

# Violence in the Los Angeles County Jails: A Report on Investigations and Outcomes

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## FOREWORD

*This week, the Los Angeles County Sheriff's Department moved to fire a deputy and significantly discipline three others for their use of excessive force on an inmate who was suspected of carrying a shank in his rectum. The deputies didn't follow a sergeant's instructions to move the inmate to another part of the jail and handcuff him to a bench. Rather, upon arrival, they told the inmate they were going to handcuff him to a wire mesh screen, place a bucket underneath him and wait for the shank to come out. When one deputy unhandcuffed the inmate, he threw a punch at the deputy and briefly struggled before being taken down to the floor. Once on the ground, deputies kicked the inmate in the legs, employed numerous punches and knee strikes to the face and head of the inmate, and kicked the inmate's torso. At the end of the confrontation, one deputy deployed a Taser on the inmate while he was lying prone on the floor, and then a second time while the inmate was handcuffed. In their reports, deputies wrote that the inmate was trying to crawl away as justification for the Taser use; the video camera attached to the Taser contradicted these accounts. Much of the incident was captured on one of the few video cameras at Men's Central Jail, helping to provide the proof necessary for the Department to find that the deputies used unnecessary force in this case. When the inmate was at the clinic for medical treatment, a shank and a lighter were retrieved from the inmate's rectum.*

In recent weeks, conditions in the Los Angeles County jail system have been the topic of much discussion. Inmate counts have been declining over the past several years, attributable to resource challenges requiring temporary closure of some beds as well as a decline in crime throughout the County. The new realignment shift between state prisons and county jails will inevitably cause an uptick in the county jail inmate population and has required considerable preparation and planning. In conjunction, the ACLU and the media have focused on allegations of inmate abuse and retaliation by deputies working in the jails. OIR is troubled by these disturbing allegations. This report is intended to provide additional insight and transparency regarding the issue of jail violence by detailing evidence and outcomes of internal investigations, providing an overview of the interrelated issues that are in need of increased scrutiny, and outlining OIR's strategy toward addressing those issues.

First and foremost, as detailed further in this report, it cannot be denied that deputies sometimes use unnecessary force against inmates in the jails, either to exact punishment or to retaliate for something the inmate is perceived to have done. As further detailed in the report, when there is sufficient evidence to prove unnecessary force, the Department moves forward with severe administrative sanctions – including termination – against the offending deputies. However, there are too many times in which the allegations of misconduct cannot be proven and could not withstand Civil Service scrutiny, and the Department is therefore unable to proceed with discipline. In some of these instances, where deputies misrepresent either their own actions or those of the inmate, the fact that a particular use of force was unnecessary may not be provable, and deputies “get away” with their abusive treatment of inmates. There are other times when deputies do not report their uses of force at all and the inmate does not complain about it to the Department. This is the case with many of the allegations recently raised by the ACLU. One troubling aspect of our initial review of the recent ACLU report is that the times in which deputies “get away” with using excessive force may be on the rise.

The fact that some deputies violate the core values of the organization and use excessive force is somewhat explainable, but not justifiable, by the nature of the jail environment. The potential for violence in the jails is almost palpable. It is a cauldron of inmates, many with violent criminal histories, who certainly do not want to be there, combined with newly hired deputies who are just learning how to do their jobs. Deputies are often called upon to stop inmate-on-inmate violence, and are sometimes physically attacked by inmates. Race identification and gang affiliation permeate the inmate culture, and can increase tension and the potential for violence. Thus, new deputies are often in a position where they need to use force in order to protect other inmates, their colleagues, or themselves. At the same time, this jail environment may tempt an ungrounded deputy to inflict unnecessary harassment or violence on an inmate who is not a threat but is simply giving him a difficult time. Sorting out these instances from the scenarios in which force is necessary and legitimate is a difficult task because an offending deputy can craft a story of justification for the force which may be impossible to disprove. Adding even more complexity to the deconstruction and investigation of these incidents is that both inmates and deputies in a force incident have motivations to shade the truth and fabricate details to their own benefit. Finally, to the degree there may be inmate witnesses to the incident,

those witnesses often are unwilling to assist in the ensuing investigation, insisting, for example, that they “slept through” the force incident.

Despite these challenges, most deputies are apparently able to navigate their tour of duty in the jail without straying into misconduct.<sup>1</sup> The Department must constantly strive to maintain rigor and accountability in its hiring practices,<sup>2</sup> but even with best efforts, there will be deputies brought on who are predisposed to use improper force or are influenced by their time in a jail assignment to stray from the core values of law enforcement. While training and close supervision are essential to identifying and remediating these individuals before they become abusive to inmates, fair but vigorous use of the discipline system is also a vital tool in weeding out and deterring deputy misconduct, and must be fully supported by Department administrators.

One way in which the disciplinary system can help the Department maintain vigilance over the development of young deputies and jail culture is to scrutinize off-duty misconduct. Such scrutiny may identify a dangerous lack of self-control and a proclivity for excessive violence. A recent example of this is the investigation of deputies for an off-duty Men’s Central Jail Christmas party fight at a restaurant. The deputies were found to be in violation of policy as a result of their assaultive behavior and were discharged. Similarly, over the years, jail personnel have been disciplined or discharged for bar fights, domestic violence, stalking, road rage, and threats. In many of these cases, while there may have been an arrest, no criminal charges were filed against the deputies.

