be charged and the evidence that supports each charge.

*Internal affairs investigated whether deputies and a supervisor had participated in a pursuit without proper notifications and authorizations. The investigation revealed that not only had the supervisor violated policy in his participation in the pursuit, but he had also failed to properly supervise deputies by intervening to stop their improper participation in the pursuit. The original charges, however, failed to mention this failure in supervisory duties. OIR recommended that an additional “failure to supervise” charge be added to the charges presented. LASD concurred.*

#### 4. Findings and Discipline

Once the charges have been finalized, the OIR attorney meets with the first-level decision maker, usually the unit Captain, to present OIR's opinion as to whether the charges against the LASD personnel should be Founded, Unfounded, Unresolved, or Exonerated. For investigations where the OIR attorney believes at least some of the charges should be founded, the OIR attorney also formulates a recommended discipline, or discipline range.

*OIR reviewed an investigation of false statements made by a deputy in an arrest report. The District Attorney had declined to file criminal charges for the false statements. OIR persuaded LASD that even though the District Attorney had concluded that the deputy's conduct did not violate the criminal statute, it could nonetheless violate LASD policies, which are broader than the statute. LASD therefore charged the deputy with violating the relevant LASD policy regarding false statements, and determined that the charge was founded.*

OIR relies on a frank discussion with the first-level decision maker to produce an appropriate resolution of the investigation. OIR has found that this in-depth consultative approach has, to date, produced a consensus in virtually every case. If, however, OIR and the first line decision-maker cannot reach an agreement as to the ultimate conclusion on a case, OIR has the option to press its position with the Division Chief, who must approve the conclusion, or with the Undersheriff, or ultimately with the Sheriff.<sup>1</sup>

*In internal affairs interviews one deputy offered a blanket denial, while the other admitted his responsibility for certain conduct. In order to reward and encourage the deputy who was more honest, OIR recommended that the discipline for the more forthcoming deputy be less severe relative to his colleague. LASD decision makers agreed that this would be appropriate and the discipline reflected this recommendation.*

<sup>1</sup> Even if the OIR attorney and unit captain do reach consensus, OIR continues to monitor the investigation as that initial decision is reviewed by successive levels of executives to ensure that changes are not made without opportunity for OIR's input.

*An OIR attorney and an LASD Commander were discussing the outcome for an investigation OIR had reviewed. Based on the investigation file, it appeared to OIR that the employee's conduct had violated a station policy. The Commander, however, had discovered through conversations with the station captain that the station policy that the employee had allegedly violated had not been in effect at the time of the incident. This was not apparent from the investigation file. Based on this new information, OIR re-assessed its recommendations.*

OIR has not yet experienced a situation where it reached an impasse with LASD about a particular case. Instead, on the occasions where the views of OIR and LASD's representatives have slightly diverged, OIR has determined that the divergence was not great and the final result reached by LASD was reasonable and supportable by the evidence. Nonetheless, OIR's ability to appeal directly to the most senior LASD executives, including the Sheriff himself, is undoubtedly significant at all phases of the process and helps ensure OIR's meaningful role.

OIR also has the authority and the responsibility to inform the Board of Supervisors in those instances when it has a difference with LASD regarding the resolution of a particular case. Accordingly, OIR catalogues all investigations that it reviews and regularly reports to the Board on: (1) the thoroughness of each investigation; (2) the appropriateness of the administrative charges imposed; and (3) the degree to which there is concurrence between LASD and OIR on disciplinary findings. Simultaneously, OIR reports these results to the Sheriff to keep him apprized of OIR's involvement in the administrative investigations.

From May through July 2002, OIR monitored thirty-six internal affairs cases as they were completed. OIR evaluated each for the thoroughness of the investigation and appropriateness of the charges. OIR also discussed with LASD the resolution of each investigation and appropriate discipline. The following Table encapsulates OIR's assessment of each case. It also summarizes OIR's suggestions for additional investigation or refinement of the charges and OIR's recommendation and LASD's decision as to the resolution of each investigation and, when founded, the appropriate discipline. As the table demonstrates, in virtually every case, LASD has concurred with OIR's recommendations. In no case thus far reviewed has OIR found an LASD disciplinary determination to be unreasonable or unsupported by the evidence.

## Oversight of Administrative Discipline Cases *May-July 2002*

Allegations	OIR Recommendation	Result	Discipline
Deputy misused access to law enforcement data. Also alleged that Deputy brandished a firearm in an off-duty contact, stole firearms from detained suspects and assaulted detainees.	<p><i>Investigation:</i> Adequate. OIR had concerns about a few potential "loose ends" that were not pursued, but is satisfied that they would not ultimately affect the outcome in either direction.</p> <p><i>Charges:</i> Appropriate</p> <p><i>Findings:</i> LASD concurrence</p> <p><i>Discipline:</i> N/A. LASD agreed that informal counseling was appropriate in light of potentially dysfunctional personal circumstances implicated by the investigation.</p>	Unresolved	None
Deputy, who claimed self-defense, punched spouse's step-father at chance encounter	<p><i>Investigation:</i> Thorough</p> <p><i>Charges:</i> Appropriate</p> <p><i>Findings:</i> Not Accepted. OIR recommended unresolved due to self-defense issue.</p> <p><i>Discipline:</i> N/A</p>	Founded	1 Day suspension
Off-duty Deputy intoxicated at party argued with spouse and then threatened victims of auto accident caused by spouse.	<p><i>Investigation:</i> Thorough</p> <p><i>Charges:</i> Appropriate</p> <p><i>Findings:</i> LASD concurrence</p> <p><i>Discipline:</i> Not accepted by LASD. OIR recommended 30-days suspension. LASD decided on 20-days suspension.</p>	Founded	20 Days suspension
Sergeant detained suspects, but told Deputy to omit Sergeant's role from report Deputy wrote.	<p><i>Investigation:</i> Thorough</p> <p><i>Charges:</i> At OIR request, charge added.</p> <p><i>Findings:</i> LASD concurrence</p> <p><i>Discipline:</i> LASD concurrence</p>	Founded	15 Days suspension
Deputy wrote false report omitting Sergeant's participation in arrest.	<p><i>Investigation:</i> Thorough</p> <p><i>Charges:</i> At OIR request, charge added.</p> <p><i>Findings:</i> LASD concurrence</p> <p><i>Discipline:</i> LASD concurrence</p>	Founded	10 Days
Lieutenant inadequately supervised large scale search warrant, leading to improper search of a residence.	<p><i>Investigation:</i> Thorough</p> <p><i>Charges:</i> Appropriate</p> <p><i>Findings:</i> LASD concurrence</p> <p><i>Discipline:</i> Within range recommended by OIR.</p>	Founded	Written reprimand

<b>Allegations</b>	<b>OIR Recommendation</b>	<b>Result</b>	<b>Discipline</b>
Lead investigator failed to properly execute large scale search warrant, leading to improper search of residence.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> OIR concurrence. Case turned on whether detective's planning and execution of a multi-location search warrant met reasonable standards of diligence and competence. LASD persuaded OIR that lapses in complex operation were not fairly attributable to the detective. <i>Discipline:</i> N/A	Unfounded	None
Deputy scribe for search warrant wrote report that contained factual inaccuracies.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> Within range recommended by OIR.	Founded	3 Days suspension
Civilian employee improperly leaned against backsides of female inmates.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded	Written reprimand
Deputy threatened spouse by phone while under restraining order.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> N/A	Unfounded	None
Deputy failed to return Deputy badge when required to.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> N/A, LASD agreed that informal counseling was appropriate in light of the questionable choices that had created a potential for administrative liability in the case.	Unresolved	None
Sergeant failed to respond immediately to allegation of workplace violence.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded	1 Day suspension
Deputy referee failed to stop boxing match before instructor became too rough with recruit.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> N/A	Unfounded	None

Allegations	OIR Recommendation	Result	Discipline
Deputy allowed injured recruit to box.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate for allegations, but probably insufficient evidentiary basis to name this subject. <i>Findings:</i> LASD concurrence <i>Discipline:</i> N/A	Unfounded	None
Deputy's random urine sample tested positive for marijuana.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded	Discharge
Deputy used patrol car to bump fleeing suspect and make arrest.	<i>Investigation:</i> Thorough, including review of training materials recommended by OIR. <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> OIR concurrence <sup>1</sup>	Founded	15 Days suspension
Civilian process server repeatedly altered time logs; lied to investigators.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded	Discharge
Civilian process server altered time logs.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded	5 Days suspension
Deputy off-duty battery.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> OIR concurrence <i>Discipline:</i> N/A	Unfounded	None
Custody assistant lied on application about past child abuse arrest.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence <sup>2</sup>	Founded	Discharge
Deputy falsified information on police report regarding basis for arrest and who had made arrest. (Deputy prosecuted, pleaded nolo contendere.)	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded	Discharge

1 OIR also recognized need for LASD to clarify training in use of vehicle to effect arrests. Due to a number of similar incidents (most not disciplinary matters). OIR is overseeing development of new training materials. During this case review, OIR identified a potentially misleading training video.

2 Subject recently found guilty of crime of oral copulation with inmate and is pending trial in separate case for credit card fraud.



