

# *Seventh* Office of Independent Review **Annual Report**

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**by Michael J. Gennaco**

Chief Attorney, Office of Independent Review

The Los Angeles County Sheriff's Department, the largest Sheriff's Department in the world and one of the largest law enforcement agencies in the country, was faced with the following special challenges this past year:

- A significant critique of its training Academy by POST, the state accrediting agency, and the resulting need to resolve the problems identified or face potential decertification.
- An unprecedented upswing in the arrests of Departmental employees for driving while under the influence of alcohol and other alcohol-related incidents.
- A continued national controversy about the appropriate use of the Taser as a force option.
- Local concern about the handling of a drug enforcement operation at one of the local community colleges, including allegations of racial profiling in its implementation.
- The response to an audit suggesting that Departmental employees inappropriately accepted gifts from a vendor at the jails.
- A concern that unlimited inmate accounts provided the potential for inmates to use those accounts to launder money.

The Office of Independent Review is the entity entrusted with providing independent civilian oversight to the Sheriff's Department. Accordingly, each of the special challenges faced by the Department and noted above presented related challenges and responsibilities for the OIR. First, OIR was required to ensure that in assessing the allegations and concerns, the Department responded in a thorough and objective way. In each situation, OIR was on the scene in real time to ensure a robust response by the Department and a dispassionate uncovering of the facts behind the controversies.

Once the necessary fact-gathering was completed, OIR's next mandate was to ensure that the Department took appropriate remedial action. In some instances, that action involved holding individuals accountable for violations of Departmental policy. In other situations, it involved creating systemic reform through changes in policies and procedures. Under either scenario, OIR's access to the process allowed it to offer independent recommendations to the Department about individual case outcomes or systemic improvement.

The final responsibility of OIR is to provide information to the public about what was alleged, what was learned, and how well the Department responded to each of these challenges. This annual report is one way in which we satisfy that commitment to transparency. A full accounting of each of these special challenges and their outcomes is therefore included in this Seventh Annual Report.

Of course, along with these "big ticket" items, OIR continued this past year to perform its "bread and butter" functions, namely, ensuring thorough investigations and appropriate resolutions to deputy-involved shootings, critical incidents, and allegations of officer misconduct. As we do every year, we have highlighted in this report some of the more significant disciplinary cases and overarching themes emanating from them.

In a pattern that dates back to OIR's inception in 2001, Sheriff Baca and the Department have remained steadfast in cooperation with and support of our oversight role. OIR's involvement with the Department's biggest controversies and most troubling episodes could easily breed defensiveness and hostility, but personnel at all ranks have followed the Sheriff's lead in communicating openly and productively with OIR's lawyers. Importantly, the Department generally accepts our findings and recommendations in the spirit in which they are given: an effort to better the Department's systems and ensure accountability of its members.

OIR's philosophy is that each of these incidents provides both a challenge and an opportunity for the Department. The challenge is to ensure that the Department get to the bottom of the incident and hold accountable those who have strayed from Departmental expectations, even when doing so is difficult or uncomfortable. The opportunity is to learn from each incident better ways of providing professional service to its constituents and improving its work force, even when the temptation is to move along or to become distracted by newer events.

This annual report provides a window into that work by giving an account of individual cases, common patterns, and promising initiatives. Again, as a bridge to the communities of Los Angeles County, this report provides OIR a way to talk openly about each of these issues in order to help promote understanding and

knowledge in areas that traditionally have not been publically available for discourse and careful thought.

We would be remiss not to mention the birth of a new Office of Independent Review, established in Orange County in 2008. Created by the local Board of Supervisors after a lengthy consideration of potential models, the Orange County OIR brings full-time independent oversight to the Orange County Sheriff's Department for the first time. Stephen Connolly, a former colleague and founding member of LA's OIR, has assumed the reins as Executive Director of the OC OIR. Since September, he has been exporting his knowledge and expertise to an agency that is responding to significant recent challenges of its own. While we miss him here in Los Angeles—in part because of his past stewardship as “editor” of our annual reports—we wish him well as he embarks on his new journey.

We hope that this Seventh Annual Report provides further insight into the challenges faced by LASD, and the ways which OIR seeks to help the Department confront those challenges constructively. We seek and welcome any feedback from our readers as we move forward to the challenges of tomorrow.

# Policies and Protocols: *Updates and Reforms*

In keeping with its proactive approach to addressing systemic deficiencies, the Department continues to examine its policies and has shown a willingness to change or modify them when necessary. Throughout the years, OIR has often been part of task forces that helped craft new and improved initiatives. This year was no exception. As discussed below, OIR worked closely with the Department in making critical policy changes in areas such as carrying firearms off-duty, use of force reporting and anti-huddling. OIR appreciates the gracious and open-minded treatment of our input in the Department's development process.

## **Alcohol-Related Incident Prompts Policy Change**

In early 2008, the Department initiated a policy change as a result of the following alcohol-related incident in which an intoxicated deputy accidentally discharged his weapon, striking an individual.

## Case

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**An off-duty deputy was at a New Year's Eve party with friends and relatives. He drank heavily. As the evening wound down, he looked at a gift that he had received that night. It was a new gun holster for his duty weapon. In the course of admiring the present, he took out his loaded handgun and showed it to or attempted to hand it to his cousin. While motioning toward the cousin, the deputy inadvertently pulled the trigger and shot one round into the side of his cousin's lower abdomen. The cousin recovered and the District Attorney's Office concluded that the shooting was unintentional. However, the deputy is still the subject of an Internal Affairs inquiry, which is now pending.**

From one point of view, this incident was a fluke, an accident that could have been much worse if the bullet had struck a vital area. There was no evidence that the deputy had any desire to harm his cousin or even any intent to pull the trigger. But the investigation of the incident made it clear that the event would likely not have happened if either the deputy had not been intoxicated or he had not had his firearm on him.

The Sheriff himself was concerned about the incident and directed that a policy be developed to specifically address the use of alcohol while carrying a firearm. He asked OIR to assist Department staff with this effort. Over the course of the next few weeks, a task force consisting of supervisors from Field Operations and Internal Affairs and an OIR attorney crafted a policy that provided specific guidance to sworn members regarding the Department's expectations about the carrying of firearms should they choose to consume alcohol.

The Sheriff himself was concerned about the incident and directed that a policy be developed to specifically address the use of alcohol while carrying a firearm.

The draft policy has attracted some controversy as well as some constructive input from the employee unions. The Department's final version represents some compromises, but OIR believes that the "Safety of Firearms" policy is a workable

and overdue guideline that helps send the important message to Department members that gun-carrying and significant indulgence in alcohol must be separated. Specifically, any deputy with a blood alcohol level of .08 percent or more is presumed to be unable to exercise reasonable care and control of a firearm.

During the bargaining process, however, the Department and the unions were unable to reach an agreement on the policy language—even despite efforts made by an independent mediator to help resolve any remaining issues. In the very near future, the Commission will hear arguments from both sides and if it determines



that the parties are at a genuine “impasse” (i.e. deadlock in bargaining) then the Department will be authorized to unilaterally implement the new policy. If, on the other hand, the Commission determines that the parties are still obligated to bargain, then talks must resume and continue until an acceptable agreement is reached. If mandated to bargain again we are optimistic that the parties will reach a workable agreement and that the policy will be implemented shortly.

## **Alcohol Consumption and The Misuse of Firearms**

LASD deputies are permitted by law and Department policy to carry a concealed firearm off-duty and, depending on the circumstances, may utilize their weapon to affect an arrest or ensure public safety. Many peace officers view this as an important privilege as well as a necessity because of the potential danger that, while off-duty, they or their families could be recognized and targeted by criminals. Deputies, however, even under the Department’s current firearms policy may be subject to both criminal and administrative consequences if, absent extenuating circumstances, the firearm is displayed, pointed, waved or otherwise used in a threatening manner. The Department’s proposed new firearms policy (as discussed earlier) will further clarify the limitations on carrying a firearm off-duty and give notice to sworn personnel that the Department will not tolerate a nexus between the exercise of that “privilege” and the over consumption of alcohol.

The cases summarized below are examples of incidents where off-duty deputies “brandished” their firearms in public. Both bear one striking similarity—each begins at a bar. Although neither incident resulted in physical injury, it is clear that the presence of alcohol increased the risk of potential harm.

### **C a s e**

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**A deputy met a few friends at a bar and struck up a conversation with the bar’s hostess. At approximately 1:30 a.m., the hostess left work. The deputy saw the hostess crossing the street toward a parking garage and offered to walk her to her car.**

**The hostess declined the offer and encouraged the deputy to rejoin his friends. He then told the hostess that he was a “cop.” As the hostess continued to walk away from the deputy, he showed her his Department identification card. As the deputy continued to follow her to the dark secluded parking garage, she became increasingly nervous and scared.**

**As they entered the parking garage, the deputy turned to the hostess and said, “You’re young and beautiful, and you probably get this all the time, but I’d really like to molest you. But I’m too nice.” The hostess became even more fearful. The deputy then requested a kiss from the**

hostess, which she declined. The deputy then placed his right hand at the center of the hostess' back, leaned over and kissed her neck. She moved her head away and told the deputy a second time that he did not have to walk her to her car. He responded that it was "okay."

Inside the parking garage, the deputy stated again, "Yeah, I'd really like to molest you, but I'm too nice." Then, the deputy asked her whether it looked like he had a gun on him. The hostess replied, "That's creepy." The deputy then asked the hostess whether she wanted to see it—and even though the hostess told him no—the deputy reached into his pant pocket, removed a black semi-automatic handgun and showed it to her. As she neared her car, the hostess thanked the deputy for walking with her and said goodbye. The deputy then moved closer to her and while still holding the handgun in his right hand, kissed her again on the neck. The hostess quickly got into her car and drove out of the parking garage. While she drove off, the hostess saw the deputy standing in the same spot, holding the gun and looking around.

The hostess reported the incident to a local police agency. The case was investigated and presented to a City Attorney's office. The deputy was ultimately charged with one count of battery. Rather than proceed to trial, the deputy pled nolo contendere to an amended charge of disturbing the peace/causing loud noise.

After the criminal conviction, the Department administratively investigated the incident and found that the deputy had violated Department policies. The Department suspended the deputy without pay for 15 days.

## **C a s e**

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After getting into an argument with patrons at a bar, a deputy waved his weapon to prove he was a "cop." According to witnesses, the deputy was obviously intoxicated. The District Attorney's office declined to file charges due to "insufficient evidence" that the brandishing rose to a level of a threat. The Department conducted an administrative investigation, found that the deputy violated Department policies and imposed a significant suspension. OIR concurred in the discipline.

## **Trends in Alcohol-Related Arrests**

In OIR's Third, Fourth, Fifth and Sixth Annual Reports, we highlighted the trend in arrests of Department employees for driving under the influence of alcohol. We first alerted the Department when we observed that the average annual number of employee DUI cases was up to the mid-teens from an average below ten in previous years. Unfortunately, since that time the trend has been relentlessly moving upward.

The Department has made various attempts to wrestle with the problem, but to date the phenomenon has proved to be relatively intractable. In 2008 the number of DUI arrests was 40% higher than each of the three previous years. Alcohol-related arrests of Department members for public drunkenness, fights in bars and nightclubs, alcohol-related domestic violence and the like alarmingly topped out at seventy, more than doubling any year's previous statistics.

## **C a s e**

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**A professional staff employee and his girlfriend (also a professional staff member) attended a unit Christmas party where they were drinking. They left the party and got into her car and waited for a deputy friend to emerge from the party. They began to argue and the male employee started to assault the woman, punching her in the face and grabbing her by the hair. The deputy friend came out of the party, noticed the commotion and pulled the male employee out of the vehicle. The girlfriend called 911. When local police officers arrived, the male employee ran from the scene. The police set up a containment and searched the area, using a police helicopter at one point, but had no luck. Four hours later, the employee turned himself in at the local police station. He claimed to have very little memory of the incident and could not remember how he ended up wandering in the hills and vomiting from excessive alcohol intake. Meanwhile, the deputy who had intervened told the police investigator that he did not know the LASD employee who had run off and minimized his observations of the fight, when in fact, he knew the involved Sheriff's Department employee. He subsequently failed to report the incident to the Department. The female civilian employee was treated at the hospital for a laceration over her eyebrow requiring stitches and a fractured cheekbone.**

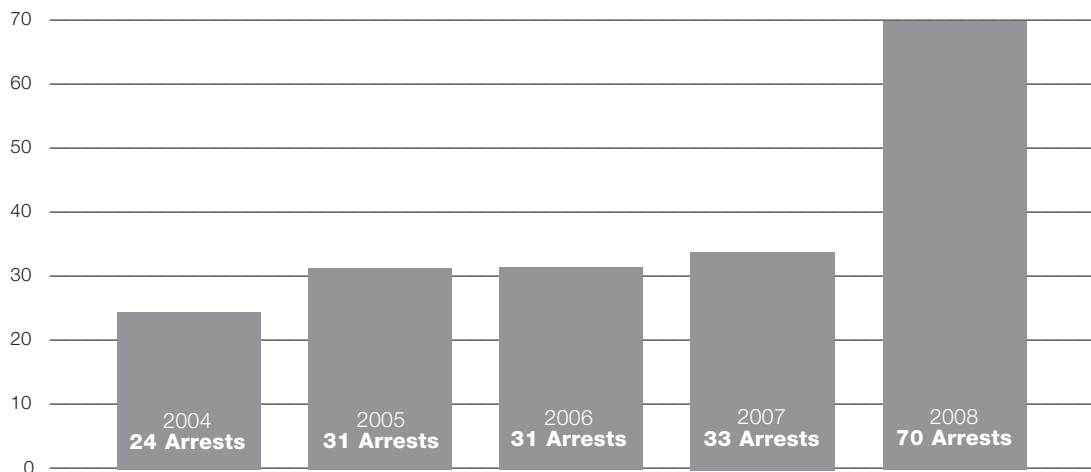
**The employee was prosecuted for spousal battery and pled no contest to a misdemeanor charge. He was sentenced to summary probation with required labor on a Cal Trans crew and a year of domestic violence classes.**

**Because of the rookie civilian employee's otherwise untroubled career, early evaluation within the Department centered on discipline consisting of suspension days. Then, a Department employee outside the relevant chain of command, but with deep and broad experience with internal affairs issues, suggested that the photo evidence of the victim girlfriend's injuries showed they were more severe than initially described, impeaching the subject employee's version of the altercation. As a result, both OIR and the Division Chief revisited that issue and agreed that the severity of the injuries as well as the false statements and lack of cooperation with the police necessitated discharge. The employee resigned before the discharge became effective.<sup>1</sup>**

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<sup>1</sup> The other deputy subject received a suspension for his failure to be truthful with the investigating police agency that responded to the incident.

## LASD Employee Alcohol-Related Arrests, 2004-2008



The Department has now begun to closely track and monitor alcohol-related arrests. Department members involved in these incidents are encouraged to submit to evaluation by Employee Support Services which helps determine whether the core problem is alcohol dependency, work, home-related stress or something else. The internal disciplinary system has begun to engage in a large-scale experiment whereby many employees who violate policies will be offered a more closely tailored remedial alternative to the traditional days-off-without-pay punishment. Meanwhile the standard punishment package for those arrested for DUI has been made more severe and more consistent. The Department will thus attempt to deter this conduct by responding with strict disciplinary action and by providing the offender with treatment and rehabilitation needs. However, despite efforts to address these issues effectively, there are some Department responses that, unfortunately, get “undone” at the end of a very long and adversarial disciplinary process.

## **C a s e**

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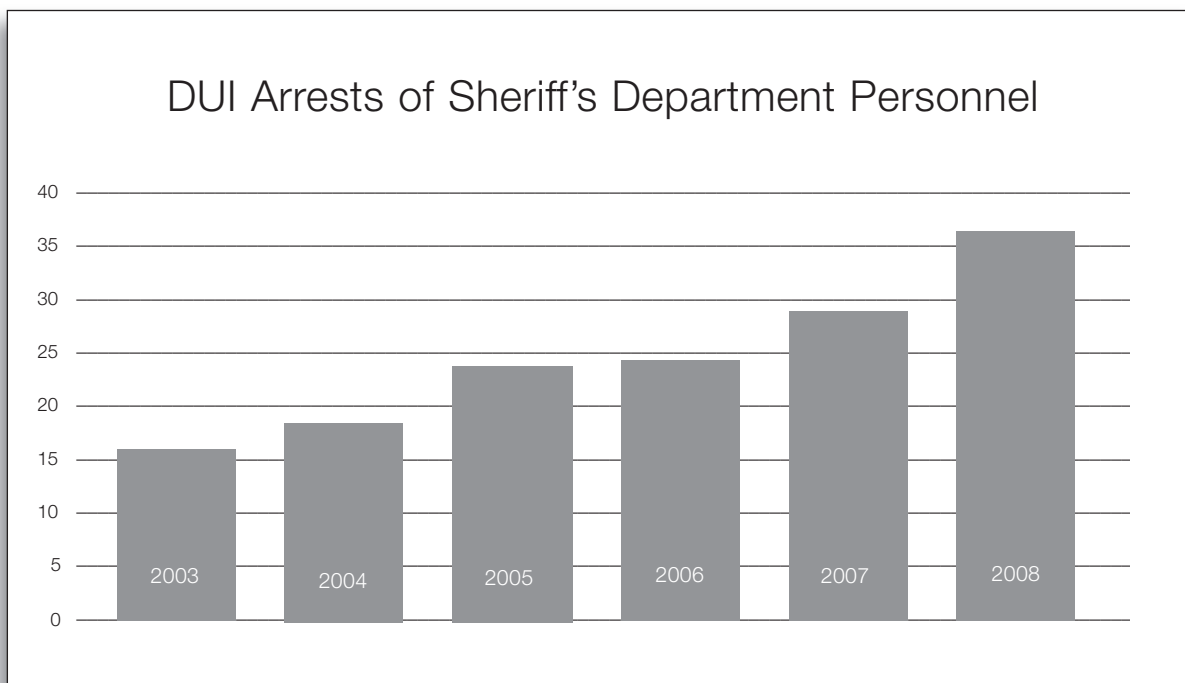
The following is an update on an off-duty DUI case that eventually found its way before the Civil Service Commission (the “Commission”). OIR closely monitored this case and last reported on its status in our Sixth Annual Report (See Sixth Annual Report at p. 68). In brief, the incident involved two deputies who were implicated in an alcohol-related traffic accident causing damage to several parked cars. A third deputy, who arrived at the scene intoxicated, interfered with the investigation conducted by LAPD.

As last reported, the driver (Deputy A) pled nolo contendere to a misdemeanor charge of driving under the influence and was administratively discharged for aggravating circumstances related to the incident. On appeal, the Commission reduced Deputy A’s discharge to a 20-day suspension.

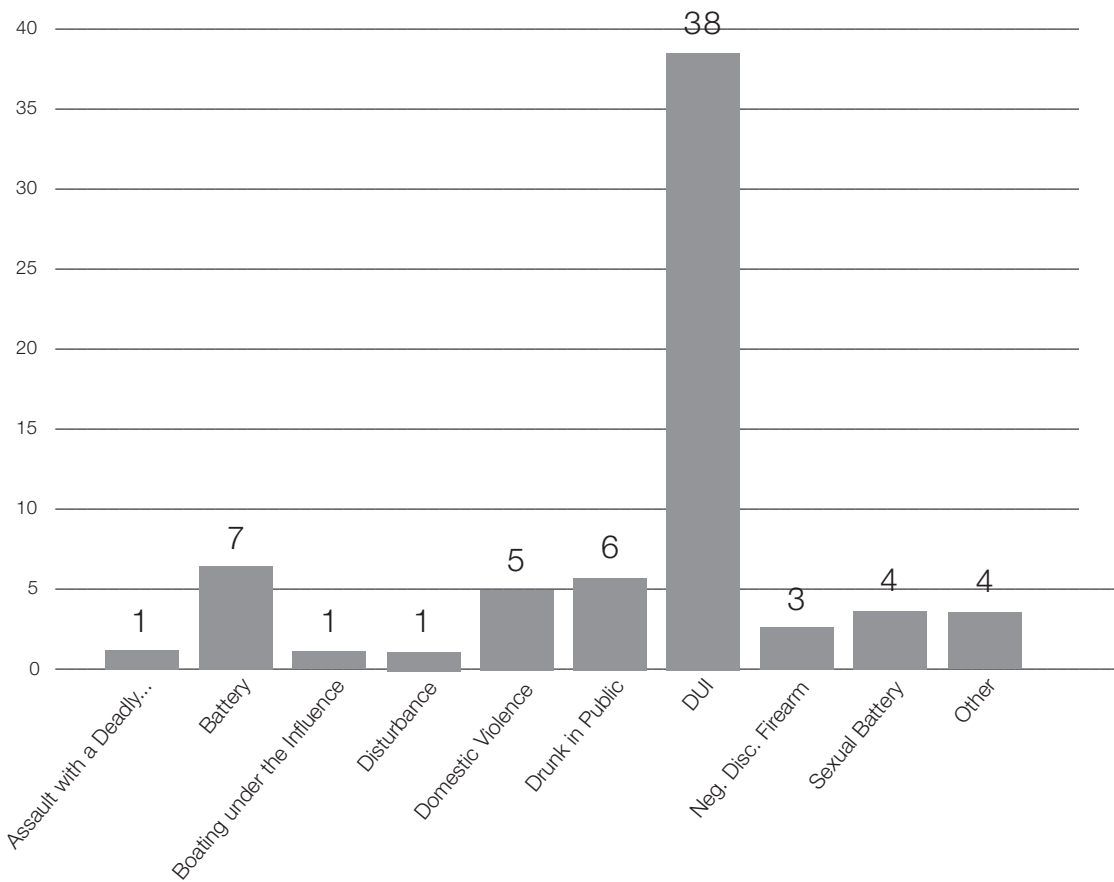
Since our last report, the passenger (Deputy B) and the third deputy (Deputy C)—both of whom interfered with the police investigation—had their cases processed through the Department’s disciplinary procedure. At the end of the grievance process, Deputy B received a 7-day suspension and Deputy C received a 30-day suspension. Deputy C exercised his right to appeal the discipline.

After hearing the evidence and making a finding that the LAPD investigating officer lacked credibility, a Civil Service hearing officer reduced Deputy C’s 30-day suspension to 15 days. On appeal, to the Commission itself, the 15-day suspension was undone in its entirety. The deputy did not receive any discipline.

Since the undoing of his discipline by the Commission, Deputy C has been arrested after a single vehicle traffic collision in which his blood alcohol reading was well over the legal limit.



## All 2008 Arrests of LASD Employees — by Charge



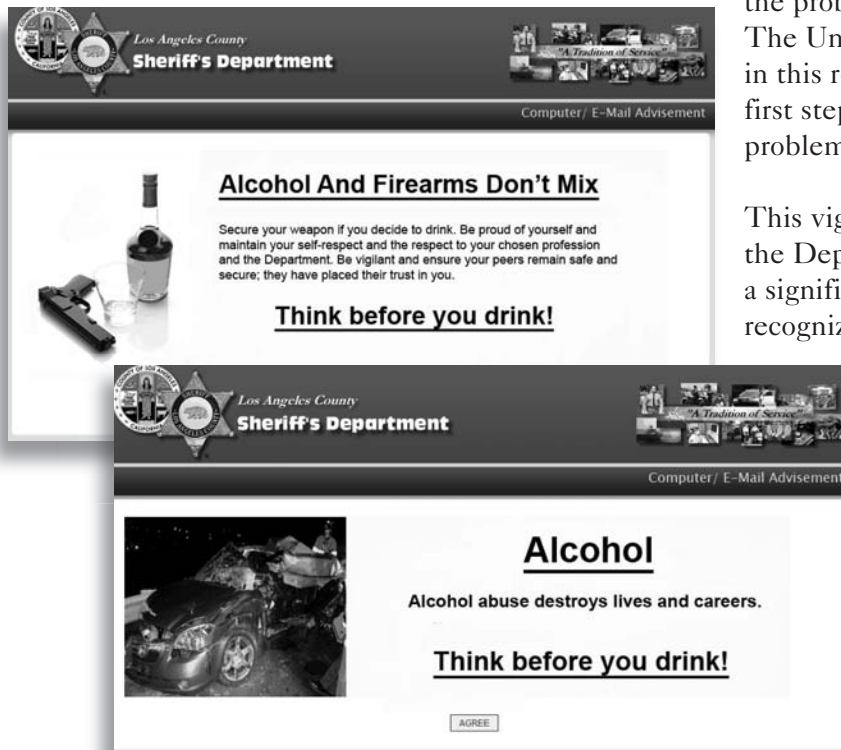
## A Message from the Undersheriff

Perhaps the most dramatic and constructive new tactic to address the spike in alcohol-related misconduct has been the Undersheriff's weekly bulletins describing the latest alcohol-related arrests of Department employees, updating the year's statistics on such arrests, and urging Department members to avail themselves of Employee Support Services and to set an example of leadership. The Undersheriff has used this format to talk frankly to each Department member about a phenomenon that was formerly rarely discussed. He has also given supervisors concrete and accurate data by which to gauge issues in their own units. Additionally, before Department members are able to access the Department's computers they are now required each day to acknowledge a "cautionary screen" warning of the consequences of misconduct including alcohol abuse. These screens change daily.

The advent of the Undersheriff's weekly announcement of Department members who have been arrested in the past is a change in Departmental culture and not without internal controversy. In the past, the Department has been reluctant to talk openly about the misdeeds of its employees for fear of appearing non-supportive. However, the weekly bulletins, without identifying the offenders, provide detailed information to Department supervisors and members and attune all to the nature and degree of the problem. It has been said that a problem cannot be fixed until

the problem is first recognized. The Undersheriff's bold initiative in this regard is an important first step towards remedying that problem.

This vigorous approach by the Department represents a significant evolution in recognizing that alcohol-related problems are a major issue worthy of attention, resources and ingenuity. We applaud these efforts and the Department's refusal to give up on this difficult but worthwhile behavioral challenge.



Examples of Cautionary Screens

✧ **Sheriff's Special Message** ✧

**From The Office of Undersheriff**

**Larry L. Waldie**

**Attention All Personnel:**

On Friday ... at approximately 0230 hours, two of our deputies were arrested by officers from the ... Police Department, following a night of drinking at a local nightclub.

[One] deputy, a nine year Department veteran, was arrested for DUI following a property damage only traffic collision. The police report documents a long tirade of verbal abuse and profanity by the deputy toward police officers, a field supervisor, and firefighter personnel. He repeatedly refused to submit to blood/alcohol testing.

His companion, a ... deputy and former custody assistant, was arrested for being Drunk in Public. Officers found the [other] Department veteran in the vehicle's back seat lying in his own vomit. He was unable to communicate and was so intoxicated, officers were afraid he had suffered alcohol poisoning. Paramedics had him transported to a hospital by ambulance. His blood alcohol result was .25.

Inexplicably, there was a third person in the car who was sober, but not driving.

In a separate incident at approximately 2145 hours that same day, a[n] ... employee was arrested for DUI by the ... California Highway Patrol. The ... eight year Department veteran, had blood/alcohol results of .12 and .13. According to the California Highway Patrol officers, he was cooperative and respectful throughout the incident.

As part of the work we do, our Department members constantly come to the rescue of fellow members in physical danger. Have the courage to intervene on behalf of your peers who are endangering their health, careers, and sometimes their lives with poor decisions regarding the use of alcohol.

If you or a loved one are having trouble with the use of alcohol, please contact a counselor at the following telephone numbers:

Employee Support Services	(213) 738-3500
Addiction Recovery Program	(213) 738-3580
Peer Support Program	(213) 738-3619

**LEAD BY EXAMPLE, DON'T BECOME ONE!**

**Example of Weekly Announcement from Undersheriff** ("..." signifies redacted text)



## **Accepting “Gifts and Gratuities”: Probe Leads to Policy Reform**

The Sheriff’s Department contracts with a number of outside vendors to provide goods and services necessary to its operations. One of the largest of these vendor contracts engages a company to run the jail “commissary service” providing snacks, stationary and toiletries for purchase by inmates in the County’s nine jail facilities. The contract called for the Department and the vendor to split a portion of the profits, with the Department’s share going into the “Inmate Welfare Fund,” a state-mandated repository for funds reserved for the improvement of living conditions and education and training programs for inmates. Department managers became concerned that the company’s accounting practices may have artificially diminished the calculated profits, thereby depriving the Inmate Welfare Fund of monies. The Department consequently asked the County Auditor Controller to audit the contract and report its results. This audit identified accounting practices at the company that had deprived the Inmate Welfare Fund of significant revenue over a seven-year period. The County challenged the vendor and eventually reached a settlement that recalculated these profits and resolved the conflict over the appropriate profit split. The contract was also subsequently granted to a different vendor.

