

Office of Independent Review *Third* Annual Report



Michael J. Gennaco
Chief Attorney

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

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

Angie Calderon
Patricia Umana
Chanelle Moore
Professional Staff

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

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Foreword

by Michael J. Gennaco

Chief Attorney, Office of Independent Review

The Office of Independent Review recently completed its first three-year term as the civilian oversight entity for the Los Angeles County Sheriff's Department. The Board of Supervisors has recently renewed its commitment to OIR for three more years, and to the goals of accountability and reform that we have been pursuing since 2001. We are gratified by the trust placed in OIR by the Board. We also look forward to building on the experience and insights we have gained in three years' time as professional monitors of one of the nation's largest law enforcement agencies.

Our task seems especially important when a controversy focuses public attention on LASD, such as the public scrutiny that resulted from the series of inmate-on-inmate murders that occurred in the County jails. When law enforcement actions are questioned in a high-profile context, be it a controversial shooting, an alleged use of excessive force, or a failure to control and protect inmates in the jail system, the public concern and frustration eventually take the form of a familiar question: Why is this *still* happening?

As I have dissected these types of incidents over the past 18 years – the last three with OIR – I have come to recognize that lapses in fair and effective law enforcement arise from three very different sources: (1) defective training or policy; (2) negligence or incompetence on the part of well-intentioned officers; and (3) actual malevolence – the purposeful violation of Department policy and individual rights.

Training or policy deficiencies can certainly compromise the effectiveness of deputies' efforts in the field. Deputies are often confronted with challenging or unexpected situations that, in the absence of set policy or specific preparation, leave them feeling compelled to improvise. In Part Three of this Report, for example, we discuss an incident that experts inside and outside LASD described as unprecedented: the accidental drowning of a suspect who assaulted two deputies and then engaged LASD in a lengthy standoff after fleeing to the nearby San

Gabriel River. The logistic challenge of arresting an armed and resistant swimmer provoked a number of creative attempts at a solution – none of which were successful in the end, and several of which proved to be highly questionable.

When the results of any incident are less than ideal, LASD executives (and OIR) must determine how much blame is fairly attributed to the involved personnel, or whether the fault – and the burden of proper remediation – properly lies with the Department itself. Sometimes, the resolution involves a combination of the two. As described in this Report and its predecessors, OIR looks at each incident and investigation as a forum for addressing misconduct, promoting or refining LASD training, and evaluating possible reforms or additions to LASD policy.

Negligence or incompetence may also lead to inappropriate – or, more precisely, deficient – conduct, even where there is appropriate policy and training. The shootings and significant force cases that OIR reviews are sometimes a forum for observing this type of lapse. In assessing the investigative files, OIR might see instances in which deputies deviated from sound tactics, training, or policy when using deadly force. While these shortcomings may be mitigated sometimes by the “heat of the moment,” LASD’s standards are necessarily exacting, and, when appropriate, discipline results. Part Three describes OIR’s monitoring efforts with the Executive Force Review Committee, and the results of a shooting case that fits this scenario. Such incidents can result in additional training, discipline, or both. A deputy’s failure to respond to corrective action or additional training may require that the Department discharge him or her. The stakes are simply too high for LASD to knowingly place a deputy that cannot or will not respond positively to remedial action in a situation that compromises officer or public safety.

Finally, and most disturbing, a number of misconduct cases are the result of intentional and conscious wrongdoing on the part of the deputies involved. OIR has seen this in several cases this year involving inappropriate sexual conduct. Especially egregious are the instances in which deputies have used their position, and the threat of arrest, to coerce their victims into sexual acts. (See Part Two.) Even in less extreme cases, though, the abuse of authority or the willingness to flout LASD standards for selfish reasons merits a strong response. When the offense is serious, or a deputy’s record of repeated problems becomes extensive, LASD must be firm about seeking discharge, and OIR has endeavored to hold LASD to this exacting standard.

Unfortunately, although LASD and we can identify the causes of lapses in conduct, neither LASD nor we can prevent the lapses altogether. With more than 7,000

deputies, LASD cannot avoid hiring an occasional incompetent individual or person with a “bad” heart. Screening of new hires should be vigorous, but as anyone with knowledge of life in a large organization can attest, it is impossible to have a perfect hiring system that weeds out all undesirable candidates. In addition, a person may change over time, starting as a conscientious deputy, but later becoming problematic. This means that inappropriate conduct will never be completely eradicated. Instead, LASD can hope only to reduce significantly its frequency, and OIR welcomes its continuing opportunities to contribute to that process.

To reduce the frequency of inappropriate conduct due to deputy behavior, LASD must first identify which of the three causes was involved in the incident. The appropriate response to each of these causes is very different. OIR dedicates considerable energy to helping LASD assess not only what, if anything, has gone wrong, but also what the most constructive and productive means of addressing its problems might be. Where there is incompetence or malevolence, LASD must identify and address it when it first becomes apparent. OIR’s goal is to help LASD do that by ensuring that allegations of misconduct are thoroughly investigated and when proven result in appropriate discipline, including discharge. Moreover, LASD’s training and policy can continually be adapted and improved and OIR continues to play a leading role in that reevaluation process.

This Report details OIR’s efforts to identify and remediate these three causes of inappropriate conduct by law enforcement. Ideally, the accounts that follow will also enhance the public’s understanding of these issues. As discussed in Part One, for example, the investigation of the recent series of deaths in the County jails, revealed that the deaths resulted from failures of policy and training as well as negligence and perhaps incompetence, but not malevolence. The Report describes the efforts undertaken by OIR to ensure LASD addresses these issues and the preliminary steps LASD has already taken to do so.

OIR continues to urge LASD to improve its practices when the policies and procedures in place do not provide sufficient controls and guidance to its employees. The jail cases offer a useful example of this phenomenon. Policies that may have worked when the jail was first constructed became outdated and ineffectual when the number and type of inmates housed in the jails changed significantly. That is why, in our view, LASD must retain the ability to adapt, quickly when necessary, to new challenges presented to the organization. As discussed in Part Five, the Department must not allow bureaucracy and inefficiency to impede that ability to change.

Parts Two and Three discuss trends in conduct and the quality of LASD review of conduct, both of which are important to identifying individual deputies who may not be fit to remain employed by LASD and policies and training that need revision. Part Four discusses the imposition of discipline, which is a crucial step to either correct the behavior of deputies who LASD believes can be retrained or remove those who cannot. Part Five describes policy and training initiatives to address deficiencies in both of those important areas.

LASD has progressed in its efforts to reduce misconduct over the course of OIR's tenure. However, more can and should still be done. As discussed in Parts Four and Five, there are impediments to improving policy and imposing discipline that limit LASD's ability to correct deputy behavior and prevent future incidents of inappropriate conduct. Some of these impediments are external, yet have a direct influence on the ability of LASD to respond effectively to misconduct. Some of these are internal and reflect a need to change LASD culture, even at the managerial level. While some of these areas may seem intractable, OIR hopes that this Report will encourage discussion that may begin the process of improvement and reform.

With regard to promoting transparency, we would like to remind the public that every three months we post on our web-site (www.laoir.com) a case disciplinary report that tracks our assessment of every internal misconduct or force investigation that we have reviewed during the quarter. In that report, we provide a synopsis of the misconduct allegations or use of force, our evaluation of the quality of the investigation and the appropriateness of any disciplinary charges, our recommendation regarding the disposition of the matter and, when founded, the level of discipline imposed, and the actual outcome of the case. On our website, readers can also find the electronic versions of this Third Annual Report, our full report on the jail inmate homicides, and our First and Second Annual Reports.

I began this discussion identifying three causes that may lead to inappropriate conduct in the Sheriff's Department. Before I close, however, I must remind the public that there are thousands of competent, hard-working, dedicated deputies and professional staff at LASD whose files never cross our desks because they are ably carrying out their duties to the public. Moreover, under our model, LASD itself retains the ultimate responsibility to hold its employees accountable. By doing so, it is actually reaffirming the reputations of the vast majority of deputies and professional staff who are serving the public honorably, and instilling confidence in the public regarding the men and women of LASD. It is for that reason that we see our monitoring and reporting functions as both meaningful and intrinsically rewarding. We look forward to the challenges of year four with renewed vigor and commitment.

PART ONE Focus on Custody

Inmate Murders in the County Jails: Investigations, Accountability, and Reform

On April 20, 2004, inmate Raul Tinajero was killed in his cell in Men's Central Jail by another inmate. The Tinajero killing attracted notoriety for two reasons: (1) it was the bold, elaborately premeditated killing of a witness allegedly by the murderer he had just testified against; and (2) it was the fifth inmate-on-inmate homicide in the downtown jail complex within a six month period.

With the killing of Tinajero, the five murders attracted a significant amount of public attention and concern, and rightfully so. While the killings had few shared characteristics other than their custody setting, they presented to OIR a challenge to ensure accountability should the facts uncover violations of policy and an opportunity to examine LASD systems to learn whether they made the killings more facile.

Shortly after Tinajero was killed, the Sheriff responded to the incidents by ordering full internal affairs investigations of all five killings to be completed on a priority basis, and the Los Angeles County Board of Supervisors requested a report from LASD on the five inmate deaths. Internal Affairs Bureau ("IAB") investigators undertook these tasks. The Custody Division provided IAB with personnel and other support in order to meet these goals.

While these investigations were pending, the Sheriff also opened his jails to the media so that it could view first-hand the current jail environment. This approach reflected the Sheriff's stated intention to confront the jail system's internal deficiencies directly and aggressively. In the months that have followed, LASD has shown a commitment to both accountability and reform in conducting the various reviews into these incidents, and OIR has actively participated every step of the way.

Each incident had, of course, prompted its own murder investigation with the goal of identifying and prosecuting the culpable inmates – and determining whether collusion or any malicious intent by LASD deputies played a role in any of the crimes. No evidence ever emerged that implicated LASD personnel in any sort of intentional wrongdoing related to the crimes.

As each of the internal affairs investigations got underway, an OIR attorney sat down with the IAB investigators to help map out the investigative plan. During the course of the fast moving investigations, OIR received regular debriefings on their progress and continued to provide input. As the investigations neared completion, OIR requested that additional areas of inquiry be pursued. Once the investigations were completed, OIR met with the Custody Chiefs and offered recommendations regarding the identification of subject employees, the disposition of each allegation, and when founded, the level of discipline to be imposed. Ultimately, Department executives recognized a very broad range of policy violations and handed down discipline to more than 25 LASD employees.

In an effort to provide some initial detail about the varied circumstances of the five deaths, and to summarize the outcome of the resulting investigations, what follows is a capsule discussion of each case. Readers of this report who seek a more extensive discussion of these issues should visit OIR's web site (www.laoir.com), where OIR has posted a separate report that offers a more comprehensive discussion of these cases and the resulting review.

The Hong Murder

Inmate Ki Hong was stabbed, beaten, and strangled to death on October 21, 2003, approximately 1 1/2 hours after being newly assigned to housing at Men's Central Jail. At the time, he and 57 other inmates were all inside a large "dayroom" that served as a makeshift dormitory and was filled with rows of bunk beds. Hong's alleged killers were "module inmate workers" – inmates who perform various jobs within the module such as meal distribution, laundry exchange, and janitorial services. These workers, who were allegedly rival gang members of inmate Hong's, learned of his arrival at the jail, managed to gain access to the locked dayroom through an unsecured control panel, and assaulted him without detection by LASD personnel. Hong's body was not discovered for hours.

The subsequent investigation revealed a number of policy violations by LASD personnel in the areas of choice and supervision over inmate workers, performance of required safety checks, and an inadequate "count" that contributed to the delay

in discovering the crime. Several deputies, sergeants, and custody assistants received discipline as a result.

The investigation also revealed several systemic issues that warranted further attention and prompted recommendations by OIR. Especially important are refinements to the method of selection and supervision of inmate workers, whose relative mobility carries with it an obvious potential for abuse.

The Prendergast Murder

Inmate Prendergast was beaten by two of his three cellmates periodically over several hours from about 6:00 p.m. on December 6, 2003 to early the next morning. These men had been drinking pruno – a contraband alcoholic beverage produced by inmates from the remnants of their food and drink – before they attacked. They had also shown irritation when Prendergast exhibited strange behavior and talked to himself, and this was the apparent motive for the killing. When Prendergast cried out in response to the attacks, other inmates on the row started yelling to cover the sound. Prendergast was discovered by a day shift Deputy at 7:50 a.m. and taken to the hospital where he died the following day of his injuries.

The subsequent investigation revealed that the deputy who conducted the nightly wristband check in the relevant cell had been inadequately observant as to the presence of pruno and the injuries that inmate Prendergast had already sustained. That deputy received discipline as a result.

Among the systemic issues to emerge in this case was the need for enhanced standards and protocols for the regular searching of cells, as well as stricter policies for the preservation of crime scenes. Inmate Prendergast’s mental health status has also prompted a re-visiting of protocols between LASD and the County Department of Mental Health.

The Alvarado Murder

On December 9, 2003, inmate Mario Alvarado was murdered in a holding cell at Custody Line Inmate Reception Center (“IRC”).¹ He had previously been housed at the Men’s Central Jail and was awaiting transfer to the Pitchess Detention Center (“PDC”). A short time after he arrived at the IRC Custody Line holding cell, which contained about 40 inmates, he was attacked by one or more other inmates, who punched and kicked him until he lost consciousness and continued

1. This was the only murder case of the five not to have occurred at Men’s Central Jail.

to beat him afterward. Inmates noticed he appeared to stop breathing. Some time after he stopped breathing, two deputies assigned to the Transportation Services Bureau (“TSB”) entered the cell to remove the inmates whose names were written on a list and were destined to be transported to the PDC. Those two TSB deputies failed to see Alvarado’s dead body because it was partially concealed under clothes and trash behind a three-foot privacy wall in a toilet area. Apparently, they called out his name from the list, but when Alvarado did not respond, they assumed he had never been placed in the cell. Approximately seven hours after his assault, an inmate worker cleaning the cell discovered his body and notified IRC deputies.

The subsequent investigation revealed that one deputy had violated policy by misrepresenting the nature of the search of the holding cell that she said she conducted. That deputy will receive discipline as a result.

In terms of systemic issues, the investigation revealed that the requirement of hourly safety checks needed to become more formalized at IRC. OIR also recommended that limits on the number of inmates in holding cells, and improvements in the tracking and counting of inmates, be adopted at this facility – the “way station” for a massive amount of inmate movement throughout the jail system.

The Faye Murder

On January 12, 2004, inmate Kristopher Faye was stabbed to death by several inmates with jail-made knives after he lowered himself from the upper tier balcony to the lower tier of his module and attempted to use the phone. Faye was black; the alleged attackers were Hispanic. Fighting ensued between the two racial groups immediately following the killing and involved about 30 inmates on the two tiers.

The subsequent investigation revealed that one deputy had violated policy by allowing all the cell doors within the module to remain open, which increased the danger of violence. Additionally, a lieutenant received discipline for failing to ensure that the force used by responding deputies was reported and documented.

The physical structure of the module played a role in this event, and OIR recommended that LASD execute its long-considered plan to install a wire screen between the upper and lower tiers of the module. Furthermore, the investigation revealed that inmates of various security levels had been mixed together improperly. OIR therefore recommended a refinement of policy that clarifies standards for assigning inmate security levels and housing and holds personnel responsible for upholding them.

The Tinajero Murder

On April 20, 2004, inmate Raul Tinajero was killed in his cell, allegedly by another inmate against whom Tinajero had testified in a murder trial. Inmate Tinajero was a designated “keep away” who was entitled to special protection because of the obvious danger posed by his agreement to be a witness. Nonetheless, the inmate who killed him was able to roam the jail freely for hours in order to get to Tinajero’s floor, gain access to his cell, murder him with his bare hands while five other inmates stood by, and return to his own cell without attracting more than the casual notice of any jail staff.

The subsequent investigation revealed that the inmate who committed the murder had previously attempted an escape, and should have been classified in a more restrictive way than he actually was. Two deputies and a sergeant were found to have violated policy in this regard, and received discipline.

The investigation also revealed lapses in the monitoring of Tinajero’s killer as he made his way from his own cell to a court line and then to Tinajero’s floor and specific cell. He should have been checked and “caught” at various points along the way, and was not. A deputy and a custody assistant were found to have violated policy in this regard, and received discipline.

Additionally, the investigation revealed that deputies and custody assistants failed to follow policy in the monitoring of inmate Tinajero’s cell during the five hours that the inmate murderer remained there. A custody assistant, three deputies, and a sergeant were found to have violated policy in this regard, and received discipline.

Finally, the investigation revealed lapses in monitoring that allowed inmate Tinajero’s killer to return to his cell without facing significant scrutiny or discipline, even when a deputy realized he was (at the very least) in an unauthorized portion of the jail. That deputy was found to have violated policy, and received discipline.

As with the other incidents, the investigation also revealed several systemic issues that warranted further attention and prompted recommendations by OIR. Certainly, the improvement of inmate classification procedures, the protection of witness inmates, and the heightening of monitoring protocols for inmate movement are prominent among these. The process of assessing, approving, and implementing the relevant reforms is ongoing.

OIR's Findings and Conclusions: An Overview

OIR's review of the LASD investigations found each of them to be thorough and timely. Each investigative team met its initial deadline and did, and continues to do, supplementary investigative work requested by OIR.² The supplementary investigation requested by OIR revealed important new facts and identified additional systemic issues in each of the five cases. As an example of the depth and thoroughness of the investigations, the Tinajero investigation comprises three volumes and resulted in the interviewing of over 65 witnesses.

With regard to accountability, the discipline handed down in the jail murders has been unprecedented in its breadth, size, and scope. The more than 25 LASD employees who have been disciplined as a result of actions or failures to fulfill their work responsibilities include deputies, sergeants, lieutenants, and custody assistants.

While the LASD investigations revealed significant lapses and failures to follow policy by personnel, the investigations revealed no evidence whatsoever of malicious intent or collusion by LASD employees in the homicides. It should also be noted that the investigations revealed specific acts of exemplary professionalism and diligence by various LASD employees that merit commendation.

In addition to the focus on discipline and accountability, LASD must devise corrective actions to address deficiencies in training, policies, practices, and systems. In short, an entire reevaluation of the way the jails have been managed should ensue.

OIR is heartened to report that LASD has not waited until the issuance of this, or any other, report to begin that evaluation. Some facility-related corrections that were obvious, concrete, and inexpensive were immediately undertaken, such as the attachment of safety latches to the module gate control panel doors, which were circumvented in the Hong killing. Some more costly measures have not yet been implemented, such as the installation of a wire mesh protective screen between the upper and lower tiers of Module 4900, the scene of the Faye killing.

In addition, as a result of some monies being provided to LASD by the Board of Supervisors, a Title 15 Compliance Officer Program has been initiated. This program ensures that deputies are dedicated to conducting safety checks in the housing areas, a shortcoming repeatedly demonstrated in the inmate murder investigations. The dedication of personnel to this effort has already borne fruit – several

2. While the vast majority of the investigations are completed, there remains some investigative work to be done in the Tinajero murder.

assaults and attempted inmate suicides have been discovered by this coterie of deputies.³

Other reforms have been developed by LASD in response to the inmate murders. The use of the day rooms for housing has been abolished, but there remains the need to ensure that this is a permanent condition. A matrix has been devised so that each cell is regularly searched, but controls need to be in place to ensure compliance with the matrix.