<b>Allegations</b>	<b>OIR Recommendation</b>	<b>Result</b>	<b>Discipline</b>
Deputy allowed patrol car to be used in semi-nude photos of girlfriend.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> OIR concurrence	Founded	7 Days suspension
Verbal abuse by Deputy of inmate lead to fight and dragging inmate by legs and waist chain.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded as to derogatory language and standard of performance	2 Days suspension
Deputy assisted another Deputy in above described dragging of inmate.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> N/A	Unresolved	None
2 Civilian employees together on unauthorized absence from duties.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence.	Founded, both	Written reprimand both
Civilian jailer left suicidal man alone and unmonitored in jail cell. Man attempted suicide in jail and died months later of related injuries	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> OIR concurred with LASD determination when apprised that policy requiring higher standard of care was not in effect at time of incident	Founded	30 Days suspension
Specially trained Deputy delayed in responding to call for assistance with suicidal man. Instructed responding Deputies to take man to jail.	<i>Investigation:</i> At OIR request, additional witnesses interviewed. <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded	10 Days suspension
Responding Deputy training officer informed custody assistant of suicide threat but failed to ensure adequate care.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded	1 Day suspension
Responding trainee Deputy failed to ensure adequate care.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence	Founded	Written reprimand

Allegations	OIR Recommendation	Result	Discipline
Off-duty Deputy intoxicated at restaurant struck spouse.	<i>Investigation:</i> Thorough as to incident, but Deputy's prior record not adequately researched. <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence after OIR research and presentation of prior record.	Founded	Pending legal review
Sergeant joined pursuit by other police agency though ordered to stay out; violated Code 3 policy; failed to order Deputies to desist.	<i>Investigation:</i> At OIR request, additional witnesses interviewed. <i>Charges:</i> At OIR request, charges added. <i>Findings:</i> LASD concurrence. <i>Discipline:</i> LASD concurrence	Founded	Demotion [Sergeant retired]
Two Deputies joined above pursuit; failed to report immediately a collision with each other.	<i>Investigation:</i> At OIR request, additional witnesses interviewed. <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> OIR concurrence	Founded, both Deputies	20 Days suspension, each.
Three Deputies used excessive force and profanities during an arrest.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> N/A	Unfounded, all three	None
Fourth Deputy involved subsequent to arrest was discourteous.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> OIR concurrence	Founded	None. Service comment report on record.
Deputy shot at oncoming and then retreating suspect's automobile.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> OIR concurrence (as to unfounded v. unresolved) <i>Discipline:</i> N/A	Unfounded	None
Deputy had improper association with prostitute, lied to another police agency, and harassed prostitute.	<i>Investigation:</i> Thorough; however, OIR questioned some investigative tactics which could potentially create liability; OIR has recommended a change in investigation guidelines, which has been accepted and promulgated by LASD. <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> Accepted by LASD <sup>3</sup>	Founded	30 Days suspension

3 Deputy will be transferred; however, OIR's recommendation that Deputy be restricted to supervision of male inmates that was accepted in principle by Legal Advocacy was not sustained throughout settlement negotiations as a result of miscommunication with County Counsel.

Allegations	OIR Recommendation	Result	Discipline												
Field Training Officer Deputy put false statements in reports and caused trainees to do so. (Prosecuted by D.A., acquitted.)	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> N/A	Unresolved	None												
Three trainees of above FTO made false statements in report.	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> N/A	Unresolved as to all three.	None												
Domestic Violence—physical abuse of spouse and children	<i>Investigation:</i> Thorough <i>Charges:</i> Appropriate <i>Findings:</i> LASD concurrence <i>Discipline:</i> LASD concurrence; including special conditions of settlement regarding specified anger management program and transfer; however, the settlement modified slightly by LASD during settlement negotiations. LASD agreed to a 1-day suspension plus special conditions and OIR had agreed to a settlement offer of a 2-day suspension plus special conditions. <sup>4</sup>	Founded	10 Days suspension (or settlement w/1 day)												
<table border="1"> <thead> <tr> <th colspan="2">Totals</th> </tr> </thead> <tbody> <tr> <td>Total Cases:</td> <td>39</td> </tr> <tr> <td>Founded:</td> <td>27</td> </tr> <tr> <td>Unfounded:</td> <td>7</td> </tr> <tr> <td>Unresolved:</td> <td>5</td> </tr> <tr> <td>Discharges:</td> <td>4</td> </tr> </tbody> </table>				Totals		Total Cases:	39	Founded:	27	Unfounded:	7	Unresolved:	5	Discharges:	4
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<sup>4</sup> OIR's research, in consultation with the District Attorney's Office and the Probation Department, resulted in referral to private anger management therapy contractor with proven track record with law enforcement personnel.

## 5. Discipline and Grievance Process

If a charge is deemed founded and discipline imposed, the subject of the discipline may challenge the result. During this process, LASD and the subject may negotiate a settlement that may change the initial disciplinary determination. OIR monitors this process to ensure it does not undermine either the fairness or effectiveness of the initial determination.

In certain cases, OIR has taken an active role in suggesting remedial disciplinary plans to address a particular employee's conduct. In cases where the subject will remain employed by LASD, such corrective discipline is much more beneficial to the individual and LASD than mere punitive discipline. OIR has recommended, however, that any settlement using a remedial plan incorporate penalties for the failure to complete the remedial plan.

*An officer had demonstrated, in a number of off-duty incidents, a problem with controlling his anger. OIR gathered facts regarding the officer's misconduct and researched available psychological counseling programs. OIR was able to identify a program tailored for law enforcement personnel. Because the misconduct did not rise to the level of a dischargeable offense, OIR formulated a remedial plan specifically addressing the behavioral issues that led to the misconduct. LASD concurred. The officer agreed to attend the psychological counseling and serve a short suspension, and accepted that if he did not complete the counseling program, he would serve additional days of suspension.*

## **IV. Outside Sources of Information**

Occasionally, outside sources of information, such as civil litigation or the Board of Supervisors, may be the first indication to OIR of an issue requiring LASD investigation. As with internal mechanisms, OIR has established procedures where possible in order to ensure its awareness of such issues. If the allegation has never been identified or considered for formal review within LASD, OIR's first task is to make sure that the appropriate entities within LASD know of the incident and, when appropriate, initiate an investigation. If the allegation has already been subject to internal scrutiny, OIR reviews that inquiry to ensure it fully addressed all information currently available and requests additional internal review when it has not.

### **A. *Civil Litigation/Claims***

The civil litigation process offers crucial information about allegations of officer misconduct. Unfortunately, in the past LASD has largely viewed civil litigation as a realm exclusively for its defense lawyers and has not thoroughly exploited this valuable information source. OIR has therefore focused on finding a better way for LASD to take advantage of the information regarding alleged misconduct found in civil claims and complaints, so that those allegations of misconduct are subjected to fair, thorough, and effective internal review.

OIR has focused attention on the civil claims filed with the Board of Supervisors prior to most civil litigation. OIR receives a monthly update of the new claims filed relating to LASD conduct. Upon the recommendation of OIR, LASD has

recently implemented the new claim review procedure discussed below. OIR is hopeful that the new procedure will provide both LASD and OIR with early and more thorough information regarding misconduct alleged in claims and lead to appropriate investigations.

Similarly, OIR has sought to ensure that any allegations of misconduct made in a lawsuit complaint receive appropriate internal review. OIR receives a copy of each complaint served on LASD. OIR reviews the computer-tracked history of the incident that resulted in the lawsuit to determine whether LASD has investigated the allegations in a previous internal investigation such as a force or shooting review, or an administrative investigation. Where there has been no prior review, or the prior review is determined to have been incomplete, OIR seeks to ensure a complete review of the allegations for any violations of policy requiring disciplinary action.

Finally, OIR also occasionally receives information about litigation when it ends through settlement or a verdict following trial. Where these resolutions suggest there may be some validity to allegations of officer misconduct and there has been no prior internal review, OIR has requested internal affairs investigations into the allegations. Although these requests can be met with arguments that the only reason for the negative result was external forces such as a hostile judge, runaway jury, or unfavorable forum, OIR has found that these internal affairs investigations can reveal potential officer misconduct that has not been addressed.

*OIR was informed that a jury found against LASD and individual officers, awarding compensatory and punitive damages nearing \$2,000,000.00. OIR also learned that the allegations had never been reviewed internally by LASD. Attempts were made to explain away the jury's award as the product of a hostile jury and some incorrect rulings by the judge. Nonetheless, because the verdict and the punitive damages established that the jury found and a judge accepted that the officers had engaged in wrongdoing, OIR requested that LASD start an administrative investigation of the allegations. LASD agreed.*

#### *B. Referrals from the Board of Supervisors*

OIR receives inquiries from the Board of Supervisors regarding significant events that have received public attention and civil litigation that has resulted in signifi-

cant liability for the County. For instance, the Board recently requested that OIR review the LASD inquiry into the videotaped July 6, 2002 encounter among Donovan Jackson, Inglewood Police Officers, and Sheriff's Deputies. OIR has been monitoring LASD's investigation as it proceeds to ensure it is fair, thorough, and effective. It has also kept the Board apprised of the investigation as it progresses. OIR will continue to inform the Board of its participation in the development of that investigation and ultimately, any administrative, policy, and/or training recommendations made by OIR.

Similarly, as discussed for all litigation generally, when the Board refers to OIR civil litigation that resulted in a significant liability for the County, OIR focuses on the quality of any LASD internal review of the conduct and any policy, practice, or training issues that resulted in civil liability. OIR reviews for thoroughness any administrative inquiry into the allegations and recommends, when appropriate, the commencement or expansion of an internal affairs investigation. OIR also can and does suggest changes to existing policy, practice, and training in order to reduce the likelihood of future civil rights violations and to avoid future civil liability.

### *C. Participants in the Criminal Justice System*

In this first year OIR has also reached out to key entities and individuals in the criminal justice system, including the Presiding Judge of the Los Angeles Superior Court and his successor, the Head Deputy District Attorney of the Justice System Integrity Division and members of his staff, the Public Defender and his executive staff, and the Alternate Public Defender and her executive staff. OIR recognizes that each of these participants in the system may, at some point, learn of an allegation of misconduct against an officer. At each meeting, OIR offered itself as a resource to ensure such allegations receive appropriate LASD review and to inquire into identified systemic concerns.

*The Public Defender's Office sought OIR's assistance because it felt that LASD was not responding to its allegation that a deputy had stolen property from a defendant. OIR's inquiry into the investigation revealed that while LASD was appropriately investigating whether the deputy had violated policy by either stealing the property or failing to safeguard it, LASD was not investigating whether the deputy had made false statements regarding his recollection of the property. OIR took steps to ensure that a thorough disciplinary inquiry into this issue would occur.*

#### *D. LASD Personnel and Employee Associations*

OIR has frequent contacts with personnel in the command structure of LASD. In addition, in its outreach efforts, OIR has emphasized that it is receptive to input from personnel at all levels of the LASD hierarchy. From its inception, OIR has also maintained a dialogue with LASD employee associations. In response to these interactions, OIR has been contacted by individuals within LASD who have presented allegations of misconduct, or who have questioned the legitimacy or fairness of certain internal investigations. OIR reviews this information to determine whether it requires an immediate and specific response, or whether it can help to shape future OIR input into investigations and reviews.

