AGN. NO.

MOTION BY SUPERVISORS AND MICHAEL D. ANTONOVICH AND DON KNABE

JUNE 22, 2010

Both the findings contained in the recent report issued by the Office of Independent Review (OIR) and some preliminary findings by the Auditor-Controller involving significant improprieties by employees of the Probation Department raise grave concerns about the quality and level of supervision as well as staff accountability.

The Probation Department may be unable to impose discipline in certain cases where the statute of limitations has lapsed. However, every effort must be made to ensure that all others that may have violated policies or allowed policies to be violated are thoroughly administratively investigated followed by appropriate disciplinary action. Those include, but are not limited to, the person(s) who: 1) authorized the issuance of credit cards, 2) made purchases of unauthorized items and/or purchased authorized items which cannot be accounted for, and 3) were responsible for supervising the staff assigned to the internal affairs unit, child abuse special investigations unit and performance management.

Additionally, every effort must be made to ensure that any recent cases of employee arrests or misconduct are being properly documented and investigated.

WE, THEREFORE, MOVE that the Board of Supervisors direct the Chief Probation Officer to work with the OIR, Auditor-Controller, County Counsel, and the Chief Executive Office to:

1. Identify, investigate and discipline past and present employees, regardless of rank, who were responsible for the egregious failures identified in the OIR's report as well as by the Auditor-Controller;

2. Immediately identify cases of recent employee arrests and/or other misconduct to ensure that those cases do not similarly fall through the cracks but instead get thoroughly investigated followed by proper discipline; and,

3. Report the results of the above actions in the response to the OIR's report due next month.

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MOTION

RIDLEY-THOMAS _____

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KNABE _____

ANTONOVICH _____

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Evaluation and Recommendations Concerning Internal Investigations at the Los Angeles County Probation Department

A Special Report by the

Office of Independent Review
County of Los Angeles

June 2, 2010

Executive Summary

The Office of Independent Review was asked in March of this year by the County Board of Supervisors to conduct a three month examination of internal investigation functions at the Los Angeles County Probation Department. Our review of this 6,000 member Department revealed a number of significant problems in the units most directly involved with internal investigations and administrative discipline. During our review, we received the unqualified support of the new Departmental leadership and executive team and were granted unfettered access to documents and managerial personnel.

We discovered inordinate delays in completing and reviewing internal investigations. As a result, in at least thirty-one cases over the past two calendar years, the Department may well be unable to discipline sworn employees who violated policy because it was unable to complete the cases on time. The twenty-eight cases are only emblematic of a wholesale systems breakdown in which over half of all disciplinary cases were completed five days or less shy of the statutory one-year deadline. This systemic failure caused victims, complainants, subject employees, and Department managers in over half the cases to wait almost a year before the cases were finalized. The bottlenecks that caused the delay derived primarily from bureaucratic inefficiencies, insufficient tracking, and weak case management.

We found general difficulty in accurately tracking cases through the system from beginning to end. The lack of an integrated database caused investigators, reviewers, supervisors, case managers, and executives alike to be unable to ascertain fundamental data such as the current number of administrative investigations in the system. This inability to know the universe of cases and track each of them hampers the Department's efforts to improve the system in critical ways. The Department entities assigned to root out and address misconduct work in isolation from one another and this way of doing business combined with the lack of an integrated database makes it virtually impossible to share information effectively and make the system more efficient.

In the Internal Affairs unit, we found quality deficiencies in the investigations and a clear need for training in basic investigative skills to professionalize their methods and work product. We also found that the unit lacked adequate Departmental investigative support , making it extremely difficult for the investigators to conduct timely, thorough and effective investigations.

In the Child Abuse Special Investigations Unit, we found the beginning of a well functioning investigation entity hampered by uneven training, erratic notification and evidence preservation at the juvenile facilities, and insufficient internal quality control within the unit.

In the Performance Management unit we found significant holes in documentation and an obscure, inconsistent process of case evaluation and discipline decision-making. Some of these issues are personnel based. Many others concern processes and procedures that do not serve those personnel well and create unnecessary obstacles to effective performance. When we asked why some seemingly counterproductive procedures exist, we often heard, "[t]hat's the way we've always done it."

Many of the problems we identified are amenable to practical short and medium term solutions, while others may take a more sustained effort. We have recommended a total of 34 changes in structure, procedure, policy and standards. We also recommend that the leadership of the Department make an explicit commitment to creating a disciplinary system that meets the standards of skill, integrity and professionalism that are so necessary to this Department.

- Among our central recommendations, we believe it is indispensable for the Department to adopt a single unified case tracking system accessible by personnel from Internal Affairs, Child Abuse, and Performance Management. The confusion, data loss and mistakes engendered by the current proliferation of different, incompatible tracking systems cripples the Department's disciplinary efforts
- We also recommend that the investigative and reviewing units take action to speed up the glacial pace with which cases are moved through the system and

institute better safeguards and management control so that cases are not needlessly bottlenecked and potentially lost to expired statutes of limitation.

- We make recommendations aimed at improving the skill set of Internal Affairs and Child Abuse investigators. We also believe that IA and CASIU could benefit from merging into a single professional organization with standardized prerequisites, training, and procedures.
- Many of our recommendations point to a new holistic attitude we believe the Department should adopt toward the internal disciplinary system. Disciplinary investigations and their outcomes can provide significant feedback to Department leaders that can help improve the quality of operations within the Department as well as the investigations themselves.
- We recommend that the Department provide needed transparency and information to both its employees and the public about individual cases, the investigative process, and systemic issues.
- We also recommend that the Department consider seeking independent oversight to ensure a continued path to reform, system-wide as well as providing quality control, fair investigations and principled decision-making on a case-specific level.

During our review, we observed a Department already actively engaging in reforms on many fronts with the assistance of the County offices of the CEO, the Auditor/Controller and Human Resources. The Probation Department's managers have already modified some aspects of their process during our review as a result of our continuing dialogue with them. We hope that the receptive attitude we encountered from its leaders will continue to sustain the Department through this dynamic period of challenge and reform.