Changes in policies, practices, or procedures that do not present as easy a “fix” were assigned to a task force headed by a Commander of the Correctional Services Division. The task force, known as IMPACT, has focused on improving the tracking, classification, and identification of inmates. As a result of the initial work of the task force, the use of inmate wristband hand scanners has been greatly expanded in Central Jail, an increase from one station to eight stations. The color-coding system for inmate uniforms is being simplified and made consistent among the jails. Jail authorities are also working on the development of an identification badge to supplement the wristbands and make inmate identification and tracking more facile. As this Report went to press, IMPACT task force members were testing in Men’s Central Jail a new handheld scanning device that is programmed to record and time stamp hourly safety checks.

OIR is a regular participant in the IMPACT meetings. As a result of OIR input, the task force has begun to devise meaningful criteria for the selection of all inmate workers. OIR has also made a number of other specific recommendations for changes in policy, procedure, and training, as a direct outgrowth of the deficiencies revealed by the investigations. Here are a few examples:

- LASD should revise its inmate classification system to distinguish between “keepaways” who are alleged crime partners and “keepaways” who are witnesses testifying against defendants.
- LASD should rigorously enforce the inmate discipline system against inmates caught roaming in expressly restricted areas.
- LASD should clarify its policies requiring supervisors to ensure preservation of crime scenes in custody settings.
- LASD should formalize and make permanent the two recent pronouncements that clarify that the hourly safety check requirement

3. OIR has recommended and LASD has agreed to compile and report events that have been discovered as a result of the deployment of these Title 15 Compliance Officers.

applies to IRC and that limit the number of inmates that may be held in IRC Custody Line cells.

- LASD should implement a documentation procedure when the inmate housing office issues instructions to rectify improper security level mixing.

OIR will continue to follow and report on the degree to which OIR's recommendations have been accepted.

Without question, a contributing factor in these inmate homicides is the fact that the typical inmate currently housed in Central Jail has a different resume than those housed there when the jail was first designed. However, while this fact is a partial explanation for the murders, it does not present a complete justification. Because the inmates currently housed in the jails are more violent, there are more severe consequences to fellow inmates and staff when those inmates are not appropriately monitored. Because the inmate population has changed in background and type, the ways in which inmates are moved inside and outside the jails must be adapted in recognition of these changes. The investigations have revealed that appropriate modifications in practices have not kept pace with the increasing challenges in maintaining the safety of persons working or housed in the county jails.

Decreased staffing has also likely played a role in the rise in violence in the jails. But again, while supplying a partial explanation, it is incumbent upon LASD to search for sufficient resources to respond to the greater needs placed upon it. By making its plight public, LASD is taking a significant step toward doing its utmost to secure the resources necessary to perform its mission. However, even with the current resource staffing, the investigations have revealed that LASD personnel could have performed better, both at the individual level and systems level.

Ultimately, the homicides of each of the five inmates in these cases were at the hands of other inmates. Nonetheless, LASD has the responsibility to do its utmost to keep inmates safe while in its custody. The need to recognize this responsibility has been aided by the media and the Board of Supervisors bringing attention to these cases and evinced by the Sheriff's outward and progressive response to the media reports. OIR believes that there is an inherent benefit to the mere fact that the spotlight has been aimed at the jails as a result of these tragic episodes. Perhaps that dynamic alone and resulting increased diligence by jail personnel may partially account for the fact that since April, there has not been a homicide in the jails.

In its oversight role, OIR hopes to ensure continued transparency as LASD proceeds to move forward to address these issues. It is only by doing so that the people of this County can be informed whether LASD continues to respond appropriately. As mentioned above, OIR has prepared a full report under separate cover on these five incidents and the issues, findings, and recommendations that emerged from them. A copy of that report is available to all interested parties on the OIR web site, www.laoir.com. OIR will provide updates as reform efforts continue to evolve.

Step Up of Custody Review

OIR Presence in the Jails

While OIR had previously been tracking and reviewing inmate deaths as they came up for review by the Custody Divisions or if they triggered an IAB review, immediately after the murder of Raul Tinajero, OIR accelerated its efforts to establish a more immediate source of feedback on all types of significant incidents from the vast jail system administered by LASD. OIR also decided to increase its knowledge base about the myriad details within the insular world of the jails. To advance this goal OIR requested office space within Men's Central Jail and leave to move unescorted within the complex. LASD immediately provided an office within the security area of the jail and a "No Escort" pass. In June 2004, Deputy Chief OIR Attorney Rob Miller moved in and began to spend approximately three days per week at the jail. This move afforded OIR immediate on-scene information on any new developments. It also provided immediate access to all crime scenes, locations, documentation and personnel in any of the three facilities – Men's Central Jail, Inmate Reception Center, and Twin Towers Correctional Facility – in the downtown complex. These facilities house approximately 60% of the inmates in the county custody system.

To date, OIR's "in house" presence in the jail has provided many oversight benefits:

- OIR has greatly increased its familiarity with jail layout, security and maintenance issues, inmate culture, and employee practices.
- OIR has interviewed jail line personnel and supervisors formally and informally at a moment's notice.

- OIR has observed implementation of new equipment and procedures in a real life setting.
- OIR has observed the important daily events of jail administration – inmate movement both within, and to and from, the facilities, daily body counts, and intake – that do not take place during business hours.
- OIR has availed itself of *in situ* training of custody employees.
- OIR has walked the modules of the jails routinely.

Increased IAB and OIR Review of Jail Incidents

As the Internal Affairs Bureau investigations of the custody homicides got underway, OIR had discussions with IAB about expanding its rollout criteria for inmate-on-inmate assaults since such events sometimes implicate employee negligence or system failure. This dialogue expanded on an earlier discussion concerning increasing IAB investigations of jail suicides. As a result of these discussions, IAB now rolls out to all inmate suicides, “natural-causes” deaths with questionable circumstances, inmate homicides and near homicides, and will participate more fully in the early stages of these investigations.

IAB has in turn reached agreement with the Homicide Bureau over sharing tasks and information at inmate homicide scenes. The agreement recognizes the different focus each unit has for its review of the death, with Homicide focused on whether a crime has occurred, and if so, who committed it, and IAB focused on how the crime was able to occur and whether LASD policies were violated or systems failed. Homicide and IAB have already put these principles in practice and are working on the development of a formal protocol memorializing them. OIR commends their efforts.

OIR believes that these developments will greatly improve the prospects for increased accountability after critical jail incidents. This improved feedback should also improve LASD’s ability to remedy security gaps and procedural shortcomings in the custody system.

Furthermore, IAB has agreed to notify OIR immediately of jail homicides, suicides, escapes, and major assaults. The on-duty OIR roll out attorney will have discretion to roll out to such incidents, and has already done so on several occasions. These incidents plus major inmate disturbances, inappropriate releases, and inmate deaths

with questionable circumstances will each be assigned for follow-up to the attorney on roll out duty at the time of the event. In addition, OIR now collects and reviews the Chief's memos and other documentation of these jail events, and has begun to participate in the formal "disturbance reviews" conducted by the Custody Division.

Access to Inmate's Medical Records

One area of continuing frustration for Internal Affairs Bureau investigators was highlighted in the investigation of the Prendergast killing in Men's Central Jail. Investigators were precluded from learning anything about the deceased inmate's mental health history except for the dates he had entered and exited state and county institutions. IAB even had difficulty getting general information from the county Department of Mental Health about their declassification policies for inmates. OIR concedes that the legal constraints presented by the medical privacy laws require all parties to proceed with caution in this area, but notes the significant incremental progress that IAB has made by working together with Medical Services Bureau and County Counsel to reach a workable accommodation. IAB investigators are now able to question Medical Services staff, about their actions in providing services and creating records, with a degree of specificity that is adequate for the purposes of most investigations. OIR applauds the efforts put forth by County Counsel, Medical Services Bureau, and Internal Affairs Bureau to make this process work, and hopes that a similar agreement can be reached with the Department of Mental Health. ⁴

Training for Custody

Responses to Inmate Complaints

This past year OIR has also continued its project to improve investigations of alleged deputy misconduct that are performed by the jail facilities. In its Second Annual Report, OIR discussed its concerns about the effectiveness of unit level inquiries into inmate allegations of inappropriate force in the County jails. It had monitored cases in which the LASD supervisor responding to the complaint had undermined the objectivity of the investigation. The problems ranged from interviewing conditions that chilled the candor of inmate witnesses to selective

4. While LASD has striven vigorously to address this issue, OIR believes a legislative remedy for this problem may be the best solution. At present, the privacy restrictions on medical records do not expressly provide an exception for purposes of investigating allegations of misconduct. Certainly, prudent public policy supports ready access by IAB to the medical records of a deceased inmate to learn whether any inappropriate conduct contributed to the death.

interpretation of the testimony when it came time to summarize the case and offer conclusions.

While OIR did not necessarily have reason to believe that the deficiencies were intentional or a sign of bad faith on the part of the responsible Custody personnel, it emphasized that the appearance of bias could be just as troublesome as actual bias on the part of investigators. A stark example came in the form of a lawsuit settled in 2002 and discussed in last year's OIR Annual Report. In OIR's view, fair and effective investigations of inmate force allegations have an importance that goes beyond potential civil liability. As difficult and dangerous as the inmates can be, they are also extremely vulnerable to abuses of power by the deputies who work the jails. Appropriate accountability requires the inmates to have meaningful recourse within the LASD system.

In discussing the issue with LASD executives, OIR repeatedly heard that one of the biggest sources of difficulty was the lack of investigative experience for many of the Custody supervisors entrusted with handling inquiries into inmate force allegations. As one step toward improving this reality, OIR devised a simple training bulletin for the Custody Division. It offers concrete reminders on how to prevent unintentional bias from compromising investigations. (See OIR's Second Annual Report, at pp 14-17.)

OIR has continued to monitor this issue in 2004. It often learns of inmate complaints – sometimes directly from the inmates themselves – and takes the opportunity to audit the facility's response. Moreover, OIR has had the opportunity to “spread the word” regarding its training bulletin. The Custody Training group has welcomed OIR's participation as a presenter in its mini-school for new supervisors. This block of time gives OIR a direct means of sharing its perspective and concerns with personnel who have been or will be on the front lines of addressing inmate allegations. LASD's openness to OIR's involvement as a trainer is another indication of a constructive working relationship between the entities.

Since the Second Annual Report, OIR has also worked with Custody Division officials to promote improved tracking of inmate complaints of deputy misconduct. One recent important innovation is the addition of an information field that allows the database to be searched by deputy name, so that a deputy who is the subject of numerous complaints can come to the attention of supervisors as a potential “red flag.”

Before OIR's interest in this area, the Custody Division's computer database was

not capturing this information, as it would have for a complaint made by a citizen against a patrol deputy. The executives explained that the choice was a conscious one that recognized the distinct character of the custody setting. At that time, the Department was unwilling to saddle deputies' official performance histories with inmate complaints because of the belief that the average encounters were more inherently adversarial and the average complaint more likely to be specious or retaliatory.

While OIR recognized the validity of these points, it still sought a means to avoid the opposite extreme – namely, a lack of accountability for deputies whose conduct could easily be tracked. The Department eventually agreed with OIR that it would record the complaint information and make it accessible on a database separate from the employee's permanent profile. This development is a forward-thinking means of bringing LASD's "early warning" technology capabilities to an important new area.

Training Regarding Inmate Discipline

OIR became aware of an inmate who alleged that she was disciplined – sent to an administrative segregation cell – as a result of a complaint she had made against a deputy. OIR reviewed the allegation and concluded that the evidence did not support the claim. Rather, it appeared that the inmate was sent to administrative segregation to protect her from other inmates who may have wished to harm her.

While reviewing the allegation, however, OIR learned that LASD employees were confused concerning whether they could send an inmate to administrative segregation merely because the inmate had made a complaint against a deputy. OIR knew of specific legal precedent holding that disciplining an inmate in retaliation for complaining against a deputy could support a viable claim of a civil rights violation. OIR brought this precedent to LASD's attention. Based on this, LASD implemented a watch briefing at the custodial facility to educate personnel regarding the precedent so that they would not impose inmate discipline on an improper basis in violation of an inmate's civil rights.

While inherent challenges remain, OIR has seen signs of progress in LASD's jail operations. OIR appreciates the Custody Divisions' openness to new ideas. The commitment of its executives to strengthening the force and misconduct review process should continue to yield positive results in the coming months.

PART TWO Trends in Reviewable Conduct

OIR reviews two types of deputy conduct primarily. First, OIR examines, through its review of Internal Affairs Bureau (“IAB”) and Internal Criminal Investigations Bureau (“ICIB”) cases, conduct that allegedly is criminal or violates LASD policies. Second, through its roll out protocol and review of Executive Force Review Committee (“EFRC”) cases, OIR examines uses of significant force, including shootings. Throughout the year OIR will notice that specific conduct appears to come up for review frequently. Below are a few trends OIR has observed in the past year.

Failures to Take Due Care of Intoxicated Persons

In the past year, OIR has monitored closely three administrative investigations involving LASD deputies who failed to act competently in either detecting that a person was under the influence of alcohol or drugs, or taking an intoxicated person into custody. OIR assisted LASD in critically examining the deputies’ failures to perform to LASD’s expected standards. Through its monitoring efforts, OIR ensured a higher level of consistency in LASD’s method of examining and determining the outcome for these similar cases. Specifically, OIR’s efforts resulted in the commencement of an administrative investigation, the assignment of investigations to the appropriate LASD unit, and more thorough investigations – which resulted in a fair determination of misconduct and an appropriate disposition.

Each of the three cases involved LASD deputies who, during their official duties, contacted alcohol or drug impaired persons and failed to perform to LASD standards. In two of the cases, the deputies failed to investigate adequately the level of intoxication of the person and the intoxicated or impaired person subsequently caused a traffic accident. In the third case, the deputies failed adequately to protect intoxicated persons. In two cases, deputies had received official information regarding possible or actual alcohol or drug use before their encounter with the alcohol or drug impaired persons. In the other case, during a traffic stop, the

deputy failed to detect the fact that a person was intoxicated. In each of these cases lives were lost.

LASD's initial reaction was to focus on the adequacy of the training the deputies received for these types of encounters. Upon closer scrutiny of the deputies' conduct, however, LASD concurred that the lapses related to expected conduct that was so basic that a lack of any specific training alone could not explain or justify the performance failures. Applying this standard to all three incidents resulted in LASD providing the same level of investigation to each of these incidents and a consistent examination and disposition of these cases.

In each of these cases, OIR was instrumental in ensuring that IAB conducted a thorough and complete administrative investigation of the involved deputies' performance. In one of the cases, OIR reviewed the allegations of misconduct, compared them with similar cases, and determined that IAB was the appropriate unit to investigate the alleged misconduct. OIR discussed this issue with LASD and recommended that IAB, not station personnel, investigate the matter. LASD concurred, and in short time, IAB completed its investigation before the fast-approaching one-year statute of limitations expired. In another case, OIR recommended and LASD executives concurred that an outside drug expert should be retained to opine on the physical indications someone under the influence of a particular drug would manifest and whether such physical indications would be obvious to an observer. The expert's conclusions and opinions clearly contradicted the deputy's version of events and corroborated the eyewitnesses' version.

The close scrutiny provided these cases resulted in a fair determination of misconduct and a consideration of discipline within an appropriate range. After discussions with OIR regarding ensuring consistency in LASD's determination and disposition of these cases, LASD held the involved deputies accountable for their failure to perform at the level expected by LASD. Based upon a reasoned review of the individual facts of each incident, OIR's recommended range of discipline included 15 to 30 days suspension and discharge.⁵ OIR will continue to follow these cases to monitor the discipline actually imposed after any grievance or appeal to the Civil Service Commission.

5. The three cases presented different challenges to LASD and OIR than the review of traditional officer misconduct. First, the deputies' conduct did not consist of any willful "bad" acts, but more closely resembled negligent behavior. Second, the cases presented the question whether the tragic consequences of the deputies' lapses should influence the level of discipline imposed, and if so, how much.

Sexual Improprieties / Inappropriate Physical Contact

As promised in OIR's Second Annual Report, at p. 49, over the past year OIR has been closely monitoring allegations of sexual misconduct by LASD employees. In August 2004, two LASD deputies were indicted for allegedly using their position to force women to engage in sexual conduct. One deputy is charged in federal court with deprivation of civil rights under color of law. It is alleged that the deputy forced two women to engage in vaginal intercourse, engaged in inappropriate sexual contact with a third woman, and forced a fourth woman to perform oral sex. The other deputy is charged in state court with unlawful sexual penetration with a foreign object, accomplished by threatening the use of the authority of a public official. It is alleged that this deputy sexually penetrated two women, including a female under the age of 18 years. This state case also charges the deputy with filing a false report. OIR will monitor these cases, as they proceed through the criminal justice system. Once the criminal cases have ended, OIR will become involved, as is its standard practice, in any administrative investigations that may follow. As a result of the filing of criminal charges, each of the deputies has been relieved of duty without pay.

Allegations of using the badge to intimidate members of the public to submit to sexual improprieties may not always result in criminal charges against the alleged perpetrator. Due to differences in the burden of proof between criminal and administrative cases, beyond a reasonable doubt versus preponderance of the evidence, respectively, some allegations may not result in an indictment. Nonetheless, such allegations should be and are pursued administratively by LASD. One such case is summarized below.

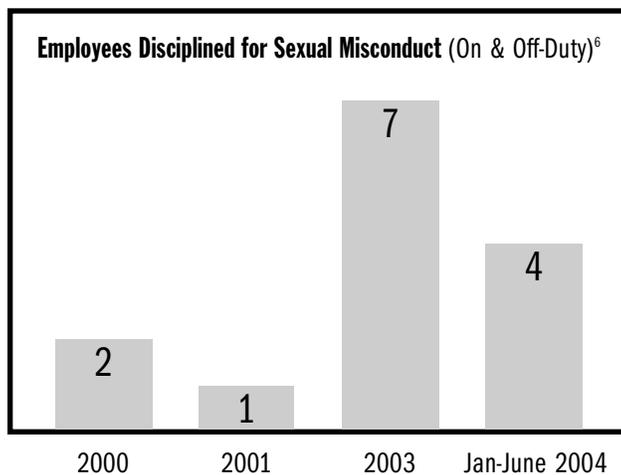
C A S E

An administrative investigation alleged that a deputy stopped a prostitute as she was walking down the street, asked her questions, and then let her proceed. He then caught up with her and forced her to perform oral sex under a threat that he would arrest her. An allegation by a member of the public regarding this incident came to the attention of a sergeant, who simply asked the deputy about it. The deputy denied the allegation and the sergeant did nothing further to investigate it.

Several months later, the same deputy allegedly stopped a different prostitute and had sex with her. He said he was going to pay her, but never did. A few days later, the woman was arrested and reported the incident. When the sergeant found out about this second incident, he then told his supervisor about the first incident, which he had neglected to fully investigate.

Both incidents were investigated for potential criminal charges, but the District Attorney declined to prosecute. The deputy and the sergeant were investigated administratively. OIR reviewed the investigations to ensure they were objective and complete, and participated in the review of the administrative charges. LASD concurred with OIR that the case against the deputy should be founded and that the deputy should be discharged. LASD concurred that the case against the sergeant should be founded and he should receive 30-days suspension.