#### *E. The Public*

Though its primary mission involves direct oversight of LASD internal investigations, OIR is available as a resource to which the public can turn directly with complaints or concerns about LASD officer misconduct. OIR has often been able to meet the immediate needs of complainants by directing them to other entities, such as the Internal Affairs Bureau's toll-free telephone number or the Los Angeles County Office of Ombudsman. Occasionally, though, OIR has received inquiries from individuals who are dissatisfied or frustrated with the pace or results of official investigations, or who express a fundamental distrust of normal channels.

On those occasions, OIR conducts a review to determine whether complaints about the process have merit and require further intervention. Consistent with confidentiality obligations and the privacy rights of the involved personnel, OIR communicates with the complainants to collect and provide available information in this regard.

OIR has also received referrals from civil rights lawyers who allege that clients have been mistreated by deputies and who are interested in identifying for OIR areas of needed systemic change. OIR examines these particular and generalized allegations with care, and uses the information to identify issues regarding LASD's own review of the incidents in question.

PART THREE

# Impact on Policies *and Practices*

## Case One

*At the end of a brief car chase, the suspect stopped his car, jumped out and began fleeing on foot. The Deputy continued to pursue in a radio car and caught up to the suspect quickly. The Deputy then decided to bump the suspect with the radio car rather than get out and run after him, saying that the suspect was holding his pants up and might be reaching for a weapon. The suspect fell down when hit by the car and was quickly handcuffed and arrested. He sustained no serious injuries.*

*This incident was brought before the LASD's Executive Force Review Committee to decide whether the intentional use of force by the Deputy merited a full internal affairs investigation. OIR reviewed the background materials and attended the Committee meeting. At the meeting OIR pointed out that the LASD had recently produced a training video on another tactical topic (shooting through windshields) that included images of the use of a police car to stop a suspect on foot. OIR suggested that this might send a conflicting message or provide an excuse for the inappropriate use of force. OIR suggested that an IAB investigation was needed to determine whether this video indeed created a problem or had any effect on the case at hand. The Committee ordered a full internal affairs investigation. Based on the results of the investigation, the Committee decided that the use of the car to make the arrest was an improper use of force and the Deputy should be disciplined. OIR concurred with this decision, but also requested that the Committee cause the LASD to address the general policy issue of if and when the use of a car to effect an arrest is justifiable. The Committee consequently turned this issue over to the LASD Training Bureau and tasked it to clarify all policy language in existing training materials so that the Department's message about the use of cars to effect an arrest is explicit: they may only*



*be used in extreme circumstances as a defense tool of last resort. OIR will continue to work with Training Bureau to evaluate its driving instruction in light of this policy.*

## Case Two

*During an investigation, internal affairs investigators recorded telephone conversations with the consent of one of the participants, but without the consent of the other participant. With some exceptions, California law normally prohibits recording conversations without the consent of all participants. OIR learned of these recordings when reviewing the investigation and discussed the issue with LASD. OIR recommended that in order to avoid future violations of this prohibition, OIR would work with LASD internal affairs investigators to devise a training bulletin to ensure that investigators do not improperly record confidential conversations during administrative investigations. LASD agreed and internal affairs investigators have since received a training bulletin on the relevant law, as well as guidelines to follow regarding recording conversations.*

Many oversight models go no further than making disciplinary recommendations. As these examples illustrate, OIR goes beyond the facts and parties of any particular case and identifies broader issues implicating LASD policies, practices, or training. OIR then consults with LASD and ultimately recommends revisions where needed. Finally, OIR assists LASD in implementing both the letter and spirit of OIR's recommendation.

To change behavior effectively, an oversight body must look beyond the particular cases of misconduct to systemic issues implicating policy and training. For example, ambiguities in policy or lax enforcement of an existing policy can prevent LASD from imposing discipline. Alternately, insufficient training on a policy, procedure, or legal issue can lead to inadvertent violations. Deputies must know the standards they are held to and LASD must exhibit even-handed enforcement of policy violations. Accordingly, OIR endeavors to use individual cases to identify ambiguities in policy, laxity in enforcement, and deficiencies in training. Whenever policies and practices can be reformed to eliminate potential civil rights violations and future liability, it will directly benefit the people of Los Angeles County.

## I. Systemic Changes to LASD Responses to MDT Subpoenas

In August 2001, after the Board of Supervisors agreed to settle a civil rights lawsuit, the Board asked OIR to investigate the plaintiff's allegations, oversee the administrative investigation into the conduct of the deputies involved and take measures to help prevent similar allegations from occurring in the future. The plaintiff claimed that deputies from Community Oriented Policing Services ("COPS") falsely arrested him and then fabricated a surveillance during which they claimed to have seen him sell illicit narcotics.

Plaintiff had been convicted of the crime, but that conviction was reversed by the California Court of Appeal, which held that the trial judge wrongly refused to allow defense counsel to re-open his case to admit into evidence certain LASD computer records. The defense counsel was delayed in offering these records as evidence because, despite serving subpoenas on LASD, he did not receive all the records from LASD until after all evidence had been presented to the jury. Because LASD's delayed production resulted in defense counsel's inability to offer the records in defense of the charges and because civil liability for civil rights violations may have been avoided had defense counsel received the records earlier, OIR reviewed the procedures followed by LASD for production of those records.

The computer records in question were from LASD's Mobile Digital Communication System, which allows LASD personnel to communicate with each other through terminals located in each patrol car as well as at certain fixed locations. MDT's are messages sent through this system. An MDT may be used to notify a patrol unit of a call for service, for the patrol unit to record its activities during a shift, including those related to a specific call, to query the registration history of cars encountered by units, to query the criminal history of individuals detained, including whether there are any outstanding warrants, and to send messages between patrol cars and/or the station.

Different reports are used to retrieve the records of the different types of MDT's used by LASD. For instance, a Deputy Daily Worksheet lists each service call received by an officer, along with when each call for service was sent to an officer, when the officer acknowledged receipt of the call, when the officer went en route to the call, when the officer arrived at the location of the call, when the officer completed the call, and the action taken by the officer at the call. It also contains any observations or contacts made by the officer and entered through an MDT. An Incident History provides, for only one service call or incident rather than an entire shift, the information contained in a Deputy Daily Worksheet. A Unit

History lists in chronological order all MDT information regarding calls for service as well as MDT inquiries to the JDIC and CLETS databases regarding vehicles or individuals. A report of administrative messages contains the final type of MDT, free-form messages between patrol cars and/or the station.

These MDT records are often appropriately sought by defense counsel in criminal matters. By the time OIR examined its practices, however, LASD had created an interpretation and delivery system for MDT discovery requests in criminal cases that often made it difficult for criminal defense attorneys to obtain information that they needed and were legally entitled to in order to competently represent their clients. LASD employees were well aware of the existence of several types of MDT's that were discretely catalogued. In contrast, while members of the criminal defense bar were aware of MDT's generally, a significant percentage were likely unaware that records of MDT's for each LASD arrest would be divided among several different classifications. Moreover, under the LASD MDT subpoena production system, unless a criminal defense attorney indicated with precision which of these MDT's were sought, the attorney could well not receive the MDT communications he or she had intended to request. Finally, the narrow production by LASD could well not have alerted the attorney to the existence of MDT records that would be responsive to the attorney's request. When one examined the complexity of LASD's MDT system, the numerous types of MDT's routinely generated in every LASD arrest situation, and LASD's Byzantine nomenclature used to describe each MDT type, it became readily apparent how a criminal defense attorney (let alone a defendant representing himself) might be hard-pressed to precisely articulate in a document subpoena the particular MDT documents that are being sought.

Moreover, even those records produced by LASD were not consistently timely delivered. LASD relied on individual patrol stations to deliver to court the records that were subpoenaed. At times, and in the specific instance raised by this litigation, the patrol stations did not promptly transport the records.

After speaking with personnel from LASD, County Counsel, the District Attorney, and the Superior Court's clerk's office, OIR concluded that LASD should make two changes to its policy: first, interpret more broadly requests for MDT records in subpoenas, including those not using precise LASD nomenclature; and second, deliver the requested materials to court in a more reliably timely manner. LASD agreed.

LASD's agreement and commitment to abandon its previous approach to MDT criminal subpoena requests is remarkable. When an organization develops procedures that may impede the public's ability to readily access information to which it

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

OFFICE CORRESPONDENCE

DATE: April 16, 2002  
FILE NO.

FROM: ROBERT SEDITA, CAPTAIN                      TO: ALL PERSONNEL  
COMMUNICATIONS AND FLEET  
MANAGEMENT BUREAU

SUBJECT: **UNIT POLICY FOR HANDLING OF SUBPOENA DUCES TECUM REQUESTS ON  
CRIMINAL CASES**

The purpose of this memo is to establish a Unit Policy for the handling of Subpoena Duces Tecum (SDT) requests in criminal cases where no personal appearance is sought.

1. If the SDT is requesting "MDT" information, all available records will be provided. Those records consist of Deputy Daily Worksheet, Unit History, Incident History, Administrative Messages, CLETS/JDIC inquiries and returns.
2. If the SDT is requesting "radio communications", both the Dispatch and L-TAC recordings will be provided for the time frame requested in the SDT. If the SDT only lists an approximate time of incident then a time frame of ½ hour prior to the time given and ½ hour after the time given shall be provided. (Example: "Radio communications for incident occurring at 1245 hrs." Radio communications will be provided for 1215 to 1315 hrs on Dispatch and L-TAC channels for appropriate station.)
3. The completed SDT will be packaged in a sealed inner envelope with the title and number of the action, name of witness, and date of subpoena written on the face of it, and an outer envelope, then mailed to the clerk of the court listed on the SDT, via Certified Mail.
4. The responses to all SDTs shall be mailed no more than five days after the department received the SDT. If an SDT is received that seeks a response in a shorter period of time, the attorney shall be notified that the response to the SDT will not be available in the time frame requested. If the response to the SDT is not prepared and mailed within five days after the department received it, the response shall be delivered by hand to the clerk of the court on or before the date and time identified in the SDT.

LS:sp

is legally entitled, that public may become skeptical about the integrity of the organization and its willingness to comply with its disclosure responsibilities. Even in situations where the documents are not hurtful to the organization, if mechanisms are devised that make it arduous to obtain materials, the public will lose confidence in the organization's readiness to produce that information. Whether legitimate or not, the unfortunate and long-held views among some members of the general public that the organization is "hiding the ball" and "playing a shell game" are reinforced by an agency that is perceived to have nar-

rowly defined requests for information to which the public is entitled. Under the newly adopted procedures, upon receiving a request for MDT records, LASD will provide all of the relevant MDT records. No longer will an attorney have to know about and then correctly recite the words that will unlock LASD's vault of MDT information.

