



Stephen J. Connolly
Executive Director

TO: Board of Supervisors
FROM: Stephen J. Connolly
DATE: Tuesday, October 4, 2011
RE: OIR Activity Report

I. Discipline Process: Year to Date

As you know, the Office of Independent Review monitors all of the Sheriff Department's administrative investigations into employee misconduct. This includes assessment at various phases, from initial complaint through resolution, and involves OIR input regarding both the thoroughness of the case investigation and the appropriateness of the outcome.

From January 1, 2011 through August 31, the Department has opened 179 new misconduct cases. Further statistical details include the following:

- 114 generated internally by OCSD administration, vs. 65 resulting from external citizen complaints of misconduct.
- 90 cases involving Custody personnel, 64 from Patrol, and 25 from other divisions.
- 20 cases involving allegations of off-duty misconduct
- 159 involving allegations of on-duty misconduct
- 12 cases involving allegations of criminal misconduct.

Projected over 12 months, the rate of new cases constitutes a decrease relative to 2010, which was itself a reduction over prior year totals. The comparison is as follows:

2008: 366 total cases reviewed by Internal Affairs
2009: 364 total cases reviewed by Internal Affairs
2010: 284 total cases reviewed by Internal Affairs
2011: 270 total cases reviewed by Internal Affairs (projected).

Part of this reduction is attributable to the Department's new Commendation/Complaint policy, which was implemented in November of 2010. The policy is part of the Department's shift to a "decentralized" model of discipline, as advocated by OIR. The new protocol requires supervisors to document all citizen complaints in a shared database at the time of receipt, at which point they receive an assessment and initial inquiry from the unit of origin.

Why this matters is that many complaints that were once handled exclusively by Internal Affairs and counted in their statistics are now being addressed – and resolved -- under the new system. OIR has endorsed that approach and believes it is working effectively, as discussed below. However, as a statistical matter, it is important to note that some of the decrease in new discipline cases has to do with how things are counted, as opposed to a substantive reality of fewer incidents or issues.

The new Commendation/Complaint procedures, in conjunction with the decentralized investigation of some formal misconduct allegations that were once handled by Internal Affairs, has resulted in a more efficient process – cases are routinely completed within weeks instead of months, with no loss of thoroughness or investigative legitimacy. (Some 60% of new Internal Affairs investigations opened in 2011 are already complete, including several that have resulted in discipline and proceeded through the often lengthy imposition phase.)

Among the cases OIR has reviewed in recent months are the following:

A young female motorist complained to the Department after being detained by a male deputy for an extended period after a nighttime traffic stop. She was subjected to a pat down search that made her uncomfortable, especially in conjunction with a detailed and persistent line of questioning by the deputy. OIR was immediately notified of the complaint and consulted with Internal Affairs on its investigative approach. IA sent investigators to meet with the woman and her father, took a statement, and used that information to determine the involved deputy and pull the digital recording of the stop, which OIR reviewed the next day. Though the search itself was minimal and was allowed under Department policy and the circumstances of the stop, the deputy's tactics and the length of the detention are currently under a broader review.

An off-duty deputy became involved in a domestic violence incident in an OCSJ jurisdiction. While others were responding to the call for service, an additional deputy, who was friendly with the suspect from work, recognized the address during the radio dispatch and decided to involve himself with the call. He ended up finding the suspect deputy at a nearby location and taking an active role in ways that raised questions about his objectivity and his adherence to normal protocols. Though the criminal case was not

ultimately compromised, the responding deputy's judgment raised concerns. At the conclusion of the resulting administrative investigation, OIR's recommendation for significant discipline was adopted by the Department.

A deputy encountered a suspect who had been evading arrest, and was able to take him into custody after a short struggle. Days passed, however, before the deputy reported having kicked the suspect in addition to using controlling force techniques. This raised questions about the necessity for the kick, which had been recorded on a patrol car video system. (The suspect was not injured.) OIR reviewed the recording and met with Department executives to recommend a presentation of the case to the District Attorney's Office for consideration, based on the overall circumstances and the importance of a transparent relationship with the D.A. The Department concurred. The D.A. efficiently conducted its assessment and determined there was not a basis for filing criminal charges; the case has now been returned to OCSD for administrative review.

II. Commendation/Complaint: Update

As discussed above, the Commendation/Complaint process has re-shaped OCSD's approach to capturing, tracking, assessing, and resolving citizen complaints about the actions of Department personnel. The new protocols were instituted in Patrol Operations in November of 2010 and are now fully operational throughout the Department.