Allegations that a deputy has abused his authority to engage in sexual conduct are some of the most troublesome cases LASD can face. Overall, LASD has demonstrated a commitment to treating these cases seriously and diligently investigating them. Indeed, LASD's ICIB and IAB deserve much praise for their investigations



in the two recent cases, noted in the first paragraph above, that resulted in the August 2004 indictments.

Over the past year since the Second Annual Report, however, OIR has noticed that LASD may not delve deep enough in investigating one-complainant allegations or cases where the deputy has no prior history of similar misconduct. This is more likely to occur

when the allegation is investigated by the deputy's unit rather than by IAB or ICIB. This failure to dig deep enough in first-time or one-complainant cases does not appear to be due to a cavalier attitude regarding these allegations. It is more reasonably explained by a natural reluctance to believe that a fellow Department member is capable of such odious misconduct, especially where at first blush there does not appear to be a pattern of misconduct.

Due to the seriousness of these cases, however, once the first sexual misconduct allegation is made against a deputy, even where there is only one complainant, LASD should launch a thorough investigation. As the above case (in italics) demonstrates, LASD supervisors should not merely ask the deputy about the complaint and do nothing else, but should investigate the case immediately to determine its veracity. These cases should not be investigated merely as Watch

6. These statistics, compiled from LASD's Quarterly Disciplinary Report, reflect discipline approved by LASD and may not reflect modifications due to subsequent grievances or appeals. LASD did not produce a Quarterly Disciplinary Report during most of 2002.

Commander's Service Comment Reports, which are informal supervisory inquiries, but rather as administrative cases, which are more formal and more thoroughly documented investigations.

The investigation should include attempts to corroborate the complaint, for example, by searching for forensic evidence, determining whether nearby business video cameras may have captured the incident or part of it, or by interviewing other individuals the deputy may have contacted, stopped, arrested or detained, to determine whether any of them may also have been victimized but did not report the misconduct. If the unit does not have the resources to perform such an investigation, the complaint should be referred to either ICIB or IAB, depending on the nature of the conduct alleged. When such referrals are made to IAB, IAB should accept the case as an IAB investigation, and not refer it back to the unit to investigate.

LASD cannot and should not wait for a second allegation to occur against a deputy before taking this proactive approach. This approach to the first-time or one-complainant allegations will require a moderate increase of investigative resources. Under the circumstances, however, the public deserves no less, and LASD personnel, the vast majority of whom obey the law and serve the public honorably, also deserve no less.

Off-Duty Conduct: Upswing in DUI Arrests of LASD Personnel

In the first six months of 2004, OIR detected an alarming increase in the number of off-duty employees arrested for driving under the influence of alcohol ("DUI").

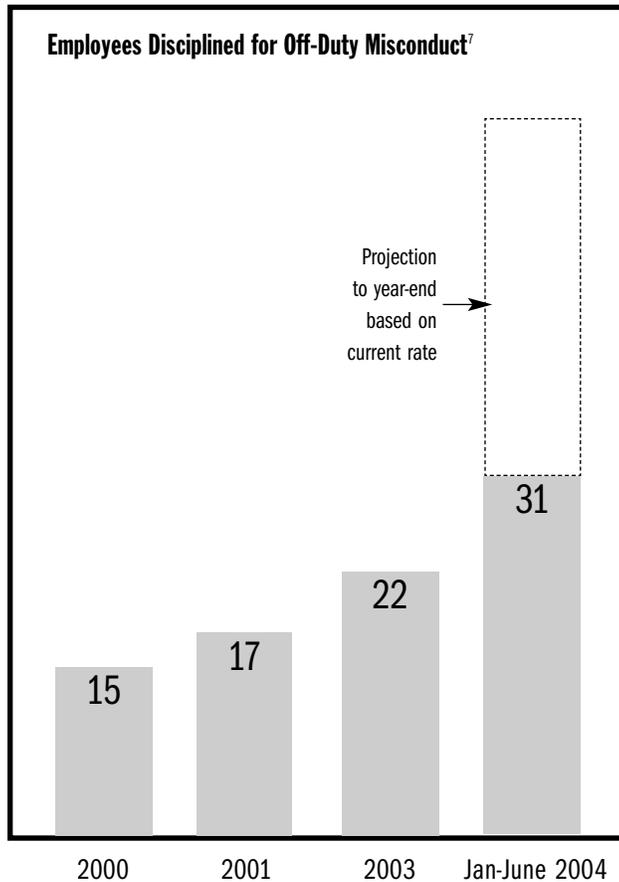
DUI Arrests (Jan 2002-June 2004)

2002	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
DUI	0	0	1	1	1	1	2	3	1	0	2	0	12
DUI w/collision	1	0	0	0	0	0	0	0	0	0	0	0	1
DUI w/other charges	0	0	0	0	0	0	0	1	0	0	0	0	1
Total DUI	1	0	1	1	1	1	2	4	1	0	2	0	14

2003	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
DUI	1	0	0	0	0	3	3	1	1	0	1	1	11
DUI w/collision	0	0	0	0	0	0	0	0	0	1	2	0	3
DUI w/other charges	1	0	0	0	0	0	0	0	0	0	0	0	1
Total DUI	2	0	0	0	0	3	3	1	1	1	3	1	15

2004	Jan	Feb	Mar	Apr	May	Jun	Total
DUI	1	1	0	1	1	4	8
DUI w/collision	1	1	0	1	1	2	6
DUI w/other charges	0	0	1	1	0	0	2
Total DUI	1	2	1	4	2	6	16

Specifically, in the years 1999 through 2003 there were between 10 and 15 DUI arrests per year. In just the first six months of 2004, there were 16 DUI arrests – more than double the rate of prior years. Of particular concern is the increase in felony DUI arrests, which generally mean that the driver caused an injury to another. After OIR brought this information to LASD’s attention, the Department began to identify and review the possible reasons for this trend and examined methods for reversing it.



In response to this trend and other patterns of misconduct – such as, off-duty incidents of road rage and fights – LASD has taken a pro-active education-oriented approach. The LASD Custody Training Unit has designed a course for its sworn personnel that reviews Department policy and procedures regarding appropriate off-duty conduct and the ramifications of misconduct.⁸ The course emphasizes LASD’s expectations regarding a deputy’s appropriate representation of the Department during his off-duty activities. A portion of the course also emphasizes the ramifications of this misconduct by reviewing recent discipline imposed on Department personnel.

7. See footnote 6 on page 18.

8. The targeting of Custody Division deputies for this training is appropriate because younger deputies are more likely to encounter these problems and Custody Division, because it is normally the first assignment for deputies, has most of the younger deputies. However, the Leadership and Training Division intends to issue a training bulletin cautioning all employees about the increase in these types of arrests.

The major components of this course attempt to focus attention on the high cost, to the individual LASD employees and the entire LASD, from an LASD employee engaging in irresponsible off-duty behavior. First, the six “Issues of Concern” describe how choices about off-duty conduct can affect Department personnel criminally, civilly, and administratively. They also explain the tactical, ethical, and community-relations implications of those choices. Second, the “Do the Right Thing” component emphasizes and extends the Department’s campaign by the same name, which is designed to help guide LASD employees away from making poor moral and ethical choices or engaging in questionable behavior. Third, the “Recent Discipline” component demonstrate that in 2002 and 2003 a significant number of Department employees were discharged because of off-duty conduct, and while not all those discharges were exclusively the result of off-duty alcohol-related conduct, alcohol-related conduct resulted in some discharges.

The course includes lectures and small group discussions. In addition, the course instructors use an “ethics workshop” setting that permits the attendees to engage in open dialogue with the instructors about off-duty conduct and to critique several “hypothetical” off-duty incidents and/or familiar incidents. LASD anticipates that the course participants will gain a better appreciation for the importance of exercising proper discretion while off-duty and learn how to employ the six “Issues of Concern” and the principles of “Do the Right Thing” when they make potential career ending decisions.⁹

In addition to providing training regarding the decision-making as it relates to off-duty conduct, LASD has continued to hold LASD personnel accountable for engaging in such off-duty offenses. In 2002, LASD issued letters of intent to discharge 38 Department personnel, and 13 of those intended discharges resulted from off-duty conduct. In 2003, LASD issued letters of intent to discharge 37 Department personnel, and 11 of those intended discharges resulted from off-duty conduct.¹⁰

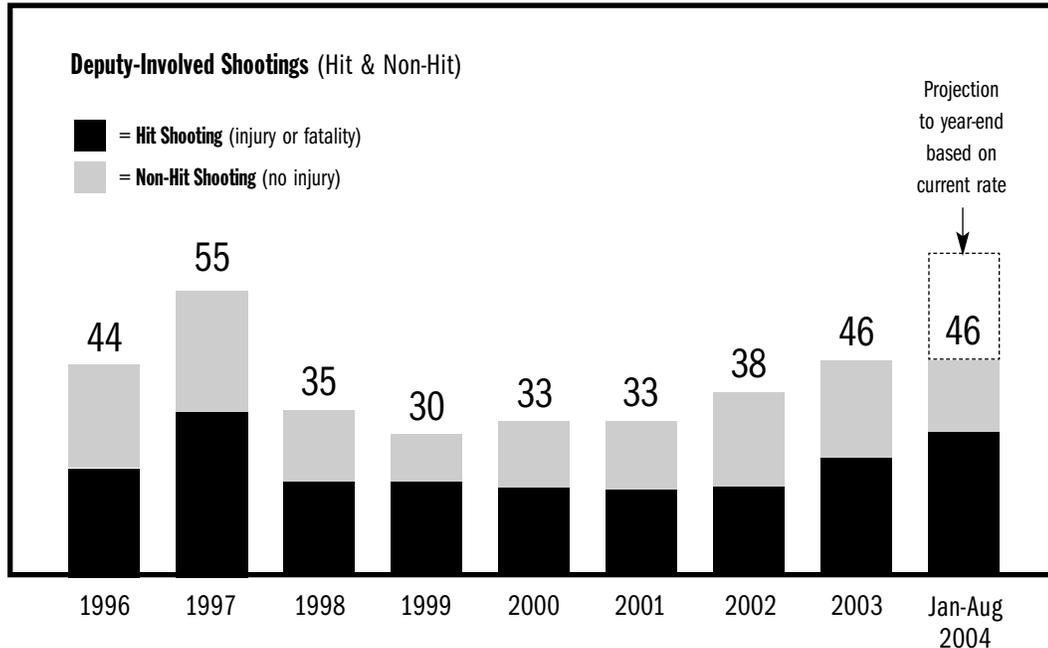
Both LASD and OIR are concerned about any off-duty behavior, including alcohol-related conduct, that indicates that a Department employee may not be suited for continued LASD employment. OIR will continue to monitor this trend involving off-duty behavior and to work with LASD to attempt to counteract it.

9. OIR has attended this training and has been impressed with the candor of the discussions.

10. These discipline decisions affected both sworn deputies and non-sworn employees. Each of these intended discharges could be challenged, and potentially changed, through appeals within LASD or to the Civil Service Commission.

Increase in Deputy-Involved Shootings

As is evident from the graph below, there is an upward trend in LASD deputy-involved shootings in the year to date.



Many factors contribute to an employee's decision to shoot, including the often unpredictable behavior of suspects. Each shooting is a source of intense concern both inside and outside the Department. LASD has a well-defined protocol for investigating deputy-involved shootings: the Homicide Bureau is the initial handling unit whenever a deputy shoots someone, and the District Attorney's Office and OIR provide on-scene monitoring. The Internal Affairs Bureau simultaneously commences a review of the shooting in order to examine policy issues.

OIR has two areas of particular concern related to deputy-involved shootings and has explored them vigorously.

- Disciplinary scrutiny of the circumstances surrounding a shooting and not simply the moment of pulling the trigger. Even though a deputy's actions at the moment he or she discharges the firearm may be thoroughly justifiable, the decisions – made by the involved LASD employees – that led up to that moment or immediately following it may be ill-conceived or unsafe.
- Decisions by deputies to shoot at drivers of vehicles based on the belief that the vehicle presents a deadly threat.

The first concern, tactical shortcomings surrounding a shooting, has traditionally been addressed by most police agencies, if at all, primarily through training and debriefing. OIR, however, has urged LASD to continue its practice of defining egregious tactical shortcomings as falling below the performance standard expected of employees and therefore potentially subject to discipline. The Department's Executive Force Review Committee, which evaluates virtually all shootings, has agreed with this proposition in a number of cases. OIR's case tracking chart, which can be reviewed at www.laoir.com, demonstrates that LASD has in fact been willing to apply discipline, where appropriate, to the policy violations leading up to or following a shooting, especially when those violations related directly to officer safety or the safety of the public. In the first six months of 2004, OIR tracked LASD investigations stemming from 61 deputy-involved shootings, some of which had occurred before January 2004. Twelve deputies and sergeants involved in these incidents have been disciplined for a variety of policy violations including:

- Failure to communicate with a partner.
- Splitting from a partner during a foot pursuit.
- Failure to properly supervise a burglary surveillance.
- Inadequate supervision of a barricaded suspect scene.
- Failure to safeguard an arrestee.
- Unnecessarily placing oneself in an unsafe position in the path of a suspect vehicle.

LASD's continued willingness to use disciplinary scrutiny to bolster its expectations of standards of performance in the field is partly attributable to the broad-ranging approach to issues taken by the Executive Force Review Committee that evaluates all shootings. (See Part Three, at pp. 39-46)

The following case illustrates this.

C A S E

A deputy was working in plain clothes as part of a surveillance team targeting commercial burglaries. He interrupted a burglary in progress and one of the suspects attempted to run him over with a van. The deputy shot at the suspect van. Based on observations and physical evidence at the scene, it appeared that the deputy fired at the suspect vehicle as it was moving away from him. A sergeant was responsible for planning and implementing the operation. Following the Internal Affairs investigation, the Executive Force Review Committee determined that it could not determine whether the shooting

by the deputy was improper, but it found that the deputy's tactical decisions to put himself in an exposed and vulnerable position were deficient enough to constitute a policy violation. It also found that the sergeant's planning and supervision of the operation fell below the Department's standards of performance. The Committee recommended a short suspension for the deputy and a slightly longer one for the sergeant.

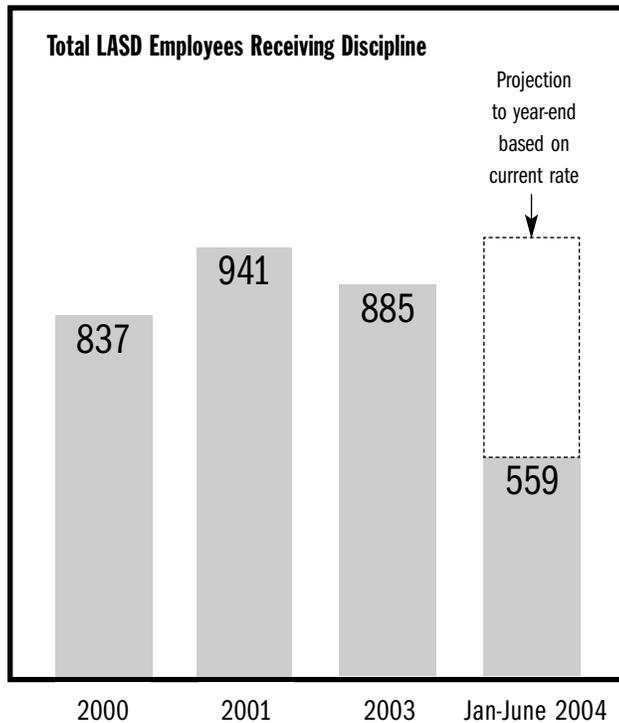
Second, OIR has recently focused its attention on one other area related to deputy-involved shootings – shooting at vehicles. When a deputy shoots at a vehicle because the movement of the vehicle appears to threaten the deputy or someone else, the shooting rarely reduces the danger to the deputy or the public at large. Current LASD policy points out that shooting at a moving vehicle is “inherently dangerous” and “generally ineffective.” OIR analyses of recent shootings strongly support these conclusions. In 15 incidents where deputies shot at a vehicle driver solely because of the movement of the vehicle, the shooting was usually ineffectual in that the shooting did not change the movement of the vehicle or decrease the danger to the deputy. It also appeared that, in a majority of these incidents, the deputy had a tactically reasonable and safer alternative to shooting, such as moving out of the way or approaching from a different angle.

OIR's discussions with police agency officials in several large jurisdictions elsewhere in the nation – e.g., Boston, Miami, Pittsburgh, the City of Los Angeles – confirmed that shooting at the drivers of vehicles is an increasing source of community concern as well as liability. Recently some police departments have all but prohibited shooting at vehicles as a result of tragic highly publicized incidents where an innocent third party was accidentally killed by police fire.

A number of LASD executives have concurrently recognized the ineffectiveness of shooting at cars and the better-informed and safer tactic of not placing oneself in the potential path of cars. As a result, OIR and LASD have begun discussions with the goal of refining LASD's policy to better educate deputies about how to safely react when faced with these tactical decisions. OIR expects that these discussions will lead to the development of a policy that will provide appropriate guidance and hold deputies accountable when they fail to follow such a course of action.¹¹

11. While, as noted above, it is currently possible to hold LASD personnel accountable when they unnecessarily place themselves in the path of a car, a specific, more refined policy will better inform the deputies about such a tactical error, and provide a clearer baseline of conduct from which to impose discipline if a deputy transgresses the policy.

Compilation of Discipline

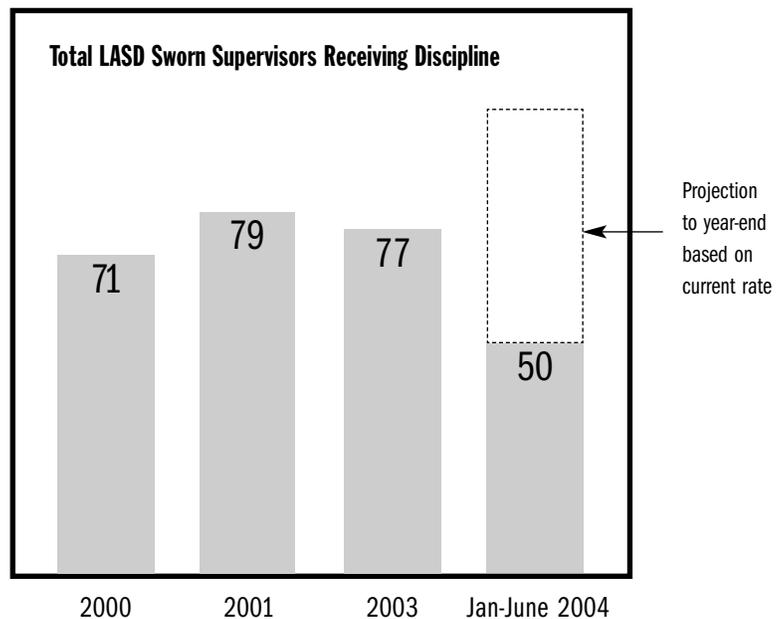


While the preceding sections discussed specific trends, the following charts reflect the discipline intended to be imposed for all types of misconduct by LASD. These statistics are compiled from the Quarterly Discipline Report, the reinstatement of which OIR reported on in its Second Annual Report, at pp. 68-71. LASD did not produce a Quarterly Disciplinary Report during most of 2002.