Even when production of the relevant materials eventually occurs, an organization that does not ensure timely delivery of those materials will also suffer in the eyes of the requestor. Some will conclude that tardy production is intentional or at least demonstrates a lack of commitment by the organization to comply with its disclosure responsibilities. Even complete production is of no benefit if the delivery is made when it can no longer be put to effective use. This is particularly consequential in the criminal justice system where the right to a fair trial lies in the balance. LASD, by adopting new delivery procedures, has committed to ensuring that production of the requested material will be timely.

LASD's commitment, as a result of OIR's recommendations, to interpret MDT subpoena requests broadly and then produce the information readily is indicative of a culture shift within this law enforcement organization. This approach stands in sharp contrast with the traditional tenets of many law enforcement agencies, which still jealously and unfairly guard documents from appropriate review.

## **II. Systemic Changes to COPS Bureau**

In addition to changes in LASD's subpoena procedures, OIR's review of the lawsuit led to recommended changes in COPS Bureau policies, training, and procedures to address specific issues. First, the COPS Bureau had no written policy or procedures in place to guide deputies on how to conduct a surveillance. There was no written policy requiring a supervisor's presence at a surveillance, nor was there any written requirement to document observations made by deputies during these surveillances. Second, the majority of COPS deputies, including the deputies involved in the arrest which led to the lawsuit, had never been trained in how to conduct a surveillance.

Having recognized these issues, COPS Bureau, with substantial advice and input from OIR, drafted and implemented a policy governing COPS surveillances that went into effect in February 2002. The new policy sets standards for planning, supervision, and documentation of a surveillance that helps to insulate LASD from allegations, like those made in the litigation, that deputies fabricated a surveillance to support an unlawful arrest. Moreover, from the administrative perspective, the requirements of proper planning, supervision and a written log will facilitate LASD

(and OIR) assessment of future allegations of misconduct during surveillance operations.<sup>2</sup>

Addressing the specific issues raised by the litigation, the policy requires that a COPS deputy draft a surveillance operations plan. Two supervisors must then approve the plan and notify the Region Lieutenant of the proposed surveillance. Time permitting, COPS deputies will complete a surveillance work-up sheet containing background information about the individuals or area to be watched. A sergeant must then be present during the surveillance to supervise and a deputy must be designated to act as a scribe and complete a surveillance log detailing all observations made during the surveillance, which deputies observed them and what times the observations were made. The policy also encourages the video or audio recording of surveillances.

OIR also ensured that, between January and April of 2002, the majority of COPS deputies received training in surveillance tactics and the importance of the operations plan, work-up sheet, and surveillance log required by the new policy. OIR monitored each of the training classes to ensure they were comprehensive and effective.

To emphasize the importance of the new surveillance policies and procedures, OIR made a presentation at the training to explain the litigation, where the deputies involved in that litigation had run into problems, and how following the new procedures would help deputies avoid litigation and allegations of misconduct. OIR used trial transcripts to demonstrate the various inconsistencies in deputy testimony that had undermined the prosecution, influenced the appellate court in overturning the conviction, and ultimately weakened the County's position in the civil suit. OIR then explained how these inconsistencies could be avoided through the use of a surveillance log.

In accordance with OIR's role in ensuring protection of the civil rights of persons LASD is entrusted to serve, the surveillance training and procedures adopted by the COPS Bureau will ensure that surveillance operations conducted by COPS are subject to quality control and supervision. In addition, the training and procedures will redound to benefit of LASD by professionalizing the work of the

<sup>2</sup> This unit order applies not only to COPS Bureau deputies, but has already been adopted by at least some Specially Assigned Officers who perform similar community— oriented policing functions in cities that contract for police services from LASD. OIR is currently working to achieve compliance by all Specially Assigned Officers with the COPS surveillance policy.

**COMMUNITY ORIENTED POLICING SERVICES BUREAU  
COPS HEADQUARTERS**

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**Unit Order # 02-4**

**February 2002**

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**SUBJECT: STATIC SURVEILLANCE**

**PURPOSE OF ORDER:**

To provide guidelines for COPS Teams throughout the Community Oriented Policing Services Bureau when conducting static (fixed post) surveillances of suspected criminal violations of the law. The guidelines set forth in this policy shall be closely followed. This order is in no way intended to prohibit COPS personnel from conducting "short duration site surveys" at a particular location to determine if sufficient information exists to conduct a full surveillance.

**SCOPE OF ORDER:**

This order applies to all personnel assigned to COPS Teams throughout all three Field Operations Regions who engage in static surveillance of suspected criminal activity.

**ORDER**

There are two basic types of surveillances, static (fixed post) and mobile. For the purposes of this order, COPS Teams shall not generally conduct mobile surveillances without the approval of their Region COPS Lieutenant and the concurrence of the COPS Bureau Captain. Therefore, the majority of surveillances conducted by COPS Team members will be static surveillances.

Surveillance defined: The covert observation of person(s), places, vehicles and activities of suspected criminal offenders.

All COPS Teams who determine a surveillance is necessary, shall complete an Operations Plan (Attachment A) outlining the surveillance in its entirety. Once completed, the Ops plan shall be approved by the concerned team sergeant, who will forward the plan to his/her unit commander for approval. Upon approval, the Ops plan shall be forwarded to the concerned Region Lieutenant for notification.

Once the Ops plan is approved and if time permits, team members shall begin their process by first filling out a Surveillance Work-up Sheet (Attachment B). All appropriate information, including photographs of known suspects etc. shall be included in the work-up sheet.

**COPS BUREAU**

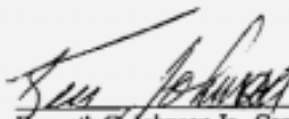
**UNIT ORDER # 02-4**

This sheet (Exhibit B), should subsequently be given to each team member who participates in the surveillance in order to ensure that all present have all pertinent information.

Once the time, date and location etc. of the surveillance has been determined, the team sergeant will appoint a team member to act as a scribe. The team scribe will then be required to initiate an LASD Surveillance Log (Exhibit C) for use during the entire surveillance operation. The scribe shall document all observations broadcasted via radio transmission made by any team member during the operation. Additionally, the scribe shall ensure that he/she documents the time that significant events occur, such as the time the surveillance began and the time of any detentions or arrests. Team members are reminded to utilize their call signs prior to initiating all radio transmissions for ease and clarity of recording on the surveillance log by the scribe. Since the scribe position can be rotational, a team effort is needed for maximum efficiency. A COPS Sergeant shall be present during all surveillances conducted by COPS Teams.

COPS Teams are reminded that the use of video and or audio recording devices may be appropriate during some surveillances and are encouraged to utilize such items when applicable.

In all cases, exhibits A-C shall be retained in the original case file under the file number assigned to the operation. When arrests are made and prosecution is imminent, team members and detectives are encouraged to provide these documents to their local Deputy District Attorney at the time of filing.

  
\_\_\_\_\_  
Kenneth G. Johnson Jr., Captain  
Community Oriented Policing  
Services Bureau

COPS BUREAU

UNIT ORDER # 02-4



COPS deputies, ensuring adequate supervision, reducing subsequent attacks on the integrity of future prosecutions, minimizing potential future civil liability, educating COPS deputies that a higher standard of conduct is required, alerting them to the repercussions that may ensue should those standards be ignored, and providing more information to LASD in order to assess the legitimacy of allegations of misconduct. By working with OIR to enact the training and create the new policy, LASD demonstrated its commitment to making its organization more responsive to each of these important goals.

### **III. Systemic Changes to LASD Claim Review Procedures**

Shortly after inception, OIR recognized the importance of information received by LASD in the civil litigation process and began to examine how LASD uses and responds to that information. OIR's review revealed several issues relating to LASD's policies and practices for exploiting this information, and in particular, information contained in civil claims. As with a traditional citizen complaint made at a station or through LASD's complaint hotline, claims contain allegations of misconduct that should be reviewed to determine whether there is a need for discipline, or a deficiency in training or policy. However, OIR learned that, in large part because virtually no direction was provided to LASD personnel responsible for responding to allegations in claims, the inquiry into those claims was not thorough. OIR has recommended and LASD has implemented policy changes to provide specific guidance and ensure thorough scrutiny of allegations in civil claims. A civil claim is a mandatory prerequisite for certain civil actions against LASD. A claim normally contains a brief statement of the alleged wrongdoing by LASD and its employees. Each unit within LASD that is implicated by the allegations of misconduct is asked to investigate and respond to the allegations in the claim.

LASD's responses to claims were often inadequate. Sometimes no response was provided, and any response was often untimely. Additionally, responses were often cursory, without significant independent investigation into the allegations of misconduct.

#### *A. Missing Unit Claim Responses*

OIR first addressed the significant number of claims that were never responded to by the units. The LASD computer tracking system showed that, between 1993 and 2001, more than 800 claims were not responded to by all involved units.<sup>3</sup> Some of

<sup>3</sup> OIR has subsequently learned that there had been a departmental response to some of these claims; however, there was no indication of any such response in the LASD computer tracking system.

the claims that had never been responded to had long ago been the subject of litigation that was either dismissed, settled, or reached a verdict. Some are currently the subject of litigation. Some were apparently never pursued by the claimant. Many are so stale that their relevance now to current issues of discipline, training and policy is minimal.

OIR worked with County Counsel to determine an appropriate procedure for addressing these claims. OIR first identified those claims that were so outdated they were no longer relevant for either litigation or internal purposes. OIR then reviewed the remaining claims, filed from January 1, 2001 to the present, attempting to verify which ones had not received responses and prioritizing certain claims. The Undersheriff then requested responses to the claims, identifying certain ones as deserving priority. As a result of OIR's identification and the prodding of the Undersheriff, the units have addressed the outstanding claims.

