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**Re: The Critical Need for Oversight to Be Involved in LASD's Disciplinary Process**

Dear Supervisors:

This letter is intended to advise you of my concern about the apparent plan to discontinue real-time involvement of the Sheriff Department's disciplinary decisions – a core function of the Office of Independent Review ("OIR"). This curtailment of real-time engagement in disciplinary decisions is not consistent with the Citizen's Commission on Jail Violence ("CCJV") recommendations. While systemic reviews and audits are important monitoring tools, I am convinced that a truly comprehensive oversight model must also include mechanisms to ensure personal accountability through in-depth involvement in the agency's disciplinary system.

Based on my experience with the Sheriff's Department and numerous other law enforcement agencies, it would be a mistake to leave all disciplinary decisions to the will of Sheriff's Department decision makers and to review those decisions only after the fact, when it will be too late to impose discipline and perhaps also too late to hold accountable the executives responsible for unprincipled decisions. Freed from OIR's real-time oversight, I have little doubt that LASD executives will exercise favoritism, fail to recognize policy violations, impose undue leniency, rescind discipline, and let deputies who should be separated from the Department keep their badges. This sort of undermining of the disciplinary system is a hugely corrupting influence on any law enforcement organization.

In its report, the CCJV found that OIR had enhanced the quality of the Department's investigations of Significant Force and the appropriate discipline for instances of misconduct. The CCJV emphasized that any centralized body would subsume and consolidate "all of the existing important oversight functions of Special Counsel, OIR, and the Ombudsman's office and utilize their existing expertise and knowledge of the [Sheriff's] Department". (Emphasis added.) The CCJV recognized the value of OIR's real-time input into internal investigative and disciplinary determinations and recommended that OIR become a "branch within the OIG". The only conclusion that can be drawn from the CCJV report is its recognition that real-time involvement in the Sheriff Department's disciplinary process need remain a necessary component of the oversight process.

I am heartened that the plans to fund and staff the Office of Inspector General ("OIG") in a way that will allow it to have significantly more resources. Both the OIG and the CCJV noted that finite resources prevented it from achieving all that it could. As a result, identifying, auditing, and remedying systems issues were often deferred while OIR lawyers tended to the burden of reviewing real cases with tangible deadlines. However, with a budget over five times the size of OIR's, it is my fervent hope that the program will not try to rely exclusively on systemic reform while leaving disciplinary decisions to the good will of the Department.

My experience is that merely expecting that LASD will adhere to objective principles and hold its members accountable for violations of policy simply will not work. There is probably no more stubborn aspect of law enforcement culture than the reluctance to hold sworn officers accountable when they violate the organization's expectations. The reasons for the development and maintenance of this culture are too numerous for this letter, but it cannot be denied that the endemic lack of trust in law enforcement stems in large part from the perception that law enforcement does not fairly investigate its own and hold its brethren accountable when they stray. As a result of peace officer privacy protections, the shadows in which the disciplinary process functions adds to this perception of favoritism and lack of resolve.

It is for these reasons that oversight entities throughout the country have clamored, mostly unsuccessfully, for a voice in the disciplinary process. I have heard many times from oversight practitioners throughout the country that they are frustrated by their inability to be heard with regard to case outcomes and discipline. They have coveted for their own oversight programs an involvement in discipline similar to that exercised by OIR. Because I do not believe either the County can afford to move backwards with regard to the oversight of its Sheriff's Department or that LASD can handle disciplinary decisions on its own, I sincerely hope that the OIG does not surrender this involvement by outside oversight that LASD has come to accept.

The loss of trust a law enforcement agency suffers when questionable disciplinary decisions are exposed to the public was brought into focus recently on the front pages of the Los Angeles Times. See "LAPD Discipline Case Raises Question of Favoritism, LAPD Gets

Suspension Over Lying About Racial Slur”, Joel Rubin, Los Angeles Times, March 24, 2014. According to the article, LAPD’s Chief of Police declined to terminate an officer who uttered a racial slur and lied about it during the Department’s Internal Affairs investigation. Because neither LAPD’s Police Commission nor its Inspector General have any real-time involvement in disciplinary decisions, the Chief’s decision to contravene the recommendation of LAPD’s disciplinary board was made without any outside voice weighing in and went undetected by the Commission until an anonymous letter was sent to the Commission and the Times.