In the course of reviewing the vendors accounting paperwork and the results of the audit, the Auditor Controller noticed that the vendor had categorized a segment of its expenses each year as “client hospitality.” This term referred to luncheons, golf games, and sports events tickets paid for by a company salesman and appearing to benefit Sheriff’s Department employees. Based on this finding, the Auditor Controller recommended, “...that the Sheriff reinforce the policy that staff should not accept gratuities and determine if disciplinary action is warranted for employees who violated the policy.”

After discussions with the Auditor Controller, OIR concurred with this recommendation. We also concluded that the documentation derived from the audit was not sufficient to determine whether specific acts of misconduct by Department employees had occurred or to point to needed reforms of Department procedure and policy. We therefore recommended to LASD executives that an Internal Affairs investigation be initiated to examine possible violations of either the Department’s gratuities policy or of the California’s Fair Political Practices Act. Eventually, the Department agreed.

OIR monitored the resulting investigation and consulted closely with the Internal Affairs investigator. The investigation was thorough and exacting and involved dozens of interviews and sifting through years of the company’s expense account documentation. While the company was ostensibly cooperative with Internal

Affairs, the results of the investigation were significantly hampered by the company's haphazard record keeping. However, it is our conclusion that the investigation was able to provide sufficient evidence to establish several important things:

1. The cash value of meals, golf games and/or tickets accepted by any single Department employee was small and not readily provable;
2. The vendor's primary salesperson had a practice of paying for meals and golf outings enjoyed by Department employees at informal occasions that tended to mix business and social gatherings;
3. The company did not prohibit its salesperson from this type of "client hospitality" and LASD had no mechanism to monitor or enforce its own policies effecting this type of activity;
4. The salesperson, by his own admission, maintained extremely haphazard and unreliable records of his expense account activities, sometimes even assigning an arbitrary name of someone he knew in the Department to an event or activity that the employee had not attended;
5. When the salesperson made a charitable contribution to a Department-sponsored charity fundraising event, Department employees who might benefit from the contribution (i.e. attending the charity luncheon or golf tournament for free) did not recognize this benefit as a gratuity;
6. Some Department members reciprocated by also buying meals for the salesman upon occasion;
7. Many Department employees did not recognize some of these "benefits" as gratuities and had a very poor understanding of what types of activities fell under the Sheriff's Department's gratuities policy or under California's Fair Political Practices Act;<sup>2</sup>
8. Department policy and training provided little guidance to the practical application of these policies and laws;
9. There was no indication that Department employees ever provided preferential treatment to the company in exchange for these meals, golf games, etc. or that they had any direct influence on contract negotiations or renewal; and
10. No Department employees took any actions to conceal or minimize the meals, golf games or other benefits they had accepted.

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2 The California Fair Political Practices Act requires that certain designated managerial employees of an agency such as the Sheriff's Department must file a yearly declaration ("Form 700") of all gifts received of a value exceeding \$50 and may not accept gifts from a single source totaling more than \$420.

**CORRECTIVE ACTION:**

To ensure compliance with established Sheriff's Department reporting procedures regarding the acceptance of any gift or gratuities, it will be incumbent upon the Leadership and Training Division, with technical assistance from Administrative Services Division, to provide annual training to Department members who routinely interact with contract vendors and service providers.

- Any member entering a position that requires completing an annual Statement of Economic Interest California Form 700, shall receive training within 30 days of taking the position. This training will be achieved individually with a designated trainer and certified every year thereafter.
- Each Division Chief, with the assistance of the Divisional Director of Administrative Services Division, shall review all services provided by contract vendors and compile a list of employees that shall receive the annual training.
- Where necessary, additional reporting policies and procedures shall be established to address "hospitality gifts" provided by Contract Vendors and service providers to Department members.
- Provide additional training to Department members that are required to submit annually a Statement of Economic Interests, California Form 700.
- Ensure that sufficient oversight, recordation and Department wide reconciliation exist concerning Department employees required to complete the California Statement of Economic Interests forms annually.
- This reconciliation shall require the Division Director of Administrative Services to submit an annual report of compliance to the Undersheriff and each Assistant Sheriff as to the annual submission process being completed no later than April 30, of each year.

In the final analysis, there was no evidence to support discipline against a member of the Department. However, the systemic and procedural shortcomings of the Department's relations with vendors and sales persons were clearly illuminated by the investigation. In OIR's opinion, these results clearly pointed to the need for changes that would prevent the recurrence of these practices. The Department indeed took this opportunity to initiate substantial corrective action by implementing a revised policy that now provides guidance to Department employees.

## **Anti-Huddling Policy**

In 2006 and 2007, OIR reported on the Department's past practice of allowing deputies who were involved in or witness to a deputy-involved shooting to talk with each other prior to being interviewed by Department investigators. In those previous reports, OIR examined a number of related issues regarding the practice, including the risk of compromising the objectivity and integrity of the fact-finding process.

After expressing our concerns, OIR recommended, and the Department agreed, to stop this practice. In 2006, the Department implemented its "anti-huddling" policy, which reads in pertinent part,

Members who were either involved in or witnessed the incident [deputy-involved shooting] may consult individually with legal counsel or labor representatives...before providing an interview with Department investigators... [but] shall not consult with legal counsel and or labor representatives collectively or in groups (e.g. two or more members consulting at the same time with the same legal counsel/labor representative).

The purpose of the policy was to collect accurate information regarding deputy-involved shootings and to promote public trust in the investigatory process. Soon after the Department implemented the new policy, the Association for Los Angeles Deputy Sheriffs ("ALADS"), the union representing the deputies, brought a court action to enjoin the Department from implementing the policy.<sup>3</sup> The gravamen of the union's argument was that the policy related to terms and conditions of employment and therefore, the Department had a duty to bargain with the union before implementing the new policy. After hearing argument, a California superior court judge denied the union's request for a preliminary injunction. ALADS appealed.

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<sup>3</sup> As the sole bargaining agent for the deputies, ALADS has the exclusive right to bargaining collectively on behalf of its members over "wages, hours and working conditions."

The appellate court affirmed the lower court decision and held that the policy did not have a significant effect on the deputies' "wages, hours and working conditions." The court found that therefore, the Department had the right to unilaterally implement the policy. In dictum the court emphasized, "The deputies working condition claim is tenuous, and the Department's interest in public accountability is significant on its face."

Importantly, the court also held that reasonable limits may be placed on a peace officer's right to consult with counsel (a right afforded to peace officers under the Public Safety Officers Procedural Bill of Rights Act) ("POBR") in connection with formal investigations. Based on the court's analysis—coupled with the Department's stated purpose for implementing the policy—the Department was entitled to



#### **5-09/431.50 PRELIMINARY RESPONSIBILITIES**

Deputy-involved shootings are likely the most critical incidents in which Department personnel become involved; therefore, they appropriately warrant an in-depth and objective analysis. A central component in this process is the collection of statements from every identifiable witness. The investigative process must be undertaken promptly and with the highest level of investigatory integrity, while at the same time, honoring the rights and needs of Department members.

The following investigative protocols have been established by the Department in order to ensure these objectives:

Personnel, either involved in, or a witness to, the event, shall not discuss the circumstances of the incident among themselves or with uninvolved persons prior to being interviewed by assigned Departmental investigators.

NOTE: The provisions of this policy regarding witness' statements shall not affect communications required for tactical needs or subsequent suspect apprehension.

Members who were either involved in or witnessed the incident may consult individually with legal counsel or labor representatives telephonically or in person before providing an interview with Departmental investigators. Members who were either involved in or witnessed the incident shall not consult with legal counsel and or labor representatives collectively or in groups (e.g. two or more members consulting at the same time with the same legal counsel/labor representative).

The Watch Commander and all supervisors shall take reasonable steps to ensure that the provisions of this policy are followed. Whenever practical, Watch Commanders or their designee shall attempt to have involved personnel and witness personnel gather in the company of a supervisor until they have provided a statement to Departmental investigators. This practice shall in no way interfere with the member's individual access to legal/labor counsel, spiritual counsel, or otherwise impede access or availability to family members.

**Revised 11/01/06**

**Copy of  
Anti-Huddling  
Policy**

exercise its fundamental managerial prerogative to implement the policy and was not subject to “meet and confer” requirements of the bargaining process.

In addition to the specific issue of “huddling”, the Court’s opinion (initially unpublished) provided much needed guidance regarding issues that may trigger the Department’s obligations to “meet and confer” with unions and the breadth of the Peace Officer Bill of Rights. Because of the potential impact the opinion had in interpreting statutes and rights specific to peace officers, OIR, along with the Department, requested that the Court publish its opinion. The Court of Appeal agreed to publish its opinion which means that the holding can be used as precedent and guidance in future controversies on these issues.<sup>4</sup>

Importantly, the court also held that reasonable limits may be placed on a peace officer’s right to consult with counsel...

OIR continues to monitor the Department’s efforts to ensure compliance with the “anti-huddling” policy and has alerted relevant Department members to the import of the Court opinion in related contexts.

## **K-9 Litigation and Reform**

While it is the role of County Counsel to advise and represent the Department in litigation arising from the Department’s activities, OIR monitors that activity and tracks the Department’s response to the underlying incidents. Civil complaints and lawsuits obviously have financial implications, but OIR also views them as windows into issues that potentially warrant accountability and/or reform. They are, in a sense, “allegations of misconduct with a dollar sign attached.”

The Department’s Risk Management Unit, ably assisted by County Counsel, does a fine job of balancing the need to protect the County’s financial interests against other priorities. The desire to prevail—or at least minimize loss—in the context of litigation must compete with the Department’s need to deal with the public fairly and to address deficiencies responsibly and thoughtfully.

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<sup>4</sup> A published opinion, unlike an unpublished opinion, may be used as precedent and guidance in future controversies regarding the reach of POBR and the degree to which fundamental managerial prerogatives may be implemented by law enforcement executives free from the constraints of employee associations.

The K9 unit deputies work with highly skilled and highly trained police service dogs to assist in the location and apprehension of suspects, pursuant to strictly regimented protocols. Most commonly, the deputies deploy the dogs within a contained (and often residential) area to locate felony suspects who have fled an encounter with the police and are considered a threat to officers or the public. The dogs find dozens of suspects each year, and induce their peaceful surrender in most instances.

Occasionally, though, the suspects “take their chances” and ignore the regular warnings that are broadcast within the search area and are supplemented by verbal announcements from the deputies themselves. This leads to a number of incidents in which the dogs apprehend the suspects by biting them until the deputies can close in and make sure the suspect is no longer a threat.

In the 1990’s, injuries related to the K9 program resulted in a considerable amount of litigation and several large payouts. To its credit, the unit refined its procedures to limit the deployment of the dogs, enhance the training, and create a number of protocols that highlight the caution and professionalism with which the dogs are utilized. Litigation plunged as a result. In fact, the K9 unit has done a remarkable job of routinizing work that is extremely dangerous, and has turned itself into a significant asset for the Department and a model for law enforcement.

Still, there are inherent variables when the “weapon” at issue is a living thing with four legs. One morning after midnight, a handler pulled over and let his dog out, off the leash, for a stretch break at a public park. What the handler did not realize was that a homeless man, lying near a wall and covered by a blanket, was obscured from his view. The dog encountered the man and bit his face, causing injuries that were not grave but that did require stitches.

The Risk Management unit did its job, responding to the hospital and making arrangements that led to the payment of the man’s medical costs and, ultimately, a reasonable additional settlement. Meanwhile, the K9 unit took prompt action as well. The bite was obviously accidental. Furthermore, the dog had performed in a manner consistent with its training, and the handler had been to this park with his dog numerous times without incident, and had no reason to expect the presence of the homeless man. But the K9 unit nonetheless saw an opportunity to revisit its comprehensive protocols and reissued a Unit Order that explicitly called for dogs to remain on the leash when being given the opportunity to stretch in a public place. The Order was rebriefed within days. Though the accidental bite was unfortunate, the K9 unit responded to it as a lesson learned and an opportunity to improve its practices.

The Board of Supervisors monitors litigation closely and is required to authorize large settlements. The Board recognizes that police work will inevitably incur some liability. However, it also hopes and expects that when the Department is at fault and a payout ensues, the Department will scrutinize its own actions and look for constructive reforms. OIR shares the Board's interest in this process, and often facilitates the Department's review. In this case, though, the K9 unit was its own harshest critic and took decisive action for the betterment of its operations.

## **Stranded Motorists Policy**

In 2008, the Department revised its policy relating to Department members' responsibilities to ensure the safety of stranded motorists. The genesis of the revisions was an incident involving a deputy who left two passengers of a car stranded on the shoulder of a busy road around 2:00 a.m. The deputy stopped the car because the driver demonstrated signs of driving under the influence of alcohol or drugs. Because of cold weather and busy freeway conditions, the deputy decided to conduct the field sobriety tests at the station, leaving two other passengers in the vehicle behind—one of whom appeared to have also been drinking that evening. The deputy neither offered the passengers a ride to the station nor called for backup. About an hour later, the deputy returned to the car and determined that neither of the passengers was in a position to drive. It was at this time that the deputy attempted to move the car and take it and its passengers to a safer location.



### **3-01/050.40 SAFETY OF STRANDED MOTORISTS**

When practical and appropriate, all personnel, when operating a plainly marked official vehicle, shall stop and render that assistance considered reasonable to the occupants of a vehicle in distress. This policy is applicable whether the cause of the distress is mechanical or the result of some other difficulty.

Deputies shall demonstrate due regard for the safety of vehicle occupants stranded as a result of their companion's arrest or as occupants of any vehicle towed at the direction of Department personnel. This may include offering the stranded person(s) transportation to a place of reasonable safety such as a local address or Sheriff's Station. The stranded person(s) may refuse to accept assistance. If unable to resolve transportation concerns, Department members shall summon a field supervisor.

Any contact with a stranded person listed above shall be documented as a log entry in the Mobile Digital Communications System (MDT) by the employee initiating the contact or, if applicable, original report. Employees who do not maintain an electronic log or initiate a report shall document the details of the contact in their field notebook.

**Revised 01/10/08  
04/01/96 MPP**

**Copy of Stranded Motorists Policy**



This incident resulted in an administrative investigation. While reviewing the case, an OIR attorney and Department executives questioned the adequacy of the existing Stranded Motorists Policy. The policy, in effect at the time, failed to address a deputy's responsibility in assisting individuals stranded on highways, particularly when vehicle occupants are stranded as a result of their companion's arrest. Under the new policy, a deputy now has an affirmative duty to ensure the safety of stranded motorists, which may include offering them transportation to a safe location.

### **Citizen Complaints: Fulfilling the Potential of the Process**

The Sheriff's Department has a well-established and formalized process for the intake and review of citizen complaints. It receives hundreds each year by mail, telephone, e-mail, or in-person contacts. They range in seriousness from the frivolous to the egregious. Common issues include discourtesy, dissatisfaction over the service provided by the Department (response time, effectiveness of investigation, etc.) and perceptions of harassment or over-zealousness. The Department records all of the complaints in its database and makes an effort to assess and pursue each one appropriately.

OIR's involvement in these complaint cases can take different forms. Systemically, OIR has worked with the Department to help ensure that a significant backlog of cases was reduced through new protocols and a concerted effort at improved timeliness. It also happens that allegations within a citizen complaint are sometimes deemed sufficiently substantive and serious that the Department chooses to open a formal administrative investigation. At that point, OIR would follow the case closely in keeping with its usual protocols. The goal, as always, would be to determine whether violations of policy occurred and, if so, what the appropriate discipline should be.

Sometimes, OIR's involvement occurs at the intake stage, when a frustrated member of the public contacts the Office to voice his or her concerns. Because OIR does not conduct its own investigations, we invariably endeavor to steer the person in the direction of the Department's existing process. We can facilitate the filing of a complaint, and then follow up to ensure that the Department is handling the matter in a reasonable and legitimate way.

The sheer volume of complaints, as well as their varied subject matter, means that most are handled at the individual "unit of origin." While OIR has access to all the relevant records if it were to become interested in a particular complaint case, it

does not directly monitor most of them. However, the County's Office of the Ombudsman is a separate oversight entity, the specific purpose of which is to interface with the public regarding complaints. If a citizen is dissatisfied with the outcome of a complaint after receiving final notification from the Department, he or she is referred to the Ombudsman, and a further independent review occurs.

OIR's general impression is that the Department takes the complaint process seriously and uses it as a means of recognizing problematic behavior among its personnel. For example, even though individual allegations of discourtesy can be difficult to prove when the evidence does not go beyond conflicting versions of events, an officer who generates several complaints will certainly come to the attention of his or her supervisors. The Department has a number of ways of intervening constructively, outside of formal discipline, and has shown a willingness to use them.

At times, though, OIR has been frustrated when the complaint process fails to bridge gaps between the Department and genuinely aggrieved members of the public who are seeking redress. While dissatisfaction is sometimes unavoidable, there are also instances in which ineffective communication or an overly defensive approach by the Department interferes with a better result. This is particularly unfortunate when the Department has shown the proper due diligence in pursuing the citizen's concern, but falls short in explaining its efforts to the complainant.

Two instances in the past year were heartening exceptions to this dynamic. Separate complainants contacted OIR to ask for assistance about different incidents involving deputy contacts with their respective sons.

## **C a s e**

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**Deputies stopped a vehicle for a minor traffic violation, and decided to investigate further when they detected an odor of marijuana. The driver of the vehicle became agitated and argumentative. Deputies cuffed him and brought him to the back of their radio car; meanwhile, the two passengers stayed in the driver's car.**

**The driver refused to follow orders to put his feet inside the radio car; instead, he allegedly blocked the door from closing and then kicked at the nearest deputy. This precipitated one punch to the face by the deputy, at which point the suspect became cooperative.**

**During the detention, the deputies received word of an emergent situation nearby. They wrote a citation for the traffic violation, released the driver, and then quickly left the scene without immediately reporting the force, getting the identification information from the witnesses, or taking other usual steps to process the incident.**

**When the Department tried to pursue the matter by contacting the driver at his home, it ended up compounding concerns his mother had already developed, based on the version of the story she had heard. Because her son was white and his friends African-American, because of the force, and because of the strange and abrupt conclusion to the incident, the mother believed that her son had been victimized and that the further attempts to be in touch with him were possibly harassing.**

**In telephone conversations with an OIR attorney, the mother learned about the Department's review process and clarified some of her understandable confusion. The OIR attorney then spoke with the captain from the patrol station at issue, who was familiar with the incident. The captain explained candidly what had occurred and acknowledged that he saw shortcomings in some aspects of the deputies' performance, though he believed the force to be reasonable. Just as importantly, he then offered to meet with the mother in person to answer any of her questions. That meeting took place several days later.**

## **C a s e**

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**A father wrote to the Department to file a complaint about a traffic stop involving his teenaged son. The young man, an African-American, was ultimately given a citation for tinted windows in the family van he was driving. The father (correctly) noted that the citation was technically improper, and he had serious concerns about how his son and the son's friends had been treated – including them having been placed in a radio car while the van was searched and other deputies were summoned for backup.**

**When a week had passed with no response from the Department, the father contacted OIR to share his complaint and express his concerns. OIR contacted the handling unit, and learned that the complaint had been received, and was in the process of being addressed. The lieutenant shared additional details about the traffic stop that put the matter into some perspective: there was allegedly an “air soft” type replica gun in the van that heightened the deputy's sense of danger until it could be neutralized. Interestingly, the lieutenant also acknowledged that the deputy was mistaken in his belief that a Vehicle Code infraction had occurred. Finally, the lieutenant articulated his willingness to speak with the family, answer their questions, and explain the Department's side of the event.**

In both of these instances, the Department's management responded to the complaint process in precisely the right way. Although the complainants may have been missing significant information about their sons' culpability or behavior, the Department treated each of them with respect and understanding, as opposed to dismissal, condescension or hostility. The Department also took the criticism of the incident as an occasion to examine its own performance and procedures. In both instances, the involved supervisors found ways that the Department could

have performed better, and incorporated those potential improvements into a reasoned response. Finally, the Department welcomed the dialogue with the concerned parties, and presumably improved their impression of LASD as a whole.

The complaint process can be burdensome for the Department. At best, responses are time-consuming and labor intensive for the supervisors who handle them, and the dynamic has an inherently negative potential. It is also true that some people knowingly abuse the complaint process, out of hostility toward the Department or in service of their own agendas. More often though, the complainants are people of good will who want, more than anything, to be taken seriously and to feel that their concerns are being thoughtfully and sincerely addressed. It is gratifying when the Department meets this very reasonable expectation.

### **Use of Force Reporting: Improvements to Department Formats**

The Department's "use of force" reporting requirements are exemplary in several respects. First, all physical contact "which is greater than that required for unresisted handcuffing" must be reported and documented. Additionally, any use of force which results in an injury or a complaint of pain must be reported. Also, deputies witnessing reportable force must write a memorandum documenting the use of force incident. The Department tracks the type of force used and other details about each incident in the computerized "Personnel Performance Index" ("PPI"). The sophisticated PPI database allows Department management to readily evaluate individual employees and monitor patterns and trends as they develop.

Importantly, the Department also has advanced protocols for supervisory review of force incidents. For each event, a supervisor issues his or her own report that becomes part of the permanent record of the incident, and helps ensure a comprehensive assessment of what occurred and what responsive action the Department should potentially take in the areas of officer accountability, training, and risk management.

While the "Supervisor's Report on Use of Force" concept has been with the Department for some time, the Department took action this year to unify approaches across the Department—more than one version of the form was being used—and to make the single format as efficient, informational, and user-friendly as possible. An executive committee held several meetings to look at ways to revise existing formats into one new form.

The committee was quick to invite OIR into the proceedings to check proposed changes against concerns that important information or exacting review might be inadvertently compromised. OIR reviewed the early drafts, offered suggestions,

and ultimately endorsed the finished product as an asset to the review process. OIR not only appreciated the opportunity to play a role in the revisions as they were being contemplated, but it respected the Department's proactive approach to the issues and was impressed with the dialogue from all the relevant stakeholders on the executive committee.

The newly developed form was tested in the field and ultimately approved for Department-wide implementation. It streamlines some of the components from earlier models without sacrificing thoroughness of review, and promotes consistency and efficiency. The new format also preserves the best aspects of the supervisory review: it pushes supervisors toward a broad and thoughtful analysis of each force case, as well as a rigorous scrutiny of the deputies' actions and reported rationales. The executive committee's fine work and finished product are commendable.



# Discipline Process: *Innovations and Developments*

## **Custody Transfers: Not Always the Best Solution to Disciplinary Problems**

In 2007, a group of deputies assigned to the Inmate Reception Center (“IRC”) organized a contest among inmates to see who could drink the most cartons of “juice” (really just a sweetened, fruit-flavored drink) in a specified time period. The prize was to be a hamburger from the Officers’ Dining Room, a meal better than the usual inmate fare. The contest began when a group of 92 inmates<sup>5</sup> was being held temporarily in an area of IRC being used as an overflow holding area for the medical clinic. Deputies organized the contest by making announcements over the loud-speaker, asking for inmate volunteers. As many as six inmates volunteered to

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<sup>5</sup> Initially, OIR and the media suspected there may be some racial aspect to this incident, as all but seven of the 92 inmates were African American, but the investigation turned up no racially-based comments or motivation.

participate in the contest. The inmates who cooperated in the Internal Affairs investigation reported that they became ill and started to vomit after drinking as many as 15 juice boxes. The incident lasted approximately five minutes. Despite vomiting and feeling ill, none of the participating inmates were sent to the clinic for medical attention.

The incident came to the attention of IRC management early the following morning when supervisors were called to the holding area in response to several inmates who were sitting in protest over the juice drinking contest. The Department opened an administrative investigation, and IAB assigned significant resources. In all, seven investigators interviewed all involved deputies, the 92 inmates present in the holding area, as well as 41 inmate trustees who may have been in the area.

The involved deputies did not deny their participation in the contest. In fact, the two who conceived of the idea and were chiefly responsible for executing the contest claimed that it would be a morale booster for the inmates and would help to relieve tension in the holding area. The Department, however, appreciated the substantial safety risks at issue, the potentially disastrous results of such a contest, and how the failure to seek medical attention for the participating inmates placed them in greater danger. At the conclusion of the comprehensive investigation, seven deputies were disciplined for failing to safeguard persons in custody. Most received short suspensions but one deputy—an instigator of the contest—was terminated pursuant to the Department’s progressive discipline policy.

A central figure in this incident was this deputy with an extensive disciplinary history. As part of a settlement agreement related to four previous cases, he had been reassigned from his patrol assignment to Custody Division for a period of at least two years. This case demonstrates that such disciplinary transfers to custody will not substitute for discharging a deputy with such a disciplinary history. The much-disciplined deputy had been with the Department for many years, working both custody and patrol assignments. His seniority gave him some stature among younger deputies. Because custody is where nearly all deputies go immediately after the Academy, transferring this deputy to custody gave him a great deal of access and ability to negatively influence young deputies at the beginning of their careers. Indeed, five of the seven deputies involved in the juice drinking contest were probationers with less than one year of experience as deputies.

While OIR has in the past touted the benefits of transfers as a management tool to maintain the harmonious functioning of a unit, we have always cautioned against forced transfers as a way of dealing with a particularly problematic employee by making him or her someone else’s problem. The disciplinary transfer to custody is a particularly dangerous form of this practice for deputies who should be discharged,



as it brings senior deputies embittered by the disciplinary process in close, direct contact with newly-hired deputies eager to learn and often impressed by the breadth of experiences of the more senior deputy. Rather than allowing such contamination of newer deputies by the embittered transgressing deputy, the Department would be better served by terminating such an employee.

## **Probationary Employees: A Shift in Approach**

Upon completing their training and becoming sworn peace officers, new deputies in the Department begin a twelve-month period as “probationary employees.” This status has various implications. Among the more important is that full employment rights do not attach until the successful completion of the probation year. This means that the Department can release a probationer from service at will, and without that employee having recourse to the full range of grievance rights and Civil Service appeals.

The concept makes obvious sense—recognizing that an evaluation period is necessary before the Department can fairly judge the suitability of a new officer. Awareness of their probationary status presumably motivates new deputies to work especially

hard and well at a critical stage of their careers, and the Department’s leverage allows it to manage risk more effectively and efficiently than it could otherwise.

...the Sheriff directed his executives that the probationary period should be a time in which Department managers should evaluate its new deputies under exacting scrutiny.

Over the past few years however, executives within the Department had adopted the view that if a probationer committed misconduct, that he or she should receive the same disciplinary sanction as a tenured deputy.

In other words, if the transgression was not so significant that a tenured deputy would

be discharged, then a probationary deputy should not be failed from probation. The rationale most often espoused by this philosophy shift was that it was counter-productive to dismiss persons whom the Department had invested a great deal of time, money, and energy. While this view has some cache, the countervailing perspective is that if the Department does not take advantage of the probationary period to shed itself of problematic employees, it will be left with individuals who displayed troublesome behavior during a “trial period” when one would expect the employee to be striving to meet Department standards.

This year, in instances where probationary employees found themselves in criminal or administrative hot water, OIR took these issues directly to the Sheriff. As a

result, the Sheriff directed his executives that the probationary period should be a time in which Department managers should evaluate its new deputies under exacting scrutiny. The Sheriff instructed that new procedures require supervisors of deputies who had run into criminal, administrative, or performance issues to reexamine the pre-employment history of the deputy including information obtained during the background investigative process. The Sheriff further indicated that the assessment need not wait until the criminal or administrative proceedings had run its course. Instead, the Sheriff indicated that an earlier assessment should be made and the Department should be more disposed to discharging probationers should the allegation be of significant seriousness or the review showed a pattern of past problematic behavior.