When a force incident is brought to the attention of the Sheriff’s Department, LASD’s first responsibility is to promptly and thoroughly investigate it. The level of scrutiny of these investigations is dependent on the type of force used and the severity of the injury suffered by

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<sup>1</sup> One underreported phenomenon that complicates matters further is the polar opposite of excessive force, namely the compromising of deputies who get too close to inmates, resulting in deputy actions that jeopardize the integrity of the jail by providing drugs and other illegitimate benefits to inmates. This co-option of deputies by inmates leads to a number of fraternization and prohibited association charges every year, forcing the Department to terminate the deputies who are so compromised.

<sup>2</sup> Over two years ago, OIR took the Department to task for not following LASD’s own hiring standards the last time there was an uptick in hiring. Some of these hires are responsible for the excessive force cases that have occurred in the jails. For more information on this topic, please see OIR’s February 18, 2009 report entitled Review of Los Angeles Sheriff’s Department Background Investigation Process.

the inmate. The Department brings more resources to bear on the more severe injuries and serious allegations, with an Internal Affairs rollout and subsequent review by a panel of Commanders. OIR is most intimately involved in these serious cases.

Less impressive are the investigations of force incidents that result in less serious or no apparent injuries to the inmate; too often we have found these inquiries lackluster, sometimes slanted, and insufficiently thorough. In response, we have beefed up our review of these lower level force incidents in Men's Central Jail and have provided regular training to jail supervisors on how to conduct effective investigations.

In our view, more work needs to be devoted to this area. For example, we recently brought to the Department's attention an inmate interview in which the LASD supervisor was largely dismissive of the inmate's account of the incident and demonstrated bias in his interview techniques. Our review of lower level force incidents has also revealed failures to interview all potential witnesses to an event and to gain access and review the medical records pertaining to the incident.<sup>3</sup>

One way in which these significant force incidents that do not rise to the level of Internal Affairs rollouts could be more effectively investigated is to have another detail of specialized investigators respond to them. The task force that the Sheriff has convened to assist in investigating force in the jails or a specially-trained subset of sergeants and lieutenants in the jails could be tasked with rolling out to and investigating these significant force. Moreover, instead of merely a paper review, we recommend that the Department use the new Commanders in the jail to convene panel reviews of all significant force incidents, with OIR's participation and input.

The second responsibility of the Department is to carefully assess the facts collected in each case and determine whether the evidence indicates the deputy violated policy. As detailed in the case

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<sup>3</sup> OIR has recently brought to the attention of the Department a hole in its investigative protocols in situations in which a force incident occurs and the inmate is transferred to Los Angeles County + USC Medical Center for treatment. In some of these cases, the hospital evaluation eventually detected an injury to the inmate that would trigger an Internal Affairs rollout. However, because the Department did not stay abreast of what the doctors eventually discovered at Los Angeles County + USC Medical Center, Internal Affairs did not pick up the investigative responsibility for the case.

examples included in this report, when the Department has evidence that proves a violation of policy, it has been willing to proceed with stern discipline, including separating deputies from their badges. The corroboration of excessive force by deputies has emanated from fellow deputies, LASD supervisors, forensic evidence, and video cameras. As set out below, the stark fact is that every year deputies lose their jobs as a result of evidence derived from internal investigations. OIR is closely involved in each of these decisions, quite often pushing the Department toward what we believe to be the proper outcomes.

The third responsibility of the Department is to continually reevaluate and improve its practices and procedures relating to the internal investigative process. To that end, this year we have worked with a federal judge overseeing the Department's jails to improve those systems. In a judicial conference, the ACLU expressed concerns about, among other things, the failure of the Department to have an anti-retaliation policy, problems with the inmate complaint process, and the inability of inmates to be fully apprised of their rights in custody. After learning of these concerns and at the request of the judge, OIR convened a series of meetings with the ACLU and LASD designed to develop a Department anti-retaliation policy, improve the inmate complaint process, revise the inmate complaint form, develop an information brochure so that inmates entering the system would be aware of the inmate complaint process and their other rights, and find ways for the jails to better accommodate ACLU monitors. As detailed in our follow up letters to the judge, each of these systemic projects was completed to the satisfaction of both the ACLU and the Sheriff's Department. The result was the creation and improvement of policies and protocols designed to address legitimate concerns raised by the ACLU and provide inmates better information and an improved process with which to raise their complaints.

This most recent chapter of our dealings with the ACLU follows a longstanding positive working relationship with that organization. Past ACLU jail monitors have communicated with us regularly, providing information about allegations of deputy misconduct that we could transform into a timely, OIR-monitored investigation. We have lauded accomplishments of the ACLU in years past; most significantly its push to provide more timely medical evaluations of inmates entering the system, and the successful reduction of overcrowding in Men's Central Jail. As an outside entity that has regular contact with inmates, the ACLU serves an important role in gathering information from inmates about incidents impacting negatively on their jail experience.

We continue to believe that the monitoring responsibilities of both the ACLU and OIR are enhanced by communication and timely notification to OIR of ACLU concerns.