### *B. Quality of Unit Claim Responses*

OIR next addressed the quality of the LASD claim responses. Many of the unit claim responses merely repeated the substance of any reports that were completed at the time of the underlying incident, with no attempt to contact witnesses or determine any events that had happened since the incident. If there was no existing documentary record of the incident complained of, many times no further inquiry was made of personnel to learn whether the incident had occurred and not been documented. Rarely was any attempt made to contact and interview the complainant or identified witnesses. Few of the responses demonstrated any serious consideration of: (1) whether any LASD policy had been violated; (2) whether initiation of an administrative investigation was appropriate; and (3) whether the complained-of conduct reflected a deficiency in training or LASD policies or practices.

Based on discussions with County Counsel and LASD, OIR recommended significant changes to the current process. Those changes include more thorough inquiry into the allegations in claims, specific guidelines for that inquiry, a mechanism for enforcing the timely response to claims, and a mechanism for ensuring the quality of the inquiry into the allegations in the claim. These recommendations focus attention on determining whether administrative investigations are warranted, gathering facts that help County Counsel better assess the merits of the allegations, and identifying any issues of training or procedures that LASD should address.

## 5-07/290.00 REVIEW OF CIVIL CLAIMS BY UNIT COMMANDERS AND DIVISION CHIEFS

Upon receipt of a copy of a civil claim from the Civil Litigation Unit, the concerned unit commander shall review the claim. The concerned unit commander is responsible for conducting an inquiry into the allegations in each civil claim and providing a response that sets forth the information obtained in that review, as well as identifying when an administrative or criminal investigation of alleged misconduct is warranted.

### Claim Review Requirements

As part of the Claim Review, all available information about the allegations made in the claim should be gathered. The review shall be unbiased, seeking to obtain all information whether supporting or undermining the claim. Unless the memorandum from the Civil Litigation Unit accompanying the claim indicates otherwise, this claim review shall include, at a minimum:

- Identifying, gathering, and preserving all pertinent written documentation and supporting physical materials (refer to Section 5-07/290.15, Administrative Documentation/Materials), including the documents identified on the Civil Litigation Unit Claim Response Documentation/Materials Check-Off List accompanying the claim. All evidence identified shall be labeled with a green label per Section 5-04/020.15.
- Interviewing claimant. If a claimant is represented by counsel, do not contact the claimant directly. A request shall be made of counsel to interview a claimant. If possible, any interview of a claimant shall be audio recorded. If counsel or claimant declines to be interviewed, such declination shall be noted.
- Identifying and interviewing all Department employees who were participants in, witnesses to, in the vicinity of, or had post-incident involvement with the events underlying the claim. Whenever possible, employee work schedules shall be arranged to allow for in-person interviews.  
*Note:* Although a claim review is not an administrative investigation, if a Department employee requests that he/she be given the rights he is entitled to in an administrative investigation, the employee's request should be granted.
- Identifying and interviewing any non-Department witnesses to the events underlying the claim, both those identified in any underlying paperwork, and those identified through the claim review, including those the claimant identifies.
- When appropriate, visiting and photographing the location of the alleged incident.

When there is more than one involved unit responding to a claim, the primary unit designated by the Civil Litigation Unit shall coordinate with the secondary units to avoid duplicate efforts. The units should arrange a single interview of the claimant and of each witness that covers all areas of necessary inquiry.

The Civil Litigation Unit may indicate that a different claim review procedure should be followed for certain types of claims, including claims of property damage, lost property, or over-detention.

If the claim relates to an incident that has previously been reviewed because of a reported use of force, shooting, traffic collision, Watch Commander's Service Comment Report, or administrative investigation, the claims review should be coordinated with the unit level or Internal Affairs Bureau investigator who handled the previous review and focus on any additional or different information

or allegations provided by the claim. The Claim Review need not repeat any steps taken as part of any prior investigation or review, unless additional or different information or allegations require additional investigation. To the extent additional or different information or allegations are found in the claim, that new information shall be reviewed like any other claim.

#### **Administrative/Criminal Investigations**

If, at any time while reviewing the claim, the unit commander determines that discipline or criminal prosecution may be an issue because of the nature and seriousness of the allegation(s) and/or the concerned employee's performance history, the unit commander shall follow Department policy, as set forth in Section 3-04/020.05, for initiation of an appropriate administrative or criminal investigation. When an administrative or criminal investigation is initiated, the unit commander shall coordinate with the Civil Litigation Unit and/or County Counsel to inform them that an administrative or criminal investigation has been initiated and to assist in responding to the claim as necessary. As long as discipline or criminal prosecution is not an issue, the unit commander shall perform a Claim Review. The unit commander should keep in mind that the selection of a given course of action does not preclude initiation of another course of action if the subsequent uncovering of facts justifies or mandates it.

#### **Unit Commander's Claim Review Report**

After conducting his Claim Review, the unit commander shall direct a memorandum to his division chief and complete any worksheets forwarded by Civil Litigation along with the claim. The unit commander's memorandum shall include:

- All information obtained from the review of the claim, including a list of witnesses, any conflicting versions of the facts, and each source for information, as well as a description of the claim review performed.
- All training, policies or procedures relating to the conduct alleged to be wrongful, and any perceived issues or nonissues regarding the same.
- Whether any administrative or criminal investigation is warranted.
- Identification of personnel involved in the events underlying the claim as either an involved employee or as a supporting employee. (An "involved" employee is someone who took part in the event, while personnel who witness it or who were in the vicinity or had post incident involvement are "supporting" employees. If the event involves an incident where no employees were directly involved, i.e., slip and fall by a county inmate at a jail facility, with no Department witnesses, the unit commander shall indicate "no Department employees involved.")
- Whether the personnel involved were contract city items or county items, whether the location of occurrence was within a contract city, unincorporated area, Department facility or independent incorporated city, and whether the personnel were performing contract city business at the time of the occurrence.
- Any other insights or assessments of the claim or issues raised by it.

The completed worksheets provided by the Civil Litigation Unit, as well as relevant supporting documents shall be attached to the unit commander's memorandum. All other documentary or physical evidence relating to the civil claim shall be preserved by the unit in a manner that allows for its retrieval.

Finally, when a unit commander forwards the claim review report to his/her chief, he shall simultaneously forward a complete copy of the claim review packet to the Office of Independent Review.

#### **Division Chief's Responsibilities**

The concerned division chief is responsible for ensuring that the unit-level review was thorough, that the proper decision was made regarding any administrative or criminal investigation, and that the review was completed in a timely manner.

The division chief shall review the unit commander's memorandum for thoroughness of the review of the claim. A thorough review requires both a thorough inquiry into the facts and a thorough analysis of those facts for any performance, training, policy, or disciplinary issues. If a review is not thorough, the chief shall return it to the unit commander for further investigation or analysis.

The division chief shall also review the unit commander's determination on the propriety of an administrative or criminal investigation. If the division chief determines further internal administrative or criminal investigation is warranted even though not suggested by the unit commander, the division chief shall follow the department policies for initiation of such an investigation.

Once the division chief is satisfied with the claim review, he shall then forward the unit commander's memorandum and his concurrence with it to the Civil Litigation Unit.

The division chief will be responsible for ensuring that the claim reviews for his division are completed in a timely manner. The Civil Litigation Unit will track the status of requests for claim reviews. The division chief will have access to information regarding claims that are overdue.

#### **Timing for Claim Review**

The designated unit(s) has 20 calendar days, from the date listed on the Risk Management Bureau memorandum, to complete their review and forward the claim to the division chief. Division chiefs are expected to review and forward claim reports to the Risk Management Bureau within 5 days.

Decreasing the amount of time needed to provide a response to the Risk Management Bureau, without sacrificing the quality of the review, is important. Therefore, all are encouraged, where possible, to rely on electronic or facsimile transmission of documents rather than Department or county mail systems. In addition, it is crucial that a unit immediately notifies the Risk Management Bureau of all claims that have been forwarded to it in error and any additional units that may need to prepare their own claim report.

Throughout this process of reviewing LASD's treatment of claims, OIR has been impressed with the cooperation it has received from LASD. OIR has appreciated the candor with which LASD personnel have been willing to discuss the claims review process and refine their agency's claim investigation procedures. OIR has also appreciated the willingness of LASD personnel to adopt new procedures in this area.

#### **IV. Systemic Changes to Use of Restraints on Inmates**

In October 2001 the Board of Supervisors agreed to settle a wrongful death lawsuit resulting from a death in LASD custody, and Special Counsel Merrick Bobb issued a report raising several questions about that death and LASD's response. The Board then requested that OIR examine the LASD's inquiry into the death and offer recommendations regarding issues raised in Special Counsel Bobb's report.

The death occurred during the application of a four-point restraint on the inmate. A four-point restraint tethers both arms and both legs of an individual to a bed and is used where an individual presents a danger to himself or others. The inmate had been examined by medical personnel who concluded that he was suffering from a "drug induced psychosis." Although the inmate was not exhibiting any physically aggressive behavior, a restraint was ordered. Initially, a three-point restraint, which would have left one extremity free, was ordered, but this was changed to a four-point one by doctors who had not examined the inmate. Several hours after the initial authorization of restraints, deputies applied them. During that application the inmate died.

##### **A. *OIR's Findings***

OIR's investigation into LASD's inquiry into the inmate's death found deficiencies in policies and procedures that led to problems with application of the restraints and that were compounded by an inadequate review of LASD conduct after the death.

LASD's written policies and procedures for application of restraints were vague, incomplete, and unenforced. LASD policies and procedures did not require any tactical planning for the application of restraints nor any attempt to gain inmate

compliance. LASD had no written policy or procedure to guide deputies on how to subdue a resistant inmate during the application of restraint devices. LASD policy allowed the application of restraints to an inmate hours after they were initially ordered without reevaluation of the inmate's behavior. Finally, while LASD policy required the presence of both a supervisor and medical personnel, this policy was often ignored. Thus, even though several hours had passed between the initial authorization of restraints and the application of the restraints, there was no re-evaluation of the need for restraints. Although, in this case, the inmate was calm, quiet and cooperative and chained to a wheelchair, deputies began applying the restraints without communicating with him about the restraint procedure and the rationale for the application of the restraints. To overcome the inmate's resistance to the restraints, the deputies kneeled on the inmate's chest and applied a knee or shin to his chin, neck and/or face area. When the application of restraints began, neither a supervisor nor medical personnel were present to monitor the inmate and the procedure employed by the deputies.