I. Board Motion

Earlier this year, members of the Los Angeles County Board of Supervisors expressed concern over recent incidents of misconduct by employees of the County Probation Department and the Department's investigation of those incidents. The Board requested that the Office of Independent Review assist in diagnosing the challenges to effective internal investigations in the Probation Department and suggest corrective action. As the Board's March 2, 2010 motion put it, OIR "...expressed a willingness to lend its assistance and expertise to the Probation Department for the next 90 days as the Department transitions from an interim to a permanent Probation Chief." Consequently, the motion directed OIR to "...work with Probation in assessing the quality and timeliness of that Department's internal affairs and child abuse investigations..."

This report is in response to the Board's motion.

II. Introduction

The Los Angeles County Probation Department is one of the largest County departments, with a 110 year history and over 6,000 employees who run three juvenile detention halls and nineteen juvenile residential treatment camps, serve every branch courthouse, and supervise every adult and juvenile on probation in the County through their 36 field offices. Approximately 4,400 of the Department's employees are "sworn," having peace officer status under California Penal Code Section 830 et seq. Sworn personnel fill most of the positions that come into direct contact with detained juvenile wards in the camps and halls. Deputy Probation Officers are also responsible for supervising adult and juvenile probationers in the field. Many sworn employees fill administrative and managerial positions in the Department as well. Most Department policies apply equally to sworn and unsworn employees, but the sworn employees, as peace officers in California, enjoy the protections of the Peace Officer's Bill of Rights ("POBR").

Department managers initiated approximately 390 internal investigations of employees during calendar year 2009 through the Internal Affairs Unit, the Child Abuse Special Investigations Unit ("CASIU"), or the Performance Management unit ("PM"). The Child Abuse unit handles all allegations involving contact between an employee and a juvenile "client." They also handle cases of employee-on-employee violence. Performance Management is not primarily an investigative unit but handles a small number of administrative investigations that arise directly from off duty criminal arrests of employees after those cases are adjudicated in the Courts. Most other cases covering the entire spectrum of on and off duty misconduct are investigated by Internal Affairs ("IA"). Cases of discrimination and harassment are currently referred to the County Office of Affirmative Action. Lower level misconduct cases that are not construed as child abuse are investigated by personnel at the camps and halls or other Department locations. Following their completion by CASIU, Internal Affairs or the work location administrators, most investigation files are sent to Performance Management where Advocates determine the appropriate level of discipline to recommend to the concerned discipline decision-maker and draft the Department's Letter of Intent to impose discipline.

III. Methodology

OIR attorneys Michael Gennaco, Rob Miller and Cynthia Hernandez have scrutinized the Probation Dept for three months and found many challenges and obstacles to effective internal investigations and enforcement of department policy. We also identified some assets and efforts that are positive and that should be supported and perpetuated.

Mindful that this project is by nature a snapshot look at a large and complex entity, we nonetheless did seek pertinent information about the Department from many different sources. To date, OIR attorneys have:

- Interviewed sixteen Probation Department executives and managers, notably in the Child Abuse, Internal Affairs, Performance Management, and Department of Justice ("DOJ") Project Management units
- Talked to twelve individual investigators and former investigators,

- Conferred with training personnel
- Interviewed the Department of Justice monitor and a DOJ consultant
- Met with union officials and LASD personnel who interact regularly with Probation
- Examined 52 investigation case files in the Child Abuse, Internal Affairs, and Performance Management units
- Tracked individual cases through the investigation, executive evaluation, imposition of discipline, and appeal phases
- Examined the Department's separate case tracking databases in Child Abuse, Internal Affairs, and Performance Management
- Completed site visits to a juvenile hall and a juvenile residential treatment camp examined the facilities' use of force and internal investigation files, and interviewed the respective Superintendant and Director,
- Conferred with Probation's Risk Management office
- Reviewed policy manuals, guidelines for discipline, investigative procedure manuals and related materials
- Conferred with CEO and Auditor Controller personnel working within Probation
- Conferred with County Department of Human Resources investigators
- Conferred with the Probation Chief, the Interim Probation Chief, and the former Probation Chief

Throughout this process, we have received an unqualified level of cooperation and assistance from the Department's Executive Leadership, unit managers and line personnel. They have been universally receptive to our inquiries and sometimes quite enthusiastic about the prospect of participating in positive change for their Department. We appreciate the unfettered access to documents and individuals who took the time to provide their insights into systems, practices, and particular cases. Their candor on these matters enhanced our ability to identify the issues set out here as well as a workable path to reform.

It was apparent to us that many aspects of the Department are moving targets for the best reasons—change is underway. To its credit, our ninety day review and discussion with Department managers has already caused the Department to rethink and modify its protocols in

several areas in a move toward reform and improvement. In an effort to respect and acknowledge many of those changes and to provide observations about the Department that are current and relevant, we have focused on Departmental activity and disciplinary cases from the last eighteen months.

IV. The Department Does Not Maintain an Integrated Case Tracking Unit

As noted above and explained further below, dependent on their nature, misconduct allegations are investigated by a litany of different units – CASIU, Internal Affairs, Juvenile Halls, Juvenile Camps, Office of Affirmative Action, and Performance Management. Each of these units has a different way of numbering or naming a case and a separate stand alone database for keeping track of it. None of the databases are compatible. Most of them are not accessible to managers of the Department outside of the particular investigative unit.

As a result, Department managers are seriously disadvantaged in knowing the breadth of investigations system-wide and with regard to individual employees or units. For example, at present, the Department would be unable to readily answer a seemingly straightforward question such as currently, how many ongoing internal investigations are there in the Department or how many ongoing investigations presently exist with regard to employee "Smith." In order to learn how many bureau level investigations are currently ongoing, the Department would have to contact every hall, camp, and other facility for an individual tally.

The unmanaged spawn of detached, non-integrated databases and their inaccessibility in the Probation Department make it problematic for even the most dedicated manager to gain a profile of any particular employee or trends occurring within his or her facility. With today's technological capabilities, any interested Department manager should be able to develop simple queries to learn the state of what is going on with investigations Department-wide, unit specific, and employee specific. A manager should be able to access a database to gain knowledge of every employee's performance history, ongoing and past investigations and their outcomes, and whether the employee is involved in Department lawsuits, force incidents or complaints.