With regard to the concerns of retaliation raised by the ACLU, our experience makes it clear that retaliation, in its broadest sense does occur in the jails. Whenever a deputy unjustifiably harasses or mistreats an inmate, it is generally with a retaliatory motive – either because the inmate is mouthy, is not obeying commands, is not following jail rules, or “disrespects” a deputy or other staff member. Over the years, there have been provable instances of retaliatory conduct in the more traditional sense. In one case, a deputy allegedly punched an inmate because he was accused of shooting a law enforcement officer. In another case, two deputies visited and made inappropriate comments to an inmate who had assaulted a deputy in another jail. In fact, just last week, an OIR attorney was contacted by an inmate to report that a deputy had attempted to deter him from cooperating in an LASD internal excessive force investigation. OIR immediately reported the allegation to LASD and there is now significant evidence that indicates there was in fact such an effort to influence the inmate. The offending deputy is now himself under investigation for those actions. Particularly in light of the new anti-retaliation policy, the Department will need to continually assess not only allegations of abuse, but the possible motivation behind such misconduct.

What to do with the “he said, he said” cases in which an inmate says the deputy used excessive force and the deputy denies it will continue to be a challenge, both for OIR and the Department. One vitally important investigative tool is the video camera. In the examples detailed in this report where video evidence was available, the proven allegations of excessive force would not have been provable but for the existence of video evidence. The video evidence was clearly the important evidentiary tie breaker between the inmates’ allegations and the deputies’ denials. Just last week, an internal criminal investigation of excessive force that was submitted to the District Attorney became viable as a result of video evidence from one of the few video cameras installed in Men’s Central Jail. Clearly, video cameras can benefit the fact finder tremendously in determining exactly what occurred during a given encounter. OIR has long held and espoused the view that the installation of video cameras will not only help prove or disprove allegations of deputy misconduct, but likely will deter improper behavior in the first place. For that reason, we are heartened by the apparent activation of a too-long delayed plan to install cameras in Men’s

Central Jail and the Inmate Reception Center. We have also long advocated for the installation of cameras at all of the remaining jail facilities, particularly Twin Towers because of its high percentage of inmates with mental health issues.

Another potential source of evidence of misconduct is third party non-inmate witnesses in the jails. One of the greatest concerns emanating from the ACLU's most recent report is that on at least several occasions, non-inmate witnesses were reluctant to provide to the Department timely information about what they had witnessed. Over the past several months, OIR has met repeatedly with jail chaplains in an effort to develop a level of trust with those individuals. It is incumbent on the Department itself however, to nurture relationships with nurses, chaplains, ACLU monitors, volunteers, and vendors so that they feel safe in raising any concerns or observations immediately rather than delayed reporting or no reporting at all.

Over the years, there have been proposals to address jail violence issues systemically that did not take root. For example, a proposal to rotate employee jail assignments was initially approved but scotched by Department executives when deputies complained about it. A related plan to place first line supervisors inside the modules was also halted despite initial positive signs of a reduction in force in the areas in which it was implemented. As a result of the Quiet Cannon episode involving Men's Central Jail, deputies are now being rotated in various assignments to reduce the specter of cliques forming in the jails and to ensure adherence to Departmental rules rather than allowing deputies to establish their own floor culture. We suggest that the Department reconsider the discontinued proposal of having sergeants deployed in a way to ensure closer supervision of deputies and custody assistants.

Whenever a force incident is investigated, particularly one in which the allegation is that deputies used excessive force, the Department should consider whether the incident also points to deficiencies in supervision or concerns about deputy jail culture. With regard to the Quiet Cannon incident, OIR pushed the Department to consider whether the incident could be traced in part to the tolerance of floor cliques among deputies. That investigation did reveal some troubling signs of such a culture, particularly the fact that deputies may have subverted their loyalty to the Department's core values with allegiance to a particular group of fellow deputies, and the use of "gang-like" signs to identify their affinity to a particular floor within the jail.

Perhaps most concerning is the evidence that jail supervisors apparently knew about the use of “gang-like” signs and other troubling behavior well before the eruption of violence at the Christmas party. OIR believed that while the assault was clearly propelled by alcohol, some LASD executives were too swift to conclude that intoxication was the sole cause of the incident.

Whenever unnecessary force or significant misconduct has occurred, it is incumbent on the Department to examine whether there may have been supervisory deficiencies that gave the offending deputies the opportunity to act with temerity. For example, in the case in which deputies created a way to avoid performing security checks by fabricating barcodes to defeat the jail’s scanner system, the investigation revealed that the sergeant was not effectively supervising the floor, and he was disciplined behind these lapses. We have made some headway recently in our efforts to have the Department take this broader look at potential supervisory deficiencies in jail force cases. For example, two out of four MCJ cases examined by the Executive Force Review Committee this year resulted in further investigation of involved supervisors.

Outside review of force incidents is critically important to ensure accountability. While OIR provides a level of outside and independent review in the disciplinary arena, other outside entities are needed to review force cases for potential criminality. Accordingly, excessive force allegations must be submitted to the District Attorney for criminal review. OIR frequently has advocated that the Internal Criminal Investigations Bureau handle the initial investigation of excessive force allegations emanating from the jails. At times, the Department has not accepted that recommendation and cases were instead forwarded directly to Internal Affairs for administrative review only. OIR is hopeful and expects that the increased scrutiny recently brought to bear on these force issues will cause allegations of excessive force to be investigated as potential criminal cases and forwarded to the District Attorney for external review.

This past year, OIR has concentrated its resources on jail issues, particularly force, and will continue to do so. As noted above, OIR has begun to review all force packages in Men’s Central Jail and has an office in the jail from which to operate. We will review every ACLU allegation and ensure there is a thorough investigation into each. OIR will continue to inform relevant stakeholders and the public regarding the results of this work.