Moreover, although force was clearly used to apply the restraints, the incident escaped the mandatory protocol applied to significant uses of force. This was because LASD practice was to classify the application of restraints as a medical procedure, not a use of force. Using this terminology freed LASD from the need to conduct an internal affairs investigation of the death.<sup>4</sup> Rather than an internal affairs review, LASD conducted a death review investigation.<sup>5</sup> Unlike an internal affairs investigation, a death review does not often focus on whether conduct violated LASD policy and warrants the imposition of disciplinary measures.

LASD's Homicide Bureau also conducted the standard criminal investigation—performed whenever an individual dies as a result of contact with a deputy—which was submitted to the District Attorney for consideration of criminal charges. The District Attorney declined to file charges. This investigation, though

4 Eventually, IAB conducted an administrative investigation of two of the nurses who treated the inmate. One nurse resigned and the other has been recommended for discipline.

5 A unit within LASD's Custody Division conducts a review of any inmates' death. That review focuses on the identification of issues related to training, policy and procedure, and/or medical and mental health, and makes recommendations to address risk management concerns. Inmate deaths which are eligible for a review include those resulting from suicides, homicides and some natural causes with unusual or extenuating circumstances. Under LASD policy, it is discretionary whether an internal affairs representative is required to be present at certain death reviews.

important, also had a focus that left several administrative issues unexplored. The decision, made within days of the death, to preclude an internal affairs review was significant in several respects. First, because of it internal affairs investigators never reviewed evidence that may have led to questions about whether deputy conduct violated policy. Internal affairs investigators never heard the audio-taped interviews of the involved deputies and never saw the autopsy report, which attributed the death to asphyxiation. Nor did they see the District Attorney's letter. Second, because the incident was exempted from normal force review procedures, the Executive Force Review Committee never examined the force used for policy violations and any potential disciplinary action.

This lack of review is not without consequence. The facts suggest that even with policies then in place, there may have been potential or actual policy violations related to the application of the restraints. First, there are questions whether, given that the inmate was not presenting a life-threatening situation, the level of force was within policy. LASD policy requires that deputies exercise care to ensure no injury to an inmate during the application of restraints authorized by medical staff. LASD policies limit personnel to use only objectively reasonable force when necessary to perform their duties and prohibit the use of unreasonable or excessive force. Second, a policy violation may also have occurred when the involved deputies began to apply the restraints without supervision and applied them outside the presence of medical personnel. An LASD policy then in place mandated that deputies apply leather restraints only at the discretion and supervision of the medical staff. While the medical staff authorized the application of restraints, no member of the medical staff supervised or monitored the involved deputies' application of the restraints.

### *B. Revised Policy for the Application of Restraints*

Over the course of several months, OIR and LASD discussed revisions to LASD policy. From the outset of these discussions, OIR and LASD agreed that the revised policy, which became effective in June 2002, needed to recognize that the application of restraint devices may constitute a use of force. This change is intended to increase and encourage effective communication among LASD personnel who authorize and apply restraint devices on inmates, and to make LASD personnel more accountable and responsible in their treatment of inmates who require restraint.



Most significantly, the new policy dictates that if force is used to overcome resistance in the application of the restraints, it must be reported and reviewed in the same manner as all other uses of force by LASD personnel. All force must therefore be reasonable.

Additionally, the revised policy views the use of restraints as a tactical event requiring appropriate planning, training and supervision and provides detailed guide- lines for their use. Only trained personnel may apply restraints, and a properly trained sergeant must be present during and supervise the entire restraint procedure.

The sergeant's responsibilities for planning the use of restraints are explicit. Before applying the restraint devices, the sergeant must review the order for restraints. If more than two hours have elapsed since the issuance of the order authorizing the restraints, the revised policy requires that the sergeant request a re-evaluation of the need for restraint. The sergeant must advise the inmate of the reason for the intended application of restraints and attempt to gain the inmate's cooperation. The sergeant must ensure that sufficient personnel are trained and present to assist in the application of the restraints and that all assisting personnel are thoroughly briefed regarding their individual duties and obligations.

The sergeant's responsibilities during the application of the restraints are also explicit. The sergeant must ensure that the inmate has unrestricted breathing and that members of the restraint team use proper control techniques and refrain from applying pressure upon the inmate's head, neck, throat, chest, diaphragm or abdomen. The sergeant, and anyone else involved in the application of the restraints, including medical personnel, has the duty to terminate the application of restraints if any control technique or conduct puts LASD personnel or the inmate in unreasonable danger of a life-threatening situation, injury or medical distress.

The revised policy thus addresses the deficiencies in LASD policy and procedures in two ways. First, it makes explicit the standards expected of LASD personnel and requires supervision to help ensure LASD personnel perform to those standards. Second, it ensures that conduct will be reviewed for compliance with those standards by eliminating the ambiguity in policy that had allowed force used during application of restraints to evade normal LASD force review procedures.

This is another example of LASD's willingness to listen to input from outside voices—in this case, Special Counsel Merrick Bobb and OIR—and to then institute systemic reform.

#### **5-03/130.00 MEDICALLY ORDERED RESTRAINT DEVICES**

Unit commanders shall ensure that procedures related to the use of medically ordered restraint devices conform with Division policy. Restraint devices shall only be used on inmates who display behavior which results in the destruction of property, or pose a serious threat to themselves or others. Restraint devices are used to immobilize an inmate's extremities and prevent them from being ambulatory. Restraint devices shall not be used under any circumstances to punish or harm an inmate. This section does not apply to the use of handcuffs, shackles, safety chairs, or other restraint devices when used to restrain inmates for security reasons pursuant to Title 15, Minimum Standards For Local Detention Facilities, section 1058 "Use of Restraint Devices." See Custody Division Manual 5-03/130.05, "Safety Chair" for Policy and Procedure pertaining to the safety chair. Examples of restraint devices include, but are not limited to:

- Leather restraints, including 3 and 4 point systems,
- Soft ties,
- Padded belts.

Only restraints specifically manufactured for the purpose of safely restraining persons shall be used. Restraint devices shall not be modified from their original specifications unless done so by the manufacturer. All restraint devices shall have the prior approval of a Custody Division Chief. Restraint devices shall never be used as punishment, harassment, or for the sole purpose of knowingly causing harm to an inmate.

Only trained personnel shall be authorized to perform or assist in the placement or removal of restraint devices. The concerned facility's training unit shall maintain a record of custody personnel trained in the use of each restraint device. The entire restraint procedure shall be video taped, and a sergeant trained in the use of restraints shall be present during the entire restraint procedure.

Any incident requiring the use of restraints shall be recorded in the Watch Commander's Log. The watch commander shall provide a memorandum to the unit commander which shall include the following information:

- Date and time of occurrence,
- Inmate's name and booking number,
- Location,
- Personnel involved,
- Reason for the use of the restraint device,
- Condition of the inmate before and after release from the restraint device,
- Name of the physician or psychiatrist ordering restraints and the reason,
- Name of the nurse who medically assessed the inmate after the restraints were applied and the location where the assessment occurred,
- The area where the inmate was housed prior to being placed into restraints,
- The classification of the inmate (mentally ill, homosexual, general population,

- etc.),
- Any other significant information related to the inmate's health,
- How long the inmate was in the restraint device.

Additionally, all restraint procedures shall be reported to the Inmate Reception Center watch deputy for entry into the Custody Division Operations Log.

The videotape and all appropriate paper work shall be maintained at the concerned facility for four years. If the inmate is injured as a result of applying the restraints, or if there is a significant risk management factor or a lawsuit is filed, all documentation shall be maintained indefinitely.

Prior to force being directed by any Department supervisor in the application of a restraint device, all reasonable and appropriate alternatives shall be considered in an effort to solicit cooperation. This may include counseling the inmate regarding the need for restraints. If in the course of applying restraints, any resistance is encountered, the use of force shall be reasonable and reported pursuant to the Department Manual of Policy and Procedures, section 5-09/430.00, "Use of Force Reporting and Review Procedures."

#### Restraining Pregnant Inmates

Restraint devices specified in this section shall only be used on pregnant inmates or inmates suspected of being pregnant under the most compelling circumstances and then only after consulting with medical personnel (physician or psychiatrist). In considering the use of restraint devices on pregnant inmates, personnel shall first establish articulable facts to demonstrate that the inmate poses an immediate threat of great bodily injury or death to herself, her fetus, others, or who display behavior that results in the destruction of property. The use of medically ordered restraint devices shall be at the direction of medical personnel, and a nurse, psychiatrist or physician shall be present during the entire restraint procedure. Medical personnel shall assess the inmate's condition and position, once the restraints have been applied.

#### LEATHER RESTRAINTS

The use of leather restraints is a medical procedure and, except in the case of exigent circumstances, their use shall only be authorized by a Sheriff's Medical Services physician or a Department of Mental Health psychiatrist. Whenever a physician or psychiatrist directs that an inmate be placed into restraints, Medical Services staff and a Department supervisor, at the permanent rank of sergeant or above, shall be present. The supervisor shall monitor the movement of the inmate from his housing location to the designated area for application of restraints, and remain while the restraints are being applied. Movement of the inmate to the medical services building shall not be unnecessarily delayed.

Immediately upon application of leather restraints, medical staff shall evaluate the inmate. If the medical evaluation indicates that restraints place the inmate's health at

risk, the restraints shall be removed. Immediate removal of restraints without the direction of medical personnel may also occur in emergencies including, but not limited to:

- Emergency evacuations (i.e., fire, earthquake, etc.),
- Cessation of breathing,
- Heart attack.

In every exigent circumstance where restraints are removed without medical concurrence, the watch commander shall be notified immediately.

#### APPLICATION OF MEDICALLY ORDERED RESTRAINTS

Custodial personnel shall assist in the placement and removal of restraints at the request of the medical staff. Application of restraints is a tactical event, which requires pre-planning on the part of the sergeant and requires strong command and control. The sergeant shall supervise and manage the custodial personnel in the application of restraints. Prior to applying medically ordered restraints, the sergeant shall review the order for restraints. If more than 2 hours has elapsed since the order was given the sergeant shall request a reevaluation of the need for restraints, based upon the inmates current condition. The sergeant shall then advise the inmate of the reason for the intended application of restraints and attempt to gain the inmate's cooperation with the application of the restraints. The sergeant shall ensure that sufficient personnel, trained in the application of restraints, are present, and that all assisting personnel are thoroughly briefed regarding their individual duties and responsibilities in applying the restraints. Under most circumstances two custodial personnel per limb shall be assigned to restrain the inmate. One to constrain the limb, the other to apply the restraint. Deviation from this procedure may only occur under exigent circumstances.