The results of the LAPD case stand in sharp contrast to a case OIR was involved in and reported in its Tenth Annual Report. (<http://www.laoir.com/reports/OIR-Tenth-Annual-Report.pdf>, at page 103) Similar to LAPD’s case, the LASD case involved a deputy who got into a fracas at a nightclub after consuming alcoholic beverages. While outside the establishment and again during an interview by outside agency investigators, the deputy was captured on tape making racist remarks. OIR closely followed the internal investigation and reviewed in real-time the tapes, interviews, and related materials. Originally, the LASD decision-maker was inclined not to terminate the deputy. However, after OIR urged him to personally review the audio and video evidence, he was persuaded to seek discharge. The deputy was terminated and recently, the County’s Civil Service Commission upheld the firing.

This case highlights the meaningfully different results achieved when an oversight entity is able to impact discipline decisions in real-time. In the LAPD case, despite the after the fact concerns raised by the Commission, it can do nothing at this point regarding the officer’s employment status.<sup>1</sup> In the LASD case, however, as a result of OIR being meaningfully involved in the decision-making process and insisting that the responsible executive make an evidence-based decision, a deputy that deserved to be fired was in fact separated from the Department. OIR’s ongoing monitoring ensured that LASD maintained its resolve throughout the grievance process. As importantly, OIR’s commitment to transparency led us to discuss the case in a public report.

The Seattle Police Department has also recently been roiled in controversy regarding a questionable disciplinary decision. The Chief created a divide between his Department, the community, and City leaders when he eliminated an officer’s one-day suspension for discourtesy and unprofessional conduct in dealing with a reporter. *See, e.g.*, “Seattle Mayor Calls it ‘Mistake’ to Clear Officer of Misconduct”, KIRO Radio, February 24, 2014. <http://mynorthwest.com/11/2464982/Seattle-mayor-calls-it-mistake-to-clear-officer-of-misconduct>. The Seattle PD has a civilian monitor but that monitor does not have to be consulted before discipline is undone.

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<sup>1</sup> The Commission does have the authority to evaluate and fire the Chief. Because the Sheriff is an elected official not subject to similar review, any after-the-fact finger-wagging at him will not be as effective.

By contrast, LASD implemented a written policy requiring its decision-makers to consult OIR prior to either reaching or modifying a disciplinary decision. This policy helps to ensure that any reductions in discipline are based on newly discovered facts and not favoritism or a misrepresentation of the facts by an employee's advocate. In the year following the implementation of the policy, reductions in discipline at LASD were reduced by 20%. Without an outside entity looking over their shoulders, I have little doubt that LASD executives will similarly undo disciplinary decisions out of sympathy or lack of resolve.

The plan to curtail oversight's real-time participation in the disciplinary process could have ramifications for other entities reviewing County practices. In its work throughout the country, the United States Department of Justice ("USDOJ") examines and assesses oversight's impact on the disciplinary process when it determines whether the agency has developed a "pattern and practice" of Constitutional violations. If there is no oversight in the Sheriff Department's disciplinary process, it could have an impact on how USDOJ eventually completes that calculus.

OIR has been asked repeatedly why the County's brand of oversight for the past two decades could not prevent the situation in the jails from occurring. First, it will never be known what additional corruption or erosion of progressive policing would have occurred but not for the existence and work of OIR, Special Counsel, and the Office of the Ombudsman. Second, as stated by the CCJV, limited resources for oversight prevented more important work from being done such as continual oversight over less significant force in the jails. However, and perhaps most importantly, while oversight is a necessary component of progressive policing, the most robust oversight mechanism alone is not sufficient to ensure that large law enforcement agencies perform in accord with modern day expectations. Ultimately, the leadership of the organization must ensure that its members are performing consistently with their oath of office and that those he or she delegates with authority similarly imbue the organization with those values. When there is significant messaging and influence that runs counter to values-based policing, the most robust oversight will not be able to entirely stem that deleterious tide.

I hope you will consider the points set out above in helping to set the course for oversight of the Sheriff's Department.

Very truly yours,



Michael Gennaco

Chief Attorney

Office of Independent Review

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