Multiple, stand alone databases also increase the risk that data entry will be untimely, incomplete, and inaccurate. Our review of some of the databases currently in existence demonstrated exactly that phenomenon. For example, Internal Affairs tracks pending investigations using a simple spreadsheet. IA has its own case numbering system distinct from other investigative units and labels cases by the name of the subject, rather than the name of the victim, which is how CASIU labels its cases. We found IA's tracking records to be confusing, incomplete and unreliable. Notably, the tracking system did not express the date the Department learned or was notified of the alleged misconduct. This significant deficit limited the spread sheet's utility in determining case urgency or priority and accurate POBR dates. [1] Since our discussions with the IA unit, however, that has changed. The unit now records the Department "knowledge" date.

While IA managers should be commended for their amenability to improving their case tracking system, this incremental improvement does little to address the Department-wide knowledge deficit without a real-time, integrated, accessible database. Progressive law enforcement has long noted the need for such tools in order to track cases, ensure timely compliance with internal and statutory case deadlines, track employment history, and provide a tool for learning about individual and systemic trends, individual employment history, and ensure consistency in discipline. Without such a critical tool, Department managers will continue to be hampered in advancing the ultimate goals of internal investigations, namely ensuring professionalism and accountability in the work staff and maintaining the public and their employees' confidence that the disciplinary program will be fair and serve each stake holder well.

- **Recommendation 1 -- Establish a unified case tracking system for all misconduct investigations.** This system should include prompt data entry for all internal investigations, uses of force, complaints, and law suits. The tracking

[1] Pursuant to Government Code Sections 3300-3312, California's Public Safety Officers Procedural Bill of Rights Act ("POBR"), the one year statute clock commences when "a person authorized to initiate an investigation" becomes aware of the alleged misconduct.

system should be accessible to all Probation Department managers and those managers should be able to know the status of ongoing cases, an employee's history regarding each of the relevant data points, and have the ability to easily query the database to learn about unit and Department-wide performance.

- **Recommendation 2 – Assign responsibility of case tracking and management to one entity with authority to ensure timely completion of cases.** One entity should be given responsibility to develop reasonable internal deadlines for case investigation, review, and decisions with regard to all internal investigations. This entity should have the support of and access to the Chief of the Department to ensure that internally delinquent cases are addressed in a timely fashion.

V. Child Abuse Special Investigations Unit

In 2005, pursuant to its ongoing responsibilities stemming from a lawsuit and resulting settlement agreement with the U. S. Department of Justice, the Probation Department created a new internal investigative unit to handle all significant allegations of misconduct involving staff interaction with detained minors. The entity would be known as the Child Abuse Special Investigations Unit. In accordance with DOJ demands, it was designed to have a relatively large investigator cohort that would be drawn from the Department's sworn personnel who could roll out to the scene of a reported child abuse incident within a few hours of notification. The DOJ monitoring also called for an experienced retired law enforcement executive to be contracted as a consultant to the unit. This consultant reviewed all CASIU investigation files in cases arising from the juvenile halls, wrote detailed memos to the investigators about each case, critiquing content and format of the reports and occasionally requested further investigation, re-interviews or additional witnesses. The investigators found this detailed mentoring and review process rigorous and exacting, but universally acknowledged its value in raising their skill level and improving their work product. Unfortunately, with the recent end of the DOJ active monitoring of internal child abuse investigations in the juvenile halls, the consultant's contract too has expired. There has been discussion, but no implementation of forging a similar relationship between the CASIU and the consultant as the DOJ monitoring shifts its focus to child abuse investigations coming from the Probation Department camps.

In the course of our evaluation, we reviewed nineteen CASIU case files and had numerous discussions with the CASIU Director and Supervisor as well as the individual investigators. We found all members of the unit to be candid and communicative with us as well as with one another. They appeared to be motivated by a clear sense of the objectives of the unit and its potential benefits to the Department.

The devotion of resources by the Department and the close scrutiny by DOJ appear to have produced palpable benefits. The unit responds quickly to suspected child abuse events that trigger a referral, generally rolling two investigators to the juvenile hall or camp the day after notification.[2] Summary reports are generally well written. Some of the investigations we reviewed also showed signs of mid-course correction and improvement due to the guidance provided by the DOJ consultant.

The unit is composed of eight investigators, a supervising investigator, a secretary and a director. All of the investigators are sworn personnel. As peace officers, the investigators receive a minimum of 40 hours of training per year required by state law. This helps maintain their perishable peace officer skills, but the training is sometimes generic and does not compliment the on-the-job lessons that these investigators must learn regarding investigations in their highly specialized environment. In any case, the unit tries to provide supplemental training using a private vendor, but this too is undercut by relatively rapid turnover within the unit. Most of CASIU's current investigators have been there for less than two years. Most investigators carry a case load at most times of between six and ten active cases. CASIU initiated 211 case investigations in calendar year 2009.

The director of CASIU is also the director to which the Internal Affairs Manager reports. The unit is housed in the Pasadena courthouse an hour away from Probation's Downey

[2] That being said, there is an apparent problem with timely notification of child abuse referrals to the CASIU. A recent DOJ report indicated that only 19% of child abuse allegations had been timely referred to the CASIU by the Department's units. Clearly, if CASIU is not provided notification in a timely fashion by the facility, any subsequent response time by the investigative unit is not going to be within expected parameters for the initiation of the investigation. As stated in the DOJ report, more needs to be done to ensure facilities recognize what incidents need to be reported to CASIU and when.

headquarters where the Internal Affairs unit is housed. This makes some sense for CASIU, placing them geographically closer to most of the juvenile camps and halls, but this physical separation from Internal Affairs magnifies the cultural and training gap between the Department's two primary units for internal investigations. For example, CASIU interacts regularly with police departments and the District Attorney's office. IA does not. The overall effect is that IA investigators and CASIU investigators employ different styles of investigation and do not document their investigations in the same manner or to the same standard.