As a result of the Sheriff's new directive, the Department is now using the probationary period for which it was designed, namely, as an opportunity to evaluate whether an employee is failing to meet Department expectations and ending the Department's relationship with them in appropriate circumstances. A probationary employee is no longer only terminated when he or she commits an offense that would result in termination for a tenured employee; a lower more reasonable threshold is employed that is more commensurate with the rationale behind the probationary process.

## **Ensuring Principled Decision-Making At the End of the Disciplinary Process**

Over the years, OIR has refined its protocols with LASD regarding the monitoring process for individual discipline cases. OIR receives prompt notification when a new misconduct investigation has been initiated (and often participates in the decision over how to handle a particular incident or allegation). It has the chance to coordinate with the Internal Affairs investigator during the pendency of the investigation, to review the case for thoroughness upon completion, and to consult with the Department's decision-makers before the initial decisions about resolving the case are reached.

The process does not, however, end there. Once the Department sends its intent letter to the subject employee, that person has the opportunity to grieve the discipline in a series of forums, first within the Department, and then through the Civil Service Commission's appellate procedure. Often, the Department amends proposed discipline as a result of this process, through a settlement agreement with the employee before it reaches the Civil Service arena.

There are many good reasons for amending discipline prior to final imposition, and the dialogue between employees and their supervisors that takes place ideally helps

bring about many of the relevant goals of the process. From OIR's perspective, though, it is important that any changes be based on sound facts and thoughtful analysis of new developments, and not on simple expediency or sympathy for the employee.

The following case is illustrative of the turns that can occur before final disposition and the value of OIR's continued collaboration in the disciplinary process.

## **C a s e**

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**A civilian employee was shopping off-duty with family members when her nephew was accused of shoplifting. The employee confronted store security in the parking lot of the shopping area, and aggressively defended her teenage relative. When police were summoned, she remained belligerent and uncooperative, and a scuffle developed that eventually resulted in her being pepper sprayed and handcuffed. Because of her physical interference with the arrest of her nephew, and her own refusal to comply with police orders, she was arrested. She eventually pled "no contest" to a misdemeanor account of disturbing the peace.**

**When the Department began its administrative investigation, the employee adamantly defended herself, made a number of statements that conflicted significantly with other evidence, and dismissed her decision not to contest her criminal conviction as a deal she made on advice of counsel. The egregiousness of her behavior in the parking lot, combined with her refusal to acknowledge wrongdoing and accept responsibility, factored in the Department's initial decision to discharge her. OIR concurred with this decision.**

**During the grievance process, the Chief of the employee's division explored the possibility of reducing the penalty to a 30-day suspension. He did this based on earlier discipline cases put forward by the employee's representative that were allegedly comparable to this case and resulted only in suspensions as well as on his awareness of the dire impact that firing would have on the employee's personal situation. The Chief was conscientious about informing OIR about the evolution in his thinking.**

**The handling OIR attorney pointed out distinguishing features in the cases put forward and assured the Chief that they did not preclude fairly moving forward with the discharge. Moreover, the attorney also reminded the Chief that a key factor in the discharge was the seemingly complete lack of remorse by the employee—a defiance that had not changed in the initial stages of the grievance process. If the employee acknowledged that her behavior was wrong and was willing to take affirmative steps to address her wrongdoing, then OIR remained open to the possibility of a settlement.**

**The Chief then agreed to raise an “alternative to discipline” concept as a part of a settlement offer to the employee. If she were to write a letter of apology to the law enforcement agency with whom she had clashed, it would provide a concrete and potentially constructive acknowledgment of her misconduct. That gesture, in conjunction with a 30-day suspension, would have been endorsed by OIR as a reasonable final outcome.<sup>6</sup>**

**In the end, after drafts of a potential letter were circulated by the employee’s representative, the employee refused to accept the settlement offer and decided to take her chances with the Civil Service Commission appellate process. That process is currently pending.**

It may be several months before the final resolution of this matter. While it is unfortunate that the parties could not reach a settlement, OIR found the Department’s actions in seeking an equitable resolution to the matter to be principled and reasonable. For purposes of ensuring effective oversight, OIR appreciated the opportunity to remain involved as the process unfolded.

## **Respect-Based Discipline**

In the early part of 2008, Sheriff Baca himself took an active role in the implementation of a new approach to the Department’s discipline process. It is called “Respect-Based Discipline” (“RBD”). The protocol it introduces is simple in some respects—essentially, it adds a step between the Department’s initial decision about the outcome of a case and the serving of an “intent letter” that puts the subject employee on formal notice of an impending discipline. That step is a face-to-face meeting between the employee and his or her unit commander or designated supervisor.

During the meeting, the employee is advised about the RBD process and given a copy of the completed case file, which includes a list of charges, findings for each charge and reasons for the preliminary disposition of the matter.<sup>7</sup> The employee has 10 business days to review the file and respond, in writing, with any additional information that is relevant to the findings and that he/she believes may affect the outcome. An employee’s timely written response is evaluated and a determination

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6 This case was processed before the development and implementation of the Department’s “Respect-Based Discipline” and “Education-Based Discipline” protocols, discussed elsewhere in this Chapter.

7 To ensure that there are no Peace Officer’s Bill of Rights triggered or violated—specifically, a deputy’s right to representation during an investigatory interview—the unit commander is strictly prohibited from questioning the employee about the case to obtain information that could be used as a basis for discipline. The unit commander or supervisor may, however, discuss his or her concerns about the misconduct in question and reasons supporting the preliminary disposition of the case.

is made as to whether an amendment to the original charges or proposed discipline is warranted.<sup>8</sup>

In a series of presentations to his command staff (and to which OIR was invited), the Sheriff explained the principle behind the change. He said that, except for the very small percentage of misconduct cases in which discharge is the necessary or most appropriate result, the discipline process should be interactive and viewed as a vehicle for constructive change. He emphasized the strain that an administrative investigation places on the average employee, particularly when it extends for months. It creates tension and uncertainty at best, and frequently leaves the subject feeling ostracized and hostile toward the Department, even when they are culpable to some extent. In the Sheriff's view, it is incumbent on management to defuse this dynamic by re-framing the discipline process: it should be understood by all parties as not only an exercise in accountability, but also an investment in the long-range success of the employee.

This is easier said than done, of course. There are aspects of a misconduct investigation that are inherently adversarial, and deputies have a number of incentives to—rather than participate in RBD—formally challenge the allegations and force the Department to prove its case. They also have legal rights and union protections that exist for excellent reasons, but that also can have the collateral effect of impeding communication and protracting the resolution of cases.

OIR has begun to monitor these cases and the initial results have been rather disappointing. Of the first fifty-one employees offered RBD, forty-seven of those employees elected not to respond. While the four written responses were somewhat heartening: (a request that another interview be conducted, a request for classes in lieu of discipline, an apology for the misconduct and a statement that the employee had no issues with the proposed discipline), the fact that less than ten percent of employees availed themselves of the process is indicative of the overall lack of acceptance of the program.

There are several possible explanations for the lack of non-participation by employees. First, the deputies' union, and in particular its legal counsel, have strongly urged its membership not to avail themselves of the RBD. Second, LASD employees do not have a tradition of responding in writing to pending discipline and some have averred that doing so increases the employee's level of anxiety rather than reducing it.

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<sup>8</sup> As discussed in the next section entitled "Education-Based Discipline", the Department intends to implement an initiative that gives supervisors a wider range of disciplinary options to address the employee's misconduct.

With few documented “successes”, the RBD process has also engendered some deleterious consequences. As a result of the extra step in the RBD process, disciplinary cases have taken longer to complete. Of even more concern, the lack of a well-developed tracking system for cases in the RBD process have resulted in several cases “falling through the cracks” and going past the one year statutory deadline for imposition of discipline, resulting in employees avoiding accountability.

Currently, the viability of RBD as an efficacious piece of the disciplinary process is in doubt. Despite the best of intentions, the practical impact on the disciplinary system to date has been minimal and the drawbacks of the system have probably outweighed any benefits.

## **Education-Based Discipline Initiative**

In 2008, the Sheriff launched a project to create an alternative to the traditional disciplinary system that relies in large part on unpaid suspensions handed down as punishment for policy violations. The new system is dubbed “Education Based Discipline” (“EBD”) and, after a year of hard work by committed personnel, is slated for implementation in early 2009. The concept is rooted in the Sheriff’s belief that the traditional “days off” discipline may unfairly burden an employee’s family and is too mechanical, in that it does not require the Department to engage with the employee in a way that will remediate the employee and reduce the likelihood that the policy violations will reoccur. Under the new plan, most disciplined employees will have a choice between taking days off or completing an education-based plan, pursuant to which the employee may take classes, conduct briefings, and/or write letters of apology as a way of compensating for his or her violations of policy and improving his or her future behavior.

OIR has been involved in the development of the Education Based Discipline system from the beginning. Interestingly, although the Education Based Discipline initiative brings some innovation to the disciplinary process, it will not be introducing something entirely new to the Department. There have always been innovative captains who, as part of a settlement agreement worked out with an employee, would come up with a creative alternative to traditional discipline. OIR monitored a few such cases this past year. The goal of Education Based Discipline is to regularize this practice by providing concrete options from which all captains can choose to create an individual remedial plan for each disciplined employee. In addition, all Department members who opt for EBD will attend a “LIFE” class (Lieutenants Interactive Forum for Education) facilitated by a cadre of lieutenants and intended to provide a refresher to employees on leadership and core ethical values of the organization.

The following summaries of cases are examples of how the Department has devised better-tailored alternative measures to addressing employee misconduct.

## **C a s e**

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**An experienced deputy submitted to the court an affidavit for a search warrant that contained inaccurate information. The District Attorney's office noticed the inaccurate statements and consequently rejected the case against the suspects who had been searched and from whom narcotics had been seized. After a thorough investigation by IAB, the unit commander determined, with OIR's concurrence, that the deputy's inaccurate statements were not intentional or malicious but were the result of sloppy, rushed work. Indeed, the deputy unquestionably had probable cause to perform the search, but took a short cut in the way he articulated it in his affidavit. The deputy took responsibility for his errors and, in fact, brought the issue to the attention of his captain, who might not otherwise have learned about it.**

**In consultation with OIR, the unit commander imposed a substantial suspension on the deputy, but offered to hold it abeyance (spared having to serve days off without pay) if the deputy would conduct briefings on the probable cause issue in question in the case. The deputy is one of a few subject matter experts in the Department on this particular issue, and readily agreed to the unit commander's settlement proposal. Under the agreement, the deputy will write a Field Operations Training Bulletin to be distributed Department-wide and will travel to two stations to personally conduct briefings and advise his peers on the need for accuracy in police reports and of the potential consequences if reports are not accurate.**

## **C a s e**

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**A custody assistant was arrested for alcohol-related disorderly behavior in a neighboring state. During the arrest, the custody assistant was uncooperative, belligerent and disrespectful to the arresting officers. After the incident, the custody assistant was apologetic about his conduct and took responsibility for his actions. As part of a pre-disposition settlement agreement and at OIR's suggestion, the custody assistant received a lesser suspension than he would otherwise have been afforded. In exchange, the custody assistant agreed to write a letter of apology to the arresting officers. As we have stated before, the letter of apology is an underused remedial measure that demonstrates acceptance of responsibility and communicates to those who were most affected by the boorish behavior that the offender has truly atoned for his actions.**

## **C a s e**

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**Two deputies violated Department policy by failing to make the required radio broadcast of a foot pursuit and separating from each other during the chase. They were each given a small**

**suspension, but at OIR's suggestion, the Executive Force Review Committee gave the unit commander the authority to hold days in abeyance if the deputies would agree to do a briefing to the unit in which they described the incident for which they were disciplined and then discussed the foot pursuit and "partner-splitting" policies. It was also an opportunity for the deputies to export their experience to their peers as personal "lessons learned" and to discuss tactics, decision-making and the importance of officer safety.**

OIR supports LASD's efforts to make the disciplinary process more constructive and meaningful and we are excited about our continued work with the Department as it implements the new system. Successfully implemented, EBD could immeasurably change the landscape of the Department's disciplinary process with closely tailored remedial alternatives that ensure individual accountability and address the root cause of the behavior leading to the violations of policy.



# Impact of Taser Use

The proliferation of Tasers as a standard tool for patrol deputies has continued throughout the Department and the Taser is now used hundreds of times per year in the course of LASD arrests. There is anecdotal evidence that the benefits of the Taser are substantial in reducing injuries to Deputies and arrestees alike, but there are occasional instances when the use of the Taser has been associated with severe injury or death. It is important to note, however, that there is scant evidence definitively implicating Taser use as a specific cause of death. Nationally, while more studies are helping further define the landscape, the potential lethality of Taser use is still hotly debated. As discussed below, OIR continues to monitor and scrutinize Taser incidents and participates in Department policy developments.

## **Taser Deployment Results in Serious Injury**

The Department was confronted with a Taser incident that ended badly—with the partial paralysis of an unarmed suspect who was being housed in a patrol station jail. It prompted a thorough review that raised questions of individual accountability and systemic shortcomings.

Problems with the suspect had begun a day earlier, when he was arrested on charges relating to the felony theft of a family member's car. The man had refused to cooperate with the booking process and would not submit to fingerprinting. Eventually, he was placed in a cell in the hope that he would settle down and eventually allow the process to move forward. Hours passed, though, and the

suspect remained adamant in his refusal and persistent in the disruption he caused in the jail area of the station. Though he was not violent, he talked and made noise persistently, and would neither listen to reason nor relent in his outspoken protests.

By the next day, some twenty hours after the initial arrest, a lieutenant decided to abandon the “wait him out” strategy in favor of more direct action. There were various arguments in favor of this approach, including a legal need to preserve the arrest by processing the suspect within the court-mandated time period. (The rule is for the protection of inmates, so that they are not allowed to languish in custody without a fair opportunity to respond, secure bail, etc.) Additionally, the lieutenant reasoned that one of the Department’s downtown custody facilities would be more suitable in terms of resources if the inmate was truly unwilling or unable to comply. The lieutenant also validly took the position that it was the Department’s job to handle difficult situations and problematic suspects, and that the initial strategy had not been effective.

The lieutenant put a team together and devised a plan in which the Taser figured prominently as a force option. The idea was to confront the suspect with a team of deputies outside his narrow cell, to make him aware of the need to comply, to “spark” the Taser in an effort to induce his compliance, and to send deputies into the cell to extract him by force if necessary.

One critical fact, though, was that the suspect, at that point, was standing on the top of metal bunk beds with his head several feet off the ground. He had tossed the mattress to the floor of the cell and had been stomping for hours. This created a couple of significant complications. For one thing, the suspect had the “high ground,” which would make him harder to grab safely and which gave him the opportunity to kick dangerously at the heads of deputies as they tried to enter the narrow confines of the cell. For another, it created the potential of a dangerous fall if the electrical currents of a deployed Taser incapacitated the suspect.

Though the Department’s Taser policy cautioned against use of the Taser for suspects who are “in danger of falling”, it allowed for such use in “emergent circumstances” or with the approval of a supervisor. Here, it was a lieutenant who devised the plan. He was undoubtedly hopeful that the threat of the Taser would end the suspect’s resistance; he had also noted that the suspect was often tucked into a corner of the bunk, against the wall, as opposed to skirting the edges.

Unfortunately, as revealed in the subsequent and very thorough investigation by Internal Affairs personnel, the other participating supervisors and deputies were unclear on some of the particulars of the lieutenant’s vision for the operation. Further, sufficient discussion of possible scenarios and contingency plans had not taken place. When the cycling of the Taser failed to deter the suspect, the deputies

racked the cell door and entered, with the Taser deputy going in first.

The suspect extended his hands and then took a step in the direction of the entering deputies. The suspect was well within kicking distance, and his movements and lack of cooperation were, on the whole, justifications for force. The deputy fired the Taser at the suspect in keeping with the plan.

At that point, the suspect stiffened at the edge of the bed and toppled straight back. He landed on the thin mattress he had previously thrown to the floor of the cell, but it did little to cushion his fall. Deputies rushed in and handcuffed the dazed suspect. This was standard and appropriate as a first step, but from there Department personnel compounded the situation by failing to recognize the inmate's grave condition. Only after several minutes did they summon paramedics.

A number of factors contributed to the inadequacy of the post-fall care the inmate received. Only two of the deputies had actually seen the impact; the view of others was blocked by fellow deputies and the cramped nature of the cell itself. As for the witnessing deputies, they were apparently so focused that they did not comprehend what might otherwise have been objectively obvious: that a bad accident had occurred. Secondly, the failure—or inability—of the suspect to stand and accompany the deputies to the booking area was consistent with hours of earlier recalcitrance. Also, though conscious and verbal, the suspect was not able to clearly articulate his condition. Finally, the injury itself was debilitating but also subtle in some respects—it took doctors at the hospital some time and multiple tests to pinpoint the damage.

The aftermath of the incident had several implications for the Department in terms of officer accountability and policy reform. The deputy's use of the Taser itself was found to have been in policy, a decision with which OIR concurred. This was because the threat posed by the suspect had fallen within the range in which use of a Taser is justified. Though these circumstances were exceptional because of the suspect's elevated position and increased vulnerability, the lieutenant's authorization allowed the Taser deputy to move ahead with the plan.

Apart from the force determination itself, a number of the involved deputies did receive discipline after careful scrutiny of the case by the Executive Force Review Committee and the Sheriff himself. Those subject to discipline included those who had failed to "safeguard a person in custody" by not recognizing the severity of the suspect's injuries and taking the necessary precautions. Though there was no evidence of malice on the part of any participant, the Department determined that it was not reasonable for a deputy to have seen the fall and not understood the need for special care. OIR concurred.

Additionally, two sergeants received discipline for their lack of contribution to the original plan, failing to ensure that involved deputies were adequately prepared and supervised, and/or adjusting to the evolving circumstances after the fall.

Finally, the Department demoted the involved lieutenant. As highly regarded as he was and is for his commitment to law enforcement and his dedicated, productive leadership, he had shown lapses in planning and judgment that contributed to a dire result.

As a result of this incident, the Department also realized that the accident warranted re-examination of its policies and practices in two areas. One was in the handling of cell extractions in the station jails; the other was the Taser policy itself.

## **Developments in Station Jail Cell Extraction Protocols**

While the Department is well-versed in dealing with problematic inmates in the County's various large custody facilities, and has the resources and policies to do so with maximum care, planning, and effectiveness, the incident revealed a serious gap in the ability of station personnel to deal with a similar problem, and a gap in the policies and protocols that might have provided further guidance in this particular case. To its credit, the Department responded energetically and set Field Operations Support Services ("FOSS") to the task of developing a training bulletin that provides a more elaborate discussion of objectives and criteria to be considered during station jail cell extractions.

OIR urged FOSS to use one station's cell extraction guidelines as a model because it established clear procedures for handling incidents involving inmates refusing to exit a station jail cell. For instance, before conducting a calculated extraction, a watch commander must first make an effort to personally speak with the involved inmate and seek a non-violent resolution. Also, where the inmate shows an apparent mental disorder the watch commander must attempt to contact the Department's Mental Evaluation Team ("MET") before conducting the extraction.<sup>9</sup> OIR was pleased to participate in the process and the resulting FOSS bulletin (included here) gives all Department stations valuable guidance in performing cell extractions only when necessary and in executing them with a minimum of danger to inmates and Department personnel.

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<sup>9</sup> The teams are comprised of trained sworn personnel and a mental health clinician. They provide assessments and are trained to perform crisis interventions.

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# Los Angeles County Sheriff's Department

## FIELD OPERATIONS DIRECTIVE



Field Operations Support Services, (323) 526-5760

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FIELD OPERATIONS DIRECTIVE: 09-01

ISSUE DATE: 03-04-09

EFFECTIVE DATE: 03-04-09

ISSUED FOR: FIELD OPERATIONS REGIONS  
CUSTODY OPERATIONS DIVISION

### STATION JAIL CELL EXTRACTIONS

#### PURPOSE

The purpose of this Field Operations Directive is to establish procedures and guidelines for handling incidents involving inmates refusing to exit a station jail cell.

#### POLICY AND PROCEDURES

A cell extraction occurs when a use of force (physical force and/or less lethal weapons) is used to remove the inmate from the cell.

The objectives of a cell extraction are to restore order and to maintain the security of the facility with a minimal level of risk to the individuals involved.

A cell extraction should be conducted only as a measure of last resort. Considerable experience has shown that leaving the affected inmate within the cell for a period of time will normally produce compliance.

Cell extractions may only be conducted where the degree of exigency, or necessity, outweighs the benefit of "waiting the suspect out."

#### Emergency Cell Extractions

An emergency extraction occurs when it is necessary to prevent or stop an immediate and serious threat to the safety of the inmate, staff, or other inmates. The conditions may not permit the full use of the risk management processes contained in this directive. This directive recognizes the need for an immediate, and tactically sound, response to emergent events. When circumstances dictate that an emergency cell extraction is necessary the senior member present shall:

- Accomplish the extraction, using available resources and sound tactics, including the utilization of jail alarm systems.
- Report the circumstances of the extraction to the watch sergeant who shall ensure notification to the watch commander.

The watch commander shall:

- Ensure all force reporting is completed in accordance with the Manual of Policy and Procedure (MPP).
- Ensure that medical treatment is provided to the inmate.
- Ensure that events are videotaped beginning at the earliest opportunity.
- Provide the unit commander with a comprehensive memoranda documenting the circumstances of the extraction.

**Copy of  
the Jail Cell  
Extraction  
Policy**

### **Calculated Cell Extractions**

A calculated cell extraction may be conducted when there is a justifiable need to remove the recalcitrant inmate from the cell by using force. Calculated cell extractions require the prior approval, and the personal supervision, of the watch commander.

When notified of circumstances potentially warranting a calculated cell extraction, the watch commander shall carefully consider the circumstances calling for the extraction and shall weight those reasons against the alternative of leaving the inmate secured within the cell. If that decision-making process concludes in favor of the calculated cell extraction, the watch commander shall:

- Respond to the station jail and personally assume incident command responsibility.
- Make an effort to personally speak with the involved inmate and seek non-violent resolution. Consideration must be given to the apparent mental condition of the inmate. An attempt shall be made to contact Mental Evaluation Team personnel in cases where the inmate shows apparent mental disorder.
- Ensure that there are adequate resources on scene for the extraction.
- Supervise the tactical planning for the extraction and approve the tactics to be used. The use of less-lethal weapons must be in accordance with MPP governing their use and with regard to the capabilities and limitations of each weapon system.
- Ensure that qualified medical aid (paramedics) have been requested to the location prior to undertaking the extraction.
- Supervise the extraction.
- Ensure that the incident is recorded on videotape, from the point of the watch commander's interview to the point that the suspect has been fully secured and medically examined.
- Ensure interviews of all inmates involved in the incident are videotaped.
- Provide the unit commander with a comprehensive memoranda documenting the circumstances of the extraction.
- Ensure that all force reporting is completed per MPP § 5-09/430.00

The use of force during cell extractions shall be documented as a "Significant" use of force.

Calculated cell extractions at the Century Regional Detention Center (CRDF) shall be handled by CRDF personnel under policies contained in the Custody Division Manual.

### **AFFECTED DIRECTIVES/ PUBLICATIONS**

Manual of Policy and Procedure § 5-09/430.00 - Adds additional criteria for "significant" force reporting.

### **CITES / REFERENCES**

Custody Division Manual § 5-05/080.00 - Cell Extractions.

NBT:CWR:TPA:DHB:RRD:JLS:js

Originally Issued: 03-04-09  
Revised:  
Latest Revision:

## **Taser Policy Revisited and Modified**

FOSS also developed a “Taser Training Bulletin.” The bulletin draws from current research and court decisions in this rapidly evolving area to give guidance and warnings about safe and effective use of the Taser. OIR had considerable dialogue with FOSS over the current best practices with regard to Tasers and stressed the need to establish some definitive limitations to its use. For instance, with OIR’s urging, the bulletin instructs that application of the Taser shall be discontinued (i.e. discontinue indefinite cycling of the Taser) once the suspect does not pose an immediate threat to themselves, Department personnel or the public. This aspect of the training bulletin parallels the revised language in the Department’s Taser policy itself, which OIR helped craft as part of a special task force that updated language of all Department policies concerning less-lethal weapons.

In addition to examining “real-time” application of Tasers, OIR and the Department recognized that an important component of the Taser—the internal memory chip—was not being regularly documented in Taser-related force incidents. The chip records a history of all recent uses, including the exact time and duration of the applications as well as power level and ambient temperature. Both the Taser bulletin and the revised Taser policy now explicitly require supervisors who are responsible for collecting information and preparing “force packages” to download and include any data from the Taser chip relevant to the force incident. Supervisory accountability will help ensure appropriate documentation of force incidents involving the Taser. In the past, the challenge has been that a very small number of Department members were adequately trained to fulfill this task. The Tactics and Strategy unit is in the process of solving this quandary by developing a user-friendly training module to accompany the software patch required for the download.

OIR also urged Department executives to take another important step related to Taser training: production of a comprehensive training video to reinforce the principles of the new Taser use policy. OIR recommended that the video expose deputies to a wide variety of scenarios in which the taser might be an effective tool to protect Department personnel and effect arrests with a minimum of force and injury. Video-based training modules are practical training tools in LASD because the Department’s 9,000 plus deputies are dispersed throughout the County, rendering conventional, centralized face-to-face training cumbersome and expensive. OIR has worked with the Department’s less-lethal training experts and the video production unit to get this project off the ground. After delays due to the revision process for the new Taser use policy, the project is finally under way and Department executives have committed to this project as a priority. OIR will continue to monitor this initiative with interest.

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## Los Angeles County Sheriff's Department

### NEWSLETTER

Field Operations Support Services, (323) 526-5760

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VOLUME 08 NUMBER 13

REVISED: November 26, 2008  
ISSUED: July 15, 2008

#### TASER TRAINING BULLETIN

The Taser (M-26 & X-26) is classified as a Conducted Energy Device (CED). It is a less lethal weapon designed to effect both the sensory and motor nervous systems. It achieves this by temporarily overriding the brain's ability to communicate with the effected muscles through Electro-Muscular Disruption (EMD).



Electro-Muscular Disruption is accomplished by delivering 19 strong (but short) shocks per second, that have a typical peak voltage of 1300 volts at 1.9 milliamps, to the body. While the electrical current is being applied, massive muscle contractions in the area between the two probes occurs.

The amperage levels being applied are equal to the static electricity shock that a person might receive from a door knob and do not cause any lasting injuries or side effects. Recovery time from the effects of the electrical current varies from immediately to several minutes.

"There is currently no conclusive medical evidence within the state of current research that indicates a high risk of serious injury or death from the direct effects of electro-muscular disruption exposure."<sup>1</sup>

The Taser is a less lethal option that can be used in "Assaultive/High Risk" situations, as defined by the current use of force policies.

The Taser should always be worn on the opposite side of the duty weapon holster.

Whenever the use of a Taser requires force reporting, a download of the Taser's stored data and video shall be conducted and submitted with the force package.

The Taser (XP) green blast door cartridges are currently the only authorized cartridges for Field Operations. The Taser (XP) cartridges have a range of 25 feet and 1/8 inch longer probe darts. They have replaced the silver blast door Taser cartridges (21 foot range). Field Operations units that have cartridges with yellow, black and yellow, or silver blast doors should immediately replace them.



<sup>1</sup>

U.S. Department of Justice. (June 2008). Study of Deaths Following Electro Muscular Disruption: Interim Report (pg. 3). Washington D.C.: Office of Justice Programs.

Originally Issued:07/15/08  
Latest Revision:11/26/08

Copy of the  
Taser Training  
Bulletin



## **STRATEGY & TACTICS**

Always evaluate the risk that may be posed to the suspect. The loss of control caused by electro-muscular incapacitation can, in some circumstances, increase the risk of injury to the suspect from their loss of balance.

Especially at risk is a suspect who:

- could fall and suffer impact injuries to the head, neck, or spine;
- could fall on a sharp object;
- is near water and could drown;
- could lose control of a vehicle/machinery;
- is at risk of ignition/combustion due to flammable materials;
- is holding an infant;
- could suffer secondary injury due to physical infirmity, being elderly, or pregnancy.

When using a Taser, aim for large muscle groups (chest, back or legs) to maximize incapacitation. The optimum distance to maximize effectiveness is from 7-21 feet away from the suspect. The darts will spread out approximately 1 foot for every 7 feet of distance from the target. The larger the distance between the darts, the more muscle area will be affected.