## Violence in the Los Angeles County Jails: A Report on Investigations and Outcomes

The presence of violence has long been an unfortunate mainstay of jail life in Los Angeles County. The jail population of between 15,000 and 18,500 includes many sophisticated or hardened detainees, many with competing gang affiliations, and many others either awaiting trial or having been recently convicted for violent offenses. The 3,500 Sheriff's deputies who work in the jails – generally at the beginning of their careers and relatively inexperienced – may be called upon to quell violence between or among inmates or defend themselves from assaults by inmates. The difficult task for the Department is to sort out the seemingly justified and necessary force incidents from those times in which deputies inflict unnecessary, unjustified, and inappropriate force on inmates. Ensuring these incidents are investigated thoroughly and fairly is critical, yet even when force reports or allegations are well-investigated, it is often difficult to learn the truth about what happened, and impossible to prove that any misconduct occurred. Too often, there are two competing views – one told by the deputies and one by the inmates. With no other evidence to break the tie, the Department generally is forced to accept the deputies' version of events, a position reinforced or even mandated by the Civil Service rules protecting deputies' due process rights. While this may lend some truth to the perception that the Department “always sides with the deputy,” in cases where independent evidence exists – uninvolved deputy witnesses, non-inmate third parties, video, or forensic evidence – the Department's investigative and review processes have held deputies accountable for using unjustified force.

OIR regularly reviews troubling force incidents where we question whether the amount of force used was truly necessary, or whether any force was justified at all. While our intuition tells us the incident may not have unfolded as the deputies report, we are nonetheless stuck with the inability to prove anything improper occurred. We openly discuss these concerns with Custody leaders, and press around the edges for discipline or additional training for the concerned deputies. For example, deputies have been disciplined for failing to report using force or for violating the Department's policy requiring them to contact a supervisor before engaging a recalcitrant inmate, or sent to additional defensive tactics training to practice techniques for more quickly and effectively controlling combative inmates. The Department also uses its personnel tracking system to identify deputies who use more force than their colleagues and consider

whether these deputies need to be placed on a performance mentoring program. That being said, there are too many force incidents where all the pieces do not add up. While the proof of misconduct may not be there, we are left with strong indications that something is amiss. But allegations of misconduct and uneasy feelings are not enough to move forward with formal discipline, which must rely on provable evidence at the subsequent and inevitable Civil Service hearing.

Investigating all allegations of force and holding people accountable when appropriate is an important element in the Department's efforts to improve the culture in the jails and ensure its members perform consistently with Department standards, but the key to preventing questionable force incidents and ensuring the fair treatment of inmates is in the hands of line-level supervisors. If sergeants do not actively engage with those they supervise, deputies and custody assistants too easily can lose sight of the expectations the Department places on them and engage in the type of abusive, retaliatory conduct inmates frequently complain of. The Department has not always staffed the jails sufficiently to provide the necessary level of supervisory involvement, and its expectation of sergeants is not consistently reinforced up the chain of command. We frequently raise these issues in our regular interactions with Department leaders.

One way to engage the jail floor sergeants in the effort to raise the performance of jail personnel and discourage abuse is to provide tools that reinforce the sergeants' important role. For instance, following the discovery of the widespread practice of jail deputies faking their inmate welfare checks by fabricating the barcodes mounted on each end of the cell rows so that they could pretend to walk the rows while sitting at their desks, the Department, with OIR's encouragement, implemented a real time monitoring procedure whereby sergeants were expected to audit the scanner results frequently using simultaneous computer monitoring. By the same token, even a rudimentary system of video cameras mounted in the jails would give sergeants a method for checking the work of their deputies, especially immediately following force incidents.

### Scrutinizing Force Incidents

The Department is conscious of the authority jail personnel hold over the inmates in their care and brings significant scrutiny to bear on use of force incidents, particularly those resulting in significant injury or otherwise attracting the attention of supervisors. Every employee who uses

or witnesses force<sup>4</sup> is required by policy to immediately report the incident to a supervisor and then prepare a brief report describing the force utilized or observed. Generally, the employee is required to write a force report before he or she goes off duty at the end of the shift. A floor sergeant compiles and reviews the reports, interviews the inmate and any other witnesses, and writes a summary report evaluating the tactics and force employed. These are compiled into what is referred to as a “force package” to be evaluated by the watch commander, a lieutenant on duty the day of the incident. When force results in an injury, the watch commander has the additional responsibility of interviewing the injured inmate at the jail clinic or the hospital.

When the force incident results in death, a fracture, a laceration requiring stitches, or a hospital admission, or involves a head strike with an impact weapon, the incident triggers an immediate roll out by Internal Affairs Bureau (IAB) investigators.<sup>5</sup> The results of their investigation or review are evaluated by the Executive Force Review Committee (EFRC), a panel of three Department commanders with expertise in the use of force and investigations. They evaluate each such significant incident for potential violations of policy by Department personnel as well as address individual or systemic training issues, supervisory issues, equipment issues and any needed refinements of policy. Thus, there is a stair-stepped series of investigative levels that tends to assign a higher level of review to cases where the use of force is more significant or the resulting injury more serious.

Occasionally, the Department learns about a force incident through an inmate complaint, where the deputies alleged to be involved have not reported any force. Where there is evidence that force was in fact used, the Department generally will conduct an administrative investigation into the incident, evaluating the deputies’ failure to report force and the reasonableness of the force used.