CASIU's investigation files are generally well organized and the summaries are clearly formatted and reasonably well-written without resort to an excess of obscuring police jargon. One exception is the investigator's work log. These logs, which should indicate when various tasks were done and should explain any reasons for delays in the progress of an investigation, were often missing or incomplete. Keeping accurate investigator logs may seem like a housekeeping matter, but they provide supervisors and any other reviewer of the case with a valuable tool for gauging the skills of individual investigators and the dynamics of case flow within the unit. Investigators were generally adept at identifying relevant witnesses and spotting key issues. The fact that written transcripts of all interviews are prepared is another positive feature of CASIU investigative files. In general, investigators express a clear understanding of the objectives of the investigations and the standards of the unit. Nevertheless, some of the investigations fall below the mark to which the unit aspires, in both quality and timeliness.

A. Timeliness

Child Abuse investigations tend to start quickly but slow down significantly prior to completion. A random sample of fifteen recent CASIU substantiated investigations indicated an average start to completion date of 204 days. This period covered the time from the date when the unit is notified of the incident requiring investigation to the date the unit sends the finished case file to Performance Management. It is important to note that Child Abuse cases in the Probation context are inherently labor intensive. The triggering incidents tend to take place in dormitories or other settings where there are many witnesses. Each witness, especially juvenile detainees, must be interviewed without delay. Typically every staff member on the shift in the

unit is also interviewed to secure a statement as to what, if anything the staff member witnessed. This is a reasonable precaution, even with staff members who were not near the incident location, in order to avoid surprises later in the investigation or appeal process. The previously agreed upon time limit for CASIU cases – 45 days – is clearly an unrealistic goal for ensuring consistently good investigations of this type of case. That being said, the 200-plus day average that we discerned is too long for completion of internal cases. The sources of these delays can be attributed to minimal training, high turnover, lack of a middle management mentor/editor echelon, poor case tracking, and unrealistic time goals. In fact, the 45 day goal set by the Department for completion of internal investigative cases has the opposite effect of ensuring timely completion of cases. Because the 45 day goal is entirely unrealistic and is almost never met, the result is that there is no internal deadline that is either expected or enforced.

B. Quality

As noted above, case investigations were usually well-defined and vigorously pursued. In some instances, however, we noted that important issues or witnesses had been ignored. As noted in the first case example below, some of those were conscious, but misguided decisions. Other shortcomings were investigator-specific. In some instances, unit managers indicated that investigators who had not been able to adapt to the rigors and standards of investigating fellow employees had been asked to leave the unit. This perspective is a laudable attempt to maintain high standards within the unit, but of course contributes to the training and continuity problems attendant on high turnover.

Each case entails its own challenges and investigative issues. The cases below, however, illustrate some of the more prominent challenges and shortcomings.

1. Failure to Hold All Involved Employees Accountable

A minor at a camp refused to comply with a probation officer's instructions. The staff member lost his temper, attempted to punch the minor, pushed the minor in the head, causing him to fall and kicked him at least once before a fellow probation officer intervened and took the

employee into another room until he calmed down. The two probation officers talked it over and agreed not to report the incident. The first probation officer then apologized to the minor. The minor alleged that the probation officer also tried to persuade him not to report the incident. Two days later the minor filed a complaint about the incident. CASIU was notified and commenced their investigation, visiting the camp several times over the next two months and interviewing a large number of wards and staff members. The first probation officer admitted pushing, though not hitting the minor and failing to report the use of force. The intervening probation officer stated that he saw his colleague attempt to punch the minor but that he missed. The witness probation officer further stated that he observed his colleague shove the juvenile's head with his hand then kick him on the ground at least once. The witness probation officer admitted that he, too, had not reported the incident. CASIU completed its investigation and determined that the allegations that the officer who used unreasonable force on the minor had violated Department policy were substantiated. The investigative unit forwarded the case to Performance Management for a final recommendation as to the level of discipline. Performance Management recommended discharge.

The CASIU investigator did not consider the witness officer who intervened to be a subject of the investigation, potentially subject to discipline for conspiring to not report the incident. This was a conscious decision that was condoned by the investigator's supervisors who viewed it as a necessary concession in pursuit of the main actor in the incident. Nor did the Performance Management unit raise any challenge to this decision, although the head of PM later remarked that she was surprised that the witness officer was not administratively charged as well.

This case example indicates that Performance Management, contrary to their doctrine, is not consistently reviewing investigative decisions prior to finalizing the case. At a minimum, it shows that there is no coherent doctrine of accountability to which the Department uniformly subscribes. The Department should state clearly through its actions as well as its policy that truthful reporting of potential misconduct is an obligation of every employee and those who violate such dictates will be held accountable.

2. Failure to Use Video Evidence During Subject Interviews

After showers, a minor refused to accept new underwear or comply with the order to get on his bed. A probation officer sprayed the minor with O.C. spray then pinned him on the floor with his foot and handcuffed him. The probation officer falsely reported that the minor had attempted to attack him. Surveillance video in the facility showed that the minor had been passive and non-combative and contradicted the subject probation officer's version of the incident. The CASIU investigators interviewed all relevant witnesses prior to interviewing the subject, then during the subject interview, declined to confront him with the video evidence and ask for his explanations. This type of confrontation is a common investigative technique and may produce either candid admissions from the subject, further obfuscations which are easily disproved or reasonable explanations that shed a new light on the incident and change the perspective of the investigators. To afford a subject officer the opportunity to respond to seemingly contradictory evidence advances the interests of due process and provides the ultimate decision maker a more complete evidentiary palette from which to make that decision.

In another case, the Child Abuse investigators made a similar decision when it came time to interview the subject. In that case, a female probation officer was accused of having sexual relations with a detained minor. The probation officer denied that she had sexual contact with the minor or had any special relationship with him. Video evidence showed her hand feeding the minor, entering a closed room alone with him and corroborated many details provided by the minor. Video evidence also captured the probation officer boasting about having sex on duty with other staff members, another clear violation of Department policy. Again, the investigators did not confront the subject with these videos, foregoing the potential opportunity for admissions from the subject, unpremeditated defenses and a more complete evidentiary record.