Application of the Taser shall be discontinued once the suspect does not pose an immediate threat to themselves, Department personnel, or the public.

Always have a contingency plan, in the event that the Taser does not yield the desired result. It is a good strategy to have a second Taser available during deployment, in the event that the primary Taser is not effective. Do not become dependant upon the Taser or any other less lethal weapon; no weapon is 100% effective in every situation.

A lethal force back-up/cover deputy should always be standing near the deputy deploying the Taser (or any less lethal weapon) to provide a lethal force option from a similar vantage point. Deputies should never provide their own lethal force back-up. Specifically, deputies should never have a Taser in one hand and their duty weapon in the other, during a Taser deployment.

By employing these tactics, the need for other force options (personal weapons, impact weapons) that have the potential to create blunt force trauma injuries, much more serious in nature, is significantly reduced and/or eliminated.

Questions regarding the content of this newsletter may be directed to: Tactics and Survival Training Unit (323) 881-3700 or Field Operations Support Services (323) 526-5760.

## **REFERENCES**

U.S. Department of Justice. (June 2008). *Study of Deaths Following Electro Muscular Disruption: Interim Report* (1-9). Washington D.C.: Office of Justice Programs.

International Association of Chiefs of Police. (2005). *Electro-Muscular Disruption Technology: A Nine-Step Strategy for Effective Deployment* (1-19). Alexandria, Virginia: IACP.

Taser International, Inc.. (April 2008). *Product Warnings: Law Enforcement* (TASER Training and Legal Bulletin). Scottsdale, Arizona: Taser International, Inc.

Taser International, Inc.. (June 2008). *Recent Jury Verdict in Hestor v. City of Salinas* (TASER Training and Legal Bulletin 14.0-5). Scottsdale, Arizona: Taser International, Inc.

M.P.P. 3-01/025.00 USE OF FORCE

M.P.P. 5-09/175.05 ELECTRONIC IMMOBILIZATION DEVICE (TASER) PROCEDURES

RRD:JLS::js

Originally Issued:07/15/08  
Latest Revision:11/28/08

Taser  
Training Bulletin  
continued

## Another Significant Taser Deployment

Before the Taser bulletin and revised policy was implemented, the Department faced another troubling Taser incident—this time the suspect died in custody following repeated exposure to the device. The incident renewed debate and concerns about Taser use and its apparent potential risks.

A man who muttered and breathed heavily followed a woman walking from her car to the front door of her son's house. She ran to the door and closed it just as the stranger tried to grab the doorknob and enter the house. Her family called 911. When two deputies arrived, the man was standing in the driveway acting strangely. The deputies ordered the man to lie on the ground. He complied, but when they attempted to handcuff him, he grabbed the leg of one of the deputies and began to twist it, causing great pain and injuring the deputy's knee. The deputies were unable to control the suspect or free the deputy's leg and called for assistance. Assisting deputies and a sergeant arrived immediately and began to wrestle with the suspect whom they described as displaying great strength and had no response to pain. They struck him in the torso and legs with their fists and flashlights. One deputy kned the suspect in the back; another may have kicked him once in the head. The sergeant fired a Taser at the suspect's back, but it did not penetrate

A Taser subject matter expert within the Department examined the evidence and determined that the sergeant had actually activated his Taser at least 10 times within a 61 second period during the fight.

through the suspect's coat. He then applied the taser nodes directly to the suspect's hip and flank several times in "touch stun" mode (which cannot disable a suspect but is designed to produce compliance through localized pain).

The sergeant himself believed that he might have activated the Taser as many as 20 times during the fight. This appeared to the sergeant to have no effect on the suspect. Eventually, the deputies were

able to subdue the suspect and handcuff him. They hobbled his legs and carried him into the back seat of a radio car. The suspect began vigorously kicking the inside of the car, then suddenly stopped; he appeared to be unconscious. Paramedics, who were there to treat the deputy's leg, examined the suspect. They tried to revive him then took him to the hospital where he was pronounced dead.

A Taser subject matter expert within the Department examined the evidence and determined that the sergeant had actually activated his Taser at least 10 times within a 61 second period during the fight. Some of those activations may have been for less than the standard 5-second cycle. He also concluded that prior to



## 5-06/040.95 ELECTRONIC IMMOBILIZATION DEVICE (TASER) PROCEDURES

The Taser is a less lethal hand held electronic immobilization device used for controlling assaultive/high risk persons. The purpose of this device is to facilitate a safe and effective response and minimize injury to suspects and deputies.

### Use of the Electronic Immobilization Device

The following policy guidelines shall be adhered to at all times:

- Only Departmentally approved Tasers shall be utilized by personnel,
- Tasers shall be issued to and used only by those who have completed the Department's Taser Training Program,
- Members authorized to carry Tasers on duty, may purchase Departmentally approved Tasers for on and off duty use,
- Prior to the use of the Taser, whenever practical, Department personnel shall request a supervisor,
- Any individual subjected to an application of the Taser, in either the "probe" or the "touch/drive stun" mode, shall be taken to a medical facility prior to booking, for appropriate medical treatment and/or removal of the probes,
- Application of the Taser shall be discontinued once the suspect does not pose an immediate threat to themselves, Department personnel or the public.
- Except in emergent circumstances, the Taser should not be applied to the following or used in any other situation where there is a reasonably foreseeable likelihood of severe injury or death. In the extraordinary instance that a Department member feels compelled to activate the Taser in the following circumstances, the conduct of the involved personnel shall be evaluated in accordance to the Use of Force policy with sound tactical principles.
  - Handcuffed persons,
  - Persons detained in a police vehicle,
  - Persons detained in any booking or holding cell,
  - Persons in control of a motor vehicle,
  - Persons in danger of falling or becoming entangled in machinery or heavy equipment which could result in death or serious bodily injury,
  - Persons near flammable or combustible fumes,
  - Persons near any body of water that may present a drowning risk,
  - Persons known to have a pacemaker or known to be pregnant,
- The Custody Division Manual may define criteria for a unique application of the Taser within a custodial setting.

### Reporting the Use of the Electronic Immobilization Device

- Authorized Department personnel discharging a Taser shall request the response of a supervisor if not already en route or on-scene,
- The use of the Taser, either by utilizing the probes or the touch/drive stun mode, shall be reported as a "significant" use of force as defined in the Department Manual of Policy and Procedures, section 5-09/430.00, "Use of Force Reporting and Review Procedures,"
- Whenever a use of a Taser requires force reporting, a download of the Taser's stored data and video shall be conducted and submitted with the force package.

Revised  
Taser Policy

**Revised  
Taser Policy  
continued**

#### Personally owned Tasers

Authorized Department members shall only carry on and off-duty Department authorized Electronic Immobilization Devices (Taser). Personally owned Tasers shall be available for computer download upon the request of a supervisor. The device shall meet the specification of the Weapons Training Center, and shall be used in accordance with section 5-06/040.95.

Department members shall record all personally owned Department-authorized Tasers (carried on-duty and off-duty) with Personnel Administration by submitting an Employee's Personnel Information form (SH-AD 395), as required in the Personnel Chapter, MPP, when such devices are:

- Purchased or obtained in any other way,
- Sold or disposed of,
- Stolen or lost.

Distribution of this form shall be as follows:

- Original to Personnel Administration,
- Copy to unit file,
- Copy to member for his personal record.

**Revised 11/03/08**  
**Revised 08/10/05**

these activations, the Taser battery had been depleted and was too low to produce the desired disabling effect on the suspect during the fight. The Department's Homicide Bureau also requested that an expert analyst from the manufacturer examine the Taser in question. He corroborated the opinion that the battery level was below standard.

An Internal Affairs investigator and an OIR attorney attended the autopsy in this case. The Coroner completed the autopsy and the toxicology testing and determined that the suspect had died from the cocaine and methamphetamine intoxication in combination with great exertion, which had proved toxic to his heart. The Coroner concluded that both the bruises and abrasions were superficial and that the multiple Taser applications were unrelated to the cause of death since they had been ineffectual and the suspect had continued to actively resist afterwards.

This case, as with all fatalities in the course of arrest, has been presented to the District Attorney's Office for review. As soon as that review is complete, it will be prepared for internal presentation by Internal Affairs before the Executive Force Review Committee, where the whole incident will be evaluated for compliance with the Department's tactical and policy standards. OIR will monitor the case closely throughout this process.

# Custody Issues

## **Inmate Accounts: An Appropriate Shift in Department Policy**

For some time, the Department's Custody Division had been evaluating the "banking" system, a service to inmates that was vulnerable to abuse or exploitation. It is a system run by a cashier's office in the jails and it allows inmates to create an account and then use the money to purchase snacks, stamps and other authorized convenience items from the jail "store." Inmates are also permitted to use the money to buy phone cards for their calling privileges.

Some aspects of these accounts are both necessary and non-controversial. Indeed, the California Government Code empowers and even requires the Sheriff to collect and account for the money and valuables in possession of inmates at the time of arrest. Money could also be deposited into the inmate's account by—and released to—third parties.

However, concerns gradually arose because of a lack of monetary limitations on the accounts. On very rare occasions, tens of thousands of dollars would be moved through individual inmate accounts. Certainly, these sums far exceeded any practical application to the inmate's legitimate jail needs, and instead raised suspicion that the accounts were becoming a clearinghouse to facilitate money laundering or to fund other illegal activity outside the jails.

**5-06/015.00 INMATE TRUST FUNDS**

Inmates will be allowed to have a maximum of \$900 in a trust fund account for their use during their stay in a custody facility. Trust fund account expenditures include, but are not limited to, phone cards, vending, canteen and third party withdrawals.

The maximum amount that an inmate may withdraw for personal use is \$135 in a week. This includes money spent for phone cards, vending, and canteen.

The maximum amount for third party withdrawals is \$300 a week. This amount will not affect the inmate's ability to purchase phone cards, vending, and canteen items not to exceed \$135 a week.

The exception to the \$900 limit is for those inmates that had more than \$900 in their possession at the time of their arrest, and did not release that money during the booking process. Inmates in this situation shall not be allowed to receive deposits until their account dips below \$900.

Funds that put an account over the \$900 limit will be refused or mailed back to the sender.

All third party deposits and withdrawals made at the Cashier window, will require a valid governmental identification, with photo. This includes all identification issued by foreign governments, as well as, those issued by local, state or the federal government.

Any deviation to this policy must be approved by the Inmate Reception Center Watch Commander.

OIR first became aware of this issue in early 2007, and talked with the Department about possible solutions. There were legitimate points to consider before a change was made, including questions about inmate rights and the valid reasons (such as legal fees) that might exist for inmates' access to larger sums of money. At the same time, only a tiny fraction of the overall inmate population seemed to be exploiting the practice by moving large sums. Still, the concerns were substantial enough to warrant reform.

Supervisors within the Department developed new protocols that addressed the issue in effective and sensible ways and were endorsed by OIR. Additionally, the 2007-2008 Civil Grand Jury, having also become aware of the issue, helped to nudge the project to conclusion. The Department implemented its new policy in February of 2009.

The new policy places caps on funds that are deposited or released into an inmate account. Inmates can now keep a maximum of \$900 "on the books" at any one

time, and can only disburse a maximum of \$300 per week to outside third parties. Moreover, third parties receiving funds must now provide new levels of personal identification, a practice that may eliminate abuses. The limits are reasonable and intended to be fair to inmates. Because an inmate can spend a maximum of \$135 in the jail stores in a given week, and the average length of time in jail is 45 days, the majority of inmates would be unable to spend any more than \$900 during their time in custody. The change in policy, therefore, should eliminate the rare but unsettling instances in which Department systems were facilitating suspicious transfers of money, while at the same time not placing any additional burden or inconvenience on inmates or their loved ones.

Though the process of changing this policy took a long time, the end result reflected well on the Department's ability to recognize a systems issue, listen to concerned outside voices, and implement a responsive change.

## **Overdetentions and Erroneous Releases**

In our prior two reports, we discussed the ongoing issue of inmates either being detained too long or released too early as the result of errors made by LASD or Superior Court personnel. This past year, the number of overdetentions remained consistent with the 2007 total (51 in 2007 and 52 in 2008). Both numbers reflect a downward trend over the prior decade (in 1997, there were over 600 overdetentions; in 2006, there were 61). In general, the LASD erroneously releases far fewer inmates than it over detains. Though 2008 brought a spike in erroneous releases (32 in 2008 as compared to 18 in 2007), there is insufficient data at this point to conclude that this reflects any sort of trend, particularly because the increase was at least in part attributable to one incident in which five inmates were erroneously released (all five inmates were rearrested within two days).<sup>10</sup>

As much as the LASD would like to eliminate this problem entirely, that appears to be an unrealistic goal, given the hundreds of inmates booked into and released from the County jail each day. While the Department continues to look for ways to improve its systems to reduce the frequency of mistakes, human error inevitably accounts for most of the overdetentions and erroneous releases. The Department's best goal is to minimize those errors through effective supervision and diligent review, and to manage the liability associated with these events.

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<sup>10</sup> The deputy responsible for this error, which by all indications was a careless mistake and not an intentional act,

OIR continues to attend and participate in the regular meetings in which managers from IRC and Court Services convene to discuss each overdetention and erroneous release. Prior to the meeting, IRC staff reviews each event, gathers all relevant documentation, and prepares a memo describing where mistakes may have been made. The group then discusses each overdetention or erroneous release with the goal of learning the reasons behind these errors and identifying any solutions. Sometimes the problems are simply personnel issues – an individual clerk has made a mistake because he or she was either inattentive or lacks the skills necessary to perform the job—and the unit commander will address the issue through counseling, discipline, or transfer of job assignments. Sometimes there are systemic problems—the way forms are written or the manner in which court personnel communicate with IRC—and the meetings provide an efficient forum for identifying these issues and working out solutions.

The regular overdetections/erroneous release meetings continue to be valuable, and OIR regularly urges the LASD to maintain them. As it has done periodically in the past, the Department fell behind in scheduling the meetings in the last half of 2008. This means the Department will be playing catch-up through the beginning of 2009 to get through a backlog of cases.<sup>11</sup> OIR will continue to work with the Department to ensure that it consistently reviews all overdetections and erroneous releases and learns whatever lessons it can from these events in order to minimize future occurrences.

## **In-Custody Death Issues – Continued Progress**

In our Sixth Annual Report, we discussed a number of troubling inmate deaths in the County jail, including several older cases in which the LASD investigation or response was slow or inadequate. We noted that in more recent years, the Department has shown a greater willingness to quickly address inmate death issues through administrative investigations. OIR continues to monitor in-custody deaths with great interest. We are happy to report that the trend toward more rigorous LASD involvement in the prevention and review of inmate deaths continues. In 2008, there were no inmate homicides and only two inmate suicides. While these events are almost never completely preventable and the allocation of credit or blame is multifaceted and complex, we acknowledge the Department's good work in continuing to prioritize this issue.

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11 Of course, any significant backlog that delays the Department's review of these incidents limits its ability to timely address any systemic and/or individual accountability issues presented.



## Inmate Death Review

Last year, we reported a marked improvement in the process Custody Division employs for reviewing in-custody deaths. We noted, in particular, the promptness with which Custody convenes each Death Review meeting and how the timeliness of the review contributes to its quality. Custody continued to hold very prompt Death Reviews in 2008, examining each of the 25 inmate deaths last year within 60 days, and most much sooner.

Likewise, the quality of the review of Custody-related issues continues to improve. Custody Support Services, the unit charged with gathering information relevant to each inmate death, organizing the Death Review meetings, and presenting each case, has begun taking a more active role in investigating inmate deaths and asking appropriate questions about policies and practices that may have had some bearing on the death. A CSS deputy now attends each autopsy and interacts with the coroner's office to learn more about what caused the inmate's death. The responsible CSS sergeant is actively engaged with the deputies, and thinks broadly, not just about the immediate cause of death, but all the surrounding issues that may not have directly caused or contributed to the death but nonetheless were brought to

Most inmate deaths are not related to anything deputies did or did not do, but rather are the result of a medical condition or some other natural cause.

light by the incident and present areas in which the Department can improve its practices. As a result, the Death Review meetings have become a more productive forum for Custody to identify needed areas for reform.

Most inmate deaths are not related to anything deputies did or did not do, but rather are the result of a medical condition or some other natural cause. The question is often raised, then, at Death Review, whether the

inmate received appropriate medical care. Unfortunately, that question is often left unanswered by the Medical Services Bureau staff who attend the Death Review. We understand that the medical staff convenes a peer review meeting to discuss inmate deaths, but we continue to be frustrated by the lack of transparency in that process. Medical staff's unwillingness to acknowledge potential quality of care issues during the official Death Review leaves us wondering whether they are overly focused on their liability and not sufficiently attentive to the goal of improving medical care for all inmates. On the other hand, it could well be that the peer review process may be quite adept at identifying and rectifying those problems. It is the lack of transparency of the process that leaves OIR and other interested stakeholders in the dark about whether those issues are being sufficiently addressed.

## Inmate Suicides

Suicides in the County jails have declined over the past three years, from eight in 2006 to three in 2007 and only two in 2008. While the data points are simply too small for any meaningful analysis, with a daily inmate population around 19,000, the Department can be justifiably proud of a year in which only two inmates completed suicides. A number of factors may be at work. Custody has placed renewed emphasis on suicide prevention and intervention. Custody Support Services regularly distributes briefing materials to deputies to remind them to be aware of the warning signs of inmates who may be contemplating suicide. Particularly around the holidays, deputies are instructed to call on the jail's mental health resources if they notice an inmate who is unusually despondent or withdrawn.

Also, Custody Support Services recently began reviewing all attempted suicides in an effort to spot trends and patterns in connection with these incidents. An attempted suicide can reveal the same issues in inmate care, screening, and security measures as a completed one, and warrants the same type of scrutiny. By looking beyond completed suicides to all attempts, the Department broadens its view and can more quickly identify what may become more serious problems in the future. For example, CSS recently noticed that some inmates were using tube socks to fashion nooses and has initiated a move to replace them with shorter socks that cannot be used as readily for this purpose. No inmate, to our knowledge, has used tube socks in a completed suicide, so the issue would not have been raised absent this proactive approach to reviewing attempted suicides.

Finally, as we reported in our Sixth Annual Report, Internal Affairs Bureau now rolls out to all jail suicides. This increased scrutiny, along with improved methods for recording when deputies perform their required inmate welfare and security checks, also may be contributing to increased vigilance by deputies working the modules and a resultant decrease in suicide numbers.

The following case provides a good example of the type of proactive approach Custody employs when reviewing in-custody deaths and inmate suicides.

### **C a s e**

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**An inmate committed suicide by strangulation. He used a torn bed sheet to hang himself off the side of his bunk. A deputy performing regular, timely safety checks discovered him and appropriately began life-saving measures that ultimately proved unsuccessful. The inmate had been having trouble in the custody environment. He twice reported being assaulted by other inmates and repeatedly claimed to be hearing voices. He had pre-existing mental health**

**issues and, while in jail, had been in and out of the care of the Department of Mental Health. Months before his death, he was housed in the jail's mental health treatment module, but had been de-classified. Normally, mental health workers request that de-classified inmates not be placed in single-man cells because those solitary conditions make it more likely that an inmate's suicide attempt will be successful. In this case, however, the inmate was housed in a single-man cell because of the prior assaults by other inmates.**

From a custody standpoint, there seemed little that could have been done to prevent this suicide. There were some issues with the inmate's movement in between facilities and questions about whether he had always been housed appropriately, given his troubled history, but no violations of jail policy or practice were identified. Nonetheless, this suicide was closely scrutinized, and Custody implemented a new policy prohibiting the use of bed sheets in single-man cells. Instead of sheets, inmates are given multiple blankets, which are much more difficult (if not impossible) to tear and fashion into a noose.

## **HIPAA Policy Revisited: Access to Medical Records**

Several years ago, OIR became aware of a long-standing barrier to inmate-related investigations encountered by Internal Affairs investigators. When assigned to investigate a death or serious injury in the jails, investigators were often unable to obtain the inmate's recent medical records without the consent of the inmate. This was problematic, particularly when an inmate had died or where there was a likelihood of future litigation against the Department. Medical Services Bureau personnel based their refusal to disclose an inmate's medical records to Internal Affairs investigators on their interpretation of the federal Health Insurance Portability and Accountability Act ("HIPAA") and the California counterpart called the Confidentiality of Medical Information Act.<sup>12</sup>

OIR suggested that this was an overly conservative interpretation of the laws. The jail is not a standard medical care facility and its needs with respect to the free flow of information are somewhat different from typical health care providers at whom the laws are directed. The objectives of Internal Affairs investigations are to ensure accountability of deputies and other custody staff and protect inmate rights. Investigators need access to inmate medical records for reasons that have little or

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<sup>12</sup> The Privacy Rule in the HIPAA regulations provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information. California's law likewise provides broad protections for patients' privacy rights. Nonetheless, both laws have definitions that may exclude the jails and exceptions that permit the disclosure of personal health information in situations that include some internal investigations of possible wrongdoing.

#### **4-12/000.00 MEDICAL/MENTAL HEALTH RECORDS**

All inmate medical records shall be maintained and controlled by the Medical Services Bureau, in accordance with the Minimum Standards for Local Detention Facilities, section 1205, "Medical/Mental Health Records." These records shall include, but are not limited to:

- Receiving screening form,
- Medical/mental health evaluation reports,
- Complaints of illness or injury,
- Names of personnel who treat, prescribe, and/or administer/deliver prescription medication,
- Location where treated,
- Medication records in conformance with the Minimum Standards for Local Detention Facilities, section 1216, "Medical/Mental Health Care Procedures Manual."

#### **Use of Inmate Medical Information or Record**

In the case of an inmate death or injury, Department investigators may obtain information from the inmate medical record, or the record (or portions thereof) itself, in order to protect the health and safety of the inmates, and to ensure the safety and security of jail operations. Only authorized requests made pursuant to this policy will be granted. Except as otherwise provided by law, for any other use of an inmate medical record, either a release, warrant, or court order must be obtained.

All requests made pursuant to this policy shall be made via the "Request for Confidential Medical Information/Records" form (with the limited exceptions specified below), and shall be limited to the minimal amount of information necessary for the investigatory purpose.

#### **Inmate Death**

In the case of an inmate death, a certified copy of the entire medical record of the deceased inmate will be made available to Homicide investigators upon their request. The Homicide detective may request the record by presenting his/her business card, along with the name and booking number of the inmate, to Health Information Management Department, Release of Information Unit (via fax number 213-946-9819 or in person at Room 6024 of Men's Central Jail). The record will be provided to the Homicide investigator immediately if possible, but in any event within 24 hours.

Custody Support Services personnel may request the deceased inmate's medical record, portions thereof, or information therefrom for the purpose of conducting and documenting a thorough death review. Such requests will be made via the "Request for Confidential Medical Information/Records" form and shall be limited to the minimal information necessary.

#### Inmate Injury

In the event an inmate suffers a disabling injury such that he or she is unable to execute a release as to his/her medical records, investigators may obtain information and documentation directly related to the subject injury from the injured inmate's medical record.

#### Administrative/Internal Investigations

Department personnel conducting administrative and/or other internal investigations related to the death or injury of an inmate may obtain information from the deceased/injured inmate's medical record to the extent necessary to conduct a thorough investigation. Any information and/or documents obtained from the inmate's medical record shall be maintained in a separate file marked "Confidential" and shall be considered and treated as privileged and confidential. Unless otherwise required by law, the information/documents obtained shall not be disseminated further without a signed release or court order, and in such cases a protective order shall be sought.

#### Exigent Circumstances

When conditions exist which constitute an immediate threat to the health or safety of any person(s) in the jail system, limited information necessary to the resolution of the threat shall be immediately provided in the most expedient manner possible (i.e., by telephone, radio, etc.).

#### Dispute Resolution

In the event of a dispute as to the adequacy of the information provided on the "Request for Confidential Medical Information/Records" form, the necessity for the information or the records, or the adequacy of the information or records provided, each unit shall submit the dispute to the MSB Unit Commander and the concerned unit's Unit Commander. The two Unit Commanders (or their designees), if necessary in consultation with County Counsel, shall reach an agreement to resolve the dispute.

**Medical/Mental  
Health Records  
Policy**  
*continued*

nothing to do with the individual inmate, but rather to evaluate the actions of Department personnel—to assess, for example, whether an inmate’s injuries are consistent with a deputy’s reported use of force. Especially in cases where there are unanswered questions about an inmate’s death, or where a use of force by Department personnel possibly contributed to an inmate’s death, the medical records are vitally important to the investigation. By adhering rigidly to a questionable application of the state and federal regulatory laws on medical records, the Department was impeding its own ability to uncover all of the relevant facts surrounding these incidents.

There was frustratingly little movement on this problem for years until OIR appealed directly to attorneys from County Counsel’s office as well as members of Medical Services Bureau and Custody Support Services. That outreach led to a roundtable discussion with subject matter experts from County Counsel, who agreed to draft a policy that could break the investigation logjam but stay within the bounds of the confidentiality laws. The policy clearly states: “Department investigators may obtain information from the inmate medical record... in order to protect the health and safety of the inmates, and to ensure the safety and security of jail operations.” Its recently-implemented provisions create a procedure for investigators to request medical information and establish appropriate limits on the dissemination and use of that information.

## **Force in Custody**

The use of force by sworn personnel within the county jails is frequent and often necessary. The more than 18,000 inmates in the county system are more likely to have significant criminal backgrounds than in the past and are increasingly affiliated with well-organized state prison gangs. Overcrowding and poor jail design require the frequent movement of large groups of inmates throughout the system. Many of the deputies in Custody are new and inexperienced. These factors can contribute to the fear and friction in the system. Much of the force used in jail is “directed force,” that is, planned operations—such as cell extractions and riot suppression—and supervised by experienced jail sergeants and lieutenants. Other force incidents are spontaneous responses to inmate actions or other unsupervised events involving only one or two deputies.

When these force incidents give rise to inmate complaints or supervisor misgivings, internal investigators face significant challenges. Jail force occurs in a sealed environment outside the view of the general public. When there are non-deputy witnesses to the events they are usually inmates with criminal records or other characteristics that may undermine their credibility, especially in court or civil service hearings. They are also often fearful and uncooperative with investigators

and sometimes difficult to locate months after the incident if they have been released. For these reasons, there are some natural barriers to effective enforcement of Department policies within Custody. Conversely, it is vital to reinforce the Department's adherence to its core values inside a jail facility because it is a controlled environment where many deputies have their initial formative experience of exerting their authority over others. To maximize accountability, supervisors must be vigilant not only in their oversight responsibilities, but also in their efforts to encourage an atmosphere of candor among line deputies. When sworn personnel tell the truth about their own conduct during an incident as well as the conduct of fellow deputies, it both upholds and reinforces the integrity of the system and helps to hold accountable those who violate Department policies. The following two cases illustrate the influential role that colleague testimony can play in the determining the ultimate outcome of an excessive force investigation.

## **C a s e**

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**Four deputies broke up an inmate-on-inmate fight at Twin Towers Correctional Facility. After pulling one inmate away from the fight, one of the deputies used what was later alleged to be excessive and unnecessary force on that inmate. While the deputy claimed his force was a necessary response to the inmate's aggression, another deputy who witnessed the incident disputed this account. The witness deputy reported that the subject deputy repeatedly kicked the inmate while he lay on the ground, and then moved the inmate to another location, mostly out of view of others, where he continued to kick him as he laid on the ground. The inmate did not appear to be threatening the deputy, according to the witness deputy and other inmates who saw portions of the incident.**

**The subject deputy was slow to report his use of force, but finally did so at the urging of the witness deputy. The incident was investigated as a criminal matter by the Internal Criminal Investigations Bureau. On the strength of the witness deputy's statement, the District Attorney filed felony charges against the deputy for Assault Under the Color of Authority. The subject deputy eventually pled guilty to a misdemeanor count of Assault Under the Color of Authority and was sentenced to probation and community service.**

An administrative investigation followed the criminal proceedings, during which the subject deputy denied any wrongdoing and stated that he only accepted the plea deal because he wanted to move on with his life. Some in the LASD argued for letting the deputy retain his position, while OIR concurred with others who believed strongly that he should be discharged for his misconduct. In the end, driven by a desire to avoid the uncertainties of the Civil Service process, the Department entered into a settlement agreement pursuant to which the deputy was demoted to security officer, a position in which he does not have the authority to interact with inmates or act as a peace officer.