OIR has worked with the Department on both the development and implementation of the new approach; it also receives notification of all new complaints and is able to monitor their progress through the system. Here are some totals from this calendar year, through the end of August:

- 93 total complaints
- 69 complaints alleging individual misconduct (as opposed to general dissatisfaction with OCSD service or policies)
- 76 completed reviews
- 8 referrals to Internal Affairs for formal administrative investigation
- 26 determinations that "no further action" was required based on initial evaluation of complaint and available evidence
- 20 findings that employee conduct was "in policy"
- 2 referrals to the Police Community Reconciliation Program
- 20 determinations that, although no policy violation occurred, the conduct at issue could have been better and led to a non-disciplinary intervention in the form of documented counseling or further training.

During the same period, the Department entered 126 public commendations into its new tracking system.

The new approach carries with it several advantages. These include more inclusive and consistent intake of feedback from the public, greater timeliness, and improved ability to identify patterns of conduct. Perhaps the most significant aspect of the protocol is the more nuanced approach it takes to improving performance. Rather than a black-and-white, all-or-nothing focus on the specific question of whether formal discipline is warranted, the new complaint system puts the burden on supervisors to evaluate all aspects of employee performance.

It is often the case that, while no policy violation occurred, one or more aspects of the incident could and should have been handled differently or better. While much of that was once lost or disregarded – or even unknown to direct supervisors because of the centralized referral of all matters to Internal Affairs – the process now promotes a comprehensive, localized review of all complaints. This puts responsibility and decision-making in the hands of people who are in the best position to have a constructive and immediate effect on their personnel. The tracking system helps to ensure that the process is working as intended, and holds supervisors accountable for their decision-making.

OIR is regularly involved in these processes, and has the opportunity to influence them as needed. Sample cases from recent months include the following:

A woman complained to the Department about the comments of a deputy who was responding to her home after the death of a relative. The complainant considered some of the comments to be insensitive and inappropriate to the situation. The review of the incident included audiotape of the exchange at issue, and the deputy's response was found to be well-intentioned and largely compassionate. At the same time, the woman's perception of certain remarks was understandable, and OIR recommended an individualized response letter from the area captain that would address the sensitivities of the situation in spite of the finding of no misconduct. The Department concurred.

A man who had been convicted of a crime complained to the Department that the handling deputy had misrepresented the facts on the initial report of the incident. The initial supervisory response was to dismiss the complaint based on the passage of time and the complainant's obvious bias and credibility issues. OIR recommended instead that some attempt be made to corroborate or refute the allegations with available evidence, and the area captain concurred with the recommendation. That further "due diligence" discounted the allegations in a way that was persuasive to OIR.

A man alleged unfair and unprofessional treatment from different OCSD employees in the context of his receiving a parking citation. The audiotape of the incident established that the citation was appropriate, if strictly interpreted. However, a comment that was made by a deputy as an aside at the end of the encounter, and that was overheard by the complainant, did unnecessarily aggravate the situation and reflected poorly. OIR recommended documented counseling about this issue, which did occur.

III. Use of Force Review

The Sheriff's Department has created a number of internal review structures in order to better evaluate the incidents involving use of force by its personnel. One of these is a quarterly Force Trend Review, in which executives from across the Department gather to assess data that has been compiled and analyzed by the SAFE Division. This process allows for the Department to have an awareness of trends and to identify issues that individual statistics may suggest. Especially helpful is the opportunity to review comparative data over time. The Department is gradually increasing its ability to do this as new processes take hold and develop cumulative stores of information.

OIR recently attended a Force Trend Review that included statistics from the first quarter of 2011. Among the noteworthy details were the following:

- The total number of force incidents in the quarter was 103
- Some of these involved multiple individual uses of force (e.g., two or more deputies using force to control a subject, or a pepper ball deployment into a jail module that struck multiple subjects)
- The custody environment produced 46 of the 103 incidents, while 48 came from patrol
- Injury to subjects was minimal, and in 74% of the incidents there was either "no injury" or "complaint of pain" only.
- The leading force option was takedowns or control holds, or some combination of the two, which is at the lowest level of severity on the force continuum
- There were no deputy-involved shootings in the first quarter of the year.

Along with reporting and description of each use of force, the Department's protocols require a supervisory analysis to determine whether the officer's actions were within policy. As with Commendation/Complaint, OIR has encouraged the Department to take a broad and inclusive approach to this review. There are often issues of tactics or training that warrant attention, even if the use of force itself is justified and reasonable.

Accordingly, one concern that emerged for OIR as a result of the recent Force Trend Review is the number of incidents from patrol that did not receive a full supervisory review. Of the 46 documented events in the first quarter, 22 were

characterized as “No Supervisory Analysis Required” (“N.S.A.R.”) based on the low level of reported force and the absence of other “triggers,” such as injury to or complaint of pain by the subject.