In addition to providing the eventual decision makers with a more complete record, confronting the subject officer in an interview setting may well cause the investigation to be resolved earlier in the process. For example, if the subject officer is confronted in the moment with video evidence and is unable to satisfactorily explain his or her actions, the Department may be in a stronger position to suggest to the employee to recognize the fruitlessness of further

challenges to the allegations. An earlier disposition in which the Department member recognizes the seriousness of his or her actions and then voluntarily separates from service eliminates the need for resources that will be needed should challenges continue through the various "after discipline" grievances.

3. Incomplete Interviews

CASIU investigated an incident that had two distinct aspects of misconduct, (1) a female staff member allegedly shouted obscenities at minors and (2) a male staff member picked up the female staff member off the ground during his attempt to question and counsel her about the incident. The investigator inquired in detail about the interaction between the staff members subsequent to the shouting incident, but asked the subjects and witnesses almost nothing about the obscenity-laced shouting incident itself. As a result, the DOJ consultant determined that some of the interviews were not complete and that witnesses needed to be re-interviewed to address the shouting component.

4. The Routine Use of Affidavits that Are Harmful to an Objective Fact Gathering Process.

In one reviewed case, immediately after a force incident where a minor may have been kicked by a staff member while in handcuffs, the minor refused to talk about the incident or to write an affidavit. CASIU investigators rolled out to the scene and interviewed the minor who cooperated with them. Two days later the facility staff instructed the minor to write an affidavit about the event. Facility staff had to assist the juvenile with the writing because he had pre-existing writing and vision problems. At this point in the investigation, the affidavit was of no evidentiary value and, under the circumstances, undermined rather than contributed to an objective fact gathering process. Facilities routinely request their wards to prepare affidavits in virtually all alleged child abuse cases as an outdated vestige of a system in which no interviews were conducted and decision-makers relied entirely on affidavits to formulate their credibility decisions. Affidavits suffer from many defects, particularly in the way in which they have been traditionally acquired in Probation facilities: they rely entirely on the writer's understanding of

what the relevant facts or scope of inquiry is; they do not provide the opportunity for follow up questions; they will be necessarily limited by deficient writing skills of the affiant; and they provide the opportunity for "coaching" or "getting stories straight." With the advent of interviews as the center piece of fact collection in child abuse investigations, the parallel preparation of affidavits actually undermines an objective fact gathering process.

5. Unexplained Delays in Investigative Process

In one case, a camp probation officer sought to chastise a minor and get his attention by grabbing the mattress from the cot where the minor was lying and jerking it away. The minor fell to the floor. Child Abuse investigators rolled out to the camp the day after they were notified. They interviewed most witnesses within a week of their notification and completed all interviews within a month, but the lead investigator then took eight more months to complete the investigative report and submit it to his manager. The manager took another two months to finalize the findings and submit the case to Performance Management for a discipline recommendation. Less than a month remained before the expiration of the POBR one-year statute of limitations. The Letter of Intent to discharge was served on the subject officer one day before the statute of limitations would have expired.[3]

This case is not a unique example of slow case progress within CASIU. Generally, investigations conducted by the unit commence rapidly with a roll out to the scene within a day or two of notification of the incident. Investigators devote long hours and interview large numbers of witnesses and potential witnesses within the first few days or weeks of notification. Then the pace slows considerably. Collection of records and documentation and the creation of the case summary tend to take a few months. Evaluation and approval of the work product and findings by the head of the unit often take another few weeks. The unit managers candidly admit that this frequent slow down cannot be primarily attributed to either the need to wait for written transcripts or the editing feedback and occasional follow up requests provided by the DOJ consultant. The delays rather are largely an outgrowth of the need for investigators to juggle

[3] Generally speaking, under state law, in any administrative investigation involving a peace officer, public entities have one year to complete the investigation and notify the employee of their intent to discipline the employee.

several cases and prioritize the more urgent or older ones, resulting in a continuous cycle of newer cases being placed on the back burner until they germinate into older cases needing attention.

6. Failure to Locate Potential Key Witnesses

A minor informed his parents that a staff member had placed him in a choke hold during his orientation at the juvenile hall and that he had almost passed out. The parents immediately informed a facility manager of their son's allegation. The manager agreed to look into the matter. Three months later, having heard nothing, the parents wrote the state Department of Justice and informed the Probation Department that they had done so. At that point, the incident was referred to the Child Abuse unit by the facility. CASIU investigators rolled out and interviewed a number of witnesses and the victim, but they failed to locate the two other juveniles who had proceeded through orientation with the juvenile victim and been present when the incident occurred. There is no evidence in the file indicating that the lead investigator attempted to use the juvenile hall's intake records or any other means to try to determine the identity of these two eye witnesses. The case was deemed not substantiated, but in the course of interviewing witnesses, the investigator came across another juvenile who alleged that he had been attacked by the subject staff member during orientation on a separate occasion. This new information should have provided added incentive to attempt to ferret out the two key witnesses to the original incident. Additionally, it should also have spawned a separate investigation, which it did not.

The problems with this case are partially attributable to the low skill level of the investigator and the late start imposed by the facility's failure to refer the case in a timely manner. Additionally, CASIU managers should have documented attempts to locate the two critical juvenile witnesses.

As noted above, the Department of Justice has found systematic failure in the inability of facilities to identify and timely refer child abuse allegations to the investigative unit. There is no evidence that the referral breakdown in this case was used as a vehicle for training, counseling,

or holding the facility manager accountable for the failure to refer the allegation in a timely manner to investigative authorities. This narrow orientation within the internal investigative units and the Department as a whole unnecessarily circumscribes any knowledge gained by the internal investigation and issues identified therein. Our review indicates that the Department views the internal investigative process as narrowly focused on policy violations. While certainly the investigative process must address those questions, our experience is that any investigative fact finding can and does point to systems issues and failures that should be exported to Department managers to be addressed more broadly. For example, if, as in this case, the internal investigation pointed to a failure of that facility to understand what cases need be referred to the investigative unit and when, then that observation should be brought forward to Department managers to address in other ways. Internal investigations tend to bring to the investigators' attention a whole host of systems or supervisorial issues. It is incumbent upon any effective Department to take advantage of that fact finding not simply to hold a policy violator accountable but to improve the systems and supervision of the Department as well.