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<sup>4</sup> Specifically, the policy states: “Any use of force which is greater than that required for unresisted Department-approved searching or handcuffing, including the use of oleoresin capsicum (pepper) spray, Freeze +P, Deep Freeze aerosols, or powder from a pepperball projectile must be reported. Additionally, any use of force which results in an injury or a complaint of pain must be reported.”

<sup>5</sup> Recently, as a result of a meeting with jail chaplains, the Sheriff asked his executives to consider whether a kick or knee strike to the head should trigger an Internal Affairs rollout. This question is currently being discussed and may result in an expanded number of incidents in which Internal Affairs will immediately respond.

OIR's role in this scheme is to monitor the Department's own internal investigations and to make recommendations as to how the Department can improve its processes, and then to consult with Department decision makers regarding appropriate outcomes. Our goal is to provide quality control in order that the LASD makes its own investigations thorough and complete. While we review every investigation emanating from the Internal Affairs Bureau and actively participate in EFRC evaluations, we do not have the resources to scrutinize the hundreds of force packages generated by the jails each year. We do however, have access to these documents, and will review all force incidents brought to our attention by an inmate, complainant, or third party with information about or interest in a particular incident. Because of recent concerns about force at Men's Central Jail, at the beginning of September, 2011 we began reading each force package out of that facility before its final approval.

### Holding Deputies Accountable

Following a force incident, Department supervisors must endeavor to determine the truth of what happened. Where the only witnesses to the event are also participants and their stories are contradictory, this job is particularly difficult. There is often the possibility that involved witnesses, whether inmates or deputies, have some incentive to lie or shade the truth. When the only non-participant witnesses are inmates, the task is not much easier, as the reliability of those witnesses is often questionable because of criminal records and the reality that jail culture strongly discourages inmates from siding with deputies at the expense of a fellow inmate, or even reporting any factual information for that matter. Conversely, in some situations, uninvolved inmate witnesses may side with jail personnel in order to curry favor. And even in the rare but not unprecedented cases in which civilians not employed by LASD witness force, their versions of events must be consistent with other evidence – the inmate's version, physical evidence, documentary evidence, and forensic evidence – in order for the Department to proceed with a disciplinary case.

As illustrated below, there are cases where a deputy reports or acknowledges wrongdoing by a fellow deputy. Corroboration of excessive force by a deputy or custody assistant may be sufficient to sustain an allegation of excessive force, but there have even been times when a complaining deputy's version of the incident is simply too equivocal or inconsistent with the

other objectively provable evidence for the Department to go forward. Because Department disciplinary decisions are subjected to the quasi-judicial scrutiny of the Civil Service Commission where the Department must prove that wrongdoing did occur – and the relevant unions expend substantial resources challenging these decisions – disciplining deputies and custody assistants for improperly using force against inmates is not a simple matter.

The following cases that have been resolved in the past year or two illustrate instances when the Department has recently held deputies accountable for unreasonable use of force.

- *Case 1*

A deputy searched the property of an inmate who was seated on the floor nearby. The deputy thought the inmate mumbled something disrespectful at him and his partner and began punching the inmate in the head and neck. A sergeant saw the unprovoked attack from a distance and yelled at the deputy to stop, an order the deputy ignored until the sergeant got much closer. After an investigation and based largely on the statements provided by the sergeant, the Department fired the deputy and suspended his partner for failing to tell the truth about the incident.

- *Case 2*

A deputy was disappointed and angry when a cell search revealed an inmate he had appointed as a trusty possessed contraband. The deputy approached the handcuffed inmate standing with other inmates in a shower area waiting for the completion of the cell searches, grabbed the inmate and threw him to the floor, breaking his arm. Based on the observations of the victim inmate, other inmates in the shower area, and another deputy who saw a portion of the incident, the Department terminated the involved deputy. The witness deputy did not come forth initially to report the use of force, but when confronted by investigators, spoke truthfully about what he saw.

- *Case 3*

A custody assistant and a deputy entered the cell of a mentally ill inmate and struck him with their flashlights on his head and legs. When they learned minutes later that his head

was bleeding, the custody assistant returned to the inmate's cell and took him to the shower to clean up. He also gave the inmate some towels and the instruction to clean the blood from his cell. Another custody assistant witnessed the force incident, and a fourth involved employee – a deputy – also knew of the inmate's injury. None of the employees reported the force incident or took the inmate to the clinic for medical care.

When the next shift began, a deputy discovered the inmate's injury and took him to the clinic, where the laceration on his head was sutured. The inmate alleged he had been assaulted by staff, and the Department immediately initiated a criminal investigation. Investigators identified witnesses and collected substantial physical evidence confirming the inmate had been injured on the prior shift and taken to the shower. The involved personnel were relieved of duty pending the outcome of the criminal investigation. The District Attorney eventually declined to file charges, citing the unreliability of inmate witnesses (all of whom were mentally ill). Without any statements from any of the deputies or custody assistants, the prosecutor did not believe there was substantial evidence to convict those involved. Internal Affairs investigators then conducted an administrative investigation, compelling those involved to submit to interviews.<sup>6</sup> They all admitted many of the substantial facts alleged. The Department decided to discharge the two employees who assaulted the inmate, and imposed substantial suspensions on the two who failed to report the incident.