## **C a s e**

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**An inmate was sitting on the floor of an access hallway facing the wall as two deputies stood nearby and searched his property. The inmate turned his head and may have said something to one of the deputies while reaching his arm out in the direction of the other. The first deputy responded by deploying pepper spray in the inmate's face. He then dropped down and began punching the inmate's head and neck. A supervisor walking down the hallway noticed the disturbance at the far end of the hall and began to run toward it. As he ran he saw the deputy continue to strike the inmate then use his elbow to drop onto the inmate's head. The inmate offered no resistance and lay down in a fetal position. The second deputy standing nearby did nothing. The supervisor began to yell commands at the deputy to stop hitting the inmate and handcuff him. The deputy continued to strike the inmate's head and face and did not stop until the supervisor was standing next to him and repeated the order to stop several times. At that point, the deputy dropped one knee onto the inmate's head. When ordered to stand the handcuffed inmate up, the deputy raised him partway to his feet then let him go, causing the inmate to fall backwards onto the floor. The resulting injuries to the inmate were a cut lip and bruises and swelling to his face and head.**

**When the supervisor demanded to know what the basis for the use of force was, the deputy greatly minimized the force he had used and alleged that the inmate had been crawling toward his partner trying to grab the second deputy's ankles. This story clearly contradicted the supervisor's own observations. The second deputy initially related a story that supported the first deputy's assertions, but later equivocated and claimed to have been looking elsewhere when some of the force was used.**

**Following an administrative investigation, Department executives concluded that the first deputy had used unreasonable force, failed to report force fully to his supervisor, and made false statements to supervisors and internal affairs investigators. They concluded that the second deputy had failed to meet Department performance standards and orders by failing to observe or understand the unnecessary and unreasonable use of force that took place inches away and failing to intervene or prevent it. Deputy One was discharged. Deputy Two received a suspension. The County Civil Service Commission recently affirmed the Sheriff's Department's decision to discharge Deputy One.**

The hearing officer based his finding upholding the discharge by contrasting the credibility of the supervisor and the involved deputy. The hearing officer found the supervisor to be more credible based on his consistent statements and testimony versus the inconsistent and evasive statements of the involved deputy.

Perhaps one of the most difficult responsibilities a Department supervisor must assume is when his or her subordinates violate the Department's core values. In addition to reporting the misconduct in question, the supervisor must submit to Internal Affairs interviews and then be examined and cross-examined in an



administrative hearing in which the supervisor's credibility is at times attacked by the deputy's attorney. In this case, by "doing the right thing", the supervisor performed in the highest tradition of the Department.



# Misconduct Cases

## **Off-Duty Misconduct**

LASD policies and its “Core Values” provide all deputies with guidelines for the Department’s expectations of both on and off-duty behavior. The vast majority of deputies perform their official duties consistent with the Department’s expectations and maintain that high standard of responsibility in their “private” lives. However, as discussed below, there are instances when a deputy’s off-duty conduct falls below that standard—embarrassing and discrediting the Department, endangering public trust and/or shaking the Department’s confidence that the deputy is capable of carrying out his or her official duties with integrity.

OIR monitors these cases to ensure that the Department takes the allegations seriously, that it gathers all relevant evidence, that the facts are evaluated objectively and in “founded cases”, that deputies are held accountable for their conduct.

### Vandalism Case

A deputy had been waiting for a parking space in a crowded parking lot for some time. When one finally became available, he proceeded to turn into the space but a woman in another car sped up from the opposite direction, cut in front him and parked in the space.

The deputy immediately parked behind the woman's car and confronted her. They had a brief verbal exchange, and then the deputy returned to his vehicle, drove around the parking lot and found another parking space. After he parked his vehicle, the deputy decided to "get even" with the woman.

The deputy went to the woman's car, removed his pocketknife and punctured the woman's front tire until it deflated. While the deputy was kneeling next to the tire, a security guard approached him asked him what he was doing. Then deputy replied "nothing" and then walked away from the woman's car.

Unbeknownst to the deputy, the security guard had observed both the deputy's initial confrontation with the woman and the puncturing of the tire. The security guard advised the deputy that he was going to call the local law enforcement agency. Approximately ten minutes later, officers arrived at the scene, approached the deputy and asked for his knife. Without incident, the deputy surrendered his knife to the officers.

During his initial contact with the officers, the deputy did not identify himself as a peace officer. That information became evident during an arrest search when officers found the deputy's LASD identification. When first questioned by the officers, the deputy denied that he had punctured the woman's tire stating: "I was just there, not doing anything.... My knife fell to the ground, I picked it up...." Later, the deputy admitted that he had vandalized the woman's tire. One of the responding officers reported that during questioning the deputy tried to wipe the rubber residue from the knife's blade.

At the criminal proceeding, the deputy pled guilty to the vandalism charges. In his administrative investigation interview, the deputy stated that he pled guilty because "there was no doubt about that." The Department found that the deputy's off-duty misconduct violated Department policies and recommended a ten-day suspension and OIR concurred. Part of that concurrence stemmed from the deputy's eventual, albeit delayed, decision to accept responsibility for his misconduct.

## Theft Cases

Over the past two years, the Department has handled a number of theft and attempted theft cases involving sworn personnel. In most instances, these types of cases will process first through the criminal judicial system before being handled administratively by the Department. Importantly, even in instances where the District Attorney's office declines to file charges, LASD will review the case administratively and ultimately determine whether Department policies have been violated and whether disciplinary action, including discharge, is warranted.

Notably, the administrative standard to establish or disprove the alleged misconduct (preponderance of the evidence) is less stringent than the one applied in a criminal court context (beyond a reasonable doubt).

The “theft cases” summarized below involving a deputy, sergeant and lieutenant are at different stages of the criminal or administrative process. OIR will continue to monitor each of these cases as they progress, and make recommendations regarding discipline where it appears that Department policies have been violated.

## **C a s e**

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**In 2008, while on-duty and during an investigation of a commercial burglary, a deputy stole sunglasses from an optometrist’s store. The theft of the sunglasses by the deputy was recorded on the store’s surveillance video. The deputy admitted to stealing the sunglasses. Despite the store owner being desirous of prosecution, the District Attorney’s Office declined to file charges against the deputy. The Department has begun its administrative review of the case.**

## **C a s e**

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**In late 2007, an off-duty sergeant in plain clothes attempted to steal merchandise from an electronics store. Unbeknownst to the sergeant, the store’s surveillance cameras captured the attempted theft. The videotape footage showed the sergeant looking around the store before putting several DVDs under his shirt and in the waistband of his pants. The sergeant then walked around the store and retrieved other items to legitimately purchase. As the sergeant stood in the checkout line, two of the store’s security officers looked at him and then radioed each other in loud voices that they had made visual contact with the suspected thief. At this time, the sergeant left the checkout line and began to put all the items, including the DVDs, behind other merchandise throughout the store. In addition, the sergeant placed a knife (that he had brought into the store) on a store shelf. It was discovered later that the sergeant had cut open at least one DVD.**

**When the sergeant exited the store, the security cameras captured the sergeant driving away in a Department patrol car. The store security guards notified the Department who later identified the sergeant as one of its own peace officers. Based on a review of the investigative file, OIR recommended, and the Department agreed, that discharge was warranted in this case.**

## Case

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**In early 2008, an off-duty lieutenant entered a hardware store and shoplifted a gardening tool. The lieutenant removed the gardening tool from its packaging and then concealed it in newspaper. When the lieutenant exited the store, store security guards approached him and persuaded him to return to the store. The lieutenant refused to provide any identification to the store security personnel. When local police arrived, the lieutenant tried to flee on foot. The local District Attorney's office filed criminal charges, and the case is proceeding through the criminal court system.**

### Off-Duty Pursuit Cases

Over the past year, a case stemming from a four year old off-duty shooting incident was finally brought to closure. The shooting was the culmination of an incident that commenced when an off-duty deputy encountered a motorist who allegedly threatened him. The deputy called the station about the incident, provided the motorist's license plate number, and then went into pursuit of the motorist in his private vehicle. Shortly thereafter, the motorist slammed on his brakes and because the deputy was following too closely, he slammed into the motorist. Although the deputy's vehicle was disabled and he did not have a radio, vest and emergency lights—tools that deputies are normally equipped with in order to perform capably—he continued to pursue the motorist. After some time, the motorist stopped and got out of his vehicle. The deputy then pulled his gun and when he saw something in the motorist's hand (which later turned out to be a set of keys) the deputy fired one round striking the motorist. As a result of a critical and thorough review of the entire incident, including the decision-making leading up to the shooting, the Department found that the deputy violated policy and imposed a significant suspension on him.

The deputy appealed the suspension to the Civil Service Commission. After an almost two year hearing and appeal process, the Commission upheld the recommended findings of the hearing officer. In doing so, the Commission found that in conducting an unreasonable pursuit, the deputy had placed himself, the motorist, and the general public at a greater risk of injury than if he had simply phoned the call in and allowed the on-duty station personnel to handle the apprehension. The Commission further found that if the deputy had not engaged in the unreasonable pursuit, the use of deadly force would not have occurred.

In another case, a detective received discipline for engaging in a dangerous off-duty pursuit. The detective had observed suspicious persons in his neighborhood. As the suspects entered a vehicle, the detective called in the license plate number and then decided to follow them with his young son in the car. Eventually, the

suspects went onto the freeway and the detective followed them. The pursuit reached speeds of upwards of one hundred miles per hour. Eventually, the suspect's vehicle stopped and when uniformed personnel arrived, a deputy-involved shooting ensued. While the detective was commended for his observations of the suspects who turned out to have just robbed a bank, he received minor discipline as a result of the dangerous off-duty pursuit in his private vehicle and the potential endangerment to himself and his young son.

These are two examples of how the Department and OIR reviews shooting events that do not simply focus on the decision to pull the trigger but targets other questionable decision making that implicates risk, liability, and officer and citizen safety issues. In doing so, the Department can effectuate corrective remedial measures through the discipline process that can serve as a deterrent to risky deputy behavior, both on and off-duty.

## **On-Duty Misconduct**

### Prescription Drugs: Usage, Policing, and Enabling

The Department grappled in the past year with at least two investigations involving personnel dependent on prescription drugs. Both cases proved challenging as the Department tried to strike the appropriate balance between disciplining the individuals for misconduct associated with being under the influence while on-duty and assisting its employees by providing them access to treatment for serious addictions. OIR reviewed both cases, weighed in on the appropriate disciplinary outcomes, and monitored the Department's response.

## **C a s e**

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**A supervisor was found to have been using prescription medication while on-duty. This field supervisor had injured his back and had been prescribed pain medication for his condition. However, the amount and types of medication he ingested were impairing his ability to perform his job. He was observed to be falling asleep during briefings and while on-duty. Eventually, the supervisor was involved in an on-duty traffic collision. After the collision, as the supervisor drove away from the scene, he activated his emergency lights and pulled into the path of another vehicle, causing the other car to swerve to avoid contact. When the supervisor arrived at the station, the station command ordered a "for cause" drug test which revealed numerous and varied prescription drugs in the supervisor's system significantly above normally prescribed dosages.**

**The Department ordered an administrative investigation, during which it learned of an earlier incident a week before when the same supervisor was observed in the locker room struggling to put his gun belt on without assistance. Later in the shift, the supervisor was observed to be sleeping in his radio car with the headlights on and the engine running. The supervisor also reportedly had labored breathing and slurred speech. Following the investigation, the supervisor entered into a settlement agreement whereby he agreed to receive professional assistance for his drug dependency.**

In the end, peers did come forward with information about this supervisor's performance that eventually resulted in needed professional assistance for this employee.

The conduct of others at the station with knowledge of this supervisor's behavior is a notable collateral aspect of this incident. During the administrative investigation, the supervisor's peers provided candid accounts of their prior observations of the supervisor's on-duty struggles. However, they had not previously reported any of his performance problems; instead they attempted to deal with the issue informally and directly with

the individual. While this approach is understandable, it only led to a continued and worsening situation that placed the supervisor, other Department personnel, and the public at risk. In the end, peers did come forward with information about this supervisor's performance that eventually resulted in needed professional assistance for this employee. The lesson learned from this incident is the importance of formally reporting to station command performance issues that place persons at risk so that the Department can act to timely assess problems and respond appropriately.

## **C a s e**

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**An on-duty patrol deputy was suspected to be under the influence of a narcotic as a result of his bizarre behavior, including yelling, striking out at a tree with a large stick, and sweating profusely. Supervisors at the station suspected the deputy may have overdosed on a prescription drug. They ordered a "for cause" drug test and also got the deputy necessary emergency medical treatment for the overdose.**

**The Department learned that the deputy likely had become addicted to the prescription pain medication he took following a back injury. The deputy had a history of other discipline relating to his prescription drug use. Following an administrative investigation, the Department concluded the deputy had reported to work impaired by his use of narcotics, placing himself, his partners, and the public at risk. Department executives planned to**



**discharge the deputy but as part of a settlement agreement, offered him a final opportunity to seek treatment for his drug problem. The deputy agreed to the terms of the settlement and was able to keep his job while getting the help he needs.**

In this case (in contrast to the preceding incident) the subject deputy's partner initiated the Department's action by promptly reporting the deputy's bizarre behavior to a supervisor. As a result, the subject deputy received both the immediate medical care and longer-term treatment that he needed. In addition, he was prevented from further harming himself or others while attempting to drive a patrol car or perform his duties while impaired. While the decision to call a supervisor about a fellow deputy's behavior is almost never an easy one, this deputy unquestionably made the right decision, for the safety of the public as well as his partner.

## Steroid Use

Similar to the Department's "zero tolerance" policy for personnel dependent on prescription drugs, it usually maintains a "bright line" response for those in possession of or using illegal substances, including illegal steroids. The discipline is usually discharge. The cases summarized below are instructive on how the Department handled two recent steroid-related cases.

## **C a s e**

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**One evening, a deputy pulled a suspected drunk driver over in a rural part of the county. He concluded that the female driver was not under the influence but noticed that she was currently on probation on a drug charge and may have been in violation of her probation. She was distressed at being pulled over and begged him not to take her to jail. The deputy suggested that he could do her a favor if she would do him a favor. She understood the implication and agreed to follow his radio car. He led her to a secluded location by a cemetery, brought her to the back seat of his car and had her perform oral sex on him. Then he allowed her to go on her way. Within a short time, the woman filed a complaint with the Department. The Department launched an internal affairs investigation that produced evidence supporting the woman's complaint. During the investigation, it was also discovered that the deputy had stored illegal steroids in his Department locker. The deputy was discharged for both the sexual coercion of the female and possession of illegal steroids. OIR monitored the case through a lengthy appeal process. The Civil Service Commission eventually upheld the Department's decision to discharge.**

## **C a s e**

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**In this case, when a local police agency responded to a fight between a deputy and his girlfriend, the girlfriend alleged that the deputy had been taking illegal steroids for some time. The police report, which included these statements, was forwarded to the deputy's captain. The captain considered these allegations in combination with the deputy's rapid increase in physical bulk observed by supervisors. The captain also factored in the deputy's recent relatively extensive history of discipline for off-duty fights, questionable off-duty uses of force, and on-duty displays of anger and insubordination and decided to request a "for cause" urine sample drug test of the deputy. Internal Affairs appeared at the deputy's workplace unannounced and took the urine sample. The laboratory results came back positive for three anabolic steroids commonly used illegally by weightlifters for performance enhancement and sometimes associated with anger and erratic behavior. When interviewed, the deputy denied ingesting the illegal steroids. He was discharged for use of illegal drugs and for failure to make truthful statements during an investigation.**

### Failure to Perform Duties

In 2007, the Department disciplined two deputies for failing to perform their official duties while on-duty—one traveled outside his jurisdiction for personal reasons and the other failed to respond to service calls. The fact that both deputies had responsibilities for large geographic areas and had little direct supervision may have been factors contributing to the occurrence of the misconduct.<sup>13</sup>

## **C a s e**

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**A deputy traveled out of area to visit with his girlfriend. He then falsified computer entries regarding his location during the relevant time period. The Department recommended a 15-day suspension. OIR concurred. Pursuant to a subsequent settlement agreement, the Department agreed to reduce the 15-day suspension to 10 days.**

## **C a s e**

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**In the second case, a deputy visited the residence of a "dominatrix" and engaged in sexual or inappropriate activity with the resident. A neighbor observed the deputy enter the residence and, through a window, saw the deputy in partial phases of undress. The neighbor called another police department to respond. The Sheriff's Department learned of the incident,**

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<sup>13</sup> Some LASD units, because of vast geographic responsibilities, are presented with special challenges to Department supervision. For example, deputies assigned to the Department's Transit Services Division are responsible for multi-County enforcement over the span of several hundred miles.

**placed this deputy under surveillance and determined that the deputy on several occasions failed to respond to calls for service and that he falsified computer entries regarding his response to the same service calls. The Department's initial recommendation was discharge, and OIR concurred with the recommendation. In the subsequent settlement agreement, the Department reduced the discharge to a demotion. OIR did not concur with the amended discipline.**

The incidents renewed the Department's consideration of ways of tracking deputies who, because of their assignments have limited direct supervision. For example, a GPS device installed in a patrol vehicle is capable of monitoring and recording movement, locating the precise location of the vehicle in real time, and determining how long the vehicle remains at any given destination. Another benefit of the GPS device is that it could protect deputies—particularly those in “single-man” units—if they find themselves in a dangerous situation and cannot communicate their location. This relatively new technology may also prove to be a deterrent to deputy misdeeds and a realistic option to addressing the Department's “management” concerns regarding on-duty misconduct.

## Tampering with Firearms

During a training day at Tactics and Survival, a sergeant discovered that his Department-issued handgun would not fire. He took it to the armory at the Weapons Training facility where a deputy trained in firearm maintenance worked on the gun, discovering that some screws had been over tightened to the point where the gun would not function properly. The sergeant had had his pistol upgraded four months earlier as part of a Department-wide update program. A different deputy working the armory had performed that upgrade and allegedly bragged afterward to others at the armory how he did not like a particular sergeant and had, therefore, tightened the grip screws on his weapon so tightly that he would never be able to get them off. The deputy had worked with the sergeant when they were both deputies and assigned to the same patrol station.

These allegations came to light only after the sergeant's weapon had failed in training. He had been carrying the pistol on patrol duty during the interim four months but, thankfully, did not have cause to fire it. The case was submitted to the Internal Criminal Investigations Bureau for investigation of potential crimes. At the conclusion of the criminal investigation, the District Attorney's office declined to prosecute. The Internal Affairs Bureau then conducted an extensive and thorough administrative investigation during which other allegations about the subject deputy's competence and professionalism emerged. The investigation also revealed that anyone with a basic understanding of how the firearm in

question operates would know that over tightening the grip screws was likely to cause the weapon to fail to fire.

Ultimately, the Department removed this deputy from his Bonus Deputy position, effectively removing him from his position as an armorer and preventing him from working at the Weapons Training facility in the future. OIR was impressed with the thoroughness of the administrative investigation but disappointed with the outcome. In our view, the evidence in this case was strong enough to support a discharge. While the Department did not disagree that a deputy who intentionally jeopardizes the life of a colleague by tampering with his firearm deserves to no longer be a deputy, it did not believe that the Civil Service Commission would uphold a discharge in this case.

## Fighting Case

In early 2008, two security assistants assigned to work on a train got into a physical altercation with one another while on-duty. During the course of the Department's administrative investigation, it learned that a third security assistant may have provoked the fight.

The fight—which started out as a verbal confrontation over the use of a cell phone—lasted fewer than twenty seconds and involved pushing and punches to the face. One of the involved security assistants was on probation at the time and had previously received complaints from both train passengers and his peers. The Department discharged him.

The other involved security assistant is currently being investigated administratively. The Department has also initiated an investigation on the third security assistant for his alleged involvement in the fight and for possibly failing to make complete statements about the incident. OIR is monitoring the Department's investigation.

## Training Exercise Gone Wrong

The Sheriff's Department's Transit Services Bureau is dedicated exclusively to maintaining security and providing law enforcement services on MTA buses and trains and at stations. The bureau maintains a small K-9 team trained for this mission.

A bureau supervisor designed a training exercise to test the bomb-sniffing skills of the dogs and their handlers. Real explosive materials (without detonators)

were hidden in ordinary luggage and trash bins placed in various locations in Union Station. The exercise was run during busy business hours to achieve a realistic environment. The supervisor made sure that there was no danger to the commuting public, but failed to anticipate thieves. A individual who had been watching the exercise, made off with a piece of luggage containing detonation cord, perhaps thinking it contained something more valuable. The thief was never apprehended and the detonation cord was not recovered. Without the proper ignition attachment, the cord is not dangerous, but the theft exposed an important flaw in the training exercise. Moreover, the Department had to explain

## **Unit Order # 32 – Sheriff’s Department Transit Services Bureau**

Unit Order 32 is a detailed guidance with the stated purpose to: ESTABLISH SAFE HANDLING PROCEDURES DURING EXPLOSIVE DETECTION CANINE TRAINING. In essence, the order requires Transit Services Bureau personnel to comply with the following:

**Order:** All TSB personnel handling explosive training aids as part of canine detection training shall follow the established procedures as outlined in the TSA Explosive Detection Canine Team Program Standard Operating Practices and Procedures.

**Training in Public Areas:** A written training operations plan detailing upcoming training in a public area shall be reviewed by a Canine Team Sergeant and approved by the Canine Detail Lieutenant.

The plan will identify those TSB personnel who are designated to safeguard the explosive training aids by number and type.

At a minimum, there shall be at least one Canine Team Sergeant on-scene when training aids are deployed in a public area.

There shall be a ratio of one sworn explosives trained TSB member per training aid placed in the public area. This member’s primary function is to watch and safeguard his/her assigned explosive training aid.

Each TSB member may not watch more than one aid when explosives are placed in a public area.

If an explosive training aid is placed into a piece of luggage or other movable item, the entire package shall be secured to an immovable object by the use of a cable and padlock.

**Copy of TSB  
Unit Order**

the loss of the cord to the Federal Transportation Security Administration agency from which it borrowed the item.

An Internal Affairs investigation resulted in discipline for the TSB supervisor who also lost his position with the K-9 unit. OIR ensured that the investigation results, including a corrective systemic action requiring a redesigned protocol for TSB training exercises, was promulgated and effectively communicated to MTA managers.

## Lying Under Oath

In OIR's Second and Third Annual Report we discussed our special efforts to monitor cases involving false statement allegations. As we explained, a crucial aspect of an officer's duty is to tell the truth. Failure to meet that expectation not only affects the credibility of the deputy as a witness in court but it also carries with it serious administrative consequences. Importantly, untruthfulness also tarnishes the reputation of the Department and creates public distrust.

In 2008, the Department opened two separate administrative investigations on deputies who are alleged to have made false material statements under oath. In each instance, the County Public Defender's office documented its concerns regarding each deputy's testimony and informed the Department. Currently, the Internal Criminal Investigations Bureau ("ICIB") is investigating the perjury charges. OIR will continue to monitor the Department's review of these cases.

We applaud the decision of the Public Defender to formally inform the Department of its concerns regarding the integrity of Sheriff's personnel. In the past, we have anecdotally been informed that regular participants in the criminal justice system have been reticent to inform the Department about similar integrity concerns. Unless the Department is made aware of potential issues of integrity, it is unable to investigate those concerns. We are hopeful that this recent referral by the Public Defender will repeat itself when regular participants in the criminal justice system have concerns about the conduct of Department personnel.

## **Misconduct Cases Warranting Discharge**

The Department maintains a progressive disciplinary system that establishes a graduated step of responses (i.e. mild to severe) to employee misconduct. The purpose of progressive discipline is to address the specific performance issue or misconduct, provide feedback to the employee as well as an opportunity to correct the unacceptable behavior. The level of discipline imposed depends largely on

the nature of the misconduct and the frequency or length of time between the offenses. There are some offenses, however, that are inappropriate for progressive discipline—because of the seriousness of the misconduct—and therefore, render the employee immediately unsuitable for continued employment. In other cases, because of a history of similar misconduct the employee may be at the end of the progressive discipline “road” and discharge is the only appropriate action.

In each case summarized below, OIR concurred with the Department’s decision to discharge the employee. As you will note, in many instances, the employees elected to resign or retire before a discharge became effective.

### **C a s e**

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**The Department recommended discharge for a professional staff employee who falsified County time records over a two-year period. Through Department computers, the employee repeatedly accessed County’s timekeeping, payroll and personnel system and altered her own time records to accrue leave time and acquire premium overtime pay. At the conclusion of the Department’s investigation, it submitted the case to the local District Attorneys office, which filed theft charges. The Department then sought to discharge the employee. Before the Department’s discharge became effective, the employee resigned from the Department.**

### **C a s e**

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**The Department recommended discharge for a professional staff employee who was involved in a money-laundering scheme and lived with a convicted narcotics dealer. This matter came to light during a federal criminal investigation of a cocaine trafficking ring. Investigators learned that large amounts of cash and cashier’s checks—far in excess of the employee’s salary—were deposited into various bank accounts and then withdrawn in a structured manner to avoid mandated reporting requirements. The monies were then used to purchase a luxury car and home. To conceal the employee’s relationship with the convicted narcotics dealer, official Department documents were falsified. Faced with a discharge notice, the employee elected to resign from the Department.**

### **C a s e**

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**The Department recommended discharge for a professional staff employee who committed theft of Social Security benefits. The employee had admitted that she concealed her mother’s death from the Social Security Administration (“SSA”) and that she forged checks from her deceased mother’s checking account. For more than 15 months after the mother’s death, the employee falsified SSA documents so that SSA would continue to deposit the Social Security checks into her mother’s account. The employee eventually pled nolo contendere to theft charges. For several months after the criminal case concluded, the employee, who received**

three years summary probation, failed to inform the Department of the conviction. In lieu of discharge, the employee elected to resign from the Department in 2007.

## **C a s e**

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Several individuals, who are non-Department personnel, were arrested for possession and/or sale of methamphetamine. During their arrest, they identified a Department employee either as a friend or as a romantic interest. Hotel records revealed that the Department employee frequently paid for rooms for prostitution and/or drug activities and that he used his Department position to gain reduced hotel rates. In addition, the Department employee used County cars to travel frequently outside Los Angeles County to visit one or more of the arrested individuals before and after their arrests and incarcerations. Also, jail records showed that the employee deposited money in the arrested persons' accounts. The employee retired from the Department before discharge was effectuated.

## **C a s e**

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The Department recommended the discharge of a deputy who had unauthorized absences and made false statements during the internal investigation. The deputy had sustained an injury (requiring surgery) during an arrest of a suspect. A doctor advised the deputy and his sergeant (who was present) that he could return to work on a modified-duty status.

Approximately four weeks later, the deputy informed the sergeant that the doctor changed his return date to a later date. When the deputy returned to work, he initially failed to present medical documentation as required. Eventually, the deputy submitted the forms but they indicated that he was cleared to return to work as originally stated. When confronted about the earlier release date, the deputy claimed that medical staff must have made a mistake.

Department investigators confirmed with the medical staff that the deputy's release date had never changed. LASD executives decided to discharge the deputy because he had a history of similar unauthorized absences and the instant misconduct amounted to theft.

## **C a s e**

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The Department discharged two professional staff employees for fraternizing with inmates. Over a two-month period, the two employees purchased and smuggled clothing and food into the custody facility and gave them to a "high-powered" inmate.<sup>14</sup> The inmate also received a cellular phone, personal notes and photographs of the employees. The

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<sup>14</sup> A "high-powered" inmate is a violent and highly dangerous individual requiring special segregated, single-man cell housing. The presence of these inmates in the general population has been known to severely compromise jail security. When these inmates are moved within a facility or transported outside a facility, they are waist-chained and escorted by deputy personnel.



employees had also provided their personal phone numbers to other inmates and received more than 200 telephone calls.

## **C a s e**

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In April 2008, the Civil Service Commission upheld a discharge in a case where a deputy, assigned to provide additional foot patrol in a train station, engaged in a series of inappropriate activities.