The discipline reflected in this chart ranges from a written reprimand to

discharge. The employees disciplined include both sworn and non-sworn members of the Department; a large majority of those receiving discipline are sworn employees.

Supervisors of sworn personnel are not shielded from the disciplinary process. In recent years, they have consistently comprised around 9% of all employees who receive discipline.



PART THREE Quality of LASD Review of Employee Conduct

One of OIR’s primary responsibilities is to ensure that LASD’s investigations and reviews of employee conduct are thorough, fair and effective. LASD has several means to review the conduct of its employees depending on the type of conduct and type of allegations of wrongdoing. The Internal Criminal Investigations Bureau (“ICIB”) investigates allegations of criminal misconduct by employees and presents its investigations to the District Attorney for evaluation of potential criminal charges. The Internal Affairs Bureau (“IAB”) investigates significant allegations of misconduct that, if proven, would lead to discipline. The Executive Force Review Committee (“EFRC”) evaluates significant uses of force and shootings, using reviews performed by IAB, to determine whether the conduct complied with policy and training and whether the incident suggests any deficiencies in LASD policy and training. LASD also employs Watch Commander Service Comment reports to capture and evaluate community complaints and commendations. Finally, LASD reviews the civil claims that precede the filing of lawsuits to identify any deficiencies in employee conduct, in policy, or in training.

Over the past year, OIR has initiated reviews of more than 750 LASD investigations of alleged criminal misconduct, policy violations, uses of force, shootings, and allegations made in civil claims. This section provides OIR’s overall evaluation of how each of the mechanisms used by LASD is operating. It also identifies specific areas of needed improvement. In addition, the LASD review of three incidents, a death of a suspect and two shootings, are discussed in detail to provide specific examinations of the LASD review process and to illustrate particular issues identified by OIR.

Case Study: Accountability and Reform after an Officer-Involved Death

The “lifespan” of cases reviewed by OIR varies considerably. Some incidents are simple and straightforward, and the investigation, review, and final resolution can occur within a few months or even weeks. In other instances, the complexity,

importance, and consequences of a particular incident can extend the review process for years. This is especially true when systemic reforms – as well as individual accountability – become a component of the review.

The case discussed below is a prominent example of a lengthy review that resulted in both accountability for individuals and constructive change for the Department. Along the way, OIR's concerns about substantive issues and frustrations about the pace eventually gave way to an appreciation for the thoroughness and rigor of LASD's investigation and self-scrutiny.

Factual Background

In June of 2001, a male suspect fought with two deputies who attempted to detain him in a motel parking lot. He fled on foot and ultimately made his way to the San Gabriel River, where his refusal to surrender presented LASD with a unique tactical challenge. Armed with a knife and under the influence of methamphetamine, the 29 year-old man spent some three hours swimming in a contained area, hiding in the thick vegetation at the water's edge, and confounding various strategies for taking him into custody. A number of additional patrol officers, an Aero Bureau helicopter, police dogs from two different agencies, and an LASD Special Weapons and Tactics team responded to the scene over time. Dozens of civilian witnesses also watched the confrontation unfold.

Eventually, a team from the Sheriff's Special Enforcement Bureau ("SEB") devised a plan to flush the man from his hiding place with gas and encourage his surrender with less lethal force options. It was an improvised approach that, for various reasons, failed to work.

As intended, the suspect swam from shore toward the center of the river. At that point, however, instead of giving up, he dove below the surface repeatedly as an LASD helicopter churned overhead and a combination of less lethal explosive devices burst around him. After one of his plunges, the man did not re-appear. An LASD rescue team soon dove after him and brought him to shore, but efforts to revive him were not successful.

As with any officer-involved death, this drowning incident triggered a number of review protocols. The District Attorney's office reviewed the case and determined that there was no evidence to establish that the officers had acted unlawfully in their use of force and attempts to arrest the assaultive and uncooperative suspect. The Coroner cited toxic drug levels as a strain on the man's system and a likely

factor in the outcome of the incident. Nonetheless, the case featured a number of unusual circumstances and developments that brought the overall appropriateness of LASD's efforts into question.

The LASD Administrative Review Process Begins

The District Attorney's Office issued its findings in January of 2003.¹² In keeping with its regular access and review procedures, OIR participated in and helped shape the ensuing administrative investigation from the beginning. The goals were multi-faceted: to address any possible misconduct, to discipline any personnel who violated policy, to glean whatever lessons could be learned from the tactical challenges of the incident, and to promote any reforms that seemed appropriate and feasible.

The Videotape

One of the more disconcerting aspects of the incident was a videotape that was recorded by the tactical on-scene supervisor in the final moments of the incident. It depicted the sudden use of an array of force devices that seemed more likely to bewilder the suspect than to persuade him toward shore and surrender. The overhead helicopter (from the LASD Aero Bureau) seemingly added to the noise and confusion. In light of the unfortunate result, a careful assessment of the plan and its execution were clearly required during the investigation.

Just as troubling, though, was what the video did not depict – namely, a crucial 28-second stretch at the end of the incident, after the man submerged for what turned out to be the last time. The supervisor who taped the incident had subsequently taped over this portion of the event, raising significant and obvious concerns over what was missing, and whether an intentional “cover-up” had been attempted.

Homicide investigators had collected the tape within hours of the incident and had, in fact, pursued the erasure issue. They made a couple of important determinations: first, as corroborated by all the other eyewitness accounts from the scene, nothing critical had occurred during the lost seconds of tape; and, second, that the erasure had been inadvertent, occurring in the immediate aftermath of the incident when the supervisor/videographer was attempting to review the film while it was still in the camera.

12. This span of time – more than eighteen months – between the incident and District Attorney's rendering of an opinion was unusually long. This was largely the result of factors unrelated to the case itself, such as the turnover of personnel in the relevant unit of the District Attorney's Office. Normally, the turnaround time for the District Attorney's review is considerably shorter. In part because of this case, the LASD Homicide Unit has developed a simple tracking system of pending cases that OIR monitors each month. This tracking system helps ensure that cases do not languish in the criminal review phase.

These findings, however, did not completely assuage the concerns of officials familiar with the tape. Because of the sensitivities of the case and the officer-integrity component of the erasure issue, OIR worked with the Department to pursue this portion of the case in an especially thorough fashion.

This effort included presenting the tape to technology experts both inside and outside the Department – including a nationally renowned scientist who had worked extensively on analysis of the most recent space shuttle disaster – in an attempt either to reclaim the lost footage or to glean significant evidentiary information about the erasure from the 28-second overtaping footage. It also included two additional interviews with the supervisor regarding his account of the event.

Nothing emerged to undermine the original conclusion that the mistake – though highly regrettable and absolutely avoidable – was inadvertent. Nonetheless, in an abundance of caution, OIR worked with LASD in presenting this additional evidence to the District Attorney's Office for a second consideration of possible tampering with evidence charges. The District Attorney agreed that there were no indications of criminality.

Administrative Review: Policy, Tactics, and Training

The attempt to apprehend an armed and recalcitrant suspect from his position in the San Gabriel River presented tactical challenges that were unusual if not unprecedented. This reality made the fair evaluation of the participating officers' performance both difficult and especially important. Not only was an assessment of the tactics necessary for determining accountability and possible discipline for the involved personnel, but the unique features of the incident also raised its profile as a teaching tool and a test of existing protocols. The fact that the suspect had died added another layer of gravity and concern to the resulting analysis.

The administrative review of the case fell within the normal jurisdiction of the Department's Executive Force Review Committee. In September of 2003, the panel of commanders that comprise the EFRC heard the case in a special session that lasted more than three hours. OIR attended and played an active role in this meeting, which covered the five volumes of interview transcripts and other evidence that Internal Affairs Bureau investigators had compiled.¹³

13. Certainly, one of the more encouraging aspects of the case was the excellent work of the investigators from Internal Affairs. The two sergeants who handled the case conducted dozens of interviews, coordinated the lengthy and complex videotape analysis, and showed great patience and flexibility in accommodating OIR's numerous requests for further interviews or the pursuit of other leads.

In another indication of LASD's determination to apply the needed rigor to its review, the meeting also involved a presentation from a nationally recognized special tactics expert from an outside law enforcement agency. The insights contributed by this expert at the meeting added significantly to the weight of the Committee's findings in this difficult case.

The EFRC panel had reviewed the sizable investigative file before the meeting began. The session itself began with a presentation from the investigators, who provided a factual overview of the incident. This included a detailed timeline and a number of photographs from the scene. The investigators summarized the various phases of the incident, discussed the evolution of the tactical plan, and itemized the force that was used in an effort to apprehend the suspect.

When that presentation was complete, the tactics expert offered a critical assessment of the entire incident. He explained the things LASD had done well, offered insight into possible shortcomings and the reasons behind them, and spoke of "best practices" and alternatives that might have been considered. This portion of the review provided the Committee with a balanced and thoughtful framework for its subsequent findings.

With OIR's concurrence, the EFRC ultimately recommended discipline for two of the involved officers: the incident commander and the supervisor of the special tactical team who had videotaped the incident.¹⁴ The EFRC found that the incident commander, an inexperienced sergeant, had fallen short of LASD standards in several ways over the three-hour duration of the incident. These primarily involved inadequate command and control of the event and of the various resources at his disposal. As for the tactical supervisor, the Committee found that he had failed to communicate effectively with his own off-site supervisor regarding the unique facts of the case and the tactical challenges it presented. Moreover, in choosing to videotape the incident himself rather than delegating that task, he undermined his own ability to assess the event as it unfolded and make adjustments along the way.¹⁵

14. In keeping with its usual protocols, OIR monitored the status of these suspensions as they were reviewed by Department executives and ultimately imposed. The recommended length of discipline for the tactical supervisor became a subject of some contention, but OIR ultimately met with Sheriff Baca himself to express its views. The Sheriff endorsed OIR's position, and the original EFRC recommendation became the official discipline.

15. Two other potential subjects for discipline were the crew chief of the helicopter (whose questionable tactical plan had threatened the safety of the suspect unnecessarily) and the incident commander's direct supervisor (who failed to respond to the scene and thereby placed an undue burden on his subordinate). However, the former individual had retired by the time of the administrative review, and the latter individual passed away unexpectedly within months of the event.

Going Forward: Recommendations and Reforms

As with any incident that involves unusual circumstances, presents new lessons, and has such serious consequences, LASD's review process looked forward for purposes of reform as well as backward for purposes of accountability. Again, the Department's willingness to consider OIR's input and engage in rigorous self-scrutiny made a favorable impression. It also brought about a number of constructive changes. These included the following:

- The development of a new protocol between LASD's Homicide Unit and the County Coroner's Office. Because the deputy coroner who performed the autopsy had not viewed the videotape of the incident, and because a subsequent misunderstanding briefly left officials with the mistaken impression that LASD had withheld it, LASD recognized that it was preferable to supply a copy of such evidentiary materials to the coroner as a matter of standard practice, rather than offering it and allowing the coroner to decide whether to accept it. It discussed the matter with OIR, and then issued a unit directive that formalized this new approach and instructed investigators to automatically "present the coroner's office with any and all relevant audio/visual documentation along with other pertinent evidence prior to the scheduled autopsy."
- The development of a new "moving up" protocol to enable station lieutenants to respond to the scene of major incidents such as the containment operation in this case. The sergeant who became the incident commander of this difficult and challenging event should not, in retrospect, have needed to shoulder this difficult burden for the entire three-plus hours. However, the lieutenant who was serving as the watch commander at the station was reluctant to leave there because of the lack of other ranking personnel on duty at the time. Borrowing an idea from the force and tactics expert who had assessed the case, and recognizing that LASD could take better advantage of its county-wide status, the Department developed a protocol to address this issue. It calls for stations in the midst of such an event to "borrow" supervisory personnel from adjoining stations. This would have allowed the lieutenant to leave the remainder of the station's business in capable hands (such as a lieutenant from another facility) and get himself to the scene, where he was most needed.
- The clarification of the Aero Bureau's important role as an advisor as well as a resource in tactically challenging situations such as the containment in this case. One of the more controversial moments of the standoff with the suspect occurred relatively early, when a deputy fired several less-than-lethal

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: June 7, 2004

OFFICE CORRESPONDENCE

FILE NO.



FROM: **JAMES A. Di GIOVANNA, CAPTAIN**
AERO BUREAU

TO: **AERO BUREAU SWORN PERSONNEL**

SUBJECT: AERO TRAINING GUIDELINE RE AIRBORNE USE OF FORCE

Every tactical operation is different and has the potential to present an unusual or even unprecedented problem or challenge. Aero Bureau's capabilities and duties within the Sheriff's Department require its personnel not only to be well-trained and highly disciplined, but also resourceful and adaptable. Regardless of the situation, however, it should always be a priority to assess each situation in light of potential risk, established policies and past experiences.

In light of these concepts, and in recognition of the need for Aero Bureau personnel to coordinate effectively with other units in responding to tactical challenges, the following guidelines are distributed for your careful consideration :

1. The advisability of using an Aero Bureau helicopter as a platform for deploying either lethal or less lethal force should be carefully considered in light of the attendant risks and the inherent difficulties in accurately delivering munitions from a moving helicopter. Current policy stipulates that use of lethal force from a helicopter is discouraged, however, it does not restrict its use in defensive situations wherein the threat to human life is imminent and no other alternatives are reasonably available. This policy is still in effect. However, in one recent case, for example, the attempted deployment of less lethal ARWEN rounds from the helicopter did not give adequate consideration to the strong possibility of an inadvertent shot to the head. The possible "secondary effects" of any force deployed from the helicopter should be carefully assessed, and Aero Bureau personnel should offer appropriate input to the incident commander in this regard.
2. Also, the advisability of using an Aero Bureau helicopter as a "herding device" for the containment and capture of a person on the ground or in the water is also strongly discouraged and should be carefully considered. In particular, the noise and disruption of the water's surface caused by the helicopter arguably create more confusion than benefit in assisting the apprehension of a resistant swimmer. In one recent case, the use of the helicopter in an effort to block the suspect's path did not prove to be effective in promoting his surrender or furthering the attempts to apprehend him safely. Again, Aero Bureau personnel should offer appropriate input to the incident commander regarding the advisability of this tactic.

June 7, 2004

“baton” rounds (essentially large rubber bullets) at the swimming suspect in an effort to promote his surrender. His firing platform was a hovering Aero Bureau helicopter. The likely success of this plan was questionable at best, and the involved officers seemingly did not consider the unique risks of a swimming suspect, and the chance that an inadvertent head strike could have fatal “secondary effects.” Additionally, the use of the helicopter to “herd” the man in the desired direction also had dubious value in the eyes of reviewers. After conversations with OIR, the Aero Bureau issued a unit directive that cautioned against the risks of these specific scenarios. More importantly, it emphasized to Aero personnel that their expertise was a potentially significant asset in the formulation of a tactical plan, as well as its execution.

- The clarification that audio and videotape materials, such as the one involved in this containment incident, are to be regarded as “evidence” that should immediately be turned over to Homicide investigators. One especially unfortunate aspect of the case was the extent to which the problems with the videotape intensified observers’ concerns and suspicions about LASD’s handling of the confrontation with this suspect. Had the SEB supervisor/videographer been more cognizant of the tape’s status as evidence in an official Homicide investigation, he hopefully would have refrained from further handling of it, and would have produced it as soon as possible when investigators arrived at the scene. The new Field Operations bulletin emphasizes this key point and holds personnel accountable for failing to preserve and produce such evidence.
- The tightening of standards for use of canines from an outside agency. At an early juncture of the incident, an officer from another agency heard the radio traffic and responded to the scene with his police dog. The incident commander authorized this officer to attempt an apprehension, which was unsuccessful and which did not directly follow LASD training and protocols. This complicating factor illustrated the need for LASD to reiterate existing policy for use of dogs from another agency. LASD also strengthened that policy by adding an explicit requirement that the LASD canine group be notified, and only when they were unavailable, could an outside-agency deployment occur.

Internal Affairs Bureau: A Progress Report

In carrying out its core oversight responsibilities, OIR relies heavily on its relationship with the investigators and supervisors of the Internal Affairs Bureau. Previous Annual Reports have described the dynamics of that relationship, but certain key facts bear repeating: OIR does not conduct its own investigations into officer misconduct, and was never designed to serve as a separate or parallel track for the redress of allegations or complaints. Instead, OIR provides an independent outsider's perspective to *existing* processes, in an effort to ensure their integrity and, ideally, enhance them through both scrutiny and active participation. In practice, this translates to frequent interactions with IAB investigators.

The close connection between OIR's work and that of IAB is reinforced by physical proximity – since OIR's inception in the fall of 2001, it has had its offices in the same building as the one that houses the Internal Affairs group.¹⁶ Each case is a forum for the assigned OIR attorney to exchange ideas, ask questions, make suggestions, and track significant developments while the investigator is gathering the evidence. The fact that IAB is just a flight of stairs away obviously facilitates that process greatly.

Proximity by itself, however, is no guarantee of productivity. OIR recognizes the fine line between providing constructive input and “Monday morning quarterbacking.” Accordingly, it appreciates the willingness of IAB investigators – and their supervisors – to listen to OIR's point of view and usually accommodate it. By the same token, OIR welcomes the investigators' willingness to discuss strategy, explain their approach, and articulate reasons for disagreement with OIR's ideas. Occasions certainly arise when an investigator's insight and expertise rightly carry the day in a debate about a particular case. What matters is that the careful identification and consideration of issues has served the process well.

Quality and Timeliness of Investigations

Overall, OIR remains impressed with the general quality of investigations and with IAB's commitment to carrying out a difficult and unpopular role in the Department. When concerns arise in individual cases or with individual investigators, OIR has generally been able to resolve its concerns in conjunction with the IAB leadership. The three years since OIR's arrival have established a strong foundation in working with IAB that OIR appreciates and values.

16. OIR's other neighbors in the building include LASD's Internal Criminal Investigations Bureau, its Discovery Unit (responsible for inputting information in the Personnel Performance Index), and its Risk Management Bureau.

IAB, however, remains significantly understaffed as a function of the Department-wide budget crisis of the past two years. Inevitably, this takes a toll on the quality of investigations and the morale of the Bureau as a whole. To its credit, IAB's leadership has attempted to get the most out of existing personnel, and has actually improved the unit's productivity in quantifiable ways.

In January of this year, IAB's unit supervisors attempted to shorten the turnaround time of its cases by imposing a two-case per month completion requirement on each investigator. The goal of the initiative was noble, and it introduced a new level of accountability and concreteness to a job that necessarily invests each investigator with discretion and autonomy over his or her schedule. At the same time, IAB began posting internally a chart that allowed each bureau member to track his or her productivity in relation to others in the unit. The investigators responded impressively. They have significantly reduced the number of cases that are more than ninety days old, and have completed roughly double the cases in 2004 that they did in a similar period in 2003.

OIR applauds this result, and supports the resolve of the IAB Captain and Lieutenants in promoting greater productivity. However, there have been collateral consequences that warrant a measure of concern. For example, some of the investigators chafed at the inflexibility of the new standard, and the "tail" of the quota began to wag the "dog" of timely, effective work in some instances. OIR found lapses in some of the investigations that were supposedly completed. These lapses included such basic investigatory tasks as interviewing available department witnesses in an effort to resolve conflicting versions of a particular incident.