When applying restraints, custodial personnel must be cognizant of the inmate's physical condition. Since the application of restraints is a medical procedure, personnel must consider that preexisting medical or mental health conditions may exist. The application of pressure upon the head, neck, throat, chest, diaphragm, or abdomen of the inmate, or any control technique that impairs the inmates ability to breathe, shall be avoided in all but the most compelling of circumstances. The sergeant shall ensure that the inmate has unrestricted breathing during and after the application of restraints. The sergeant shall diligently monitor personnel to assure that the control techniques being used comply with this section. Any person involved with the application of restraints, especially the sergeant and the medical services clinician, have the duty to terminate the procedure immediately if they detect any action that puts the personnel or the inmate in unreasonable danger of a life threatening situation, injury, or medical distress.

All restraining procedures shall be videotaped, uninterrupted, including:

- Transport of the inmate to the Medical Services Building,
- All conversations between the sergeant and the inmate,

- Placement of the restraints on the inmate,
- Medical Services' staff assessment of the inmate's medical condition and comfort immediately after the restraints have been applied.

The un-resisted placement of an inmate into restraints does not necessarily constitute a use of reportable force as stated in the Manual of Policy and Procedures. However, if in the course of applying restraints, the inmate struggles or resists in any way, it does constitute a use of force and must be reported pursuant to the Department Manual of Policy and Procedures, section 5-09/430.00, "Use of Force Reporting and Review Procedures."

#### Monitoring Restrained Inmates

An inmate placed in leather restraints shall be housed in the Medical Services Building (MSB), separate from all other inmates. Custody personnel and Medical Services staff are responsible for conducting safety checks of all inmates placed in restraints, consisting of a direct visual observation check to ensure that the inmate is breathing. Safety checks are conducted at least twice during every thirty minute period at least 15 minutes apart. Department of Mental Health personnel may require additional safety checks for the mentally ill inmates who are placed in restraints. Safety checks shall be documented on a safety check log.

## Working to Achieve Systemic Change

OIR Identification of Systemic Problem	OIR Recommendation	LASD Response	Implementation of OIR Recommendation
Lack of evidence of any LASD response to more than 800 civil claims dating from 1993	Develop system to respond to critical overdue claims	Office of the Undersheriff and County Counsel work with OIR to obtain responses to overdue claims	YES
Claim responses lacking in quality and comprehensiveness	Improve claims investigation guidelines to ensure more comprehensive responses	Office of the Undersheriff and County Counsel to work with OIR to devise improved guidelines	YES
COPS Deputies conducting drug surveillance w/o written surveillance policy	Develop written surveillance policy	COPS Command Staff and OIR work jointly to develop feasible written surveillance policy	YES
COPS Deputies conducting drug surveillance w/o surveillance training	Provide surveillance training to COPS Deputies	COPS Command Staff and surveillance expert from Major Crimes Bureau work with OIR to develop training curriculum	YES
LASD response to MDT subpoena request narrowly interpreted to pertain only to certain types of MDTs	Produce all types of MDT communications in response to criminal subpoena requests	Chief of LASD, Data Systems Bureau and his staff work with OIR to modify LASD policy to broaden response to criminal MDT subpoenas	YES
LASD response to MDT subpoena requests untimely	Create more efficient protocol for timely production in response to MDT subpoenas	Chief of Data Systems Bureau and staff work with OIR to modify LASD policy so that timely compliance is achieved	YES
Single-party consensual tape recording of conversations undertaken in internal affairs investigation contrary to case law	Devise internal affairs policy and training bulletin indicating limitations on such procedures in internal affairs investigations	Internal Affairs Bureau Captain and Lieutenants work with OIR to produce policy and training bulletins indicating such limitations	YES



**W**HILE LASD has provided unlimited access to its materials, a similar commitment for unfettered access to civil litigation documents and other information has not been forthcoming from County Counsel, the possessor of much of the civil litigation information. Accordingly, while OIR has access to the claims and lawsuit complaints as they are received by LASD, County Counsel has blocked OIR from acquiring any further documents or information generated by the civil litigation process. This restriction impedes OIR's efforts to ensure that LASD use information learned during lawsuits to address alleged misconduct of individual employees and to conduct timely examination of systems, policies, training and procedures.

Civil litigation is a potentially useful source of information about misconduct, as well as system or training failures. The claim and lawsuit complaint usually contain only bare bones and conclusory statements about the alleged misconduct. It is during the civil litigation process, when witnesses are identified, depositions are taken, motions are filed, hearings are convened, and trials conducted, that the information supporting the allegations is made known to the lawyers defending the County. This information is learned by County Counsel; however, there is no effective conduit through which these facts are transmitted to the LASD units responsible for addressing misconduct and training. From its inception, OIR has sought to establish a conduit whereby information learned during the lawsuit could be used to begin an internal inquiry into any alleged misconduct as well as address policy, systems, or training issues implicated by the litigation. County Counsel has resisted this effort.



The failure to use information learned during the litigation process has demonstrative deleterious effects on LASD's ability to address misconduct in an effective and timely fashion. In its short time of existence, OIR repeatedly has observed cases presented to the Board in which County Counsel recommends settlement based on its prediction of an inability to successfully defend the misconduct alleged. In many cases, the Board then asks the Sheriff to explain why this misconduct was never addressed administratively. Often, the unfortunate answer is that information which could and should have prompted an LASD internal review has never been transmitted from the litigation process to the relevant LASD executives. By the time the litigation has reached its conclusion and been brought to the Board's attention, it is often too late to take any effective disciplinary action because of statutory time limits on administrative investigations.

Recognizing this gap in his misconduct investigation program, the Sheriff has registered his unqualified support for OIR access to the litigation materials. Yet County Counsel has remained steadfast in its opposition. County Counsel has expressed its view that ethical issues may preclude it from supplying such information. OIR has considered these concerns and has suggested a variety of workable solutions. Nonetheless, OIR must report that the status quo continues—namely, valuable information that could be used by LASD to address misconduct is being squandered.

As a result, under the current state of affairs, OIR has been stymied in accessing even those litigation materials contained in closed files and ordinarily available to the public. Nor has OIR been able to make inquiry into particular questions raised by the Board. Moreover, even in cases where no ethical issues are presented, County Counsel has not provided the requested access. The divergent views of OIR and County Counsel continue to exist at the time of the writing of this report. OIR will continue to press this important issue and eventually report to the public on its final outcome.

# PART FIVE Outreach to Civil Rights Groups *and the Community at Large*

**I**N CARRYING out its oversight function, OIR essentially acts as the public's independent representative, helping to ensure that LASD employees exercise their authority responsibly and with proper respect for the rights of individuals. Accordingly, OIR has welcomed the input of local civil rights leaders and has worked to keep them, and the public in general, apprized of its developing role and its accomplishments.

OIR representatives have strived to increase the public's awareness of the Office and to gain insight into the perspectives and concerns of a wide array of individuals and civil rights groups. OIR has also used its outreach efforts both to establish rapport that will maximize our productivity and to help pinpoint systemic problems that are amenable to improvement. Finally, OIR has interacted with other oversight agencies seeking insight into OIR's new model, including a contingent from the country of Turkey.

## **I. The Civil Rights Community**

From its earliest stages, OIR has reached out to the entities significantly involved in civil rights matters. The hard-earned familiarity that these groups have with problematic law enforcement behavior, and its effects on community relations, has been an important source of insight for OIR.

OIR has also talked with individual civil rights practitioners in the Los Angeles area. OIR solicited input from these organizations and individuals regarding law enforcement issues, particularly those dealing with LASD. OIR obtained valuable information about LASD policies and procedures from these important sources of information. Civil rights attorneys who had been successfully litigating against LASD for years shed light on certain practices in the misconduct arena and elsewhere. The civil rights community also provided important background information regarding certain public perceptions of LASD and its operations.

OIR is pleased to report that many who have devoted countless hours to the civil rights effort have been generous with their time, insight, and wisdom, not only in initial meetings but throughout OIR's first year. Beyond providing initial input about how OIR could best deploy our resources and accomplish our goals, and providing current and historical perspective on critical issues and questionable LASD practices or policies, the civil rights groups and individual leaders remain an important resource. In our numerous meetings, OIR has stressed its hope for an ongoing dialogue

## **II. Special Counsel and Inspector General**

OIR attorneys meet on a regular basis with Los Angeles County Special Counsel Merrick Bobb and Los Angeles City Inspector General Jeffrey Eglash. Mr. Bobb figured prominently as Executive Director of the Kolts Commission of the early 1990's and has continued for nearly a decade to serve as an insightful analyst of LASD. Inspector General Eglash leads the office that bears some of the civilian oversight responsibility for the Los Angeles Police Department. The purpose of these meetings is to discuss issues common to each entity, share challenges presented to each group, and work together to create solutions to those challenges. OIR has found the exchange to be fruitful and is heartened by this relationship between representatives of the oversight entities in Los Angeles County.

## **III. Law Enforcement Oversight Experts**

OIR also met with the historic founders of civilian oversight in Los Angeles County, Judge James Kolts and former Secretary of State Warren Christopher. Judge Kolts, who passed away in December 2001, gave his name and his leadership to the Kolts Commission, which issued a landmark report on LASD in 1992. That report continues to influence LASD to this day and serves as a prominent example of how meaningful independent oversight can make a difference. In meeting with OIR, Judge Kolts candidly shared his own experiences and strategies for identifying issues and implementing reforms. Mr. Christopher's reputation for integrity and his long history of prominent public service gave immediate credibility to the independent group that evaluated LAPD in the wake of the Rodney King incident in 1991. Currently in private practice, he met with OIR's attorneys in October 2001 to pass along some of the key lessons from his own reform efforts.

## IV. OIR's Sharing of its Oversight Model

Throughout its own short history, OIR has received inquiries from other law enforcement agencies seeking to learn of our mission, operating plan, challenges, and initial achievements. For example, the newly-appointed police monitor for the Austin Police Department came to Los Angeles to learn about the OIR oversight model. In addition, governmental representatives from Turkey have visited Los Angeles to learn of police oversight in the United States. It is the goal of these meetings that some of the precepts and principles that guide OIR can be incorporated into an oversight model for the Turkish police.