By way of background, on July 7, 2005, the London bus and subway systems were bombed in a massive terrorist attack. This incident caused the Department to deploy additional personnel to monitor this station. Within a couple of days after the London bombings, the deputy, without proper authorization, obtained a security radio and telephone. Using the equipment, the deputy repeatedly contacted security personnel (privately contracted to work at the station) to ask for assistance and falsely identified himself as an officer employed by another police department. Frustrated by inaction to his requests, the deputy threatened a security supervisor by calling and saying that he had him "in sight." Concerned for his safety, the security supervisor called another police department, who initiated an investigation.

Soon thereafter, the deputy, using inappropriate language at times, left voicemail messages with various security personnel requesting that they persuade the supervisor to drop the complaint and have him "shut the hell up."

Following an administrative investigation conducted by LASD, the Department discharged the deputy. The deputy appealed to the Civil Service Commission which ultimately adopted the affirmed the deputy's discharge.

## **C a s e**

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In this case, a sergeant's misconduct violated Department policies regarding workplace violence, relationships with subordinates, performance to standards and general behavior.<sup>15</sup> The misconduct included: (1) touching a deputy's testicles through clothing; (2) dipping his hand inside a deputy's underwear, sniffing his fingers and then commenting on the scent; (3) grabbing a deputy's nipple through a shirt; (4) talking to a deputy about "ass f\*\*\*ing"; (5) telling a deputy to "get in the bathroom...you're going to get your rectal exam"; (6) making threats about kicking " a deputy's ass"; (7) threatening a subordinate by stating, "[I'll] put a bullet in your head, and I'll take you out to the desert and bury you" and "The desert is a pretty big place and you could have a lot of bodies out there. You know what I mean?";

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<sup>15</sup> Earlier, the sergeant had been demoted to the rank of deputy for fighting with an employee on-duty. The sergeant's conduct for which he was discharged commenced within weeks after being reinstated as a sergeant.

**(8) asking a deputy whether the deputy had ever performed oral sex on a man and if the deputy ever got drunk enough would he “blow him”; (9) commenting on his own appearance and the appearance of other employees while changing clothes in a locker room; and (10) stating to a deputy “Why don’t we go into the men’s restroom and you can show me how much you appreciate [the good rating on your performance evaluation].” Many of these comments were made repeatedly to the same group of deputies. After a complaint was filed against the sergeant, his unit commander ordered him to stay away from certain Department personnel. The sergeant failed to obey this order and deliberately sought out those individuals.**

**Based on the deputy’s past disciplinary history and nature and frequency of the recent misconduct, OIR concurred with the Department’s decision to discharge the sergeant. When the sergeant was notified of the Department’s intent to discharge, he elected to retire from the Department.**

## **C a s e**

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**A professional staff’s conduct created an actual threat to Department security and confidential information. Personnel conducting a large-scale investigation of a particular gang’s operations including murder detected a potential leak of law enforcement database information to gang members.**

**The investigation of the leak ultimately focused on two recently hired professional staff employees at a particular station. Evidence showed that unauthorized criminal histories of known gang members had been run during the graveyard shift when these employees were among the few station staff. During the investigation, one of the employees admitted living with a known female associate of the gang and occasionally socializing with the gang members. She also admitted running these gang members for warrants at the request of her roommate and accessing their criminal histories. This clerk was discharged for “Prohibited Association” with known criminals and for disclosure of confidential information and illegal access to the Sheriff’s data network.**

**Evidence about the other clerical employee failed to establish any knowing association with criminals or improper accessing of databases. This employee may have unwittingly socialized with the gang members in question, but there was no proof that she had violated a Department policy. She received no discipline.**

OIR believes that the cases mentioned above exemplify the Department’s continued seriousness regarding integrity issues, inappropriate associations and on and off-duty violence. It also shows a disciplinary evaluation process that, with OIR’s input, can improve the ultimate decision making process.

# Force and Shooting Issues

## **Deputy-Involved Shootings**

Pursuant to Department policy, deputies are authorized to use deadly force “in self-defense or in the defense of others, only when they reasonably believe that death or serious physical injury is about to be inflicted upon themselves or others....”

Deadly force obviously constitutes the strongest and most consequential application of police authority and warrants the highest level of scrutiny. Some weapons constitute deadly force only when used in certain ways—e.g., a baton strike to the head—but anytime a deputy shoots a firearm at a suspect, it is considered deadly force, whether injury results or not. Consequently, deputy-involved shootings are among OIR’s core concerns.

OIR attorneys roll out to the scene of each LASD shooting (whether a suspect is struck by LASD bullets or not) in order to view the location and to confer with Homicide and Internal Affairs detectives as they begin their investigations. We monitor each case individually through the Executive Force Review process—a preliminary investigation and evaluation to determine whether the shooting indicated any apparent violations of Department policy or significant tactical shortcomings. We also track cumulative trends in shootings and tactics.

This year, there were a total of 21 “hit” shootings where a suspect was killed or wounded and 16 non-hit shootings. These numbers continue the downward trend in deputy-involved shootings since 2004. There were 40 in 2007 and 48 in 2006. Many factors outside the control of the Department influence this statistic, for instance the use of a gun by a suspect. But some tactical modifications may also have contributed to this modest downward trend. In 2005, at OIR’s urging, the Department modified its policy on shooting at suspects in moving vehicles to reduce the danger to deputies of getting run down and to minimize inaccurate and ineffectual shooting at cars. The already rare episodes of shooting at moving vehicles have clearly diminished further in the last two years.

The Department is to be commended for its own interest in tracking and analyzing trends in the use of deadly force. In 2006, command staff determined that shootings involving a high number of deputy rounds might expose tactical practices that could be improved. A task force was formed to evaluate as many of this type of incident as could be identified and to then make tactical, training and policy recommendations.<sup>16</sup>

This past year, the Department identified another important area for tactical evaluation, alternately called “state of mind shootings,” “mistake of fact shootings,” or “threat assessment shootings.” These shootings involve incidents in which deputies believe that a suspect has armed himself or is about to arm himself with a gun, shoots in response, then ultimately learns that the suspect was not armed with a gun. These are among the most stressful events in law enforcement, as well as the most controversial, and go to the heart of the split-second decisions that deputies are required to make.

## **Force Investigations: The importance of Video Surveillance**

In recent years, with increasing frequency, private video surveillance tapes have become a major factor in force investigations. The following cases demonstrate this phenomenon.

### Altercation on Train

Two security officers patrolling a light rail train stopped at a station and asked to see passenger tickets. When a young man produced an invalid ticket, they asked

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<sup>16</sup> For details see the “Shooting” sections in our Fifth and Sixth Annual Reports.

him to step off the train. He refused, and when a security officer put a hand on his shoulder, the man punched the security officer in the chest, knocking him backward. The other security officer radioed the nearest LASD sheriff for assistance. A deputy who was a few yards away on the station platform entered the train car, saw the man fighting with the security officers, took control of the suspect and handcuffed him. He and his partner then walked the handcuffed man down the platform towards a patrol car. The arrested man was docile until he reached the bottom of the stairs, then began vigorously twisting and trying to knee the deputies. They responded by pushing him up against a ticket machine, then pushing him down on the ground between two ticket machines and containing him there with their feet until he stopped kicking. At that point, they led him to the front of the patrol car, bent him over the hood and conducted a pat down search. At one point, he tried to push himself away from the car hood and was pushed back by the deputies. The deputies then attempted to place him in the back of the patrol car for transport. The man stuck his legs out against the car door frame and tried to twist away. One deputy tried again to force him into the seat and the other punched him in the head and shoulder. They then deployed pepper spray into the car, closed the door and took the man to the station.

A transit employee at a central control center observed most of the activity commencing from the struggle by the ticket machines onward by viewing a surveillance camera. She was immediately concerned with what she perceived as an excessive use of force by the deputies and called to one of her colleagues. The colleague too was concerned and attempted to communicate with the deputies over the public address system. The deputies did not appear to hear or respond. The employee spent the next three days worrying about what she had seen, then decided to express her concern to her supervisor and show him a tape of the surveillance camera footage. The supervisor, in turn contacted his superiors, who eventually contacted Sheriff's Department managers.

In the meantime, the Sheriff's personnel had documented the incident and the field sergeant had gathered the reports and other evidence into a "force package" for review by the watch commander, as is typical of any reportable use of force. Failing to view the start of the incident, the field sergeant had neglected to collect the in-train surveillance video. By the time the transit company made its concerns known to the Sheriff's Department, the train surveillance video had recycled and was not recoverable.

As a result of the controversy, members of the MTA Board asked OIR to take a close look at the case. In the course of evaluating the case, OIR determined that the issues of significance fell into two distinct areas, those relating to the actions and behavior of the involved deputies and those relating to the communication and understanding (or lack thereof) between the transit personnel and Sheriff's Department personnel.

The evaluation of the use of force case was relatively straightforward. There were two surveillance videos that depicted the detention and force from shortly after the young man was taken off the train until he was forced into the back of the patrol car.

The solution to the communication problem between the Sheriff's Department and the transit agency was less clear. OIR met with personnel from each entity, both at the operations and the management level. Two themes emerged. First, transit operations personnel were not sure under what circumstances Sheriff's personnel could take over control of the movable surveillance cameras at the stations and Sheriff's Department personnel did not know how to communicate their legitimate need to do this. Second, Sheriff's Department field personnel were not aware of how to determine whether a particular train car had in-train video surveillance and how to retrieve video data before it was automatically recycled. In the final analysis, this incident exposed what OIR viewed as a short catalogue of solvable procedural problems that had led to misunderstandings and inefficiency.

To avoid similar future problems, OIR made the following recommendations:

- LASD should provide training to its field sergeants (assigned to transit services) regarding transit agency procedures for accessing and obtaining surveillance resources;
- Transit employees and LASD personnel should create a reliable forum for the exchange of ideas and information regarding train-related law enforcement issues; and
- LASD and the transit agency should create notification and reporting protocols for incidents witnessed by transit employees.

Department managers had begun to take some of these actions on their own before the resolution of the case and readily embraced the OIR recommendations. Among the changes initiated is a mentor sergeant program that pairs an experienced transit sergeant with a newly assigned sergeant. The main purpose of the program is to facilitate a structured transition-training period that focuses on duties unique to transit service responsibilities. We will continue to monitor the implementation of these changes with interest.

## Barbershop Case

In this case, video surveillance also recorded a force incident but when it was finally discovered it caused a firestorm of issues for the Department.

Businesses in a strip mall alerted the local Sheriff's station to the presence of a man on the sidewalk who was yelling, acting "crazy" and waving a possible weapon

around. Several deputies arrived and took the suspect into custody without incident. During the course of the arrest many members of the public came out of the strip mall to view the police activity, then quickly returned inside when asked to do so. Some patrons and employees of a barbershop in the strip mall however, refused to do so, even when they were told they might be in the line of fire if deputies had to engage the suspect with deadly force. One barbershop patron in particular taunted the deputies and held up a camera or cell phone.

After the arrest was effectuated, three deputies marched into the barbershop, confronted the patrons and employees and arrested the taunting patron for obstruction of a police investigation. A second patron, who interfered with the first patron's arrest was also arrested. The police reports of the incident indicated that, in the course of arresting this second patron, handcuffing him, and leading him to a patrol car, an older employee of the barbershop had stepped into the path of the arresting deputy, refused to step aside, gesticulated menacingly, and failed to comply with any orders from the deputies. The reports then state that the arresting deputy, fearing that the older man or others might attempt to seize his prisoner from him,

The videotape showed that there may not have been any legal basis for the arrest of the older man

pepper sprayed the older man in the face and had him taken into custody as well. The older man was eventually charged with obstructing an officer in the performance of his official duties by the District Attorney's Office.

Weeks later, a videotape was brought to Sheriff's Department executives by the arrestees. It depicted the view from a passive surveillance camera mounted outside of the barbershop. The video showed that the deputy leading his prisoner out of the barbershop never had his path blocked by the older man, who was actually following a few steps behind him and was being held by another deputy at the time the initial deputy stopped, turned around and sprayed him. The videotape showed that there may not have been any legal basis for the arrest of the older man and that, in any case, events did not unfold as they were described in the arrest reports written by that deputy and two other colleagues.

The Department quickly notified the District Attorney's Office and the charge against the older man was dropped. The Department then initiated an Internal Affairs investigation and four employees received discipline as a result of their involvement in this incident. The incident also prompted OIR to urge the Department to develop a training bulletin instructing supervisors to actively seek, review and include video surveillance in force packages.

## **Commendable Tactics**

On a daily basis, field deputies have to make decisions under dangerous and unpredictable situations. They are expected to assess a situation and respond in a manner consistent with their training and experience. The following cases are examples of some of the Department's best work.

### **C a s e**

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**An intoxicated man called a LASD station and requested that the "cops" come to his home. When the dispatcher questioned the man further, he stated: "I want them to put a f\*\*\*ing bullet in my head right now." The man's father had recently died, and the two were very close. The intoxicated man informed the dispatcher that he had an axe and was prepared to use it.**

**Before approaching the man's home, a sergeant and several deputies developed a tactical plan. The sergeant designated specific functions to each deputy and discussed both less lethal and lethal force options. When the sergeant and deputies arrived at the residence, they contained the residence and encountered the armed suspect. In one hand, the man held a large sledgehammer; in his other hand, he had a large knife. The man waved both weapons in the air toward the deputies and repeatedly yelled, "Come on. Let's get this over with. Shoot me!" The handling deputy repeatedly ordered the man to drop his weapons, and each time, the man refused to do so. As time passed, the man became more agitated and aggressively paced back and forth on the front lawn of the residence.**

**At one point, the man's wife came out of the residence and pleaded with her husband to stop. The man told her that he wanted to be shot. Fearing that the wife and other family members might insert themselves further into the situation or become injured, the sergeant ordered the wife back into the residence. The sergeant was then able to persuade the man to move away from the residence at which time he directed a deputy to deploy the stun bag. The deputy fired four rounds. The sergeant gave a separate order to deploy each round and assessed the round's impact before firing another. The man dropped the sledgehammer after the fourth round but then picked up a large planter and attempted to use it as a shield. The sergeant then ordered the deployment of a taser. Although it was ineffective because the darts did not make sufficient contact with the man's body, the man immediately surrendered.**

The prudent response and calculated deployment of force probably saved the man's life. The force and the tactics used were appropriate, within Department policy and consistent with Department training.



## **C a s e**

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**In this case, Department personnel responded to an armed bank robbery in progress. When deputies arrived at the bank, they saw the security guard outside the building. The guard had a substantial amount of blood on his clothes. The guard had fought with the bank robber and had disarmed the suspect of two guns. The guard had also gouged out both of the suspect's eyes.**

**The deputies entered the bank and confronted the suspect who was armed with a knife, covered in blood and had one eye dangling from his socket. Unbeknownst to the deputies, the suspect could not see and had already stabbed himself in the chest. The deputies issued commands to the suspect to drop his knife and to put his hands up. With the knife in his hand, the suspect staggered toward the deputies who had lethal and less lethal weapons.**

**When the deputies observed that the suspect had at least one eye injury, their threat level decreased. Although the robber remained a threat and was still considered dangerous, one deputy holstered his gun and retrieved his taser. The deputy fired his taser as the suspect continued to advance toward deputies. The taser darts struck the suspect in the chest area. The deputy activated the taser, and the suspect fell to the floor. Deputies then took the suspect into custody. The suspect later died of his self-inflicted stab wounds.**

Despite the eventual demise of the suspect, the Department's use of less lethal force under these circumstances demonstrated restraint and sound tactics and eliminated the need to deploy deadly force.



# The Sheriff's Training Academy

## **Difficulties with the Academy's Certification**

Early in 2008, following an unfavorable certification review by the state's Commission on Peace Officers Standards and Training ("POST"), the Sheriff's Training Academy faced the risk of losing its certification and, consequently, its ability to train law enforcement officers. It voluntarily delayed the start of a new class so that it could focus on remedying the deficiencies noted by POST. In May, OIR was instructed to examine the nature and cause of the violations enumerated in POST's certification review and to report our findings and recommendations.

Since last spring, the Sheriff's Department has made great progress toward addressing all of POST's concerns with its Academy training. In its 2007 review of the Academy, POST identified significant deficiencies in the ways the Academy was training and testing its recruits. But the Academy's failure to respond to POST's concerns in a timely and professional manner was equally to blame for POST's negative certification review. This inattention was the result of the Academy's overconfidence in its size and status in the state's law enforcement community, the demands of other business on Academy staff intent on trying to graduate a thousand deputies in a year, and a basic misread by Academy leaders of the seriousness of

POST's concerns. POST is confident in the Academy's new leadership and, while there is still work to be done to bring the Department into full compliance with POST's recommendations, the most serious concerns noted in the 2007 certification review – training of instructors, test security measures, records maintenance, and the procedures for remediating and retesting recruits who initially fail part of their training – have been remedied. Following the recommendations of OIR and the Sheriff, the Department also has implemented some measures to prevent future crises affecting its POST certification.

## **POST's Certification Review**

Every three years, POST conducts a Basic Course Certification Review (“BCCR”) of all POST-certified law enforcement academies, including the Los Angeles County Sheriff's Training Academy (“LASD Academy” or “Academy”).<sup>17</sup> The review team typically sends a draft report, giving the subject academy an opportunity to respond. Before issuing a final report, POST traditionally considers the academy's response and will modify its draft report as appropriate. POST conducted its most recent review in June and July, 2007, sent the Department a draft report in October, 2007, and issued its final report on February 4, 2008.

We reviewed the various versions of POST's report, the Department's response, and all accompanying correspondence. In addition, we met with Academy staff and Department executives as well as a group of POST staff executives who were intimately involved in the review of the Academy and subsequent communications with the Department. We summarize the POST findings and directives and present the results of our independent review below.

## **POST's Directives and the Academy's Response**

For four days in June and July 2007, POST sent a team of eight individuals (six POST staff and two members of other law enforcement agencies) to the LASD Academy sites in Whittier, Santa Clarita, and the Antelope Valley to conduct a Basic Course Certification Review. At the conclusion of the Whittier site visit, the POST

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<sup>17</sup> During our review of this matter, we learned that even though a POST Academy review was due to occur in 2004, the only document that can be located by either the Academy or POST is the Department's initial self-assessment. We spoke with Department executives who specifically recall meeting with POST for the 2004 review, and receiving only positive comments, but no written report could be located. Because it is unlikely that both entities would have lost the 2004 review and POST assessment, the best surmise is that POST did not issue a report tied to that year's certification review.

review team met with Academy command staff to address some of the team's concerns about the Academy's compliance with POST regulations. The team then compiled a draft report outlining its concerns that was sent to the Academy on October 13, 2007.

The issues raised in the October BCCR report range from concerns about the Academy's facilities and records maintenance to the manner in which Academy staff teach classes and administer tests. Among the most serious findings were violations of POST's remediation and retesting procedures, which limit the number of times a recruit can attempt and fail a test before he or she must be separated from the Academy, and the allegation that the Academy routinely violated POST's Test Use and Security Agreement by "teaching to the test" to maximize the recruits' chances of passing written tests.

Specifically, the October 13, 2007 draft BCCR review made recommendations in the following areas:

- **Records Maintenance.** Among other concerns about the consistency of record-keeping practices and the security of sensitive files, the review team cited the Academy's failure to comply with POST requirements regarding the maintenance of instructor resumes and the development and electronic filing of course outlines.
- **Instruction.** The report noted concerns that Recruit Training Officers ("RTOs") have too many collateral responsibilities and that the inconsistencies between courses and instructors are too great.
- **Testing.** POST's most serious concerns were with violations of the POST Test Use and Security Agreement. Specifically, the review team found that Academy staff had taken tests into the classroom to ensure they covered all test topic areas so that recruits would receive all the answers. In addition, they found violations of POST's remediation and retesting procedures, particularly in Weapons and Emergency Vehicle Operations Center ("EVOC") training, where recruits who did not pass their initial tests were given multiple chances to retest rather than being retrained or remediated as much as Academy staff felt necessary and then given only one more opportunity to pass the test.<sup>18</sup>
- **Training.** According to the POST report, approximately half of the RTOs had not, at the time, attended the POST-mandated RTO Workshop and several had not attended the Scenario Manager Workshop.

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18 POST executives explained to us that their review is limited to whether or not to continue certification to the Academy. Accordingly, if the Academy were to lose certification, it would have no impact on deputies who have already legitimately graduated from the Academy. Moreover, even though recruits may have passed tests inconsistent with POST guidelines, the fact of the matter is that they did pass the tests necessary to become certified peace officers. POST's findings do not conclude that the Academy graduated unqualified deputies. Thus, to the degree that the Academy needs to respond to the POST critiques regarding teaching to the test and multiple retesting, in our view, the reform should focus on ensuring compliance with POST protocols in the future.

- Physical Conditioning. The review team had a number of specific suggestions for improving the quality of the physical fitness instruction.
- Facilities/Safety. The review team had a number of concerns about the adequacy and safety of the facilities the Department uses to accommodate its recruits. These range from seemingly minor concerns (torn carpets that present a trip hazard) to potentially more consequential ones (inadequate instructor-to-student ratios for firearms training).
- Communication. The review team found that Academy staff members are not aware of many POST requirements and recommended the Academy establish a more formalized communication process, particularly given that Academy command staff and supervisors are located in Whittier, physically removed from the Santa Clarita and Antelope Valley sites.

When POST sent the draft BCCR report to the Academy via e-mail in October 2007, it asked for a response noting any errors, omissions, or corrections that needed to be made. The Academy did not timely respond to the concerns raised in the draft report. In January 2008, the Academy sent a response to POST that the Department now admits was wholly inadequate and inappropriate. The original author of that response, a sergeant in the Recruit Training Unit, wrote it as an internal communiqué to his supervisors that was not intended by him to be the Academy's official response. The response was informal, defensive of Academy practices, sarcastic, and belittling of POST's recommendations. Despite the intent of the author that the response be limited for internal use, the response was eventually e-mailed to POST by the Training Bureau Captain. It is unclear to what degree the "response" was reviewed by the Captain or the responsible Lieutenant before it was electronically sent to POST.

In January or early February 2008, at POST's request, the Academy Captain met informally with POST's Executive Director. The Captain was contrite about the Academy's written response to the draft report and the Executive Director at that time was content to move forward with assisting the Sheriff's Department to implement the directives the BCCR set forth. POST sent the final report to the Department on February 4, 2008. Armed with no helpful feedback from the Academy, POST made few substantive changes from the October 2007 draft. The final report noted all of the same problems but elevated 11 specific issues from "recommendations" to "directives" that the Academy was supposed to take immediate steps to remedy within 60 days.

At the end of February, the BCCR team scheduled a follow-up review at the Academy for April 22-23. POST deemed this to be sufficient time for the Academy to correct the most serious deficiencies noted in the report and expected to return in April to find the Academy would be well on its way toward implementation of the POST directives. In what has been interpreted as either arrogance or indifference,

the Academy had, in fact, made little progress toward addressing the substantive issues set out in the BCCR report. The April review team found ongoing problems with 10 of the 11 enumerated directives and identified five additional violations that it presented to the Department in a follow-up report dated May 29, 2008.

Prior to the April review, it had become apparent to POST executives that its directives and the Academy's responses had remained largely out of view of the Department executives with supervisory responsibility over the Academy. In fact, when POST had first visited the Academy in June and July of 2007, they even found it difficult to meet with the command staff in Whittier. When the team visited the satellite Academies in North Los Angeles County, no ranking Academy officials accompanied them. As the process moved forward and its concerns became greater, POST specifically requested that Department executives above the rank of the Academy's Captain be part of the discussion – those requests were initially rebuffed by Academy staff.

As a result, before the April review, the POST audit team contacted the Chief responsible for Academy operations regarding POST's perception that the Academy leadership in Whittier had failed to grasp the seriousness and growing urgency of POST's concerns. Following this contact, the Chief and Commander then became involved in regular communications with POST. The Commander attended the POST briefing that concluded the April review, and the Department finally came to appreciate the seriousness and urgency of POST's recommendations.<sup>19</sup>

POST committed significant resources and attention to working with the Department to get it to comply with its directives.

After the April follow-up visit from POST, Academy staff began work at a frenzied pace to implement the POST directives. At the same time, because matters had devolved to crisis mode as a result of the Department's prolonged inattention to

POST's concerns, Department executives decided to voluntarily postpone the start of the next scheduled Academy class in order to provide the Academy time to focus on the POST mandates and avoid the risk of having POST formally de-certify the Academy. That class was scheduled to begin in May but was voluntarily postponed for 30 days.

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19 Shortly after his conversation with the Chief, POST's Executive Director also strove to hold a face-to-face meeting with the Sheriff. An eventual phone conversation between the two provided an additional push for the Department to address POST's concerns with greater diligence.

POST committed significant resources and attention to working with the Department to get it to comply with its directives. POST staff members rearranged their schedules to travel to Los Angeles to provide training to Academy staff, and made the review of LASD documents, policies, and remedial measures a top priority so that the Academy could achieve its goal of quickly returning to good standing with POST. But for POST's willingness to adapt its schedules and resources to assist in remedying the deficiencies, it would have been extremely difficult for the Department to have corrected matters sufficiently within the 30-day window so that the new Academy class could begin.

The Department likewise shifted considerable resources to address POST's directives. A newly-assigned Training Bureau Captain traveled to Sacramento along with his operations staff to meet with POST to discuss the Department's remediation efforts, Academy staff was made available for required training, the Training Bureau developed new policies, and civilian professional staff worked long hours to ensure the Academy's outlines and instructor resumes were in the correct format to be uploaded to POST's Electronic Data Interface (EDI) system. At the beginning of June, the Chief responsible for the Academy, along with the Captain, traveled to Burlingame to discuss the Academy's status and assure POST its directives were being addressed.

On June 5, 2008, POST notified the Department that it had sufficiently satisfied POST's immediate concerns and authorized it to start the next Academy class, which began on June 16 and graduated on October 17, 2008. The Department continued to work through the summer to address the critical issues addressed in the BCCR report. Each of those issues is either completed or has been submitted to POST and approval is pending. Many of the non-critical issues also have been remedied, particularly those regarding communication between Academy command staff and supervisors, records maintenance issues, and consistency of instruction. The Department continues to work to address POST's remaining concerns, which do not involve violations of POST regulations, but are nonetheless recommended by POST to enhance recruit training. These recommendations deal mainly with Academy facilities. While a number of POST's recommendations for physical improvements have been implemented, some of the more expensive and less critical items on the list have been delayed while the Department locates sufficient funding.

Most importantly, the Department has reestablished productive communications with POST, so that POST is confident that future concerns affecting the Academy's certification will be prioritized appropriately. Perhaps the best evidence that the Department has returned to good standing with POST is that the Training Bureau Captain and his Operations Lieutenant recently were asked by POST to serve as members of POST's BCCR team that will review other academies throughout the State.



## Analysis

If the Sheriff's Academy was not on the brink of losing its POST certification and being stripped of its authority to train peace officers, it at least placed itself unnecessarily into a crisis that required a 30 day delay of an Academy class and a feverish response to get the Academy back on track.<sup>20</sup> The Academy's failure to respond to POST's October draft BCCR report in a timely and professional manner was at least as important in creating that crisis as was the identification of significant deficiencies by POST.

Moreover, the lack of a professional and timely response to the deficiencies identified by POST was compounded by the fact that the Academy had made little progress between October and April toward addressing the substantive issues raised in the BCCR report. Some have subscribed the Academy's initial inattention to POST's identified deficiencies as endemic of a unit that had grown overly confident in its size and status in the state's law enforcement community. Others attribute it to the press of other business by Academy staff intent on trying to graduate a thousand deputies in a year. There is also evidence that the lack of responsiveness by the Academy was the result of either miscommunication or a disconnect between the Academy's supervisory staff and the POST executives with whom they were regularly meeting which caused Academy leaders to underestimate the seriousness of POST's concerns. Based on our review, we conclude that the initial inadequate response was caused by a confluence of all three factors.

As yet another partial explanation (but not a justification) of the Department's initial insufficient responsiveness, the POST certification review in 2007-08 was unprecedented in its breadth and scope. In prior years, the review team had only three members and the scope of its review was necessarily more limited. Indeed, as noted above, in 2004, there is no evidence that POST even documented its review in a written report. Thus, the Academy's attitude toward POST's 2007 review may have been partially formed by this historical framework.