While that issue seems less pronounced now (perhaps a sign of adjustment), LASD should at least fill the current vacancies at IAB and dedicate the requisite resources to this area. OIR has discussed the issue of IAB understaffing with the highest levels of LASD management and is hopeful that long-vacant positions will soon be filled.

Another reason why timeliness remains an issue relates to the legal statute of limitations for administering discipline. In its Second Annual Report, OIR discussed failures by IAB and other units to identify the proper date for the statute of limitations, and the detrimental effect on investigations and discipline that resulted. LASD responded positively by establishing a new protocol designed to eliminate errors in the calculation of the statute of limitations, which OIR also noted in its last report.

This protocol seems to have improved the situation and generally created a more

uniform approach to establishing and meeting deadlines. LASD, however, still is not error-free. In the past year, old habits caused a few investigations to come troublesomely close to lapsing because they were not timely, and a couple of cases did lapse. OIR will keep a watchful eye on this area to encourage more improvement and a continued emphasis on accuracy in the calculation of time limits.

This past year also uncovered a new statute of limitations issue of which OIR was not previously aware. LASD was unable to impose discipline in several cases during the past year because of a potential misunderstanding of the legal effect of injured-on-duty (IOD) status. IAB supervisors believed that, if an employee with a pending administrative discipline case was at home due to illness or injury, that employee need not be served with a “letter of intent,” until he or she returned to work. A letter of intent serves notice on the employee that LASD has found the employee in violation of a departmental policy and intends to impose discipline. State law requires LASD to complete the investigation, reach a conclusion, and send such a letter within one year of learning about the allegations against the employee, or lose the right to impose discipline. This one-year time clock does not necessarily stop running when a subject employee is at home IOD, unless the employee is unavailable, for instance because he has refused to cooperate with or been unable to participate in the investigation.

IAB became aware of its potential misunderstanding of the time limit when a few employees challenged discipline.¹⁷ IAB conferred with OIR who then confirmed that the time limit might not be suspended in most cases without proof of the employee’s unavailability, such as an explicit documented refusal to submit to an interview or a letter from a physician indicating that the employee could not participate in an administrative interview. OIR recommended that IAB immediately send any letters imposing discipline that it was previously retaining under the belief that they need not be served until the employee returned from IOD status. In addition, OIR recommended that for all on-going investigations, IAB send letters requesting interviews to all subjects currently on IOD status. IAB followed this course immediately and has had no further statute of limitations problems of this nature.

Internal Criminal Investigations Bureau: Refinement of Investigative Techniques

As OIR enters its fourth year, it continues to monitor ICIB investigations, with recognition given to ICIB’s continued close relationship with the Los Angeles

17. IAB’s practice grew out of a well-intentioned desire not to disturb employees who were recovering from injuries. However, employees’ advocates turned this concern to their advantage in objecting to discipline, forcing LASD to take a more aggressive stance with its employees who are out of work IOD to recover from injuries.

County District Attorney's Office, which reviews ICIB's cases for potential criminal charges. OIR's relationship with ICIB has focused on "big picture" items that may improve the quality of its investigations. When such areas have been noted, ICIB has been receptive to OIR's input. Over the past year, OIR has noted several areas for improvement.

For example, OIR observed that in at least one case an investigator had used an out-dated Department of Motor Vehicles ("DMV") photograph of a suspect deputy in a photo spread. The DMV photograph was so dated and the deputy's appearance had changed so dramatically that even people who worked with the deputy would have had difficulty identifying him from the photograph. Not surprisingly, the witness who was shown the photo spread also had difficulty picking the deputy's photograph out of the photo spread.

In another case, there was evidence that a suspect deputy had contacted an alleged victim in the field. The evidence of the contact consisted of the deputy's Mobile Digital Terminal entries reflecting the individual's name, as well as the date and time he contacted her. Based on this evidence, and the alleged victim's complaint that the deputy abused her, there was no dispute that the deputy at least had some kind of contact with her. The ICIB investigator, perhaps acting instinctively, nevertheless asked the victim to identify the deputy out of a photo spread. The victim did not identify him, possibly due to her reluctance to get involved.

These cases highlight two issues with regard to photo spreads. One, when identification of the deputy is not in dispute, it may not be necessary to show the alleged victim a photo spread. Two, when a photo spread is necessary, a current photograph of the deputy should be used.

In a third case, OIR recognized a potential issue with regard to how an informant, at the behest of an investigator, had recorded telephone conversations with a suspect. Usually, the standard operating procedure is for the investigator to carefully monitor such calls. The purpose of the monitoring is two-fold, so that the investigator can later testify as a witness, and to prevent any possible claim that the informant altered the tape or entrapped the suspect. In this case, even though there was no suggestion that the informant altered the tapes or entrapped the suspect, the investigator had not strictly adhered to the practice. In OIR's discussions about this case with ICIB, the investigative unit's supervisors were aware of the standard procedure and the purposes for it.

When OIR raised these three issues with ICIB, the Captain and Lieutenant reacted

positively and agreed to raise them at a briefing with the investigators in the unit. They further indicated that they would be vigilant as managers of the unit and watch for these issues in cases in the future. Since OIR's discussions with ICIB, it is aware of a case where ICIB's investigator first showed an out-dated photograph of a deputy to an alleged victim but then obtained and used a photograph that more accurately depicted the deputy's likeness. OIR is hopeful that this correction reflects increased vigilance for the problem of out-dated photographs, and that in the future the photograph initially used will be a current one.

EFRC Strengths and Limitations: A Tale of Two Cases

As described in previous Annual Reports, the LASD Executive Force Review Committee helps ensure that the deputies' power to use deadly force is handled responsibly, with appropriate regard for both officer safety and the rights of the public. The Committee's review is generally thoughtful and thorough, resulting from hours of careful review of investigations, training, and policies. The quality of the Committee's work deserves respect from LASD executives who should support the Committee's work and defer to its findings and recommendations. Indeed, LASD policy includes protocols intended to promote this deference. However, this has not always been the reality.

The EFRC consists of three Commanders – high-ranking members of the Department with considerable experience. It meets twice a month to review all officer-involved shootings and certain other uses of significant force. In advance of each EFRC meeting, OIR and the Committee receive and review the complete file of the IAB investigation for each use of force to be examined at the meeting. This file includes all the official records from the incident (arrest reports, medical documents, etc.) as well as summaries or transcripts of interviews with all the key participants. OIR then prepares and circulates to the Committee its questions, concerns, or recommendations regarding the use of force or any tactical considerations surrounding it.

Importantly, the EFRC's review of each case has different components and objectives. Not only does it determine whether the force was justified and "in-policy" (and recommends discipline on those occasions when policy is violated), but it also assesses the circumstances and tactics of the encounter from a broader perspective. It looks for ways that the individual officers might have handled the event differently or better, and occasionally recommends training or a "debriefing" at the station level that is meant to be a constructive forum for improvement.

A seasoned representative from the Department's Training Bureau attends the meetings and contributes to this process.

While this has always been part of the Committee's mandate, OIR has noticed a heightened willingness on the part of the panel to evaluate incidents comprehensively and assess not only whether the force was "in-policy," but also how and why it came to be needed in the first place. OIR supports this broader approach enthusiastically. It recognizes that deadly or significant force often emerges as the product of a longer string of decisions and actions that also merit attention. This careful and holistic review reinforces the importance of sound tactics and training, and encourages deputies to learn from their own and each other's experience.

This spring, the EFRC reviewed two very similar non-hit shootings, and determined in both instances that one or more deputies had violated policy and used unreasonable force. OIR concurred in both cases. From there, though, the recommendations for discipline went to higher levels in the chain of command for review and imposition. In both instances, the Committee's recommendations were overturned. This, in itself, is not necessarily problematic. In fact, in one of the cases, OIR participated actively in the subsequent deliberations and found them to be careful and principled. OIR ultimately concurred with the downward revision of the discipline.

In the other case, though, a variety of factors contributed to a far less thoughtful and effective evaluation of the EFRC's findings. This change in discipline lacked the reasonable foundation that OIR seeks before concurring with a decision by the Department. Here, an important case ended up with a result that OIR did not support, after a process that OIR found significantly wanting.

Shooting #1

In November of 2002, two deputies pursued a reckless and fleeing driver into a residential neighborhood where they briefly lost sight of the car after it rounded the corner. They then spotted the vehicle parked in a narrow driveway next to an apartment building. They swerved over so suddenly and quickly that their radio car struck a low wall on the adjoining property. The radio car came to a halt at an angle that partially blocked the driveway where the suspect's car idled.

Both deputies later claimed a shared belief that the suspect had abandoned his car and fled into the backyards of the neighborhood. However, instead of re-positioning in a more strategic location and shining a spotlight on the suspect vehicle, the passenger deputy burst from the front seat and immediately found himself behind

the suspect's car – which promptly began backing down the driveway in an attempt to escape, to hit the deputy, or to do both.

Darting to his right and in a professed fear for his own safety, the deputy fired a total of ten rounds as the car narrowly missed him, performed a Y-turn in the street, and sped away. Meanwhile, the driver deputy emerged from the radio car (which the suspect had scraped down one side while traveling in reverse) and stepped into the street, firing two rounds of his own before his weapon malfunctioned.

The driver, who had a criminal record, was not hit, except by flying shards of glass. By his own admission, he tossed a gun from his car on the next block before abandoning his car and attempting to escape on foot. Several hours later he was captured in a containment.

Shooting #2

Two deputies responded to a call of an auto burglary in progress in the back parking lot of an apartment complex. After parking their radio car in the street, they made their way on foot down a long, narrow driveway along the side of the building, where they startled the two suspects in the final stages of their crime. The suspects immediately got into their car and, ignoring the deputies' orders to stop, drove rapidly up the driveway toward the street – and directly at the deputies. The deputies scrambled toward opposite sides of the driveway and, in a self-professed fear for their lives, each fired at the passing vehicle as it headed toward the street. The suspect driver was unable to complete his turn in the tight confines of the residential street, and both suspects abandoned the car and fled on foot. Both were captured within a short period; neither was hurt.

Investigation: Shooting #1

The physical evidence in the case immediately raised an issue in terms of the legitimacy of the force: While it was the rear of the reversing car that posed the threat to the passenger deputy, several of the bullet strikes were into the side and even front of the vehicle, which meant that the deputy had continued firing after the car had passed him by. Also interesting to note was the fact that it marked the deputy's fourth shooting incident in less than two years – an unusually high number. While each previous shooting had been evaluated and found to be reasonable and justified, the numbers certainly merited closer scrutiny of the deputy's tactics and approach to dangerous situations in the field.

After reading the first set of interviews with the officers and the suspect, OIR re-visited the scene and then devised a series of follow-up questions. These were designed to elicit more information about the deputies' choices and their impressions of the physical circumstances. In particular, OIR thought it important for the passenger deputy to explain his rationale for the final shots, as well as to discuss his awareness of the officer-safety issues implicated by his firing in the general direction of his partner at one point in the incident.

The results of the second interviews did not satisfy OIR's concerns – or those of the EFRC. While the passenger deputy's initial sense of threat was reasonable and justified, OIR took the position that the deputy should have stopped firing once the car was clearly past him, and that the final shots – at what was effectively a fleeing driver – were out of policy. OIR did not see this as a malicious or intentional abuse of the suspect's rights. Nonetheless, OIR did consider it an important “statement case” for LASD, in which the Department's expectations about the significance of each shot in a deadly force scenario, and the overall importance of sound tactics, could be clearly conveyed.

The EFRC agreed. After a careful review of the facts, it determined that the passenger deputy had violated policy through his “unreasonable use of significant force,” and recommended a ten-day suspension. This was the minimum discipline for violation of that particular Manual Section, as dictated by the LASD Guidelines for Discipline.

Investigation: Shooting #2

The physical evidence in this case also indicated that shots had been fired at the suspect car after it had passed by the deputies in the narrow driveway area. However, in their initial interview, the deputies accounted for this fact by claiming that the suspect vehicle had stopped before reaching the street, *had then come at them a second time in reverse*, and had finally, after the deputies fired additional rounds to protect themselves, again proceeded forward.

This seemed implausible, and the suspects' interviews with investigators further increased doubts about the deputies' shared version of events. The suspects, who were arrested separately, questioned separately, clearly upset, and extremely forthcoming about their own culpability, both denied changing direction in an effort to take a second pass at the deputies. Indeed, such a strategy hardly made sense, because they were far more intent on escaping than on harming the deputies.

While this discrepancy was troubling, there seemed to be no way of reconciling it or proving the truth of one account. The investigation then languished for months while the lead investigator was not available to complete the investigation. As a result, the EFRC was not scheduled to hear the case until just before the expiration of the one-year limitations period for imposing discipline against a peace officer.

Then a significant breakthrough occurred. The deputies' captain, interested in learning more about the case before the review, decided to explore the possibility that the original informant's call about the auto burglary might yield some interesting information about the physical circumstances. As it turned out, the LASD telephone line was still open when the shots were fired in separate bursts, and the recording (which still existed nearly a year later) provided an opportunity to re-create the incident in more detail.

At this point, a new internal affairs investigator received the case and did a superb job of matching the deputies' account to the sounds of the tape and the physical layout of the driveway. Returning to the scene with LASD analysts who handle accident reconstruction, the investigator drove down the driveway repeatedly and ultimately proved that there was not sufficient time for the suspect vehicle to stop, go in reverse, and then squeal to its final halt in the span of seconds captured on audiotape. He then re-interviewed the remaining deputy (the other had left the Department to pursue another career). That deputy stayed with his original story that the suspects drove in reverse at him, and was basically unable to account for the new physical evidence that undermined it.

In a special session that was called to avoid the imminent lapse of the limitations period, the EFRC found that the remaining deputy had used unreasonable force in firing at a fleeing vehicle, and then had made false statements and a false police report with his own contrasting account of the event. The recommendation was a thirty-day suspension. OIR concurred.

Subsequent Events: Shooting #1

From early in the process, an alternative view of the incident emerged and had several proponents. OIR did not agree with this perspective, but respected its validity, and appreciated the thoughtful and careful analysis offered by its supporters.

These supporters included the deputies' captain and the training sergeant who

regularly attends the EFRC meetings. Both argued that the dynamics of a force situation are too volatile and rapid to parse the individual shots and hold the deputies to such an exacting standard. They were correct in several important respects – the incident did unfold in mere seconds, as confirmed by radio traffic. The narrowness of the primary shooter’s initial escape, the collision with the radio car, and the adrenaline that came from being startled in the first place all undoubtedly contributed to his actions and made the “unnecessary” shots understandable.

When the case went to the Division level for final adjudication by the Chief, OIR monitored its progress closely. To his credit, the Chief took pains to schedule a meeting in which the outcome of the case could be discussed in advance of his decision. In attendance were the captain, a division commander, a representative from the LASD Advocacy Unit (who would be responsible for defending the Department’s position in any grievance that might arise), and a representative from OIR.

At the meeting, which lasted well over an hour, the parties discussed the facts and reviewed the different options for resolving the case. Everyone shared the goal of balancing fairness to the deputy with upholding LASD standards in the crucial area of deadly force. Each person had the opportunity to speak, to ask and answer questions, and to ensure that clarity and principled, reasoned analysis would drive the final decision.

Ultimately, the Chief overturned the EFRC’s recommendation regarding the characterization of the final shots as “unreasonable force.” He, however, did approve a lesser discipline based on a “performance to standards” violation, based on his conclusion that the deputy’s overall tactics were dangerous to himself and his partner and that he could have exercised better fire control in response to the evolving circumstances. He proposed a four-day suspension, and OIR concurred. It was imposed later that week. Importantly, the deputies were also ordered to participate in a special training program tailored to the events of the incident and designed to bolster the relevant skills.

Subsequent Events: Shooting #2

With mere days remaining before the expiration of the limitations period, the Department hastily added the EFRC’s recommendation to the bi-monthly “Case Review” calendar. At Case Review, high-level Department executives receive briefings and then decide about discipline recommendations for the most serious of administrative cases (suspensions of more than fifteen days, demotion, or discharge.)

Usually, the division chief provides the briefing to his superiors in this forum, but this case took a different path. The Chief, for reasons not articulated to OIR before the meeting, vehemently disagreed with the EFRC findings. With no advance notice, it was left to the Internal Affairs Bureau investigator to lead the presentation. He gamely attempted to explain the factual significance of the physical evidence and the reconstruction he had organized. However, seemingly influenced by the Chief's obvious disapproval and dismissal of the EFRC's work, the executives quickly revealed a strong disinclination to accept the finding that the deputies had lied about the car reversing and creating a second stage of threat.

Both OIR and one of the EFRC commanders attempted to clarify the facts and articulate the Committee's rationale. This, too, was discounted. In spite of their stated acknowledgment that the car could not physically have backed up as the deputies claimed, the executives quickly rejected the "false statement" theory. Instead, they concluded that both deputies must have somehow both independently had the same, shared (mistaken) perception of what had happened. In a matter of minutes, they reduced the charge to a "performance to standards" violation and authorized a minor suspension.

This result disappointed OIR on several levels. While disagreements with LASD officials are not unprecedented, the problem here was largely with the deliberative process itself. It plainly lacked the care, thoroughness, and clarity so evident in the other shooting case. Accordingly, the executives' decision went beyond overturning the recommendation of the EFRC – it undermined the validity of the review. This was not simply because of the outcome, though OIR remains troubled that the possible misuse of deadly force and a serious potential integrity lapse became something far less. More bothersome is the impression that an important case was decided in haphazard fashion at the eleventh hour – exactly the occurrence that the EFRC's protocols are intended to avoid.

OIR's Response to These Events

In the aftermath of that second shooting decision, OIR met with LASD executives to express its concerns and discuss ways of preventing a recurrence of the problem. The executives were gracious about acknowledging that the hasty and truncated analysis had not served the Department well. Moreover, all parties recognized that the imminent deadline for imposing discipline had worsened the dynamic. This reinforced the importance of investigations by the Internal Affairs Bureau that are timely as well as thorough and effective.

OIR also emphasized its belief that the work of the EFRC merits the support of the executives, and that deference to the EFRC findings and recommendations should become more formalized. Accordingly, OIR has revised its protocols to ensure that all EFRC discipline recommendations are “exceptional cases” that, per agreement with the Department, will not be overturned without prior consultation with OIR. Furthermore, OIR has returned the Department’s attention to the LASD policy section that requires a memorandum of explanation when Division personnel seek to overrule a finding of the Committee. Both enforcement of the memorandum requirement and the required consultation with OIR will encourage a reasoned justification for any deviation from an EFRC recommendation. Thus, these adjustments should make a significant difference in those cases where disputes emerge, and where critical issues regarding force are weighed.¹⁸

Civil Claims: A Progress Report

During this past year, OIR continued to review the investigations and responses provided by units to civil claims filed in preparation for litigation. In addition to monitoring the quality of the responses, OIR continued to monitor their timeliness. On a couple of occasions, OIR identified units with an unusual number of overdue claims responses. OIR brought these situations to the attention of the relevant unit commanders and their supervisors, including the Assistant Sheriffs. On each occasion, efforts were then undertaken to complete the overdue responses. In addition, the Civil Litigation Unit has been monitoring the responses and alerted units to their overdue claims. Under these procedures, it appears that most claims are getting timely investigations and responses.