C. "Unsubstantiated" Cases

Under the current protocols of the Probation Department, once the fact finding has been completed, there is a determination whether the evidence indicates a "substantiated" finding, i.e., a violation of Department policy or an "unsubstantiated" finding, whereby no policy violation is proven. The decision to determine whether a case is substantiated or unsubstantiated rests initially with the investigator.

Currently, only case investigations resulting in a substantiated finding are forwarded and reviewed by Performance Management and the Bureau Chief or other executive decision-maker. Unsubstantiated cases remain in the CASIU file cabinets and undergo no further scrutiny. There are good reasons to have a Department manager outside of the Child Abuse unit review unsubstantiated cases. First, these case investigations may exemplify the strengths or weaknesses of the investigative unit as much as substantiated cases do. Second, as noted above, these investigations are a valuable window into problems and system failures throughout the Department. Upper management should take advantage of this information, often obtained

through the expenditure of large amounts of Department resources and effort. In addition, a secondary and more detached Departmental review of the unsubstantiated case provides the appropriate quality control and second opinion regarding whether the evidence does support an unsubstantiated finding. Finally, providing facility managers knowledge about every investigation, even those ending up unsubstantiated allows them to identify patterns of performance of employees under their supervision. For example, when a manager receives three unsubstantiated cases involving an employee with the same allegation, the information presents a potential red flag regarding problematic behavior. If those three files simply collect dust in the drawers of the investigative unit, important knowledge is lost to those most responsible for ensuring professional performance of the subject employee.

The case example of the parents' complaint discussed above proves the point about important information being learned by Bureau review of unsubstantiated cases. The late referral that hampered the investigation in that case should become known to the facility leader so that the lack of appropriate referral could be independently addressed. The fact that during the investigation, the employee was named in another allegation of misconduct should be considered by the Bureau Chief and instigate a discussion about whether to commence an additional investigation. Finally, it was imperative that the Bureau Chief be funneled knowledge that two separate minors had alleged similar misconduct against the employee suggesting a need for intervention or close monitoring of this employee. For unsubstantiated cases to die at the investigative unit prevents the facilities managers from being informed about matters learned during every internal investigation, substantiated or not. (See also our discussion below of unsubstantiated cases in the Internal Affairs unit.)

D. Feedback Loop to CASIU investigators

As noted above, after an investigation is completed, it is forwarded to the Performance Management unit for review, potential modification, and a discipline recommendation. While at times this process results in a quite different product, there is no feedback loop in the process designed to educate investigators on how the case is resolved. Thus, the investigator is not informed about whether the misconduct charges are subsequently modified by decision-makers,

whether evidence the investigator considered important is relied upon, and/or whether the decision-maker found holes in the investigation. This type of feedback is essential to improve the investigative process. The current system does not envision a method by which investigators can be provided this information, for example the Performance Management unit's database is not accessible to personnel from the CASIU. As with other internal investigative functions of the Department, units tend to work in silos, yet their ultimate product is so reliant on each other that better systems integration and feedback loops are vitally needed.

E. Recommendations for CASIU

The issues illuminated by these and other CASIU cases examined by OIR fall into three main categories—insufficient training and experience, lack of in-unit substantive review, and lack of Department-wide tracking systems. As such, we believe many are amenable to improvement through achievable, near-term changes:

- **Recommendation 3 -- Facilitate investigator access to case results and other feedback.** Provide an integrated feedback loop between PM personnel, decision-makers, and investigators so that each can benefit from each other's experience and expertise.
- **Recommendation 4 -- Provide an experienced review mechanism to ensure thorough and objective investigations.** As noted above, on at least some cases, a DOJ consultant was able to provide quality control and guidance, but his jurisdiction and time was limited to certain cases. Moreover, the consultant was not on site and therefore not as easily accessible for consultation and guidance in fast developing scenarios. Moreover, reliance on DOJ to provide this oversight means that any quality control assurance would be tied to satisfying the dictates of the settlement agreement and might expire when that outside oversight goes away. We suggest that the quality control and oversight for investigations be sufficiently robust so that thorough and fair internal investigations are ensured for all administrative investigations and that the oversight entity should be collocated with the investigative unit to further foster collaborative relationships and be

available for consultation during rapidly developing scenarios.

- **Recommendation 5 -- Provide adequate focused training.** CASIU investigators are sworn personnel but do not usually have extensive experience with law enforcement oriented investigations. While as noted above, CASIU investigators receive a week of training yearly to comply with state standards for peace officers, any training of direct relevance to their job is not routinely ensured. CASIU investigators should receive continual training in basic law enforcement detective skills as well as training tailored to internal investigations of peace officers. There are resources available locally that provide such training on a recurrent basis.
- **Recommendation 6 -- Eliminate the affidavit procedure.** As detailed above, directing minors involved in an alleged child abuse incident to produce written affidavits is a counterproductive vestige of the past. The procedure is superfluous now that the Department has a dedicated child abuse investigation team that is capable of interviewing the minors within hours or days. In situations where a more immediate statement from the minor is deemed essential, the affidavit procedure should be replaced with an audio or videotaped interview conducted by a supervisor at the hall or camp facility.
- **Recommendation 7 -- Uphold a consistent principle of accountability and base line standards of integrity.** In contrast to what occurred in the case example above, employee witnesses who fail to report important events such as inappropriate force must be held accountable for their failures, even when they admit such failures. When an employee eventually recognizes the need to report force and cooperate in an internal investigation, this can significantly mitigate the violation, but it cannot cause that initial failure to be entirely ignored or vitiated.
- **Recommendation 8 -- Refer unsubstantiated cases for review and tracking.** Cases deemed "unsubstantiated" by CASIU should be reviewed by the requesting Bureau Chief or another executive of the Department to confirm the Child Abuse unit's conclusions and in order that Department management can make use of the information revealed by the investigation or obstacles encountered in the course of the investigation. Unsubstantiated cases should also be entered into the

Department's centralized database.