The N.S.A.R exception to the full review protocol is a legitimate one; it was proposed and accepted in late 2009 in recognition of the workload burdens and resource challenges for field sergeants in patrol. (The jails do not use it.) Because the applicable force incidents are presumably minor, straightforward, and unlikely to present a risk management concern, it makes sense to limit the amount of “paperwork” that accompanies them. There are, however, a few potential pitfalls: not only is potential value being lost when holistic assessment of deputy actions does not occur, but the existence of an exception could become a temptation for deputies or supervisors, both of whom have foreseeable motivations to lessen the formal scrutiny of a given event. Additionally, OIR believes that the subject’s statements about the incident, and his or her perceptions of the force, are a critical component of review. These statements are often not captured under the N.S.A.R. protocols.

Surprised by the high number of N.S.A.R. incidents in the recent report, OIR has undertaken a follow-up audit of the category and the ways it is being utilized. OIR’s goal is to ensure that patrol personnel are not over-using the exception, that appropriate quality control measures are in place at the lieutenant and captain levels, and that the benefits of rigorous force review are being achieved to the extent possible. Already, OIR has determined that there are inconsistencies in the understanding and application of the policy. It is currently working with OCSD executives on some clarifications and reforms, the progress of which I will cover in my next report to your Board.

IV. Inmate Grievance System

On June 15 of this year, the Custody Division began using its new Inmate Grievance system. The new system is significantly more user-friendly for both inmates and the OCSD personnel responsible for handling the various matters that arise. It also rectifies two significant areas of concern that OIR had raised with the Department on previous occasions, and which the Department of Justice cited in its most recent tour of facilities in September of 2010.

While the Department has always had a way for inmates to communicate questions or complaints, the previous grievance system was both inaccessible and needlessly complex. It also excluded complaints of staff misconduct in order to focus on “conditions of confinement,” with the result being that the former often fell by the wayside. OIR recommended the development of a single form that was readily available to the inmates and which shifted the burden of proper routing and handling to the Department.

The Department did develop new forms, placed them in central locations throughout the facilities, and protected them from interference by adding locked boxes, to

which only supervisors have access, for their submission. The Department also created an impressive new database for the input and tracking of the grievance forms, thereby improving efficiency and facilitating the timeliness and accountability of the responses by handling personnel.

Importantly from OIR's perspective, the process now includes "Staff Misconduct" as a category on the main grievance form. Since mid-June, and county-wide, a total of 41 grievances have involved that category of complaint. (The total number of grievances for all issues is 333). That amount is neither surprising nor alarming at this point, but instead reflects the inmates' need for a better vehicle of communication that is being met by the new system. OIR believes this will heighten accountability, improve supervision, and redound to the benefit of the jail environment over time.

The alleged misconduct at issue ranges in severity, much like with the Commendation/Complaint system for the general public. However, while the most serious allegations are receiving appropriate attention (including Internal Affairs referrals and three force cases that have been investigated for possible criminal prosecution), the lesser cases do not appear to be receiving consistent handling. OIR is working with the Custody Division to develop new protocols for the evaluation and proper resolution of these grievances.

V. Critical Incident Review Process: Jail Release Issues

OIR has noted a slight increase in 2011 in the number of clerical problems that have resulted in either the over-detention or early release of inmates in the county jail system. The issues pose concerns for reasons that are obviously different but equally worthy of attention.

Certainly, there are reasons to sympathize with the jail records staff: the volume of inmates "in transition" through the system numbers in the thousands each year, and the staff is not acting in isolation: it depends on the accuracy and clarity of the court orders on the front end and the effectiveness of execution by deputies on the back end. Nor is the number of total incidents rising dramatically: there have been 7 documented incidents in 2011 to date. This number, does, however, already exceed the 2010 total and merits concern.

Each documented episode of over-detention or early release results in an Internal Affairs investigation, which addresses issues of individual performance and accountability. OIR has monitored those cases in keeping with its usual protocols. But in an additional effort to determine whether a systemic problem exists, OIR has recommended that the Department initiate a meeting of its Critical Incident Review Board. That process brings subject matter experts in front of a panel of Department executives, as well as OIR, County Counsel, and other relevant participants from different involved agencies. The goal is to diagnose problem areas and develop responsive action items. That meeting will occur later this month.

VI. Closed Session

OIR continues to monitor the civil litigation process as a component of its emphasis on risk management issues. At the Board's request, OIR will now routinely attend Closed Session meetings of the Board when OCSD cases are part of the agenda. OIR will also prepare an advance memorandum for the Board's review in those cases when it has particular insight into the underlying facts, the Department's administrative response, and/or any recommended corrective actions.

VII. Conclusion

Thank you for your attention to this memorandum. Please feel free to contact me at your convenience regarding these contents or other matters related to my responsibilities.

Best regards,

Stephen J. Connolly
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