One of the reasons these case examples merited the ultimate sanction against the deputy was that the force employed was unequivocal and utterly unjustifiable. Most important, though, was the strength of the evidence supporting the allegation of unreasonable force – a sergeant who witnessed the force, substantial forensic evidence, and/or the employees' own statements. In those cases where a deputy comes forward to testify against a fellow deputy, the Department's ability to impose discipline also is much greater, as the following cases exemplify.

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<sup>6</sup> Personnel can be compelled to make statements during an administrative investigation. Those statements are not admissible in any criminal proceeding, but may be used by the Department as a basis for imposing administrative discipline on the employee.

- *Case 4*

A group of jail deputies learned that an inmate had made an obscene gesture at a custody assistant. While transferring the inmate to a disciplinary area, three of the deputies assaulted the inmate resulting in a fractured cheekbone and injuries to his ribs. They left the inmate in a cell without medical attention. The inmate was discovered by a deputy on the following shift, and the Department initiated an investigation. A fourth deputy who had witnessed the incident helped cover it up by telling investigators he had not seen the use of force. The investigation was presented to the District Attorney's office but the inmate could not positively identify the involved deputies, and the DA declined to file charges. Shortly thereafter the fourth deputy, who had witnessed the beating, applied to another police agency and was subjected to a background investigation. During a polygraph examination, he revealed that he had witnessed excessive force and lied about it. The polygraph examiner informed the Sheriff's Department which reopened its criminal investigation of the case. When the detectives questioned the fourth deputy again, he admitted what he had witnessed and lied about. The subsequent presentation of the case to the DA resulted in criminal filings against the three deputies who had taken part in the assault. The fourth deputy was granted immunity from prosecution in exchange for an agreement to testify truthfully at trial. Before trial, the three deputies pled no contest to assault charges and were sentenced to probation for three and two years, respectively, and ordered to complete community service and anger management courses. Before sentencing, the Department secured resignations from each deputy. The fourth deputy was the subject of an Internal Affairs investigation and was discharged by the Department.

- *Case 5*

An inmate filed a complaint stating a deputy removed him from his dorm, used excessive force on him, and was extremely discourteous to him during the incident. The inmate had used the restroom at a time when the deputy believed the inmate was required to remain on his bunk. The inmate was ordered to the front of the dorm, called a derogatory name, handcuffed, and then escorted outside the dorm to be searched. Once outside the

dorm, the inmate alleged the deputy continued to use profane and derogatory language, threatened him, and then struck him on the head with a flashlight. A custody assistant witnessed the incident, corroborated the inmate's account of the derogatory comments, and stated the deputy had poked the inmate's shoulder with a flashlight. The inmate suffered no physical injuries. In particular, there was no physical evidence to suggest the inmate had been struck on the head.

The custody assistant later approached the deputy, admonished her that she should have called a supervisor before ordering the inmate out of the dorm, and told her they were required to report the force used. The deputy did not report the incident, but the custody assistant informed his supervisor of the force he had witnessed the next morning prior to knowing the inmate had filed a complaint. The unit initiated an investigation and ultimately imposed a suspension on the deputy.

- *Case 6*

An inmate who had just arrived at a custody facility, in a line of inmates all handcuffed together, smirked at the deputies. One of the deputies responsible for handling the incoming inmates asked "what's funny?" and then, according to three inmates and another deputy, put one hand around the inmate's throat, pushed him into a glass window, and threw him to the ground. Shortly after this incident, the witness deputy saw the inmate and believed he might be injured. As he was taking the inmate to the clinic the deputy who had used force stopped him, told him the inmate didn't need treatment, handed the inmate an ice pack, and put him back into the cell with other inmates. When the inmate's minor facial injury was discovered later, the deputy who had used force – a more senior deputy – reported the inmate had stepped on the chain binding him to the other inmates and fallen to the ground. He then instructed the witness deputy to write a report supporting this version of events. The witness deputy refused, and reported the force incident to a sergeant. After a thorough Internal Affairs investigation, the Department decided to discharge the subject deputy. The witness deputy has since received threatening phone calls calling him a "rat" and telling him to watch his back.

By contrast, in a similar incident to the prior example, there were no independent witnesses and the outcome was far different.

- *Case 7*

Two deputies were processing an inmate as he entered the facility. The inmate was not following instructions and then, according to the deputies, moved aggressively toward one deputy, who responded by shoving the inmate by his shoulder into a wall. The deputies did not report this use of force, but placed the inmate in a cell with other inmates. When the inmate encountered other personnel, he complained of pain to his jaw, and alleged the deputy had struck him in the face. The deputies' accounts of the incident vacillated somewhat as they tried to explain how shoving an inmate in the shoulder could result in an injury to his jaw and why they had not reported the incident at the outset.

The injury to the inmate's jaw turned out to be significant, and the incident was reviewed by the Department's Executive Force Review Committee (EFRC). OIR believed the deputies should have been disciplined for failing to report force properly and for failing to perform up to Department standards by placing the inmate in a cell with others rather than isolating him until he could be medically cleared. OIR expressed this view at the EFRC meeting. The Department's decision makers disagreed, finding the deputies' actions were within Department policy, largely because there were no witnesses to the incident other than the injured inmate.

Sometimes strong forensic evidence can help to satisfy the Department's burden of proof in cases where an inmate or other witness alleges unnecessary force, as in the following case.