- **Recommendation 9 – Devise ways to incentivize Probation Department employees to aspire to conduct internal investigations.** As noted above, while the unit has only been in existence a few years, it has experienced a high degree of turnover. The Department should consider devising ways to attract its "best and brightest" to a stint as an internal investigator. Moreover, those who do well in such an assignment should be rewarded through promotional and career advancement within the Department. The Department should recognize the importance of having top quality personnel perform these important functions and devise ways to ensure that it will attract and retain such individuals within the internal investigative unit.
- **Recommendation 10 -- Consider merging CASIU with the Internal Affairs unit.** The two units are currently small and have very little flexibility to adjust to the challenges of complex or high priority cases that may come in the door. The primary benefit that would flow from combining the units is that managers would have a larger skill and talent pool to draw from in order to respond to high priority or extra sensitive cases. Most importantly, with integration and co-location the supervisor over both units would be able to more efficiently supervise those units, instead of shuttling from one venue to the next.
- **Recommendation 11 -- Improve availability of video evidence.** Only a fraction of the Department's juvenile detention and residential treatment facilities currently have recordable video surveillance installed. Some of the most significant cases we reviewed where the evidence of misconduct was compelling came from those locations and the evidence sustaining the case was largely derived from the existence of the video evidence. Similar allegations of misconduct arising from the many camps and halls where there is no video capability are much harder to effectively prove or disprove. It is reasonable to infer that even any significant increase in video cameras throughout the juvenile facilities would improve the Department's ability to ferret out misconduct while disproving spurious allegations.

- **Recommendation 12 -- The Department should modify its meaningless forty-five day internal deadline** for completion of investigations, devise a more reasonable deadline and hold investigators and reviewers to the new deadline.

VI. Internal Affairs Unit

In total, OIR reviewed fourteen Internal Affairs investigative files, in depth, for content, timeliness, methodology and strategy. Eight of those investigations resulted in "substantiated" findings. The remaining six were determined to be "not substantiated." We reviewed another seven files primarily for timeliness. The investigations involved subjects that were both sworn personnel and non-sworn personnel. As with CASIU, the focus of this review was to provide an assessment of the timeliness and quality of the Department's internal investigations, to identify systemic issues and to make recommendations aimed at improving the investigative process. As with our experience with CASIU, while we performed our review, we received an unqualified level of cooperation from the Department's Executive Leadership and the Internal Affairs group. We were impressed and appreciative of the unfettered access to documents and individuals who took the time to provide their insights into systems, practices, and particular cases. The willingness to engage in dialogue with us on these matters enhanced our ability to identify systemic issues set out here and \make recommendations aimed at improving the investigative process.

The unit is staffed with six investigators[4], a senior clerk, one administrative manager (also referred to as the "supervisor"), and a head manager. On an as needed basis, the IA manager occasionally assigns herself and the supervisor complex or "high profile" investigations.[5] The head manager's primary responsibility is to manage and monitor the daily operation of the unit. The supervisor shares some operational responsibilities but her primary role is to provide guidance to the six investigators, review all completed investigations and serve

[4] Five of the six investigators in the unit are awaiting approval from the CEO's office to be promoted to the item "Administrative Investigator." Currently, those five are in the following job classifications: Contract Program Auditor; Senior Department Personnel Technician; Administrative Services Manager; Senior Detention Services Officer; Deputy Probation Officer II.

[5] A "high profile" case is one where the subject of the investigation is a high-level Probation Department employee (e.g. Bureau Chief, Director, Deputy Director.)

as the "quality control" function for the investigations. Neither the head manager nor the administrative manager position is filled by sworn personnel.

Two of the six current IA investigators are sworn peace officers. Training for all the investigators has been limited. The two most senior investigators (one hired in early 2006 and the other in early 2007) have attended a five-day LAPD Internal Affairs training course. The rest of the investigators have attended seminars on generic topics. Because of apparent budget constraints, the last time any of the investigators attended any training whatsoever was in late 2008.[6] Currently, the investigators handle between six and eight active administrative cases at any given time. Collectively, the unit initiated 114 case investigations in 2009. In 2010, the unit has opened 39 cases at the time of this writing.

The IA manager keeps a year-by-year log of all IA investigative cases. The log records the date an IA request was made, the nature of the alleged misconduct, when a case was assigned to an investigator and the incident date, among other entries. As mentioned earlier in this Report, the unit now records the Department "knowledge" date for statute of limitations purposes (i.e., POBR). However, to ensure that POBR dates are accurately recorded, the Department should clearly establish which of its Department personnel is "authorized to initiate an investigation." We discovered no consensus throughout the Department as to which ranks or job titles were so authorized.

Like the CASIU cases, the IA investigative files are orderly and generally contained referenced documentary evidence such as interview transcripts, tape recordings and relevant policies. Investigator activity logs, however, lacked detailed entries of ongoing case activity or failed to note reasons for lengthy time spans of inactivity. As discussed in detail below, we also detected bottlenecks in the investigative process and deficiencies in the quality of the investigations.

Currently, the Internal Affairs Unit occupies a converted, windowless warehouse building with exposed indoor pipes, located behind the Probation Department headquarters. There is no

[6] Budget constraints also resulted in cell phones being taken from investigators; they must share one County-vehicle and do not have lap tops available to them to conduct work in the field.

conference room or any secure interview rooms in the IA office. Subject interviews are conducted at headquarters in Bureau Chief offices which are located in a separate building on the complex. Witness interviews have historically taken place at witness work locations, witness' homes, coffee shops, restaurants and, on occasion, even inside vehicles.[7] In attempting to review one taped witness interview, we had a hard time discerning the witness' responses because of all of the background noise presented by the venue in which it occurred. The potential for members of the public to overhear confidential conversation is an obvious risk when conducting interviews in public places. We are pleased to report that approximately two months into our review, the Department - improved the situation by drafting a new Directive mandating that interviews must take place in a Probation facility or County building or at a secure location away from members of the public.