In addition, OIR has reviewed the quality of the responses. On occasion, OIR has requested that responses be supplemented and LASD has done so. For instance, one claim response reviewed by OIR thoroughly addressed all allegations of misconduct by the unit providing the response. However, an examination of the claim revealed that an allegation against a LASD executive could also potentially be implied. The unit’s response did not address this executive’s conduct. OIR requested that the Civil Litigation Unit forward the claim to the executive for him to provide a response to the allegations. This was done and resulted in a complete review of the allegations.

18. Another significant development worthy of OIR comment is the greater resolve of one of the patrol regions to better document and more finely attune any training recommended as part of the EFRC process. While this initiative is in its infancy, OIR is optimistic about this development and will comment more fully in the future assuming this protocol matures.

Watch Commander Service Comment Reports: Ensuring Completion and Documentation of Investigations

When a member of the public contacts LASD to commend or complain about a deputy, LASD completes a Watch Commander Service Comment Report (“WCSCR”). The WCSCR is then reviewed by the deputy’s unit of assignment. If it is a complaint about the deputy, the unit will inquire into the incident and will determine whether the deputy’s conduct was appropriate or not. After this inquiry, if there are significant concerns about the deputy’s behavior, the unit can commence a full investigation leading to discipline. It can also determine, after its inquiry, that the deputy’s conduct could or should have been better but does not warrant a full investigation and discipline.

WCSCRs are tracked in LASD’s Personnel Performance Index (“PPI”) computer database and appear on a deputy’s employment history. WCSCRs are extremely important. First, they are the community’s means for voicing their praise and concerns about deputies. Second, they can provide the first notice of a problematic deputy.

Earlier this year, OIR met with a unit to discuss an IAB investigation of a deputy who arrested a woman for DUI and then allegedly attempted to commence a personal relationship with her and assisted her in defending the DUI charges. Before the meeting, OIR reviewed the deputy’s performance history and saw five WCSCRs that were listed as “pending” and were 1½ to 2½ years old. LASD policy requires that a WCSCR be investigated within 60 days of receipt. OIR asked the unit about the entries and was told that the citizen complaints in those WCSCRs had never been fully investigated by the unit. The unit also explained that some of those complaints, like the current IAB investigation, alleged that the deputy had not properly cited women who were potentially DUI. The unit said that it had already begun and would complete its inquiry into the WCSCRs. While the unit’s efforts to “catch up” were commendable, it had missed an important warning sign about this deputy by not completing the inquiries into the WCSCRs in a timely manner.

The unit discussed above is one that normally is very prompt about completing inquiries into deputy behavior. The fact that it had not completed these WCSCRs caused OIR to become concerned about how the other units were doing. OIR then searched PPI and found more than 2300 WCSCRs that were received by LASD from September 1999 through December 2003 and were still

listed as “pending” – meaning either no inquiry was done, one was started but never completed, or although an inquiry was completed, the administrative tasks of having it approved and entered into the computer database had not been completed.

Of particular interest to OIR was the fact that the WCSCRs that were pending were not limited to citizen complaints – one-fifth of them were commendations! Thus it did not appear that this was a concerted effort to whitewash deputies’ behavior, but rather an administrative failure to fulfill duties.

OIR raised the issue of these incomplete WCSCRs with the Discovery Unit, which is responsible for maintaining the PPI database for WCSCRs. The Discovery Unit was itself aware of these pending WCSCRs and had begun to attempt to identify whether the “pending” WCSCRs were in the Discovery Unit’s possession, but just not entered into the computer, or had never been forwarded to the Discovery Unit. Its initial efforts identified few WCSCRs where the Discovery Unit was responsible for the listing as “pending.” After discussions with OIR, the Discovery Unit agreed to forward the lists of outstanding WCSCRs to each unit for it to address. OIR understands that this process is still on going and will continue to monitor it through contacts with the Discovery Unit and the Captain of the Risk Management Bureau.

OIR has been impressed with the dedication of the Discovery Unit to rectifying this problem and improving the reliability of the PPI system in general. This is a large task and the Discovery Unit has limited resources. LASD, however, should better utilize existing reports in PPI that allow the monitoring of the WCSCRs that are overdue. Each unit and division should review the reports of overdue WCSCRs on a regular basis. OIR hopes that by using these reports, and perhaps assigning a central person who is responsible for identifying and contacting units that do not comply with WCSCR timelines, LASD can repeat for WCSCRs the success it had reducing the backlog of civil claims responses.

PART FOUR Concerns About The Discipline Process

After the completion of investigations that result in discipline, OIR follows the cases through the grievance and appeals process to continue to ensure fair and rational results. As detailed in previous reports, there are several stages during the grievance and appeals processes when the result of the investigation can be changed either internally by LASD or externally by the Civil Service Commission or arbitrators. These processes are important to ensure the rights of the employees are respected, however, they also provide the opportunity for changes that are not based on a rational evaluation of the merits of the investigation. When a change is made that is not supported by the investigation, it leads to inconsistencies in LASD's discipline process and a mixed message to LASD employees regarding misconduct.

OIR has discussed some areas of concern in past reports. This report discusses LASD's treatment of false statement charges, specifically. In addition, over the past year OIR identified an area of concern outside the official discipline process – specifically the impact unit-level supervisors can have on the message sent by discipline. During this last year OIR learned of a specific incident in which a Captain approved use of the patrol station for a fundraiser that was intended to offset the financial impact of discipline on a deputy. This significantly undermined the symbolic and deterrent effect of the discipline LASD had imposed.

Major Supervisory Lapse: Sending the Wrong Message

LASD is a large organization with more than 15,000 personnel. Executives who have little regular contact with line deputies often make disciplinary decisions. Because of this, LASD must rely on unit commanders – such as captains – and other more immediate supervisors to help communicate the message intended by the discipline. It is often up to captains to debrief deputies regarding major incidents and explain concerns raised by higher-ranking supervisors. Although a unit commander, such as the deputy's captain, will often participate in and make recommendations regarding a discipline decision, he or she does not have the

final word and may not have agreed with all the bases for the decision. Moreover, because the imposition of discipline can be delayed, the captain who talks to the deputy about the discipline may be a different one than the one who supervised the deputy during the misconduct, ordered the investigation, and recommended the result. Nonetheless, the captain is bound by the chain of command to carry out the ordered discipline. This system breaks down when a captain, either out of lack of knowledge of the original case or lack of agreement with it, undermines the discipline by sending messages that could be interpreted as a lack of support for the disciplinary result.

OIR recently learned that last year an LASD deputy received a lengthy suspension without pay as a result of a finding of an improper use of force. Several colleagues of the deputy approached the Captain of the unit and asked whether they could hold a “fundraiser” to assist the deputy financially. The Captain agreed to allow the use of the facility to hold a barbeque for the deputy. Money was “solicited” from other employees of the LASD facility to assist the disciplined deputy.

Several of the first level supervisors at the unit were unhappy with the Captain’s decision to allow use of the facility to hold this fundraiser. Those supervisors also expressed concern that trainees and newer deputies at the facility would feel pressured to participate in the event, even if they did not want to financially support the deputy.

When OIR received information about this event, one of its attorneys immediately held a private meeting with the Captain. At that meeting, the Captain admitted his authorization of the barbeque fundraiser and expressed regret about that decision. OIR also expressed disappointment with the Captain’s decision and discussed at length with the Captain the kind of message that was sent by authorizing the fundraiser. OIR believed that the remorse expressed by the Captain was genuine.

By authorizing the fundraiser, the Captain significantly undercut the discipline that had been imposed. The theory behind a suspension as discipline is similar to the imposition of a fine in criminal cases, namely that the financial burden imposed will serve as a deterrent to future misconduct. In this case, by allowing LASD personnel to use an LASD facility to “fund raise” for an employee who was feeling a financial burden imposed by the Department as a result of his misconduct the message that was conveyed was that LASD really did not intend the imposition of discipline. Moreover, by allowing “solicitation” of all employees at the facility, the Captain created a situation whereby trainees and newer members could have felt coerced to contribute to a cause in which they did not believe. Furthermore, as to those newer members and all other members of the facility, the fundraiser could have been

interpreted as meaning that the unit commander did not really agree with the harshness of the discipline against the deputy in this case and did not have full “buy in” to the Department’s disciplinary process in general. As a Captain new to the facility, the decision sent a message to his subordinates with regard to how he was going to run his facility.

After discussing the matter with the Captain, OIR discussed this event with the Chief, the Assistant Sheriff in charge of the facility, and the Sheriff. OIR was surprised that the Assistant Sheriff was not even aware of the incident. As a result of this meeting, the Assistant Sheriff instructed the Chief to discuss this matter with the Captain.¹⁹

OIR finds that this incident exemplifies the need for supervisors to unequivocally promote accountability by their subordinates and buy in to the disciplinary system. Supervisors cannot acquiesce to any acts that could possibly undercut a message the Department has sent in that arena. In this case, by his agreement to allow the barbeque to go forward, the Captain did just that.

Preserving the Integrity of the Discipline Process for False Statements

The Second Annual Report discussed OIR’s special efforts in 2002-2003 to monitor LASD’s response to allegations of false statements and falsification of official documents. The integrity of sworn personnel is central to the legitimacy of the criminal justice system. Consequently, OIR encouraged LASD to review carefully these cases and discipline sworn personnel based on the seriousness of the allegations and the weight of the evidence. LASD reacted positively, and in 2003 OIR noted an increase in the number of cases where appropriate charges of false statements or falsification of official documents were found to have been proven.

In 2004, OIR continued to monitor these same false statement cases as they progressed through the grievance and appellate process. During this year, OIR has detected a troubling trend. In multiple cases, even though the unit commander had made a recommendation that false statements charges were proven and thus “founded,” and the division chief had approved that recommendation, the division chief subsequently changed the result from founded to

19. Because over a year had elapsed since this incident had occurred, OIR did not suggest an internal investigation into this incident. However, should OIR have learned of this incident in a timely manner, it would likely have recommended such an investigation.

unresolved. These changes were made without consultation with OIR and were often done unilaterally following the usual grievance process meeting between the chief and the employee and the employee's representative.

OIR recognizes that if an employee presents new information in the grievance process and if this information after thorough investigation is relevant and affects the strength of the false statement charge, LASD may be justified in changing its determination of the false statement charge in those instances. In fact, in one case where OIR was consulted, OIR agreed with the Chief that a re-examination of the evidence supported a change of all charges, including a false statement charge, to unresolved.

In the cases discussed below, however, there did not appear to be a principled reason to alter the charge findings. In each of these cases, OIR was not consulted regarding the decision to change the charge findings or regarding any new or additional evidence cited as a justification for the change.

C A S E

An administrative investigation alleged that an off-duty deputy was driving his personal vehicle under the influence of alcohol, crashed into a telephone pole, and left the scene without reporting the accident. About an hour and a half after the crash, officers responded to his home and asked him about the whereabouts of his vehicle. He failed to tell them he had crashed it into a pole, but instead said he had last seen his vehicle parked in his driveway. The officers handed the deputy a stolen vehicle report form, which he signed under penalty of perjury. He was charged criminally with perjury and false report of theft, but the judge believed his claim that his reporting the vehicle stolen was due to a misunderstanding and dismissed the charges. After the criminal case was dismissed, the incident was investigated administratively for potential LASD policy violations. According to standard procedure, OIR monitored the administrative investigation.

After reviewing the evidence in the administrative case, OIR recommended that the conduct described above supported a determination that the following policy violations be founded: False Statements, Failure to Make Statements, Obstructing an Investigation, Cooperation During a Criminal Investigation, General Behavior and Obedience to Laws and Regulations. LASD concurred. Pursuant to protocol, OIR made a request to the Undersheriff that the case be a specially designated case whereby LASD would consult with OIR before any change in the disposition of the allegations or discipline. The Undersheriff agreed and OIR notified the division chief of the special status designation of this case.

After a grievance hearing, the division chief, without consulting OIR, changed the findings of the following charges from founded to unresolved: False Statements, Failure to Make Statements, Obstructing an Investigation and Cooperation During a Criminal Investigation. After OIR became aware of the change in these findings, it met with the division chief who apologized and candidly admitted he forgot about the special status designation of the case. After OIR explained why it believed the charges should have remained founded, the division chief conceded that if he had consulted with OIR, and had the benefit of its insight, he would not have decided to change the findings from founded to unresolved.

C A S E

LASD investigated a Custody Assistant for an unauthorized absence from work and making false statements regarding that unauthorized absence. The Custody Assistant inquired about the possibility of extending an approved vacation leave. Without submitting a request for the extension of vacation leave and without receiving authorization for the extension of vacation leave, the Custody Assistant took the unauthorized vacation leave for a substantial period of time. During an internal investigation of the unauthorized leave, the Custody Assistant made false statements regarding obtaining written authorization from a particular supervisor. The evidence clearly demonstrated that the Custody Assistant made false statements.

After reviewing the evidence in the administrative case, OIR recommended that the following policy violations should be founded: False Statements; Performance to Standards; and Absence. Initially, LASD concurred with the finding for each of the stated charges. OIR communicated with the Chief regarding the findings of policy violations and about its recommendation for discharge of the Custody Assistant. From the Chief, OIR received assurances that if any modification were necessary, the Chief would consult with OIR.

After a grievance hearing, the Chief modified the finding on the false statements charge from founded to unfounded without consulting with OIR, and in violation not only of his representation, but the protocol established between OIR and LASD regarding discharge and other exceptional cases.²⁰

Recently OIR brought its concerns about the unprincipled removal of false statement charges to LASD executives. In that meeting, the issues were thoroughly addressed. As a result of that meeting, the current protocols between OIR and

20. This protocol was discussed in the Second Annual Report, at pp 56-62.

LASD were modified so that any time that an LASD executive is considering modifying a sustained false statement charge, he or she is to consult with OIR before doing so.

Identifying and disciplining employees who make false statements is essential to LASD's credibility with the public and to ensuring that only qualified individuals remain as LASD employees. OIR is hopeful that through monitoring of investigations it can ensure that appropriate charges are considered and through discussions it can convince LASD only to change these findings when there is a rational basis to do so. The revision of the protocol will provide the opportunity for OIR and LASD executives to engage in those discussions and provide recourse if it is ignored.

PART FIVE Policy Initiatives

OIR has promoted various policy initiatives during the past year. Some of these initiatives, which are discussed in this section, have involved a change to existing LASD policy, others have merely sought increased training and enforcement of existing policy. LASD has also taken the initiative on certain policy changes itself.

Throughout its three years, OIR has been impressed by the willingness of LASD to examine its policies and modify them when appropriate. This year has been no different. This section also discusses, however, OIR's perception that the implementation of policies is unnecessarily delayed by the process used to meet with the unions to obtain their feedback on policy changes. OIR hopes that LASD and its unions can improve their process to remove these delays.

Mandatory Baton Carry

LASD policy requires that patrol deputies carry a baton. In its review of major force incidents, OIR has found occasions in which patrol deputies were faced with the need to use an impact weapon but did not have their batons with them. Often this resulted in the use of a flashlight, or even a gun, as an impact weapon. This practice has proven very controversial in law enforcement nationally and locally.

As a result of observing a number of cases where deputies did not have their batons available when needed, OIR consulted with Field Operations Training. As a result of OIR's request, training personnel have been instructed to remind patrol deputies of the mandatory baton carry policy.

OIR is hopeful that this initiative will ensure compliance with the mandatory baton carry policy. OIR will also more closely monitor the substantial force cases to see whether a flashlight or gun was used as an impact weapon because the deputy was not carrying his or her baton. In those cases, OIR will encourage LASD to impose discipline when there is a violation of the mandatory baton carry policy.

Relieved of Duty Acknowledgement

In an appeal of a disciplinary case, an issue was raised regarding the functions that a deputy can perform when he or she is on “relieved of duty” status. LASD has the option of relieving a deputy of duty when an investigation is begun that if founded would result in a dischargeable offense. After a decision is made to relieve a deputy of duty, the deputy surrenders his or her badge, and the deputy is instructed that he or she is no longer to perform peace officer duties until the investigation is concluded or the deputy is further notified.

At the time that a deputy is relieved of duty, a form is provided that the deputy signs to acknowledge the change in duty status. The standardized form indicates that acting in the capacity of a Los Angeles Deputy Sheriff and the carrying of a concealed firearm is prohibited while under relief of duty status. In reviewing a discipline case, however, OIR discovered an ambiguity in the standard form. The form in use did not clearly inform the deputy what restrictions were imposed on his abilities as a peace officer as a result of the change in status. As a result, in at least one disciplinary case, confusion reigned between the Department and the deputy about what uniform, if any, the deputy could wear and what peace officer powers, if any, a deputy on relieved of duty status possessed.

As a result of this incident, OIR recommended that the relief of duty acknowledgement form more clearly lay out to the deputy the limitations imposed on him or her as a result of being placed on such status. The form now indicates and the deputy acknowledges that he or she has been instructed and cautioned about the ramifications of being relieved of duty. The form instructs the deputy that he or she is prohibited from acting in the capacity of a Los Angeles County Deputy Sheriff and that the employee lacks arrest powers and any other peace officer authority. The form expressly notes that the carrying of a duty weapon or concealed weapon is prohibited under this status. Finally, the form notes that the carrying of a badge or identification or wearing of a uniform or any other clothing identifying the employee as a Los Angeles County Deputy Sheriff is also prohibited while under relieved of duty status.

LASD has agreed to modify the relieved of duty form to more clearly spell out the ramifications resulting from such a change in status consistent with LASD policy and OIR’s recommendations. OIR believes that such a change will redound to the benefit of the Department and the employee so that all are informed of the precise implications such a change in status has for the employee. As a result, LASD will be able to enforce its expectations and employees will be able to avoid unwitting violations of the relief of duty policy.

Tape Recordings of Incidents Under Investigation

In August 2003, OIR was notified of a use of force involving a deputy who used his baton to strike a suspect. The use of force occurred after the deputy pulled over a vehicle and an occupant allegedly struggled with the deputy. After striking, restraining, and handcuffing the suspect, the deputy arrested him for battery on a peace officer. The deputy used a pocket tape recorder to record the traffic stop, a practice that reportedly occurs with some frequency. When the IAB investigators who were assigned to investigate the use of force requested the recording, the deputy initially refused to provide it to them. The Internal Affairs Bureau investigators contacted OIR, who opined that the deputy should turn over the tape because it constituted evidence of a crime, and was made during the course of the deputy's law enforcement duties. Eventually, after much discussion and consternation, the deputy turned over the tape.

After the incident, OIR and LASD discussed how to avoid a similar refusal to turn over tape evidence in the future. As a result of this collaboration, LASD proposed that the Failure to Make Statements policy be amended to state that personnel who record incidents that result in an investigation, shall be required to surrender the recordings to investigators upon request. The proposed amendment further states that refusal to surrender any recording may result in disciplinary action. In July 2004, LASD executives approved the amendment to the policy.