- *Case 8*

An inmate alleged three deputies removed him from his cell and took him to an isolated area, where they punched him, took him to the ground, and applied OC spray to his anus and genitals. None of the three reported any use of force. As investigators began looking into the inmate's allegations, two other inmates came forward to say they had been assaulted by some of the same deputies, though they had not suffered any injuries.

Because it appeared to be a pattern of abuse, jail managers relieved from duty all of the deputies alleged to be involved. ICIB investigated all of the allegations and submitted the matter to the District Attorney, who eventually declined to file criminal charges.

Based in part on the strength of the forensic evidence – OC spray residue found on the inmate’s boxer shorts – the Department discharged all three employees.

Where the Department’s case for disciplining a deputy is not subject to the usual Civil Service scrutiny or protections, the Department is more able to terminate or otherwise discipline employees. The following two examples involve probationary employees.<sup>7</sup>

- *Case 9*

An inmate swore at a deputy and insulted him as the deputy was enforcing a jail rule about inmates’ bedding. Another deputy and a custody assistant – both probationary – heard the insult, handcuffed the inmate, and escorted him out of the area into the outdoor recreation area, a more isolated part of the jail. The custody assistant then left to check on the other deputy, who was alone with a larger group of inmates, leaving the probationary deputy alone with the inmate for a couple of minutes. The inmate alleged the deputy took him to the ground, kicked him, and struck him with a flashlight, all while the inmate remained handcuffed. The custody assistant returned to the outdoor recreation area and said he found the inmate lying on the ground, squirming, while the deputy stood near him, flashlight in hand. The custody assistant said he did not witness any use of force and did not ask the deputy what had happened. The other, more senior, deputy then arrived and he and the custody assistant picked the inmate up and returned him to the housing area. Neither inquired about or noticed any injury to the inmate.

The probationary deputy stated in his IA interview that he sat the inmate in a chair in the outdoor recreation area, where he bounced around and complained repeatedly about his medication and housing situation. The inmate then lunged toward the deputy, the deputy grabbed his arm, and the inmate fell to the ground. The deputy also stated he stumbled

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<sup>7</sup> Deputies and other employees generally have probationary status during their first year of employment, meaning that their permanent employment is still under review and employment may be terminated at will without the right to a full Civil Service hearing.

during this maneuver, causing his flashlight to come out of his pocket and hit the ground. He retrieved the flashlight and was holding the inmate down when the custody assistant and other deputy arrived. He did not ask the inmate if he was injured, and did not notice any injury.

The inmate later complained of pain and was treated for bruises on his back and arms, as well as a small laceration. The Internal Criminal Investigations Bureau completed a thorough investigation. Among other things, investigators discovered blood on the probationary deputy's flashlight that matched the DNA profile of the subject inmate. The District Attorney declined to file charges, citing the fact there was no direct evidence of what happened in the outdoor recreation area other than the inmate's statement and the inmate's significant credibility issues, including his mental health history, gang affiliation, and criminal record. The Department staff also could have presented other credible explanations for the inmate's injuries, including the account the probationary deputy provided and the possibility the inmate was injured by other inmates when he was returned to the housing area. (As a result of this incident, deputies shut off the TV in the inmates' common housing area, which may have inflamed the inmates.)

Even before the District Attorney declined to file charges, the Department made the decision to discharge the two probationary employees. Following the criminal investigation, IA completed a thorough investigation into the role of the other deputy (who was beyond his probationary period and therefore entitled to full Civil Service protections). The Department concluded there was insubstantial evidence to conclude he was involved in any force incident but nonetheless found he had not performed up to Department standards when he failed to inquire about potential injuries before returning the inmate to his housing area. He was given a short suspension.

- *Case 10*

An inmate became visibly confrontational with a deputy when he was not permitted to attend a church service because the maximum number of inmates had lined up ahead of him to be escorted to the jail chapel. The deputy decided to pull the inmate out of the dorm and take him around the corner to talk to him in an attempt to calm him down.

Once around the corner, the deputy asked the inmate to turn and face the wall. The inmate allegedly turned and began fighting with the deputy. The deputy screamed for help and took the inmate to the ground, where he got on top of him and struck the inmate with his fists and elbows to counter the inmate's assaultive conduct. According to the deputy, the inmate was combative during the entire incident. Other witness deputies, however, reported that the subject deputy delivered multiple elbow strikes to the inmate's head while the inmate appeared to be unconscious and was bleeding profusely from his head. One witness indicated he had to pull the deputy off the inmate.

The inmate was unconscious at the conclusion of the incident and suffered significant injuries requiring surgery, including brain swelling. Based on the evidence and eyewitness accounts of the incident, the Department found the deputy violated various policies, including the prohibition against the use of excessive and unreasonable force. The deputy was on probation at the time of the incident and was released from his position as a deputy.

The evidentiary issues present in the above examples demonstrate just one way in which video cameras would be useful in the effective administration of the jails. In most cases, the tie-breakers presented above – uninvolved witnesses, solid forensic evidence, or admissions by the deputies– do not exist, and the Department is left with the task of weighing inmate accounts against those of the deputies. OIR has long argued that the Department should install cameras in all critical or problem areas in the jails. Indeed, cameras would also often work to the benefit of deputies, to conclusively clear them of untruthful or exaggerated allegations of misconduct made by inmates.

The following three recent cases demonstrate the value of having cameras in critical areas of custody and court lockup facilities, both to prove and disprove allegations of deputy misconduct.