Many of the substantive issues identified as problems in the BCCR report—filing course outlines and instructor resumes and scheduling instructors for necessary training—were relatively straightforward for the Academy to correct once it focused its remediation efforts. Others—the facilities issues—require more long-term efforts. In our view, however, the most significant issues—violations of POST's test security and remediation and retest policies—reflect an historical ideological divide between Academy staff and POST.

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<sup>20</sup> To be clear, the Academy was continuing to instruct two ongoing Academy classes when it voluntarily decided to delay a new class of recruits for 30 days. The issues identified by POST had no impact on the ongoing classes and the recruits in those classes.

POST regulations regarding test security require that written tests be kept in a secure location. Instructors are not permitted to carry tests into the classroom and are not supposed to teach to the test; their instruction must consist of a wide range of materials, including subjects not on the test. Test rules allow a recruit who fails a test to have some period of remediation (the length of which is within the Academy's discretion but must be clearly documented) and one chance to retest. A second failure requires the recruit to be separated from the Academy.

As noted above, the recent POST review found the LASD Academy to have been violating these regulations. The review team found that instructors were using the written tests to guide their lectures, ensuring that answers were provided to recruits, and sometimes placing special emphasis on material to cue students that it was a likely test subject. The team also found that instructors were giving recruits multiple chances to remediate and retest, particularly in Firearms and Emergency Vehicle Operations. Their custom was to allow a recruit to continually practice a test course until he or she successfully completed it, and then call that successful attempt the retest. Indeed, we received anecdotal evidence that in some cases recruits were not even aware that they had taken and passed the requisite test because of the improper blending of the remediation and testing. According to POST, some EVOC instructors reported that they believed that management would not allow them to separate a recruit based on a failed driving test.

The Department's hiring push in the past two years undoubtedly placed pressure on the Academy—explicit or implied—to graduate recruits. The testing violations noted in the POST report are partially explained by this atmosphere of accelerated hiring, and there is some evidence to suggest a history of bending POST rules to accommodate the Department's hiring needs.<sup>21</sup> In response to the recent BCCR report, the Academy has developed new policies on remediation and retesting consistent with POST standards and has retrained all its instructors on POST test security regulations. These efforts were sufficient to satisfy POST's immediate concerns so that the Academy could resume operations. Nonetheless, the Academy's past willingness to adjust its practices according to the Department's hiring demands may be indicative of a longer-term ideological divide over whether nearly every recruit, with enough training, can become a successful law enforcement officer, and to what extent the Academy should be used as an effective gatekeeper to prevent unqualified individuals from earning a badge. Even after the POST report there remains a healthy debate within the Department regarding the lengths to which it should go and the resources it should expend to assist struggling recruits in getting

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21 Some of this history of trying to find ways for recruits to succeed, and even the practices discovered by POST regarding multiple retesting was influenced by litigation requiring the Department to bring more women into its workforce and a keen desire among some Departmental leaders to diversify its membership, current litigation notwithstanding.

through the training regimen, or at what point the Department should accept that a recruit lacks the basic skills necessary for the job. POST rules do not stand in the way of an Academy remediating or retraining each recruit exhaustively, if necessary, to increase the likelihood of passing the retest—POST only prohibits repeated retesting.<sup>22</sup>

Indeed, for a recent class to graduate (on October 17, 2008), the Academy devoted unprecedented resources to remediating 41 recruits—an unusually large number—who failed their initial weapons test. The Department made 40 hours of remedial training mandatory for those recruits, and introduced a new presentation to the entire class aimed at building recruits' self-confidence and minimizing the effect of nervousness through positive self-reinforcement and other cognitive learning techniques. All but five of those 41 recruits passed the retest and went on to graduate with their class.

While some in the Department still may disagree with the strict interpretation of POST's remediate and retest regulations, the Academy has accepted POST's mandates and understands it must comply or risk losing its certification. In any event, the deficiencies identified by POST, and the initial insufficient response by the Academy caused a crisis that could have been avoided. It is hoped that this crisis will serve as a caution to the Academy to not run afoul of POST dictates in response to future Department hiring demands or any other internal or external influences on the Academy.

During our initial review and preparation of our interim report, we recommended that the Department take a proactive approach to avoiding any future difficulties with POST certification. We suggested that the Department conduct its own internal reviews on a regular basis rather than wait for POST to conduct its three-year review. The Training Bureau already has implemented this recommendation. It created checklists for each of its units as a tool for each responsible lieutenant to review his or her responsibilities; ensure compliance with applicable POST mandates, Department policies, and unit level orders; and report back to its operations command. The Training Bureau currently is conducting its first such review. Related to this reform, the Sheriff has ordered the Training Bureau to develop a unit manual that will incorporate POST requirements and instill individual accountability on Academy staff for any future failures to adhere to these requirements. The implementation of these practices is an important step toward ensuring that the Department will not encounter future crises impacting its POST certification.

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22 During our review of the Academy, we learned of a related allegation that a recruit was improperly allowed to graduate from the Academy by a supervisor. The disposition of that internal affairs investigation remains pending and we will report on its results when it is concluded.

## **“The Academy” Reality TV Show**

At the same time we were asked to review the Academy’s issues with its POST certification, we also were asked to evaluate and report on whether and, if so, to what extent the filming of the Fox television show, “The Academy,” may have impacted the quality of the Sheriff Department’s training program.<sup>23</sup>

We concluded that the show’s purported advantages did not outweigh the potentially deleterious impact on recruits. While the filming did not clearly impact the quality of the training provided at the Academy, the potential negative effect on recruits—including safety concerns raised for recruits featured on the show, the humiliation of recruits who had particular difficulty in training, and the fact that most recruits believed that refusing to participate in the show was not a real option—may be too great, in our view, to warrant continued production of the show.

### Scope of Review

We interviewed dozens of people, including Academy staff, the show’s creator and Executive Producer, and roughly 20 percent of the members of the two classes depicted on seasons one and two of the show (Class 355 and Class 368, or “TV classes”), most of whom are now deputies. We reviewed statistics comparing the two TV classes with non-TV classes and read the evaluations completed by recruits in the TV classes for comparison to those evaluations written by recruits in other classes. Of course, we also watched both seasons of the show that have aired on television.

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23 The inquiry regarding the reality TV show was prompted by a letter from POST to the Sheriff’s Department in which POST expressed its view that the presence of the film crew at the Academy is “an inappropriate and unnecessary distraction” that “disrupts the instructional and learning environment” while serving no value beyond the entertainment purpose of the show. POST raised specific concerns about (1) violations of its Test Security Agreement when the Department allowed filming of a POST-developed scenario test; (2) violations of recruits’ privacy rights by the filming of dialogue between recruits and staff members regarding a recruit’s injury; (3) the distractions to staff members, who may be more animated in their criticism of recruits when they are aware they are being filmed in an effort to get more on-camera time; and (4) unnecessary humiliation to recruits whose mistakes are captured on film and aired on television. The Department very quickly addressed the first of these concerns, acknowledging it should not have allowed filming of the POST-validated testing scenario and developed precautionary measures to ensure that no scenarios were aired during the second season of “The Academy.”

## Findings

### *Effect on Training and the Training Staff*

All of the recruits<sup>24</sup> and instructors with whom we spoke were highly complimentary of the film crew and others associated with the production company. While the cameras were an imposing presence, nearly everyone whom we interviewed commented on how professional and friendly the crew members were. Occasionally, training staff would have to ask a crew member to move for operational or safety reasons, particularly during firearms training, where safety concerns are obviously most significant. In general, though, most people, including staff members who were originally very skeptical about the anticipated level of interference, told us they were pleasantly surprised by how effectively the crew stayed out of the way so that they rarely interfered with Academy activities. The camera crew simply filmed what was happening, without asking for re-takes or any kind of special accommodation. Indeed, after the first few weeks of nervousness around the cameras, most of those we interviewed said they grew accustomed to them and eventually they did not even notice the film crew. Only a handful of recruits told us they never really got used to the idea of always being filmed and never forgot the cameras were there.

Nearly all of the recruits reported they did not believe that the cameras deleteriously affected their training or their ability to succeed—essentially saying that the drill instructors were the driving force behind the creation of a stressful environment and whatever additional stress the cameras may have supplied altered neither their performance nor the quality of instruction they received. Nonetheless, many recruits told us they thought about the cameras whenever they made a mistake and worried they would look “stupid” on TV.

The film crew’s presence at the Academy affected staff instructors in ways not easily characterized or quantified. We heard reports that some staff instructors were eager to appear on TV and made efforts to attract the cameras’ attention, even appearing during training segments in which drill instructors typically do not play a role. At the same time, most recruits reported that the cameras’ presence generally did not affect the behavior of the drill instructors or the training provided by any of the training staff. Some told us that, if anything, having the cameras around may have restrained the instructors and tempered their criticism of recruits. Most tellingly,

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24 At the time we interviewed them, most of the members of Classes 355 and 368 with whom we spoke were deputies. However, for ease of reference, we will refer to them all as “recruits.”

several recruits who previously had been members of non-TV classes before being separated from the Academy and returning in a TV class told us that they observed no discernable difference between how staff instructors interacted with recruits in the TV and non-TV classes.

Finally, there is no evidence that graduates of the TV classes perform better or worse as deputies than their non-TV class counterparts. There are no significant differences in the numbers of these new deputies who successfully complete their probationary assignments.

### *Effects on Recruits*

The recruits in the two TV classes can be broken down loosely into three categories—those who performed well in the Academy and were portrayed in a positive manner on TV; those who struggled during the training or attracted the drill instructors' attention because of their errors and consequently were depicted in a negative way; and those whose presence in the class was not apparent to the average viewer or whose appearance on camera was entirely neutral. We interviewed recruits from each of these three categories and found a surprising convergence of views on some issues. For example, as noted above, recruits generally reported that the presence of the film crew did not affect their performance during training. And as reported below, most recruits told us they would have preferred to not have their Academy experience televised, regardless of how they were depicted.

Not surprising, though, was the fact that how a recruit was portrayed on the show impacted the degree to which he or she held and expressed strong opinions during our interview. Many of the deputies who appeared on the show only in passing expressed indifference toward the show and the effect of the cameras. While these recruits generally had reservations about the show initially and tended to shy away from the cameras, in the end, most agreed that having the camera crew around during training was “no big deal.”

For some recruits, though, the show was a source of great humiliation. Obviously, only a limited portion of the training could be depicted, and the producers had to be selective about what was aired. Given the nature of television and the public's interest in dramatic events, the show tended to focus on recruits who struggled to meet the demands of the training program and who, therefore, attracted the attention of drill instructors. The show was dominated by scenes of drill instructors screaming at recruits who, for example, failed to remember specific commands, struggled with physical training, did not properly polish their shoes or tuck their shirts, were careless with their equipment, or in some other way failed to meet the staff's expectations. When the failures were so significant that a recruit had to be

separated from the Academy, the cameras captured the moment and recorded the recruit's disappointment at losing his or her job. Some of the recruits who did perform poorly at times in the Academy, or whose serious mistakes or failings were captured on camera and aired on television, told us they have substantial regrets about their involvement in the show.

Some recruits also expressed concerns about how their private matters, including medical issues, were captured on camera and aired on television. While these disclosures may not violate any federal or state laws, as POST surmised, the Department should consider whether it ought to place its recruits in this compromising position. The recruits who were impacted by the public airing of their medical issues acknowledged in retrospect they could have asked that the cameras be turned off as their medical troubles unfolded and that request likely would have been honored. But they said that at the time of the incident they either trusted a staff member to step in and divert the camera or later edit the sensitive material out or they simply did not notice the camera was present.

Many also told us the cameras affected their behavior at the Academy. They said they did not feel like they could be themselves, particularly on breaks, because it seemed the cameras were always around so they had to filter everything they said. Some recruits reported they believed this affected class camaraderie and interfered with their ability to build relationships with their classmates. Other recruits, however, apparently enjoyed the attention paid to them by the film crew and seemed, according to their fellow recruits and some trainers, to seek out ways to get themselves on camera. Still others—mainly those who were not featured and rarely, if ever, appeared on the show—reiterated that the cameras were something they got used to and stopped noticing after the initial few days of training.

Members of the TV classes achieved a certain amount of notoriety that was not always welcome when they arrived at their first custody assignments. They were referred to as “Hollywood” and had fellow deputies question their judgment for agreeing to participate in the show. For the most part, this took the form of good-natured teasing. A few recruits, though, told us they had difficulty integrating with other deputies at their units. Some felt isolated from fellow deputies in a way they believe other new deputies were not, and attributed this to the perception that they had sought celebrity status or thought themselves to be somehow superior based on their status as members of a TV class. Some felt they were judged by fellow deputies for having made a poor decision in allowing their families or their homes to be shown on television. As episodes of the show began to air, others who were shown performing poorly (but who ultimately graduated nonetheless) faced additional criticism from deputies who questioned their fitness for the job.

### *Voluntariness of Participation*

Before the recruits could be members of one of the TV classes, each had to sign a release agreeing that the entertainment company that owned the show could tape and photograph the recruit and waiving any claim for payment or ownership of any copyright or licensing rights. Recruits were told that if they refused to sign the release they would be deferred to another class. The Department did not keep any records regarding recruits who decided to defer because they did not want to be captured on film while in the Academy, though Pre-Employment personnel recall that two candidates originally assigned to Class 355 decided to wait until the following class, and do not recall any recruit who refused to sign a release from Class 368.

From the Department's perspective, all of the releases were voluntary: Recruits were not forced to sign and an alternative was provided for those who did not want to participate. With only two exceptions, however, the recruits who we interviewed told us that refusing to sign the release and deferring to another class did not at the time feel like a real option. Every recruit told us that by the time they learned about the show,<sup>25</sup> they were anxious to get their careers with the Department underway. The hiring and backgrounds process for some of these recruits took as long as a year, and they told us they did not want to give up their positions in the class for what they viewed as an uncertain promise to be brought back in the next class, which was to start on an unspecified date.

Many recruits also told us that it was clear the Department supported the show and encouraged their participation, and that the atmosphere during orientation was intense, so that whatever desire they had to refuse to sign the release was overcome by a fear of standing out or drawing attention to him or herself. Finally, a smaller but not insignificant number of recruits told us they could not afford to defer to another class for financial reasons. This was true particularly for Class 355, most of whose members did not learn about the show until the first day of orientation, when they already had quit their previous jobs. One recruit told us he could not defer because he had a pressing need to obtain health insurance.

For all of the reasons these recruits had for signing the required release rather than deferring to another class, one thing clearly emerged from our interviews—nearly every recruit we talked to said he or she would have chosen to be part of a class that was not filmed and aired on television if such a class had started on the same day as

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25 Class 355 was told about the TV show on the first day of orientation, just five days before training was set to begin. Most members of Class 368 were given more advance notice by Personnel Bureau, several weeks before training began. In both classes, some recruits learned sooner than their classmates because they already worked for the Department as part of the off-the-street program.



Class 355 or 368. This was true for all types of recruits—those who looked good on TV, those who were portrayed in a negative way, and those who rarely, if ever, appeared on the show.

Beyond the release that each member of the two TV classes had to sign in order to stay in the class, on the first day of orientation, recruits were asked to stay at the end of the program to be interviewed by members of the production company.<sup>26</sup> The purpose of these interviews was to give the show’s producers information based upon which they could decide which recruits to feature during their coverage of the 18-week Academy. Among other things, recruits were asked whether they would agree to be interviewed for the show and whether they would allow the film crew to follow them in some part of their lives outside the Academy—at home or in some other setting, with their families and/or friends.

Almost all of the recruits agreed that this decision was completely voluntary and they felt free to refuse, though a few told us they felt some pressure to consent because of their perception that the Department wanted them to participate, or that it would win them favor with Academy staff, or, conversely, that a refusal would draw unwanted attention from staff. Many members of Class 368 who had watched the first season of the show when it aired initially stated they did not want to be interviewed. As training progressed, though, and the film crew was not getting the interviews it wanted, recruits were encouraged by Academy staff to grant interviews and to feel comfortable with the crew. None of the recruits who reported this “encouragement” felt that staff had improperly pressured them. A small number of recruits did feel particularly pressured by the film crew to consent to interviews because they were singled out during training and thus, through no choice of their own, became featured characters on the television show.

During filming at the Academy, recruits generally understood that they could turn the cameras away during private moments or for personal conversations with staff members, and recruits who did not want their conversations with classmates to be recorded learned how to evade the cameras. On only one occasion that we learned of, numerous class members reported that one recruit’s explicit, emotional request that the cameras be turned off was refused, and the crew continued to film, likening its role to that of a documentary filmmaker with the right to record everything. This made a lasting impression on much of the class, who typically felt less free to sidestep the film crew following that exchange. In another instance, it was reported

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26 While recruits acknowledge they were not “forced” to stay and consent to these interviews, they note at the same time that leaving without being interviewed did not seem like a real option because it was clear to them that the Department wanted them to cooperate with the production company. Some members of Class 355 report the interviews went on until 10:00 p.m., making for a very long first day of orientation.

to us that a recruit's private conversation with a staff member was filmed without the recruit's knowledge of the camera's presence. The recruit was surprised to see the encounter on television and was disappointed that the staff member had allowed it to be filmed.

### *Officer Safety Concerns*

Most recruits who declined to be interviewed for the show and refused to invite the cameras into their homes and personal lives cited as their primary reason a concern for their own safety and that of their families. Indeed, many of the recruits with whom we spoke said they were concerned when they first learned their class would be the subject of the show about the safety of appearing on television and being recognized as deputies by members of the public. A number of other recruits said they did not think of this as an officer safety issue from the outset, but now feel that their roles in the show could have jeopardized their safety.

Most of the recruits who were featured in the show reported that they are regularly recognized in public based on their TV appearance. In addition, all of the featured recruits, and many of those who had minimal roles told us they have been recognized by inmates in the jails.<sup>27</sup>

There is a mixed view in the Department on the significance of the safety issues involved when a police officer or deputy is recognized as a peace officer while off duty, in civilian clothes. On one hand, some argue that all deputies regularly are identified in public places by former inmates who they encountered while working in the jails or by people they arrested or encountered on duty. On the other hand, some argue that those encounters are more limited and less likely to involve a deputy's home or family than the more widespread recognition of the recruits from "The Academy." Also, deputies recognized by former inmates or arrestees are acknowledged based on their positions of authority, whereas many of the recruits on the show are depicted in moments of failure during which their weaknesses are exposed. Indeed, some of the recruits who were recognized by inmates reported having a sick feeling at the moment of this recognition because they believed that inmates saw them as vulnerable.

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27 All of the custody facilities have instructed personnel to cut off TV access for inmates during those times when "The Academy" is aired, or to ensure that the TVs are set to a different channel. This reportedly has not been uniformly enforced and, in any event, the jail population is so fluid that inmates easily could have seen the show prior to their arrests.

While some recruits' worries about the officer safety issues presented by the show may be overstated, as some more senior members of the Department have suggested, it can hardly be denied that the show exposed recruits (and Academy staff) to the public in ways no ordinary police activity would. And concern about public exposure is not unique to the members of the TV classes. Deputies generally tend to do whatever they can to minimize the overlap between their professional and personal lives, sometimes preferring to live outside the area in which they work so they do not regularly see people off duty who they may have to interact with on duty. During the first season of the show, none of the staff was filmed away from the Academy. During the second season, staff members agreed to give the crew some window into their personal lives, but only one allowed his family members and home to be filmed. And deputies working the jails are cautioned to not share personal information with inmates, yet despite some efforts to limit recruits' public exposure,<sup>28</sup> inmates and others had easy access via the show to a great deal of personal information about some recruits, much of it not particularly complimentary.

### *Asserted Benefits of the Show*

Contrary to POST's assertion that the show serves no benefit beyond its entertainment value, some Department members maintain the Department derived significant benefits from "The Academy." Because the show is aired nationally and has been a commercial success, it raised the LASD's profile on a national scale. Training Bureau staff reportedly receive "fan mail" from police officers all over the country (and occasionally from other parts of the world) praising the show and its depiction of law enforcement as a serious profession with substantial barriers to entry. The Department argues that the show boosted its image locally and nationally as well, serving as an important recruiting tool during a time when the Sheriff sought to hire a large number of new deputies.<sup>29</sup>

It is interesting to note the divergence of views between recruits, on one hand, and Academy staff and other Department members, on the other, on how the show affected the Department's image. Recruits generally focused on the negative, believing that the show made them, and the Department, appear incompetent, because it emphasized the failings of recruits and not their successes. Staff focused on their own roles and tended to believe the show depicted the Department as an

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28 The Department instructed the film crew to avoid showing the fronts of recruits' houses, and generally to not reveal much about the neighborhood in which a recruit lived.

29 The degree to which the television show served as an effective recruiting device for the Department is premised entirely on anecdotal evidence as there was no effort to quantify the number of applicants who were influenced to apply to the Department as a result of their exposure to the show.

impressive organization with high standards and effective instructors. Both groups make colorable arguments. Ultimately, conclusions about the image of the Department that emerges from the show depend in large part on the lens through which one views it.

The show may serve the public as well as the Department. While many law enforcement agencies seek to shield their activities from public scrutiny, the LASD opened the doors to its training Academy and essentially invited the public in. Some in the Department criticized this level of transparency, fearful that the show would give away too many law enforcement training secrets in a way that criminals could exploit. From our perspective, the show did not depict the training or curriculum with such specificity that one could learn how to subvert law enforcement merely by tuning in. But by sharing with the public some of the techniques and

While many law enforcement agencies seek to shield their activities from public scrutiny, the LASD opened the doors to its training Academy and essentially invited the public in.

demands of its training methods, the Department both opened itself up to outside criticism from which it may learn and benefit and showed the rigors of training in a way that may help improve the public's opinion of deputies encountered on the street. The rigors and complexities of the training program at the Academy as featured on the show may also have assisted in educating the public that policing is a demanding profession,

requiring a combination of physical skills, technical expertise, and complex decision making. Moreover, documenting both the successes and miscues of the recruits as they struggled to become police officers could be said to humanize members of the profession and offset the perception by some that police are cold or unfeeling.

Additionally, some in the Department have suggested that taping the Academy for broadcast on a reality TV show is good training for police work in a society where anyone and everyone may have a camera with which to record one's activities, as a result of the increased presence of video in patrol cars, on cell phones, in the jails, and in commercial and public structures. While the cameras may have made recruits more nervous during training, this added stress may be good preparation for 21st century law enforcement officers and a wakeup call that virtually every action undertaken by them in their law enforcement careers has the potential to be captured on camera. While certainly this observation is true, there may be a distinction between the recruits in this case who are in a learning environment and full-fledged police officers who do need to understand that all of their actions are potentially subject to video scrutiny.

Another unforeseen benefit of the television show is that it provides the Department's executive staff an opportunity to view the Academy training from a unique perspective. The contract between the Department and the production company provides the Department the right to screen all footage before it is aired. Particularly since POST raised issues about its test security, the Department has taken advantage of this opportunity to ensure that the lessons administered by the training staff are consistent with the vision of the leaders of the Training Bureau. When a disconnect in that vision has been identified, the leadership has moved to alter the training methodology. For example, a review of the raw footage demonstrated some inappropriate language being used by training staff when addressing recruits. After viewing those scenes, the command staff quickly moved to change that behavior. Of course, nothing other than cost (an admittedly significant hurdle) prevents the Department from engaging in this type of intense, video supervision of its training programs without the intervention of a television production company.

Finally, the financial benefit to the Department cannot be ignored. Pursuant to its contract with the production company, the Department is entitled to a percentage of the license fees and profits the producer receives. For the first two seasons of "The Academy" combined, the Department received approximately \$250,000, which it placed in its Special Training Fund.

## Analysis

Whether the benefits to the Department outweigh the negative attributes we discovered during our review is a question decision makers in the Department and the County must answer. In our opinion, though, the purported advantages do not justify the show's potentially deleterious impact on recruits. While the filming of the show did not clearly impact the quality of the training provided at the Academy, the negative effect on recruits is potentially too great, in our view, to warrant continued filming of the show. We base this opinion mainly on what we learned during our many interviews with members of the two TV classes. When we asked recruits whether they believe the Department should continue to allow the production company access to the Academy to film the show, a few cited the benefits to the Department's recruiting efforts and image noted above, a few claimed indifference, and a clear majority simply said "no."

Though our assignment was not to opine on the disciplinary techniques employed by drill instructors and the extent to which those serve a legitimate training purpose, we agree with POST that public humiliation is not a necessary aspect of the training of law enforcement officers. Exploiting some recruits' difficulties and failures by airing them on national television for the apparent entertainment of others does not

seem to advance the core mission of the Academy, namely to train and ensure that graduates possess the skills necessary to perform as peace officers in the State of California.

More troubling for us than the humiliation factor, though, is the concern deputies expressed about officer safety and the sometimes disconcerting encounters with inmates as a result of their involvement in the show. Many recruits recognized from the beginning that being featured on the show or having their family members identified on TV could pose a safety issue and they declined individual interviews. Some of these recruits nonetheless ended up in prominent roles on the show during the course of training. Many other recruits told us they were not thinking about safety issues at the time they agreed to be featured on the show and they did not realize at the time—on day one of their training to be a peace officer—how, for example, having their parents, spouses, or children appear on television with them could create problems later. And few could appreciate how the show might expose their weaknesses to inmates and others. While there is no evidence that deputies who were featured on the show have had their safety compromised, the expressions of concern by deputies about that potential do give us pause.

Underlying all of our concerns about the wisdom of continuing to allow filming of “The Academy”—including issues of recruits’ dignity, safety, privacy, and notoriety—is our finding that recruits’ participation in the show was not entirely their choice. While it is clear that no one was forced to sign a release, it is equally clear that most, if not all, recruits believed that refusing to sign was not a real option. This atmosphere where recruits reluctantly acceded to the cameras’ presence only out of a desire to get on with their law enforcement careers will likely grow worse as the Department slows its hiring and recruits will have to choose between signing a release and appearing on the show or deferring to the next class, which may not begin for six months or more.

These concerns are mostly unique to the recruit training environment and do not necessarily apply to other potential reality television shows involving Department members from, for example, the Crime Lab, Homicide Bureau, and Patrol regions.<sup>30</sup> Participation in the filming of those contemplated projects will be much more clearly voluntary. While some deputies may feel compelled to consent to play roles in those shows in order to please their superiors, their status in the Department will be more secure than that of recruits; they will feel confident that they can refuse to

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<sup>30</sup> We make no judgments about the wisdom of pursuing the production of these other contemplated shows, and only discuss these shows in the context of our concerns about “The Academy.” It is important to note that the issues that were the most problematic for the recruits being televised are likely to be non-existent for certified peace officers.

participate and still maintain their jobs with all attendant benefits. Further, deputies who would agree to be filmed for these shows would go into the project with more complete knowledge of the risks, benefits, and potential downsides than any of the recruits had when they signed releases for their appearances in “The Academy.” Finally, the drama or entertainment value of those shows presumably will not derive from the embarrassment or failure of the deputies involved in the way that “The Academy” relied on recruits’ mistakes and breakdowns to fuel interest in the show.

Following our review, we conclude that the filming of the reality TV show did not affect the quality of the training provided to recruits at the Academy. We did not find that recruits received any less or inferior instruction as a result of the cameras’ presence, nor did we find the production crew affected recruits’ ability to learn. Nonetheless, the TV show did impact a number of recruits in potentially negative or harmful ways, and the choice to participate, for most recruits, was not entirely voluntary. For these reasons, unless recruits have the ability to refuse to participate in the show without any delay to their training or other adverse consequences, and unless the Department uses its editorial prerogative to ensure that no personal information or humiliating experiences are televised, we recommend that the County and Department not proceed with a renewed airing of the show.





# Racial Profiling Allegations

## **Introduction**

On October 17, 2007 fourteen LASD deputies conducted a “saturation patrol” operation targeting the alleged use and sale of drugs on the campus of Los Angeles Trade Technical College (“LATTC”). During the operation, thirty-two African-Americans and one Latino student (who was recording the event on his cell phone) were stopped and questioned. Two individuals were arrested—one for possession of marijuana and the other for an outstanding warrant. Allegations of racial profiling quickly emerged, and the immediate posting of the cell phone video on YouTube contributed to the incident’s notoriety.