“Out of Area” Policing

Over the past three years, OIR has reviewed a number of incidents involving force, shootings, or alleged misconduct where the deputies' behavior occurred outside the normal patrol area of the LASD – “out of area.” This is a particular problem for patrol stations that are adjacent to non-LASD areas or are responsible for multiple areas where the LASD areas are separated from each other by other cities not patrolled by LASD.

LASD recognizes that it has an obligation to concentrate its law enforcement activity in LASD areas and not proactively seek out criminal activity out of area – a practice commonly referred to as “poaching.” At the same time, LASD deputies have the ability to enforce the law anywhere in the County and there may be times when deputies legitimately find themselves outside their patrol area and needing to take law enforcement action. For instance, a pursuit may legitimately

take a deputy out of area, and LASD policy does not require that the deputy allow a dangerous felon to escape merely because he has crossed a jurisdictional line. Similarly, a deputy may be called to assist another jurisdiction as part of a mutual aid request. In addition, because LASD's patrol areas are often divided by other jurisdictions, a deputy may drive through another jurisdiction in order to get from one assigned area to another, and witness a crime requiring his immediate intervention.

Although some individual patrol stations had unit orders prohibiting policing "out of area," other stations did not and distinguishing between poaching and the legitimate activity allowed under the orders was sometimes difficult. OIR therefore suggested to LASD that it adopt a uniform rule regarding out of area activity. The result was the Patrol Area Integrity directive.

The directive balances several interests. First, it recognizes that there are legitimate reasons for a deputy to leave her assigned area, but limits those situations. Second, it recognizes that there may be a need, to ensure public safety for instance, to initiate law enforcement activity when out of area, but it again limits the situations that would allow that and the scope of activity to be undertaken. For instance, the directive recognizes that police activity commenced in LASD area, such as a traffic stop, should not be cancelled merely because the suspects leave LASD area. Similarly, if a deputy is legitimately out of area and observes activity requiring immediate intervention to prevent loss of life, the directive clearly allows the deputy to act. However, if there is a citizen flag down, the deputy is to respond; but if it does not require immediate action, she is to notify the appropriate agency to handle the matter. To promote accountability, the directive requires that supervisors review deputies' activities to monitor the frequency of out of area activity. OIR believes that the Patrol Area Integrity directive correctly balances the competing interests and provides consistent guidance to patrol deputies on this issue.

Crowd Control Issues and Policies

At the start of the United States' invasion of Iraq in 2003, war protesters gathered at the Federal Building in Westwood.²¹ LASD, in anticipation of the protests, had scheduled refresher training for the members of its Tactical Response Force who are responsible for crowd control at protests. The deputies responded directly from

21. OIR did not report these incidents and reforms last year because they had not yet been completed. LASD has now implemented one of OIR's proposed procedural modifications and has agreed to implement the other.

Los Angeles County Sheriff's Department

FIELD OPERATIONS DIRECTIVE



Field Operations Support Services, (323) 526-5760

FIELD OPERATIONS DIRECTIVE: 04-04

ISSUED FOR: FIELD OPERATIONS REGIONS

PATROL AREA INTEGRITY

PURPOSE

The purpose of this Field Operations Directive is to establish guidelines for police activity initiated outside assigned reporting districts and/or jurisdictional boundaries of the station area by uniformed Sheriff's Department personnel. It does not apply to those arrests/citizen contacts made out of the area where the police activity began in the assigned area. All policies, Field Operations Directives, Unit Orders, or any other document previously written which contradicts procedures set forth in this Directive shall be void. Procedures set forth in this Directive shall remain in effect until the Manual of Policy and Procedures is amended and/or this Directive is rescinded.

POLICY

Deputy personnel assigned to a Field Operations Region in a uniformed patrol capacity shall devote their full attention to their assigned reporting district(s) unless one of the following situations exists:

- ◆ Dispatched to another reporting district or non-contract city.
- ◆ An exigency (e.g., assistance, back-up or mutual aid request) requires their response to a non-assigned reporting district or non-contract city.
- ◆ Traversing another reporting district or non-contract city en route to or from authorized Sheriff's Department business (e.g., court, transportation of prisoner, etc.)
- ◆ Involved in an authorized pursuit, Code 9 or surveillance activity.
- ◆ Law enforcement activity, such as a traffic stop which begins in the unit's reporting district, but concludes in another reporting district or non-contract city.
- ◆ Deputy personnel who observe criminal, or suspicious activity that requires *immediate* law enforcement intervention (such as a felony in progress; a fleeing suspect; or a situation involving a potential threat of death or serious bodily injury).
- ◆ Citizen flagdowns where immediate law enforcement intervention is required. In the event the matter is routine in nature, the appropriate agency shall be notified to handle the matter.

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Deputy personnel who are absent from their assigned reporting district(s) and unable to justify the necessity of their "out of area" activity are in violation of this policy. Additionally, deputies who routinely initiate "out of area" activities are in violation of this policy.

Each patrol station Unit Commander shall ensure the routine review of the Deputy Daily Worksheets and monitoring of the frequency of arrests and/or activities that occur outside assigned reporting districts and/or jurisdictional boundaries of the station area. Problematic areas shall be addressed promptly by the concerned employee's supervisor and actions taken shall be documented by the supervisor in a written memorandum to the Unit Commander.

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training to assist the Los Angeles Police Department with crowd control at the protests. After seeing coverage of the protests on local news, and hearing allegations that the Los Angeles Police Department had used force on the protesters, OIR asked LASD supervisors whether any force was used by LASD officers and was told that none had been used. OIR, however, received complaints about force used by some of the deputies, including allegedly pushing a television news reporter to the ground.

OIR sought an IAB investigation of the alleged force and the failure to report it. This investigation revealed a number of problems with the LASD procedures for crowd control situations. First, the standard force reporting procedures were ill-suited for crowd control situations where deputies are unable to leave their positions immediately after using force to report it and when force may be used by a large number of deputies on many, virtually anonymous, protesters. Second, because of the protective gear used in crowd control, even though LASD practice is to videotape the deputies' conduct, identification of the deputies in the videotapes is difficult. Finally, this particular encounter between the deputies and the television news reporter appeared to be unnecessary and avoidable with additional training.

The standard force reporting procedures require a deputy to notify his supervisor after using force. The supervisor will then interview the person on whom the force was used and have the deputy write a memorandum regarding the force he used. Although force, including pushing certain members of the crowd, was used during the crowd control, none was reported. When OIR raised this issue, several LASD executives felt these standard force procedures were impractical for crowd control situations. In a crowd control situation, the person on whom the force is used will not always be identifiable. In addition, as occurred in this incident, after force is used in crowd control the involved deputies are frequently assigned to a skirmish line and cannot leave their positions to report the force for several hours. In addition, because force is often inherent in the orders given at crowd control, such as an order to move the crowd from the street onto a sidewalk, it may seem superfluous to a deputy to report that she used force.

OIR worked with LASD to modify its force reporting procedures for crowd control situations to address these concerns. Recognizing that the deputies who are involved in a use of force may not be able to immediately identify the person on whom they used force and report it and also recognizing that in a crowd control situation there may be a large number of uses of force, the policy was re-written to clarify the requirement that force must be reported even where the person on

whom force is used cannot be identified. It also expressly states that the reporting of the force can wait until it is safe to do so and contemplates that one memorandum reporting force will be completed for force used on multiple unidentifiable persons in a crowd control situation. While LASD approved the policy change a year ago, LASD has been in discussions with the relevant unions for months in an attempt to implement this policy. As discussed below in this Part, these lengthy delays in policy implementation are a concern for OIR.

The second issue, identification of individual deputies, came to light because of allegations regarding the force used on a television reporter. Even though LASD had videotapes of the incident where the reporter fell down after a group of LASD deputies in a skirmish line passed her and there was a list of the deputies who were on that line, IAB investigators were unable to identify the specific deputies who were near the reporter. The images were shown to every deputy on the skirmish line, none identified himself as being near the reporter and the IAB investigators were unable to match any of the deputies to the images they had. In addition, still pictures were taken from the video and sent to supervisors to see if they could identify the deputies. However, because the crowd control gear did not include a nametag there was no easy identification. In addition, the helmets with protective shields worn by the deputies made facial recognition extremely difficult.

Recognizing that this inability to identify individual deputies was problematic, LASD agreed that each deputy must be more readily identifiable. LASD suggested an inexpensive and easy fix – at future events, each deputy involved in crowd control will affix to the front and back of his helmet a piece of tape on which he has written his last name. This requirement is in the process of being incorporated into unit directives for the units that supply personnel for the Tactical Response Force.²²

As a final step in response to the incident, starting in the Fall of 2003, LASD augmented its crowd control training to address the problem that occurred when the LASD skirmish line moved past the television reporter who then fell to the ground. The skirmish line followed the standard practice, which is to preserve the integrity of the line and not allow a break for anyone. However, here the reporter was clearly not part of the problem, had a right to be where she was, and was several feet from the crowd. The skirmish line could have opened to go around her and her cameraman without undermining its effectiveness. Moreover, it was generally agreed that opening up the line to go around her would have been the preferred tactic. The

22. There is a wealth of literature in the field of psychology that concludes that individuals who are anonymous often perform differently than those who know they are easily identifiable. OIR believes that deputies who are aware that they can be identified will act more responsibly than a group of anonymous officers in riot gear.

videotape recording of the incident was added to the standard training to allow discussion of this.

Double Locking Handcuff Project

In the Second Annual Report, OIR discussed how an LASD Captain had discovered from a review of an allegation of misconduct that the handcuffs deployed in that case had significantly sharper inside edges than the handcuffs used by a majority of patrol deputies. As a result of that discussion with the Captain, OIR recommended that the handcuffs with the sharper inside edges be replaced with the handcuffs that had beveled inside edges. LASD immediately agreed with OIR's recommendation.

When OIR was discussing this issue with deputies of the Board of Supervisors, Randi Tahara, Justice Deputy to Supervisor Yvonne Brathwaite Burke, asked if LASD had a policy regarding the double locking of handcuffs. At about the time OIR initiated its inquiry into that issue, the media reported the issuance of a multi-million dollar award to a surgeon who had sued another law enforcement agency for injuries obtained during an arrest.²³ Part of the claim in that lawsuit had been that the surgeon's wrists were injured as a result of the failure to double lock the handcuffs that had been placed on him.

Handcuffs are designed for ready placement on wrists. They also have a mechanism to ensure that once the handcuffs are secured on the wrists the size of the handcuff openings cannot be reduced or enlarged. This locking device prevents the handcuffs from tightening down on the wrists and causing injury.²⁴

Our inquiries revealed that LASD's Court Services Division had a policy requiring that handcuffs be double locked. OIR also learned that while deputies were taught in the Academy to double lock handcuffs, there was no Department-wide policy that addressed that issue. OIR then worked with representatives of LASD's training units and the Risk Management Bureau to develop a policy regarding the double locking of handcuffs.

23. The size of the verdict in this case has subsequently been reduced, but the law enforcement agency still faces significant financial exposure as a result of this incident.

24. Civil rights advocacy groups have alleged in the past that officers sometimes intentionally fail to double lock handcuffs in order to punish unruly arrestees. Whether intentional or not, the failure to double lock handcuffs has significant potential for liability for law enforcement departments.

As a result of those discussions, Department executives agreed to modify the current LASD handcuffing policy. The modified policy requires that the double locking mechanism be deployed whenever handcuffs are deployed. The policy also provides an exception that if the double locking cannot be reasonably accomplished, once the situation stabilizes, deputies are to complete the double locking process. The policy also provides for documentation of the handcuffing process whenever exigencies required a deviation from the policy.

The adoption of a Department-wide double locking policy will help ensure that handcuffs are double locked and potentially reduce injury from the use of handcuffs. The policy also provides a basis to hold employees accountable should the sound practice of double locking handcuffs not be followed. Finally, the policy will insulate LASD from civil suits and litigation risk alleging injuries from a failure to lock down handcuffs.

Refining the Settlement Process

A large fraction of administrative discipline cases end in a settlement agreement. The settlement is usually negotiated between the employee and the Sheriff's Department after the employee receives the Department's "Letter of Intent" informing the employee about the results of the investigation and the intended discipline. Settlement can be an efficient and creative tool to avoid civil service litigation and to implement mandatory training or transfer in addition to discipline. OIR has not objected to the use of settlement agreements as long as the principles of appropriate discipline, fairness, and consistency are not sacrificed.

Recently, however, OIR became aware that some individual units within the LASD were negotiating settlements with employees even before completing a unit level investigation of the alleged policy violation. The Chief of LASD's Leadership and Training Division conferred with OIR and other interested units within the Department, such as Internal Affairs Bureau, Risk Management, and County Counsel's Advocacy Unit.

All agreed that pre-investigation settlements, except in very limited circumstances, were unfair, both to the Department and to the subject employee, and would produce inconsistent and possibly unenforceable settlement agreements. This quick consensus resulted in a policy clarification establishing that all proposed settlements reached before the completion of a full investigation of the allegations must be approved by the Captain of the Internal Affairs Bureau before being finalized. OIR

believes that this rule will help promote consistency in the disciplinary process as well as fairness to employees and the public.

Another positive development relating to case settlements concerns the OIR Cooperative Paradigm discussed in our Second Annual Report. This agreement between OIR and LASD management requires every Chief of the Department to consult with an Assistant Sheriff or the Undersheriff and with OIR before making any last minute changes in the discipline imposed in particularly serious cases or designated “exceptional” cases. The Advocacy Unit, which represents LASD before civil service, has agreed, at the urging of the command staff, to confer with OIR as well before reaching any settlement in serious or exceptional cases.

LASD Division Initiatives: An Overview of Internal Responsiveness

OIR is encouraged to see a number of internal Division-inspired initiatives that have commenced or begun to yield results in the past year. Each initiative varies in tone and approach but they are singularly minded in their mission to address important issues of accountability, integrity, and systemic improvements. The following is a brief description of some of the initiatives of which OIR has become aware.

Patrol Region I²⁵: Honesty/Veracity Briefing Project

Region I has developed a briefing project designed to raise individual and group consciousness regarding the importance of trust and honesty in law enforcement and to create a climate among deputies in which leadership with respect to honesty is the norm. The briefing project is intended to reach each of the patrol deputies at briefing with an ethics awareness training curriculum designed to promote discussion and thought about honesty and trust. The program promotes the development of station lieutenants and sergeants into effective presenters and facilitators of the training. The briefing is based on real life scenarios that form a basis for discussion of integrity issues that face deputies on a daily basis. The goal of the briefing project is to have 700 Region I deputies participate in two complete briefing presentations by Fall 2004.

25. LASD patrol stations are divided into three Field Operations Regions.

Patrol Region II: Supervisor Accountability and Statute of Limitations Enforcement

The leadership of Region II is in the process of traveling to each of its stations to address accountability issues with its Sergeants and Lieutenants. Part of the thrust of this initiative has been to ensure the timeliness of internal investigations within its Region. The leadership of this Region has gone so far as to place the onus of ensuring timely completion of investigations on its patrol supervisors and raised the specter that an administrative investigation could be initiated for the supervisor who fails to ensure timely completion. The Region has also stressed the need for supervisors to timely and accurately prepare use of force packages and other important records. Finally, the Region has frankly communicated to its front-line supervisors about the need for respect among their subordinates and the expectations that Region leadership has of its supervisors to make difficult personnel decisions.

Patrol Region III: Pursuing Policy Modifications

Region III has been particularly active this year in two areas important to OIR. First, Region III was instrumental in convening a meeting that led to the recommended modifications of the Guidelines for Discipline discussed on p. 72 of this Report. Second, Region III, in tandem with Region I, was at the forefront in achieving implementation of a new foot pursuit policy.

Custody and Custody Support Services Divisions

The jail divisions have been particularly active in examining systemic issues affecting inmate and officer safety. IMPACT is a committee formed in specific reaction to the five inmate homicides and is described at p. 7 of this Report. Subcommittees on jail housing and inmate classification have also been recently formed.

In addition, as detailed at pp. 19-21, Custody Training Division has moved forward an initiative attempting to address off-duty conduct.

Risk Management Bureau: Proactive Management of Civil Litigation

In the past year, OIR has continued to build on its constructive relationship with the LASD Risk Management Bureau, the unit that (among other things)

addresses the hundreds of claims and lawsuits²⁶ that are filed against the County of Los Angeles each year as a result of alleged harms caused by the Sheriff's Department.²⁷ The leadership at Risk Management has not only facilitated OIR's access to this information but has reached out to OIR in an effort to strengthen its own forward-thinking initiatives and pro-active approaches.

A good example of the collaborative relationship between the entities is the regular Critical Incident Analysis meetings (CIA's) that Risk Management coordinates in order to assess significant cases holistically and develop the best strategy for resolving them in light of the facts. The meetings bring together investigators, County Counsel lawyers, and supervisors from the involved units. As described in last year's report, Risk Management has invited OIR to participate in these meetings, and that practice has continued.

At the CIA's, OIR has the opportunity to learn relevant facts about the incidents in question so that it can evaluate whether the LASD internal review has adequately responded to potential misconduct or deficiencies in policy or training. For its part, OIR can offer the information it accumulates through its own familiarity with the cases and its awareness of LASD actions and review processes. Recently, Risk Management agreed to put a particular case on its agenda at OIR's urging, with the idea that the process would promote needed additional scrutiny of the incident in question.

OIR has also noticed a marked (and laudable) change of philosophy in the unit's approach to civil litigation issues. Whereas OIR once needed to bring LASD's attention to the fact that it had a huge backlog in unanswered claims, Risk Management has developed a pro-active philosophy in addressing these matters. An especially diligent sergeant has the job of monitoring overdue claims and reaching out to each unit as needed to obtain a response. The willingness to "get on top" of incidents in terms of fact-finding, assessment, and response offers a number of benefits.

Another positive development in the Risk Management Bureau is the creation and dissemination of a weekly bulletin that reports important developments such

26. The filing of a claim for damages within six months of the incident in question is the required precursor to filing a lawsuit against a County entity in the state court system.

27. OIR has been interested, of course, in litigation from the beginning of its tenure. It recognizes the allegations as "complaints with a price tag attached," and therefore considers them a potentially useful source of information about misconduct or deficient practices. It provides OIR with another frame of reference and another means of assessing LASD's ability to identify and respond to wrongdoing by its personnel.

as the filing of noteworthy claims and lawsuits, the resolution of litigation, and other significant events. This user-friendly document is of great benefit to OIR in tracking the litigation and identifying issues of accountability and misconduct in that arena.

From OIR’s perspective, the risk management process now dovetails much more effectively with OIR’s goal of rigorously scrutinized allegations of misconduct. From a business standpoint, LASD’s newfound efficiency and assertiveness about

Lawsuit Payouts		
FY 01-02	FY 02-03	FY 03-04
270	326	238
\$19,248,030.00	\$13,126,394.54	\$5,663,626.30
Claim Payouts		
FY 01-02	FY 02-03	FY 03-04
1052	1016	1064
\$268,405.00	\$326,900.07	\$367,269.03

confronting claim issues as early as possible has also paid dividends. This chart (supplied to OIR by LASD) is illustrative.