- *Case 11*

Deputies were detailed to escort inmates from court to their housing location. An inmate was classified as a high security, special handle inmate, considered highly dangerous and designated to be a “keep-away” from other inmates. Video cameras captured one deputy

escorting this inmate along with general population inmates. The recording also showed the deputy using unreasonable force against the inmate by pushing him against a wall and shoving him to the ground for being uncooperative. The deputy received a significant suspension.

- *Case 12*

At the one County jail facility substantially equipped with cameras, an inmate complained to a sergeant that several hours earlier in the day he had been injured by a deputy who had forcibly pushed him up against a wall for no reason. The inmate said that his wrists were injured as the deputy handcuffed him. The sergeant reported the inmate's complaint to a lieutenant whose first step was to pull the video footage of the area where the inmate stated the incident occurred. The lieutenant was able to confirm a force incident had taken place and that there had not been any reported use of force by the involved deputy nor any of the approximately 10 other deputies who appeared in the area on the video.

The unit quickly consulted with OIR and provided us a copy of the video. In the moments before the force incident, the deputy can be seen on video conversing with the inmate and then throwing an object at him. The deputy then rushed toward the inmate (who has his back to the Deputy) and pushed the inmate against the wall, placing his forearm into the back of the inmate's neck/head area. The deputy was then assisted by another deputy and together they handcuffed the inmate, ultimately removing him from the processing area.

The jail initially wanted to dispose of this matter quickly by entering into a settlement agreement with the deputies who had used force where they would accept responsibility in exchange for short suspensions. But the video still left many questions unanswered, including which of those deputies seen in the video witnessed the incident and therefore should have reported it. OIR urged the Department to open an administrative investigation to address the entire incident. A full formal investigation was initiated and the Department consulted OIR as the facts developed.

Most of the personnel present during the incident admitted to witnessing the incident but nonetheless failing to report it. The principal deputy involved also admitted his failure to report the use of force, but disputed the allegation that the force was unjustified, arguing the inmate was being aggressive. The Department imposed suspensions on all those involved for failure to report the force, but initially declined to include an unreasonable force charge against the lead deputy. Relying on the video which showed the inmate was not being aggressive or resistive, OIR recommended that unreasonable force be added to the charges, and the Department ultimately agreed. But for the existence of the video evidence, the inmate's allegations likely would not have been sufficient to trigger even an internal investigation, let alone support a charge of unnecessary force.

- *Case 13*

A high security inmate with a history of unpredictable, sometimes violent behavior as well as litigiousness was deemed a “sergeant escort” by the jail. That meant that a sergeant would be summoned to observe every time the inmate was moved from his cell to any other location. On one such occasion when the sergeant had also called for a deputy with a video camera to trail the escort, the inmate walking between deputies suddenly fell down on the ground and yelled, “stop kicking me, stop kicking me.” No one had touched him. A quick review of the video by the watch commander and by OIR obviated the need for a formal investigation of the so-called incident.

It is difficult for a jail monitor to determine which allegations of unnecessary force are credible and which might be motivated by other factors – an inmate's desire to get back at a particular deputy for a perceived wrong or to win a lawsuit, for example. Likewise, distinguishing between truthful and untruthful accounts by deputies is often impossible in the absence of additional evidence. In these challenging cases, sometimes the best we can hope to do is ensure that Department investigations are fair and thorough – that all witnesses are identified and interviewed in an un-biased manner and that documents and forensic evidence are gathered and preserved. OIR's access to these investigations as they unfold provides us the best chance of identifying problems with the Department's investigative mechanism. Similarly, our ability to

consult with Department decision makers regarding appropriate outcomes gives us the opportunity to ensure the Department correctly assesses the merits of any given allegations.

### Recommendations Regarding Investigations

Through our review of Custody force cases, we regularly identify deficiencies or weaknesses in the Department's investigatory practices. We raise these issues with the Department, generally on a case-by-case basis. Some of these issues are recognized best practices and are encompassed within the Department's expectations of its investigating sergeants and lieutenants. Nonetheless, they are not always uniformly followed and warrant being the subject of regular reminders. The following recommendations highlight these issues:

- Involved deputies should never be present when the inmate is being interviewed.
- All witnesses or potential witness, including all civilians and third parties (i.e., inmates, medical or mental health staff, visitors, chaplains, and volunteers) should be identified and interviewed.
- Deputies should be separated after a significant use of force and not share computers to write their reports.
- Unit level investigators should receive ongoing training in conducting force interviews of inmates and witnesses.
- A sergeant who is involved in a force incident, whether using force or directing it, should not interview the involved inmate or write the force package.
- Where practical, inmates should not be interviewed while in the clinic either waiting for treatment or during treatment. When an inmate is obviously in pain or distress, the interview should be conducted after treatment.
- Force incidents witnessed by third parties, where the third party account differs from the deputies' reports, should receive a heightened level of review requiring taped administrative interviews of involved deputies.

- Investigators should be required to confer with medical staff to learn the outcome of the evaluation of an inmate's injuries following a force incident.
- Significant force incidents that do not meet the standard for an Internal Affairs review should be investigated and reviewed by a specially-trained group of sergeants and lieutenants and should be reviewed by a panel of jail commanders, with OIR's participation and input.
- Investigations into unnecessary force and other misconduct allegations should include inquiries into the role that supervisory deficiencies may have played in the incidents.