In addition, OIR has been requested to present an overview of its oversight model at the upcoming annual conference of the National Association for Civilian Oversight in Law Enforcement (“NACOLE”). NACOLE is the leading national organization for civilian oversight and draws oversight groups throughout the country to its annual conference. OIR’s model of oversight is unique in comparison to those implemented for other law enforcement agencies. The presentation by OIR will allow discussion of OIR’s organizational structure and early accomplishments, and will give other agencies an opportunity to evaluate OIR’s approach for applicability to their own jurisdictions.

In August 2002, OIR gave a presentation describing its model to the Hispanic American Police Command Officers’ Association. The presentation gave an overview of the different oversight models and how they compare and contrast to OIR. Commanding officers, chiefs, deputy chiefs and architects of oversight from around the country attended the presentation and expressed interest in how OIR works, what challenges it faces and what it expects to accomplish in the future.

The interest in OIR from leaders of the national civilian oversight association and leading police officials is clear indication that OIR has already been identified as a progressive model of police oversight. That indication is further confirmed by recently published literature concerning the relationship between the police and the community. In *When Cultures Clash*, a book dealing with the “divisive nature of police-community relations and suggestions for improvement,” author Daniel P. Carlson describes OIR as “breaking new ground in the management of civilian complaints.” Carlson finds the “forward-looking approach” of creating a team of attorneys and then empowering OIR to review and make recommendations regarding internal investigations to be the most far-reaching of all civilian oversight models in the country.

OIR also has made numerous presentations and explained our oversight model to various groups in the Los Angeles area, including community-based organizations, leading law firms, and local governmental leaders. The purpose of such presentations is twofold: to begin to explain how OIR has and will add thoroughness and objectivity to misconduct investigations conducted by LASD, and to build a bridge and initiate a dialogue with the Los Angeles community so that OIR can hear directly about concerns arising from LASD's interactions with the public it serves.

# APPENDIX A Attorney Profiles

## Michael J. Gennaco

Michael Gennaco came to OIR from the Office of the United States Attorney, where he served as Chief of the Civil Rights Section. In that position, Mr. Gennaco was responsible for overseeing all police misconduct, hate crimes, and involuntary servitude investigations and prosecutions for the Central District of California. He also served as the federal civil rights liaison for community and public interest groups and federal and local law enforcement agencies.

Prosecutions and investigations that Mr. Gennaco has been involved in included the prosecution of Buford Furrow, Jr., for his racially motivated killing of a postal carrier and anti-Semitic shootings of four children and one adult at the North Valley Jewish Community Center, the Thai El Monte garment slaveshop case, the UC Irvine and Cal State Los Angeles Internet hate e-mail prosecutions, and the prosecution of an INS detention enforcement officer for using excessive force. The Furrow prosecution was the first federal prosecution involving dual allegations of hate motivation and domestic terrorism. The UCI prosecution was the first federal prosecution of a hate crime perpetrated over the Internet. As Chief of the Civil Rights Section, Mr. Gennaco also oversaw prosecutions of officers from the Los Angeles County Sheriff's Department, the Los Angeles Police Department, and the Adelanto Police Department.

Prior to working at the U.S. Attorney's Office, Mr. Gennaco served for ten years as a trial attorney with the Civil Rights Division in Washington, D.C. While there, Mr. Gennaco successfully prosecuted an LAPD officer for using excessive force and making a false arrest and was involved in prosecuting numerous other hate crimes and police misconduct cases.

Mr. Gennaco also served for two years in the Voting Section of the Division where he litigated voting discrimination cases. Mr. Gennaco is a graduate of Dartmouth College and received his Doctorate of Jurisprudence from Stanford Law School. He has also taught as an adjunct professor at American University Law School, George Washington University School of Law, Loyola Law School, and Chapman College of Law.

Mr. Gennaco is the eldest of five children born to Mr. Armand Gennaco and Ms. Marie Padilla. Prior to becoming an attorney, Mr. Gennaco taught elementary and high school in Arizona public schools. Largely as a result of his multi-ethnic upbringing and the encouragement of his family and his mentor, the Hon. Thomas Tang, for whom Mr. Gennaco served as a law clerk, Mr. Gennaco has dedicated his entire legal career to the protection of civil rights.

## **Benjamin Jones, Jr.**

Ben Jones is the Deputy Chief Attorney for OIR primarily responsible for matters related to internal criminal investigations. Prior to joining OIR, Ben Jones served as an Assistant United States Attorney in the Major Crimes Section of the United States Attorney's Office for the Central District of California in Los Angeles, California. As a federal prosecutor for more than 10 years, Ben Jones was responsible for investigating and prosecuting complex crimes including bank fraud, civil rights violations, computer, financial and sex-related crimes, government fraud, insurance fraud, police misconduct and securities fraud as well as domestic and international terrorist and violent crimes. He conducted numerous jury trials in federal district court and extensive grand jury investigations and argued cases frequently before the United States Court of Appeals for the Ninth Circuit.

Before serving as a federal prosecutor, Ben Jones was in private practice with the law firm of Mintz, Levin, Cohen, Ferris, Glovsky & Popeo, P.C. ("Mintz Levin") for several years. At Mintz Levin, Ben Jones was a litigator, practicing primarily in the firm's Boston, Massachusetts, offices. He represented clients at various stages of state and federal civil and criminal matters, and he conducted jury trials in both state and federal courts.

During his last year of law school, Ben Jones served as a part-time public defender in Boston, Massachusetts and represented criminal defendants in several bench trials. Ben Jones was graduated from the University of Virginia in Charlottesville, Virginia, and from Boston University School of Law.

## Robert Miller

Rob Miller is the Deputy Chief Attorney at OIR primarily responsible for matters related to internal affairs investigations. He came to the OIR from a fifteen-year career in the Los Angeles County District Attorney's Office. His assignments there included central felony trials, juvenile crimes, environmental crimes, OSHA death cases and administration. He prosecuted 70 jury trials for crimes ranging from murder and kidnaping to toxic dumping and corporate fraud. He has taught evidence, environmental crimes prosecution, and case investigation techniques at seminars and symposia sponsored by the California District Attorneys Association, the Los Angeles County Bar, the California Hazardous Materials Investigators Association, OSHA, the AFL-CIO and the Western States Project.

He has testified before numerous legislative committees in Sacramento on behalf of proposed law enforcement legislation. Rob attended law school at UCLA and received his undergraduate degree from Stanford University. He was a research fellow of the University of California Institute on Global Conflict and Cooperation and received a MacArthur Foundation grant in Rome for research on terrorism.

## Ray Jurado

Ray Jurado began his career with the Los Angeles County District Attorney's Office. As a deputy district attorney, he was assigned to the Central Trial Unit where he prosecuted violent felonies, tried many cases resulting in guilty verdicts and was promoted to Assistant Deputy-In-Charge of the West Covina office.

After more than five years as a Deputy District Attorney, Mr. Jurado joined the Glendale law firm of O'Flaherty & Belgum, where his practice consisted of complex medical malpractice litigation.

Prior to joining OIR, Mr. Jurado was an Assistant United States Attorney in the United States Attorney's Office for the Central District of California in Los Angeles for over six years. Assigned to the Major Crimes Section, he targeted gang-related violent crime. As a trial prosecutor, he earned numerous guilty jury verdicts, including a four-defendant Hobbs Act conspiracy conviction involving Bloods and Crips gang members. He also prosecuted several first of their kind cases in the Central District of California, including a twenty-six-defendant RICO prosecution of the 18th Street and Mexican Mafia gangs, the



first conviction for violation of federal interstate stalking laws, and one of the first serious violent felony three-strikes convictions. Mr. Jurado also authored over twenty-five appeal briefs and successfully argued many of these cases before the Ninth Circuit Court of Appeals.

Ray Jurado is a native of East Los Angeles. He was the first in his family to attend college and graduated from Yale University. He attended UCLA School of Law, where he served as an extern to United States District Judge Terry J. Hatter, Jr. and the associate editor of the *Latino Law Review*.

## **Ilana B.R. Rosenzweig**

Ilana Rosenzweig joined OIR after practicing law at Munger, Tolles & Olson LLP. Ms. Rosenzweig's private practice focused on civil litigation involving a variety of areas of law, including privacy, First Amendment, False Claims Act, antitrust and general commercial law, and also included internal client-initiated and government-initiated investigations. During the 1998-1999 academic year Ms. Rosenzweig took a leave of absence from private practice to teach a course in basic skills for lawyers at the University of California, Los Angeles School of Law.

While at Munger, Tolles & Olson LLP, Ms. Rosenzweig also served, pro bono, on the staff of Merrick J. Bobb, Special Counsel to the County of Los Angeles. As a staff member, she contributed to semiannual reports regarding the Los Angeles County Sheriff's Department. Her contributions focused on the implementation of recommendations made by the Kolts Commission and Gender Equity Committee; the investigation, resolution, and/or litigation of gender discrimination, sexual harassment, and use of force complaints; and departmental programs to promote gender equity.

Ms. Rosenzweig received her B.A. degree, with honors, from the College of William and Mary in Williamsburg, Virginia, where she was elected to Phi Beta Kappa. She received her J.D. degree, magna cum laude, from the University of Michigan Law School in Ann Arbor, Michigan, where she was elected to the Order of the Coif. After graduation from law school, she served as a law clerk to the Hon. John G. Davies of the United States District Court for the Central District of California.

## Stephen J. Connolly

Steve Connolly joined OIR after beginning his legal career in private practice. He specialized in white collar criminal defense as an associate at the Los Angeles offices of Kirkland & Ellis, and represented clients at various stages of federal criminal investigations. While still at Kirkland & Ellis, Mr. Connolly's pro bono work included serving as counsel to the Rampart Independent Review Panel. That group produced a report in November of 2000 that assessed the Los Angeles Police Department's Rampart scandal and proposed a number of reforms.

Mr. Connolly also worked as a volunteer prosecutor for Redondo Beach, California, as part of that city's "Trial Advocacy Prosecution Program." Mr. Connolly graduated from Holy Cross College in Worcester, Massachusetts, and has a Master's Degree in Literature from the University of California, Irvine. After several years as a writing teacher at the high school and community college levels, he attended Loyola Law School in Los Angeles, where he graduated cum laude in 2000.