These figures reflect the evolution – and results – of LASD’s new strategy regarding the claim stage, which is where speed and directness in dealing with public complaints can often

lead to much more economical resolutions than would be available in a protracted and contentious court case. While more money has been spent on claims, the impact on litigation costs – and the overall benefit to the system – is readily apparent.²⁸ OIR is pleased to have had a small part in this trend by virtue of its perspective as a frank and candid outsider with knowledge relevant to the various cases. OIR will continue to monitor this trend, and looks forward to further collaboration with the Risk Management Team.²⁹

The policy initiatives started by the various Divisions provide encouragement that Department executives remain committed to achieving reform and stressing issues such as integrity and accountability to the deputies they are entrusted to lead.

28. OIR is hopeful that the apparent trend of decreasing lawsuit payouts reflects a true improvement and is not merely an anomaly.

29. Risk Management Bureau’s approach to litigation has been so novel and progressive that the unit has been selected to conduct a joint presentation with OIR on risk management issues at the 2004 annual conference of the National Association for Civilian Oversight of Law Enforcement (NACOLE).

The Delay in Revising LASD Policies

In its Second Annual Report, OIR charted out the numerous changes in practices, protocols, and policies that OIR had worked with LASD to devise. In that chart, OIR indicated that the vast majority of the systemic changes had already been adopted and that LASD executives had agreed with OIR regarding the remaining policy changes. However, as to three of the recommended policy changes, it was determined that before implementing those changes they would be subject to the “meet and confer” provisions between LASD and its employee unions.

Under the “meet and confer” provisions as set out by California labor law, certain proposed changes in “terms and conditions of employment” must be presented to affected employee unions before they can be implemented. Under those procedures, representatives of LASD are to meet with union representatives and discuss the proposed modifications in policies before implementing the changes. During the process, the unions can suggest modifications in the language of the policy or object to the entire policy. However, once LASD has met and conferred with the unions, it is free to then implement the change, even over the objection of the union.³⁰

The goal of the “meet and confer” process is to attempt to achieve consensus regarding proposed changes in policies that might affect the employment conditions of employees.³¹ While this goal is laudable, OIR has been frustrated and disappointed about the length of the process as practiced by LASD and the employee unions. For example, with regard to the three policy modifications that OIR and LASD had agreed to, it was six months before LASD and union officials even met regarding the policies. In fact, it was only after OIR informed the Sheriff that the policy changes had been stalled and only as a result of his personal intercession that a meeting between LASD and the union was finally scheduled regarding those modifications. A series of meetings were then held and finally, after nearly a year had passed since they were approved by LASD, two of the three policy changes were implemented. Unfortunately, as to the remaining policy change, the “meet and confer” process has yet to produce any results.³²

30. OIR does not concede that the policies in question even require a “meet and confer.” However, the Department decided to “meet and confer” with regard to the policy changes in question.

31. The “meet and confer” requirements are quite different from and are intended to be much more streamlined than the requirements for changes in other areas, such as employee salaries, that require actual negotiation.

32. The three policy changes at issue were not controversial. The modifications finally implemented involved providing guidance to deputies regarding courtroom presence of off-duty deputies in uniform. Copies of those policies are included in this Report, at pp. 70-71. The policy that has yet to be implemented because of this “meet and confer” process sets out the reporting requirements for LASD deputies when they observe force used by outside agencies in joint law enforcement operations and when they use force during crowd control.

3-01/050.95 COURT CASES

On-Duty Court Appearance Attire

Department members shall dress either in full uniform or appropriate business attire pursuant to the Department Manual of Policy and Procedures, Section 3-01/050.80, Grooming and Dress Standards.

Off-Duty Court Appearance Attire

Department members attending any court proceeding, without a subpoena, may not appear in uniform. Any exception to this policy shall require prior approval from the member's Unit Commander (Refer to section 3-03/030.10, Who Shall Wear Uniforms).

All Court Appearances

Members appearing in court on Department business shall be punctual in attendance.

Without specific authorization from the concerned Division Chief, members shall not take part or interfere, either directly or indirectly, in negotiating or influencing any compromise or arrangement that permits a defendant to escape any aspect of the law. Members shall not, because of a personal relationship with a defendant, or because a defendant is a member of any law enforcement agency, seek favorable treatment for any defendant in any court proceeding.

This shall not prevent members from cooperating with the prosecuting attorney in the interest of justice. A member who is the arresting or investigating officer may communicate about the merits of a case with the prosecuting attorney.

Members shall be properly prepared to testify in cases in which they are concerned. Upon prompt arrival at the designated court, they shall have reviewed the pertinent crime and arrest reports to adequately familiarize themselves with the case in preparation for testimony. Whenever possible, members shall complete such review during their normally scheduled work hours prior to the court appearance. They shall ensure that all property which is to be used in any court proceeding as evidence is available and present in court.

Members shall not be disruptive in court. Behaviors, such as audible laughter, audible conversations, and tobacco chewing, are examples of disruptive behavior. Members shall not chew gum while testifying in court. They shall speak calmly and explicitly in a clear, distinct and audible tone in order to be easily heard by the court and jury.

Members shall testify with the strictest accuracy, confining themselves to the case before the court.

Revised 10/05/04

Revised 04/15/02

Revised 03/22/99

3-03/030.10 WHO SHALL WEAR UNIFORMS

Uniformed members shall wear the approved uniform, safety equipment and identification items appropriate for their rank, classification and/or assignment during their tour of duty.

Department members shall not wear full or partial uniforms, safety equipment or Department identification items while off-duty which would identify them as uniformed members of the Sheriff's Department. Uniforms may be worn by members while traveling to and from their work location provided all clothing or equipment identifying the Department is covered. Any exceptions shall be authorized by the member's Unit Commander prior to the off-duty activity. Funerals are an exception to this policy.

This policy shall not preclude off duty members from carrying concealed an approved weapon and/or identification.

Revised 10/05/04

Unfortunately, the institutional delay produced by the “meet and confer” process is not limited to changes promoted by OIR. For example, for years there has been a move to reform LASD’s Guidelines for Discipline. The Guidelines set out the range of discipline to be ordinarily assessed for violations of departmental policies. For example, the Guidelines instruct that an employee who is involved in an unauthorized pursuit is subject to a discipline range of from 3-10 days suspension.

Last summer, LASD convened a meeting of its executives to consider formalizing significant changes in the Guidelines. OIR was invited to the meeting and participated in the discussion. The resulting product that LASD executives agreed to was a user-friendly document that also made important substantive reforms regarding disciplinary ranges. For example, under the current Guidelines, untruthful statements to a supervisor or during a criminal or internal investigation provide a standard disciplinary range of only 15-25 days suspension, and does not ordinarily provide for discharge. This penalty range is out of sync with progressive disciplinary practices found in other police agencies and needs revision in order that LASD can deal with integrity issues forcefully when warranted.

Since the reformed Guidelines For Discipline were agreed to by LASD, the Guidelines have descended to the black hole of the “meet and confer” process. Even though there was consensus among LASD executives regarding the modified Guidelines over a year ago, the first “meet and confer” between LASD and the employee unions on this important topic occurred just recently with no advancement of the issues. And as a result of the way in which the “meet and confer” process is currently practiced between LASD and the unions, OIR is pessimistic that any reform of the Guidelines will be implemented anytime soon. OIR is also aware that other LASD executives that were involved in the development of the Guidelines reforms are similarly frustrated regarding the total lack of progress toward implementation.

Different reasons are offered by different parties to explain the inefficiency of the “meet and confer” process. Some have offered that it is difficult to get the parties to schedule regular “meet and confer” appointments and that once scheduled, the meetings are often cancelled or postponed. Others have indicated that there is little interest among union representatives in adopting improved policies and practices, especially if those modifications will impose additional accountability on its members. Finally, others have opined that even if the changes are relatively benign, union representatives expect concessions on other matters in exchange for signing off on those provisions.

At this juncture, OIR's suggestions on improving the "meet and confer" process are extremely modest. OIR would like to see evidence that meetings are routinely scheduled and conducted and that proposals are timely presented. There also appears to be little rationale as to how matters are prioritized and when they will be discussed by meeting participants. Perhaps the development of an improved system regarding the scheduling of these meetings and the setting of the agenda would help streamline the process.

OIR has found the "meet and confer" process, as practiced by LASD, a significant obstacle to achieving productive change in the organization.³³ OIR agrees that the unions should have a voice regarding changes in the working conditions of its members. But the unions need to voice their positions in a timely manner. In order for the process to work effectively, meetings need to be regularly scheduled and occur when scheduled. Progressive reform should not be stalled by the process and effective meetings and discourse should not take months or years to occur. It is incumbent upon LASD and its unions to improve its system to prevent the Department from becoming hidebound and bureaucratic, and instead to strive to be the adaptive progressive organization that its leaders and the community it serves desire it to be.

33. OIR has learned that this paralysis in policy changes is not limited to LASD, but appears to be a common obstacle to reform among many large law enforcement entities. However, because LASD prides itself, often rightly so, as being a model for best practices, it is imperative that there is a system in place in this organization that allows flexibility and change.

APPENDIX A OIR's Attorneys

Michael J. Gennaco

Mr. Gennaco has been involved in assessing police misconduct and other civil rights violations for twenty years – first as a civil rights trial attorney and prosecutor and for the past three years as the Chief Attorney of the Office of Independent Review.

“I am most heartened by our ability to provide transparency to a traditionally cloistered process – both to the general public and the men and women of LASD itself. By doing our utmost to ensure principled decisions by LASD and to then be able to report out the results of our work allows the world to better understand the process. By reporting on the systems of LASD whether in our view they are stellar, poor, or something in between, we enable persons inside and outside the Department to learn and, if they choose, dialogue about issues of common interest. Each day I am more persuaded that providing a conduit for information is an essential step towards continuing the public’s confidence in this organization.”

Rob Miller

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

“The Sheriff’s Department, like many large organizations, has a huge untapped capacity to fix itself. Our job is to help it tap into that capacity.”

Benjamin Jones, Jr.

Mr. Jones, a Deputy Chief Attorney in OIR, is a graduate of the University of Virginia and Boston University School of Law. Before joining OIR, Mr. Jones

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

“A strength of OIR is its ability to engage in real-time and substantive dialogue with LASD investigators and decision-makers and, through such dialogue, to assist LASD to achieve thoroughness, fairness and consistency in its decisions related to internal investigations, discipline and policy matters.”

Ray Jurado

Ray Jurado earned his bachelor's degree from Yale University and his juris doctor from UCLA. Before joining the Office of Independent Review, he had been a prosecutor in both the Los Angeles County District Attorney's Office and the U.S. Attorney's Office, where he prosecuted many violent crimes, including Hobbs Act and RICO conspiracies against notorious street gangs. He was also a civil litigator in the law firm of O'Flaherty & Belgum. In addition to his work in the Office of Independent Review, he teaches legal writing at USC Law School, and represents battered women as a volunteer lawyer for a domestic violence clinic.

“Law enforcement serves a basic need to protect society from those who would cross the line. In serving that need, law enforcement should stay within the line.”

Ilana B.R. Rosenzweig

Ms. Rosenzweig earned her undergraduate degree from the College of William and Mary and her law degree from the University of Michigan Law School. Before working at OIR, her legal career included clerking for the Honorable John G. Davies, practicing law at Munger, Tolles & Olson LLP, teaching at UCLA School of Law, and researching and contributing to reports about LASD by Special Counsel Merrick Bobb.

“Over the past three years we have begun to see the long term impact of our efforts – both those that achieved their goals and those that did not. The knowledge gained from this perspective is invaluable, informing our decisions and helping us adapt our approach to each new concern.”

Stephen J. Connolly

After graduating from Holy Cross College in Massachusetts, Mr. Connolly spent two years in the Jesuit Volunteer Corps. He then worked as an English teacher for several years before attending Loyola Law School in Los Angeles. He has been an attorney since 2000.

“I’ve had moments of great admiration and also great concern in monitoring the Sheriff’s Department for three years. I try to keep all of them in mind and remember that LASD – and police work in general – doesn’t lend itself to simple blanket judgments.”

Working to Achieve Systemic Change – Year Three

OIR Identification of Systemic Problem	OIR Recommendation	LASD Response	Implementation of OIR Recommendation
No criteria in place with regard to the selection of inmate module workers	Develop workable and enforceable guidelines with regard to the selection of inmate module workers	Agreed to work with OIR to develop such guidelines	Agreement in principle, see page 7
No formal pronouncement that the hourly safety check requirement applies to IRC	Issue formal permanent pronouncement regarding the applicability of the safety check requirement to IRC	Agreed to issue such a pronouncement	Initiative in progress, see pages 7-8
No formal pronouncement limiting the number of inmates that may be held in IRC Custody Line cells	Issue formal pronouncement limiting the number of inmates that may be held in IRC Custody Line cells	Agreed to issue such a pronouncement	Initiative in progress, see pages 7-8
No protective screen between upper and lower tiers of former low security module	Install protective screen between upper and lower tiers of module	Agreed	Installation work requested, see page 4
No regular oversight presence in the jails	Have OIR satellite office in the Central Jail	Agreed to the presence of an OIR office	Implemented, see pages 9-10
IAB did not routinely “rollout” to inmate homicides and suicides	Establish operative “rollout” protocol for IAB to inmate homicides and suicides	Agreed to set up rollout protocol	Implemented, see page 10

OIR Identification of Systemic Problem	OIR Recommendation	LASD Response	Implementation of OIR Recommendation
No protocol regarding handling of inmate suicide and homicides between IAB and Homicide Bureau	Develop such a protocol	Agreed to develop a protocol	Protocol developed in practice; written protocol in development stage, see page 10
No notification protocol to OIR for inmate homicides and suicides	Initiate such a protocol	Agreed to initiate a notification protocol	Notification protocol initiated, see pages 10-11
No routine transmission of memoranda to OIR regarding homicides, suicides, inmate disturbances and escapes	Provide such memoranda on a routine basis to OIR	Agreed to transmit such memoranda	Implemented, see page 11
No ability to search the inmate complaint tracking system by deputy name	Modify inmate complaint tracking system database to permit searching by deputy name	LASD agreed to modify database	Implemented, see page 12
Insufficient training regarding investigation of inmate complaints	OIR to present training to supervisors on investigation of inmate complaints	LASD agreed	Training undertaken, see page 12
Upswing in DUI arrests of LASD personnel	Develop ethics training to address off duty misconduct issues	Training developed by LASD Custody Division	Training undertaken, see pages 20-21
No systematized tracking of cases sent to District Attorney for review	Develop tracking system	LASD agreed to develop system	Tracking system developed, see page 29
No formal protocol with regard to providing audio/visual materials to the Coroner	Develop formal protocol that requires automatic production of audio/visual materials to Coroner	LASD agreed to develop protocol	Protocol developed, see page 32

OIR Identification of Systemic Problem	OIR Recommendation	LASD Response	Implementation of OIR Recommendation
No protocol in place to allow short-staffed supervisors at station to respond to scene	Develop “move-up” protocol to allow borrowing of supervisors from other stations in times of crisis	LASD agreed to develop protocol	Development of protocol in progress, see page 32
Need for reinforcement with Aero Bureau personnel regarding their important role in formulation of tactical plan	Create a unit directive emphasizing the important role of Aero Bureau in formulating a tactical plan	Agreed to prepare unit order	Unit order created and disseminated, see pages 32-34
Using helicopter as firing platform for suspect in water ineffectual and potentially dangerous	Create a unit directive noting the ineffectiveness and danger of such helicopter deployment	Agreed to prepare unit order	Unit order created and disseminated, see pages 32-34
Using helicopter to herd person in water ineffectual and potentially dangerous	Create a unit directive noting the ineffectiveness and danger of such helicopter deployment	Agreed to prepare directive	Unit order created and disseminated, see pages 32-34
Insufficient understanding that audio and video tape materials of death in custody are evidence to be provided to Homicide investigators	Create a directive requiring audio and video tape materials to be immediately provided to Homicide investigators	Agreed to prepare directive	Directive in progress, see page 34
Insufficient guidance regarding use of canines from an outside agency	Issue directive tightening standards regarding use of canines from an outside agency	Agreed to prepare directive	Directive in process of being completed, see page 34
Employees on injured on duty status not being served with notice of discipline resulting in inability to impose discipline	Serve all letters imposing discipline regardless of work status of employee	IAB agreed to change procedures	Change in procedure implemented, see page 37
Investigators used outdated photograph of deputy for identification procedures	Use current photographs of employees when conducting identification procedures	ICIB agreed to raise at briefing	Briefing held, see pages 38-39

OIR Identification of Systemic Problem	OIR Recommendation	LASD Response	Implementation of OIR Recommendation
Investigators engaged in identification procedures when identification not in dispute	Do not engage in identification procedures when identification not an issue	ICIB agreed to raise at briefing	Briefing held, see pages 38-39
Investigators did not monitor telephone calls tape-recorded by cooperating witness	Best practices is to monitor the tape-recording of telephone calls	ICIB agreed to raise at briefing	Briefing held, see pages 38-39
Need to formalize the deference to be given to Executive Force Review Committee determinations	Have all Executive Force Review Committee cases with discipline recommendations designated as "exceptional cases" requiring consultation with OIR	LASD agreed	Protocol implemented, see page 46
Over 2,300 Watch Commander Service Comment Reports shown as not completed	Ask units to ensure completion and computer entry of listed outstanding reports	LASD agreed	Project in progress, see page 48
False statement charges removed without a principled basis for removal	Develop protocol whereby false statements charges not to be removed without consultation with OIR	LASD agreed to develop protocol	Protocol implemented, see pages 53-54
LASD requirement that batons be carried on patrol not being followed	Brief LASD personnel on mandatory baton carry requirement	LASD agreed to brief at training	Briefing undertaken, see page 55
Relief of duty acknowledgment form provided insufficient guidance regarding consequences of that status	Revise form to clearly inform deputies and LASD supervisors of consequences of status	LASD agreed to revise form	Form revisions in progress, see page 56

OIR Identification of Systemic Problem	OIR Recommendation	LASD Response	Implementation of OIR Recommendation
No clear policy regarding the disposition of tape-recordings of contacts when investigation is initiated	Develop policy mandating that tape-recorded evidence possessed by LASD personnel be provided to investigators upon request	LASD agreed to develop policy	Policy agreed to by LASD, see page 57
No clear or consistent policy regarding enforcement out of LASD's enforcement area	Develop consistent policy regarding enforcement out of LASD's enforcement area	LASD agreed to develop policy	Policy implemented, see pages 57-60
Force reporting procedures in crowd control situation need refinement	Refine force reporting procedures to address unique challenges of reporting force in crowd control situations	LASD agreed to refine policy	Implementation of refinement of policy in progress, see pages 61-62
Difficult to identify LASD personnel in crowd control operations	Provide way to more readily identify LASD personnel in crowd control operations	LASD agreed to place identification on helmets of personnel involved in crowd control operations	Procedural change implemented, see page 62
No Department-wide policy requiring double locking of handcuffs	Develop Department-wide policy requiring double-locking of handcuffs	LASD agreed to develop policy	Policy agreed to by LASD, see pages 63-64
No policy regulating pre-investigative settlement agreements	Develop procedures regulating pre-investigative settlement agreements	LASD agreed to develop procedures	Procedures implemented, see pages 64-65
LASD employees confused about whether they could administratively segregate an inmate after a complaint	Train employees that such conduct could violate inmate's civil rights	LASD agreed to prepare training memorandum and briefing	Memorandum prepared and briefings held, see page 13