Though the Department moved quickly to speak at meetings on campus and prepare a written account of its actions for the District Chancellor, the concerns within and outside the LATTC community did not entirely dissipate. The District eventually commissioned a formal report on the matter—one that resulted in a finding that racial profiling had occurred and that led, in part, to the Los Angeles County Board of Supervisors (“the Board”) passing a motion directing OIR to conduct an independent assessment of the event.

Pursuant to the Board’s motion, OIR conducted an independent review of the October 17 incident and concluded that there was insufficient evidence to establish that the deputies engaged in racial profiling.<sup>31</sup> However, OIR determined that there were aspects of the operation—from planning to execution to the aftermath—that fell significantly short of the Department’s best work and contributed to the tension and controversy that ensued.<sup>32</sup>

The following is a factual overview of the events leading up to, and including, the day of the operation on October 17, an assessment of the different investigations that responded to allegations of Departmental misconduct, OIR’s conclusions as to the racial profiling question and the Department’s response to the deficiencies identified by OIR.

## **Factual Overview**

### History of Drug Activity on LATTC Campus

In April 2007, the newly appointed captain of LASD’s Community College Bureau (“CCB”) met with all nine presidents of the Los Angeles Community College District (LACCD)<sup>33</sup> to introduce himself and inquire about special campus issues. During that meeting, the LATTC President expressed that one of his main concerns was the ongoing narcotics problem (particularly possession of marijuana) on the LATTC campus.

According to complaints from students, faculty and staff, the alleged drug activity was occurring in and around the K-Mall, an open-air area where many students congregate before and between classes. It was agreed between college and LASD

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31 The Final Report, issued to the Board in January 2009, is available on the OIR website at [www.laoir.com](http://www.laoir.com).

32 The findings are based on OIR’s review of the Department’s investigative record, which included documentary and photographic evidence relating to the operation and its planning stages, as well as, the interviews of relevant supervisors (including the captain of the Community College Bureau), all of the LASD personnel who directly participated in the incident, the LATTC Vice President for Student Affairs and two representatives from the Los Angeles Mayor’s office who were present during part of the incident. In its review, OIR also considered the Department’s Watch Commander Service Complaint Report, a claim filed by the ACLU on February 6, 2008, on behalf of nineteen of the involved students and a report issued by the Los Angeles Community College District.

33 LASD’s Community College Bureau provides exclusive contract police and security services to all nine LACCD campuses, which includes LATTC.

representatives that LASD should investigate these activities and that a plan be developed to address the problem. LASD on-site personnel continued to monitor the area.

In early July 2007, an individual arrested for trespassing in the K-Mall told LASD deputies that he and others were selling marijuana and other narcotics on campus and that they operated like a “family.”

### Surveillance by the LASD Rover Impact Team

The LASD Rover Impact Team (“RIT”) is a group of four sworn personnel who assist with patrol activity and conduct special assignments, including surveillance, at all nine LACCD campuses. Sometime in July, the captain directed RIT to respond to the narcotic problem at LATTC.

From mid-July to October 16, 2007, RIT members conducted numerous surveillance operations of the K-Mall. During the surveillance operations, RIT identified a core group of 8-10 African-American males that it believed were engaged in illegal drug activity. An additional 10-15 African-American males and females were identified as “associates” of the core group and appeared to be responsible for finding potential buyers.

Based on its observations, RIT personnel determined that the core group of potential suspects and their regular associates arrived at the K-Mall around the same time every morning but did not leave the area all day. RIT observed hand-to-hand contact, hand signals, an excessive amount of cellular phone use, people contacting each other for brief periods of time and buyers apparently being directed off campus to pick up their drug purchases. RIT also noticed what appeared to be a “look-out” person on the bridge that overlooked the K-Mall.

Photographs were taken during the surveillance operations. These pictures were used to document the suspicious activity and create a record of involved individuals as the investigation unfolded.

As RIT’s operation progressed, it was eventually determined that the scope of the potential drug activity merited the involvement of LASD’s Narcotics Bureau (“NARCO”), a specialized unit of highly trained and experienced LASD personnel that addresses drug crimes on a full-time basis.

## NARCO's Role in the Investigation

In July 2007, RIT met with NARCO detectives, briefed them of its observations and showed them surveillance photographs. NARCO agreed to conduct its own surveillance of the K-Mall with the goal of having its own specially trained personnel conduct a "buy-bust" operation.<sup>34</sup>

NARCO made two visits to the campus. During NARCO's observations, detectives noticed clusters of African-American males and females in the K-Mall area. However, NARCO did not observe any hand-to-hand drug transactions. However, a NARCO detective acknowledged that, by that time, RIT had done a "pretty thorough work up" of the situation.

NARCO was scheduled to return to the campus twice in September, but cancelled because it was diverted to other operations. By this time, the school's liaison with the Sheriff's Department was eager to see some sort of enforcement action designed to address the issue.

The RIT sergeant eventually decided to develop an alternative approach in the event NARCO could not execute a scheduled buy-bust operation. The secondary plan was the "saturation patrol" that the Department ended up deploying on October 17. The primary goal of the new operation was not to make arrests. Instead, the main purpose was to have uniformed deputies make contact with the core group and the associates, complete Field Interview Cards<sup>35</sup> ("FI cards"), and determine whether they were students and whether they had any prior narcotics arrests.

Sometime in early October 2007, the RIT sergeant met with the LATTC liaison and informed him that an operation would occur on October 17. There is no dispute that a meeting occurred. However, whether details about the new operation were discussed is unclear. The sergeant recalls explaining that the buy-bust operation was still planned but that it was contingent on NARCO's availability, and that a saturation patrol operation was the potential alternative. The liaison claims that the tactics of a new operation were not disclosed and that, based on prior conversations,

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34 A "buy-bust" operation is an undercover operation designed to catch unsuspecting drug dealers. As the name suggests, undercover detectives "buy" drugs then "bust" those who sold the drugs to them. The goal of the operation is to remove narcotics sellers from drug prone areas.

35 A Field Interview Card is an index card that records a deputy's contact with an individual in the field. The card contains the name of the individual contacted, date of birth, home address and physical description of the individual. The Department maintains these cards as a means of tracking its own activities and staying informed about the area it serves.

he understood that a buy-bust operation was still going forward. The liaison also asserts that had he been told about the tactics of the new operation, he would have never authorized it.<sup>36</sup>

Sometime after the meeting took place, NARCO informed the RIT sergeant that it would not be able to participate in the October 17 operation, and he decided to move forward with the saturation patrol operation. The CCB captain was kept apprised of the developments as they progressed.

### The October 17, 2007 Operation

At approximately 8:00 am on October 17, the RIT sergeant conducted a briefing for the fourteen LASD personnel scheduled to perform the saturation patrol operation. The Community College Bureau's operations lieutenant and captain were not present. The LATTC liaison was not invited to the briefing.

During the briefing, the sergeant distributed an operations plan and surveillance photos. The mission of the operation was to make "contact" with the individuals captured in photographs, ascertain whether they were students and collect Field Interview Cards. Also, those in close proximity to the targeted individuals were to be contacted.

During the operation, some individuals were "patted-down" and some backpacks were searched.

Deputies were paired up and assigned positions of entry. The sergeant then positioned himself in an elevated location where he could observe the K-Mall and radio deputies for coordination.

When the sergeant observed some of the individuals captured in the surveillance photographs entering the K-Mall he used his radio to instruct deputies to enter campus and directed them to contact specific individuals.

Individuals were contacted, asked for identification and deputies filled out F.I. cards. Once F.I. cards were completed, Department personnel "ran" the names for possible

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36 It is plausible that both men's recollections are sincere, though obviously conflicting. Simple misunderstanding, or differences in perspective and emphasis, could certainly account for the gap. Clearly, though, better communication during this preliminary meeting would have alleviated some of the tension between LASD and LATTC that followed the operation. A more formal "approval" or "authorization" process would have ensured that school representatives had input into the

warrants. During the operation, some individuals were “patted-down” and some backpacks were searched.

Throughout the operation, there were other individuals of various ethnicities, including African-Americans, who were also standing, sitting and passing through the K-Mall and who were not detained.

The entire operation lasted approximately 45 minutes. However, many of the individual detentions lasted only between 15-20 minutes. After the operation ended, an observer told a deputy “[you] got some of the sellers, but not all of ‘em.”

The majority of those stopped and questioned were calm and cooperative. According to a representative from the Los Angeles Mayor’s office, who observed 30 minutes of the operation, the individuals who were protesting were those observing the detentions, as opposed to the detained parties themselves. One student began protesting after he was released.

During part of the operation, a Latino student recorded the event on his cell phone.<sup>37</sup> At one point, he approached a lone deputy who was detaining several individuals who were seated on the ground. When the Latino student was within arms-reach of the deputy, the deputy took the cell phone away and detained the student. Within a day, the cell phone video (2 minutes and 18 seconds in length) appeared on [www.youtube.com](http://www.youtube.com).<sup>38</sup>

In all, thirty-two African-Americans and the one Latino student with the cell phone were detained. One individual was arrested for possession of marijuana and another for an outstanding warrant. Two others with minor warrants were warned but not arrested. An additional detained individual was on parole for a felony conviction. According to LATTC, six individuals were not students and did not have a legitimate reason for being on campus.

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37 This same student is also the one who called the representatives from the Mayor’s office and requested they come and observe the incident.

38 There are two versions of the video. One version has rap music playing in the background and ends with the sounds of a snorting pig and gun being discharged. The other version does not have music playing in the background. The YouTube video itself appears to show groups of detained African-American males and females seated on steps, cement planters or on the ground. Other individuals are walking around, sitting nearby watching or passing through the K-Mall. Some of these bystanders appear to be African-American. The scene appears calm. Those being detained do not appear to be protesting or yelling and no one has their hands behind their heads. Deputies do not have their guns drawn and they are not shouting. Deputies appear to be writing on cards and intermittently questioning detainees one at a time. At least one person being questioned is no longer detained when the camera returns to his original location. Another individual appears to be subject to a “pat-down.”

Neither the LATTC president nor the liaison objected to the operation while it was being conducted. In fact, after the operation ended, the liaison told involved LASD personnel (including the RIT sergeant) that he was pleased with the operation and that the deputies did a “good job.” Further, during the LASD investigative interview, the liaison stated that throughout the operation, “[t]he deputies were very professional.”

## **The Investigations**

### The District's Report

In January of 2008, Los Angeles Community College District released its own report on the October 17, 2007 incident, penned by its Director of Diversity Programs. Based on the interviews of several detained students, school staff and involved LASD personnel, as well as demographic data of the student population at LATTC, the report concludes that the Department engaged in racial profiling on October 17. OIR found value and legitimacy in much of the report's contents. However, for reasons discussed below, we cannot agree with the ultimate conclusion.

First, in our view, the report gives insufficient weight to the legitimacy of the Department's preliminary investigation. Part of this, to be sure, resulted from the RIT sergeant's reluctance to cooperate fully with the author's investigation. The report reflects only a terse, one sentence statement from the sergeant that “Actions taken that day (October 17, 2007) were based on reasonable suspicion developed during the investigation.” Understandably, this statement alone was clearly not persuasive to the author; nor was the handful of surveillance pictures the Department apparently shared without significant explanation or elaboration.

The absence of real input from the sergeant left the author notably frustrated and more important, without answers to significant questions regarding the intelligence obtained before and during the surveillance period, the operations plan and the objective mission of the “saturation patrol” operation. This factual deficiency makes the author's conclusions understandable but necessarily based on incomplete information.

The other significant issue, in our view, is the report's virtual entire reliance on demographic statistics to support its finding that racial profiling had occurred. The author goes to some trouble to establish that, as a statistical matter, it is highly unlikely that a random selection of the student population could have led to the detention of only African-American students on that day. While this statement may be unquestionably correct there is no assertion by LASD that the detentions were random, or that they were ever intended to be. Instead, the operation was focused

on specific students—and those associating with them on the day in question—who had been identified as potential participants in criminal activity. The real issue is whether race, as opposed to legitimate investigative criteria, dictated or improperly influenced the Department’s decision-making.

The report does succeed in bringing the students’ perspective to light in an important way and covers a number of relevant facts. However, because the report was based on incomplete information (particularly with regard to the reasons the specific group of persons on campus were “targeted”) it unequivocally concludes—a conclusion OIR cannot share—that the Department’s actions were based entirely on race.

### The Department’s “Service Comment Review” of Student Complaints

After the controversy became evident (but before having received a formal complaint), a lieutenant from the Community College Bureau Department conducted a supervisory review of the incident, pursuant to the Department’s “Watch Commander Service Comment Report” (“WCSCR”) protocol. This suggested an appropriate willingness to address the concerns that emerged from the event.

The review focused on two specific questions: whether the Department had engaged in racial profiling, and whether a deputy had acted inappropriately in stopping a Latino student (who was then detained) from recording the event with a cell phone video camera.

In the report, the lieutenant cited the history of the drug investigation on the Trade Tech campus, the events that preceded the operation on October 17, and the specific reasons—unrelated to race—for the detention of the individuals on that morning. She then described the disruption of the cell phone recording and the detention of the Latino student as an “officer safety” issue, predicated on the student having approached a “lone deputy” who was already detaining several individuals.<sup>39</sup> Based on this analysis of the two main issues, the lieutenant concluded that the complaints did not require further action.

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39 Generally, citizens have a First Amendment right to photograph or videotape police conduct. That being said, the First Amendment does not provide protection to people who move too close to a police officer or in any other manner interfere with a stop, detention or arrest. According to the “lone deputy”, the student approached him “aggressively” and was “getting closer” to him and the individuals he was detaining. The lieutenant contacted the student in order to receive his version of the incident. He never responded.



The Department then sent a letter to the two complaining students and informed them that “the inquiry revealed that established Department guidelines and procedures were followed in this instance.” It did not elaborate on the basis for its conclusions and did not specifically address the advisability of the saturation patrol strategy, or important questions about consent and interactions between students and Department personnel. Here, the terseness and the “form letter” quality of the response seemed particularly ill-suited to the sensitivities of the incident.

### The Internal Affairs Investigation<sup>40</sup>

OIR was consistently impressed with the quality of the IAB investigation and with the lead investigator’s efforts to gather relevant material. As an example of the thoroughness of the investigation, the investigative report included over 100 pages of exhibits including surveillance photographs, copies of Field Interview cards, incident reports, the District Report and a copy of the October 17 operations plan. The report also included the YouTube video footage taken during the operation. The lead investigator interviewed twenty-two witnesses, including all fourteen LASD personnel who participated in the October 17 operation, the captain and operations lieutenant of the Community College Bureau, a NARCO detective, the liaison (LATTC Vice President for Student Affairs), the author of the District’s internal report and two representatives from the Los Angeles Mayor’s office who were present during part of the incident. Throughout the investigation, OIR made specific suggestions regarding areas of inquiry and reviewed each transcript for thoroughness and objectivity.

Although the investigator successfully conducted twenty-two formal interviews, he did face challenges in securing interviews with the school staff/faculty who had watched part of the incident unfold and the nineteen involved students. Despite numerous attempts to contact these witnesses, the investigator was never contacted by them.

For the nineteen individuals represented by the ACLU in the civil claim against the County, OIR and the Department sought to coordinate the interviews with the named counsel. By letter dated April 30, 2008, counsel declined to have her clients interviewed, stating that the “essential facts” of the October 17 event are “not in

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<sup>40</sup> On January 22, 2008, the Undersheriff requested that the Internal Affairs Bureau conduct an administrative investigation regarding the October 17, 2007 operation.

dispute.” She added her view that interviews conducted by LASD would not “yield materially more information” regarding how LASD and the County should respond. In its review, OIR did consider the only available information regarding the student’s perspectives of the incident, namely, the summaries of student interviews included in the District’s report, as well as statements made in the ACLU claim itself.

While OIR respects that whether citizens participate in an internal probe by a law enforcement entity is a voluntary exercise, the fact that students and staff declined to share their perceptions is disheartening to an oversight entity interested in learning the truth and holding departmental personnel accountable when they err. Without the cooperation of those aggrieved and non-law enforcement witnesses to the event, it makes accomplishing either objective particularly problematic.

## **Findings and Other Considerations**

### The Racial Profiling Allegation

Consistent with the Fourth Amendment of the United States Constitution (protection against unreasonable search and seizure) and other statutory authority, LASD maintains a department policy that prohibits racial profiling. The policy, Sheriff’s Bulletin #468, defines racial profiling as “contacting and stopping a person without reasonable suspicion or probable cause<sup>41</sup> based solely on race, ethnicity or gender.” This policy is enforced regardless of where the individual is contacted—in a vehicle, while walking on a public street or on a college campus.

Here, it is specifically alleged that on October 17, while conducting a saturation patrol operation on the LATTC campus, LASD personnel detained “every black student they saw” including those that “walked through the quad during the detention period.”<sup>42</sup> However, based on the investigative report, other relevant material and the applicable policy, OIR concluded that the evidence was insufficient to establish that LASD personnel engaged in racial profiling on the morning of October 17, 2007.

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41 “Probable cause” is simply the probability, based on specific articulable objective facts and circumstances, that an individual committed a criminal act. If probable cause exists, then a deputy has the right to detain that individual. To establish “reasonable suspicion”, both the quality and quantity of the information needed to detain an individual is considerably less than what is required under the “probable cause” standard.

42 This allegation is made in the civil suit.

Based on the evidence, individuals approached during the saturation patrol operation were not targeted because of race or ethnicity. Rather, the evidence shows that LASD personnel contacted individuals based on prior suspicious conduct consistent with drug activity (e.g. hand-to-hand exchanges, hand signals, an excessive amount of cellular phone use, brief contacts and counter surveillance). Others were contacted because of their proximity to the targeted individuals. The evidence does not show that anyone was singled out or otherwise treated differently as a sole consequence of their race or ethnicity.

Also, the evidence does not support the claim that “every black student” in the K-Mall was detained. To the contrary, the YouTube video appears to corroborate the evidence in the investigative record that, throughout the operation, there were a number of African-Americans who freely remained in or passed through the K-Mall and were not contacted.

Although the investigation revealed no evidence of malicious intent or racial bias, it did reveal significant lapses and errors in judgment with regard to planning and tactics. In OIR’s view, these errors, though not rising to the level of violations of Department policy, contributed to the perception that LASD’s operation was motivated by racial considerations—a result that was clearly troublesome and largely avoidable. The following is a discussion of shortcomings revealed in the investigation.

## Operational Deficiencies

### *Documentation and Planning*

The investigation revealed that there was a lack of documentation generated during critical phases of the narcotic investigation. For instance, the only hard evidence of K-Mall surveillance was a collection of photographs that did not provide any consensus about what they captured.

Purportedly, the photographs show individuals using hand signals and engaging in other behavior indicative of narcotics activity. The author of the District’s report, however, found the Department’s interpretation of the photographs to be “highly subjective.” In one example, the report suggests that what LASD interprets as a “handoff” may instead be individuals engaged in a form of greeting called “giving dap.” In OIR’s view, the photographs, without more, do lend themselves to varying interpretations—including those contrary to the Department’s conclusions.

Although LASD policies and procedures do not require additional surveillance documentation, it is clear that the circumstances may have warranted supplementary

records. This was a unique surveillance operation in that it was conducted on a college campus, involved a number of personnel and a number of students suspected of engaging in drug activity. Had LASD personnel recorded the activity on video or kept a detailed surveillance logbook with notes, dates, times and impressions, the patterns and frequencies of the conduct captured in the photographs may have been more evident. At the very least, supplemental documentation would have helped quell suspicions that the October 17 operation was a spontaneous episode of racial profiling, instead of the culmination of a lengthy criminal investigation that it was.

In addition, the investigation revealed that planning for the actual saturation patrol operation left something to be desired. For instance, the written operations plan disseminated at the briefing on October 17 ambiguously directs deputies to “contact” individuals photographed during surveillance operations and those in “close proximity” to them. Although it mentions that these individuals have engaged in “suspicious activity” it fails to state the nature of the “contacts” to be made with the intended targets.<sup>43</sup> Nor is there mention of search procedures. In addition, neither the operations lieutenant nor the captain reviewed the operations plan in advance. Although the sergeant was not required, under Department policy, to submit the operations plan to his supervisors for approval, the unique circumstances and venue of this pre-planned operation clearly warranted a higher level of review and should have been considered. A detailed, thoughtful operations plan would have not only made the operation more uniform but it would have made it more effective and less vulnerable to subsequent criticism.

As it stands, the nature of each contact and the subsequent searches were concerns raised in both the District’s report and the civil claim. Specifically, the claim alleges that students did not consent to searches. OIR is unable to make conclusive determinations about the specific allegations on this issue, in large part, because of the students’ declination to be interviewed by the LASD Internal Affairs investigator. Accordingly, these allegations can only be considered unresolved.

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43 Generally, law enforcement officers have a right to approach an individual, ask him if he is willing to answer some questions and request identification without triggering Fourth Amendment rights. This type of contact is commonly referred to as a “consensual encounter.” All other investigative detentions, stops and searches must be based on a standard of reasonable suspicion or probable cause. According to LASD personnel, most of the contacts they made that morning were consensual. Without the cooperation of those contacted or non-involved witnesses, this review is largely reliant on these assertions made by the deputies on scene.

## *Communication*

Chief among the problems that undermined the operation were the breakdowns in communication between the Department and the college administration—a problem that clearly influenced the course of this incident and its aftermath in significant ways.

Although the LATTC liaison was given periodic updates of the surveillance operations, he claims that he was not shown photographs of the targeted suspects prior to the operation. The liaison also claims he was never told that all of the suspects were African-American or informed that a saturation patrol operation had been replaced by the scheduled buy-bust operation.

If communication had been better between the parties, and if the liaison had attended the briefing, there would have been numerous opportunities to reassess the situation, examine the proposed tactics and discuss any potential issues of proceeding with the operation (i.e. protesters). Also, timely communication would have gone a long way to promote the Department's commitment to transparency.

A better approach to clear communication might also have served the Department well in the context of the saturation patrol itself. There are allegations that during the operation when students requested a reason for their detention, some deputies did not respond at all or told students to remain seated and be quiet. Also, faculty members attempted to intercede and vouch that certain individuals were students but were allegedly “rebuffed” by deputies. Although a deputy need not justify or verbalize reasons for simply wanting to speak to someone (i.e. consensual encounters), explaining the reasons for the detentions, as soon as practicable, may have diffused frustrations and diminished or even eliminated the perception that the detentions were racially motivated.

## *Tactical Issues*

With the benefit of hindsight, it is generally agreed, even by the CCB captain, that the saturation patrol operation may not have been an appropriate operation for a college campus and presented unique tactical challenges. Even if the underlying reasons for conducting the operation were justified, the campus setting is unique and special consideration of foreseeable issues or liabilities should have been taken into account.

The investigative record also revealed that the decision to proceed with the saturation patrol operation may have been done in haste. When NARCO informed the RIT sergeant that it was not available to conduct a buy-bust operation, instead

of rescheduling, the sergeant, appearing to bow to pressure from the college, rushed into the alternate plan—the saturation patrol operation. In OIR’s view, the Department should have been firm in committing to a reasonable timetable and not allowed the college administration’s agenda of expedience to rush it into an ill-informed and ill-designed operation.

## **LASD Systemic Reform**

Once an IA investigation is complete, OIR reviews the investigative report and meets with the captain of the unit to discuss the case. Here, because the IA investigator interviewed the captain as a witness OIR made recommendations regarding case outcome to the commander to whom the CCB captain reports. This course of action ensured further objectivity and fairness.

Even before OIR met with the commander to discuss recommendations for changes in policy, procedure and training as a result of the deficiencies revealed by the investigation, three changes had already taken place.

First, immediately after the incident, at the request of LATTC, the RIT sergeant responsible for planning the saturation patrol operation on October 17 was transferred from CCB to a different unit. This transfer is not considered a form of discipline or an acknowledgment of wrongdoing. Rather, the Department honored the request out of respect for LATTC and in recognition of the tension that the incident had engendered.

Second, a new District policy was issued delineating review and approval procedures that govern LASD policing activities on all nine college campuses, including LATTC. The new policy requires approval by the Chancellor for any policing actions outside of normal operational duties and emergencies. Prior to this change in protocol, the captain had maintained dialogue directly with presidents, who made those decisions.

Third, at the direction of the Sheriff himself, the Department circulated a directive to all personnel assigned to the Community College Bureau establishing a “review and approval” process of an operations plan. This change is intended to improve communication with LATTC and make LASD personnel who authorize and direct operations more accountable for their role in the operations. The directive became effective on November 5, 2007.

Consistent with OIR’s assessment of the incident, the commander concluded that the “tactics, communication and written documentation could have been better”

and that “[a]ny operation on a school campus must balance the intended outcome with public perception.”

OIR recommended that four additional measures be taken in order to prevent a recurrence of similar incidents. They are as follows:

- LASD should provide a briefing to all CCB personnel regarding the new Department directive;
- LASD should provide training to all CCB personnel regarding appropriate surveillance documentation during narcotics operations;
- LASD should provide training to all CCB personnel on how to draft an operations plan. The training should also include a review of a saturation patrol operation, consensual encounters, investigative stops and detentions; and
- LASD should provide a briefing to all CCB personnel regarding constitutional considerations related to public video/audio recordings of on-duty police conduct.

The Department implemented all the OIR-initiated recommendations by September 25, 2008. In addition, on December 16, 2008, prompted by discussions with the ACLU stemming from the lawsuit, the Department issued a revised bulletin on “Racial Profiling/Bias-Based Policing.” The new bulletin states, in relevant part:

*Racial profiling [and bias-based policing] is defined as discriminatory conduct on the basis of race, color, ethnicity, national origin, gender, sexual orientation, or disability in the application of law enforcement activities...stops or detentions by the Los Angeles County Sheriff’s Department, shall be made on the basis of legitimate, articulated reasons consistent with the standards of reasonable suspicion or probable cause...<sup>44</sup>*

Although there is no guarantee that this new, more robust policy will prevent racial profiling from being practiced by Department personnel, the change in policy does demonstrate the Department’s proactive approach to addressing public concerns and willingness to take appropriate action.

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44 The parties ultimately settled the lawsuit. The settlement agreement memorializes the Department’s decision to revise its racial profiling bulletin, distribute it Department-wide, post it at LATTC and to train CCB personnel. The students will each receive \$3,000 and an opportunity to meet with a high-ranking CCB supervisor and discuss the incident. The agreement also contains a standard “general release” by the students and a “non-admission” clause for the County.

## **Conclusion**

As noted above, shortcomings in planning, communication and judgment undermined critical phases of the October 17, 2007 incident. And although the evidence did not support the racial profiling allegations, each of those failures, independently and collectively led to the public outcry that the Department had engaged in misconduct. The lesson here is that the purpose of maintaining an anti-racial profiling policy should not be only to prevent biased policing but it should also prevent the perception of it. OIR is hopeful that the Department's willingness to address the issues revealed in the investigation will help prevent a similar occurrence in the future.



# Summary of Systemic Changes – *Year Seven*

<b>OIR Identification of Systemic Issue</b>	<b>OIR Recommendation</b>	<b>LASD Response</b>	<b>Implementation of Recommendation</b>
Spike in alcohol-related Incidents.	Devise policy circumscribing gun possession when intoxicated.	Policy devised.	Yes, see pages 1-3
Spike in alcohol-related Incidents.	Provide specific information as deterrence.	LASD implemented Undersheriff’s Memo and Cautionary Screens.	Yes, see pages 9-10
No guidance to deputies regarding how to deal with stranded motorists.	Develop Stranded Motorist Policy.	LASD devised Stranded Motorist Policy.	Yes, see pages 18-19
Insufficient guidance regarding limitations on gifts and gratuities	Develop more specific guidelines.	LASD devised specific guidelines.	Yes, see page 13
Insufficient scrutiny given to probationary employees who have displayed performance issues and/or run afoul of Department policies.	Develop procedures and policy to provide more exacting scrutiny of probationary employees.	LASD has modified procedures and is working on policy development.	Yes, see pages 27-28
Insufficient guidance to deputies regarding TASER use.	Revise TASER policy.	TASER policy revised.	Yes, see pages 41-46
Inability for internal investigations to access inmate medical records.	Create policy allowing access.	Policy created.	Yes, see pages 54-55