The IA offices feature partial walls and no sound insulation. Investigators and supervisors cannot discuss confidential matters without fear of being overheard in adjacent offices occupied by personnel from another Department unit. The Department has recently acknowledged the vulnerability of the current office space and has put into motion an effort to secure the office space for strictly IA use. In the meantime, with this conspicuously inadequate facility, the Department runs the risk of sending a message that it places little importance on the internal affairs function.

A. Timeliness

In our audit of internal affairs investigations, we noticed some lengthy periods of inactivity and a generally slow progress between the date of the incident or Department knowledge of alleged misconduct and case completion. On average, it took 202 days from the time a request was made for an investigation to the date the investigation had been concluded. Similar to what occurs at the conclusion of a CASIU investigation, IA sends a completed case file to Performance Management for final disposition. As explained in more detail later in this Report, when "substantiated" IA cases are sent to Performance Management we noticed a

[7] On one occasion, an investigator conducted an interview inside a vehicle because the public meeting place was closed at the time the interview was scheduled. On another occasion, an investigator conducted interviews inside the vehicle because she was in a perceived unsafe neighborhood, uncomfortable entering the witness' home and was concerned about her safety.

common theme of cases suffering from another period of unexplained inactivity.

With regard to the investigative stage, we dissected the documented case activity (i.e. date of complaint, date of IA requests, date case was assigned to an investigator, etc.) in order to learn where IA cases became "stuck" in the process, for lengthy periods of time. We identified the following bottlenecks:

1. Delay Between Date of Incident/Complaint and IA Request

The IA unit opens an administrative case when a Department employee authorized to initiate an investigation (typically, a Bureau Chief) sends a written request to the IA manager to investigate an allegation of misconduct. In the majority of the IA cases we reviewed, once the Department learned of alleged misconduct, IA was notified of the incident fairly swiftly. There were two cases, however, where there was a significant delay between the date the Department learned of the alleged misconduct and the time an IA request was formally made.

In one case, an employee submitted a "Special Incident Report" ("SIR")[8] alleging that a subordinate was unprofessional, yelling at him and refusing to leave his office when asked. One month after the complaint was made, the Bureau Chief requested, in writing, that an IA investigation be initiated. It was unclear from the investigative file whether the one month delay before the investigation was requested was due to inactivity at the Bureau Chief level or at someplace else in the Department's hierarchical chain. More frustratingly, the lack of any document trail made it impossible to learn precisely where the bottleneck occurred in this case.

In another case, there was a forty-one day lapse between the time the alleged misconduct was reported and an IA request was made. In that case, an employee submitted an SIR to his supervisor reporting that a probationer told him that his girlfriend was a sworn officer in the Probation Department and that she was pregnant with the probationer's child. The next day, via e-mail, the supervisor immediately reported the allegation (attaching the SIR) to a high ranking management employee who, after an unexplained 40 day delay, finally requested that IA initiate an investigation. These early delays frustrate and undermine the investigative process.

[8] SIRs are used Department-wide by employees to report alleged misconduct.

As these cases illustrate, there should be a clearly defined Department expectation that persons authorized to initiate investigations must act swiftly when receiving allegations of misconduct. In addition, there should be safeguards in place so that allegations of misconduct do not languish in the process, particularly at the initial stage.

2. Delay in Assigning Cases to Internal Affairs Investigators

When Internal Affairs receives a request to initiate an investigation, the case is then assigned to an investigator. In the cases we reviewed, we noticed a chronic delay between the date of the IA request and the date the case was assigned to an investigator. This identified bottleneck further interrupts and disadvantages the investigative process. In one of the most extreme examples, a one hundred and thirty-one day delay occurred between the time IA received a request for investigation and the case was actually assigned to an investigator. In that case, the subject employee allegedly had an inappropriate relationship with a clerical contract worker and, without proper authority, reassigned her to a more attractive position within the Department. The delay in assigning the case was apparently caused by a particularly heavy backload of work and a period of indecision as to whom to assign the case because the subject was a high-ranking official in the Department.

Indecision caused another lengthy delay in a case where the subject was a high-level executive in the Department. In that case, an anonymous letter, alleged that an executive knew (and failed to report) that his daughter, a sworn officer with the Department, had an intimate relationship with a former minor client and was pregnant with his child.[9] The unit initially referred the case to ACOCI[10] for guidance on whether IA should investigate the allegation. Five months later, the ACOCI responded and directed IA to conduct the investigation. Five months after that, the case was assigned to the IA supervisor. In total, there was a three hundred and

[9] The executive's daughter was discharged at the conclusion of her case. The allegations against the executive were not substantiated.

[10] ACOCI refers to the Auditor-Controller's Office of County Investigations ("ACOCI") Fraud Division. ACOCI coordinates and investigates criminal and administrative investigations of alleged fraud and misconduct by County managers, employees, contractors, and vendors. Considering the nature of these allegations, and the cases that are handled by ACOCI, we cannot fathom why this particular case was ever referred to the Auditor-Controller's Office for review..

eleven day delay from the time the anonymous complaint was received to the time the case was assigned to an IA investigator. The case was investigated in just one month—sparing just a few weeks before the one year statute of limitations date was due to expire.

The following chart shows, in the cases we reviewed, how many days elapsed between the date the request to investigate was made to IA and the date an investigator was assigned the case.

Case	Days Between Request & Assignment
1	38 days
2	25 days
3	17 days
4	131 days
5	8 days
6	18 days
7	42 days
8	28 days
9	1 day
10	6 days
11	35 days
12	6 days
13	39 days
14	311 days
15	6 days
16	36 days
17	12 days
18	28 days
19	28 days
20	9 days
21	50 days

3. "Plan of Action" Forms Cause Further Delay

After an investigator is assigned a case, he or she submits a "Plan of Action" form to the manager or supervisor. On the one-page form, the investigator describes how he or she plans to pursue the investigation. This step was integrated into the investigative process to prompt investigators to open the file and start "thinking" about their cases. There is an area on the document where the manager or supervisor can comment and provide further guidance to the investigator. The purpose of the form may have been well-intended but it had the unintended consequence of creating another bottleneck in the investigative process.

After being assigned a case, the investigator is afforded two work weeks to submit the form for approval. Many of the forms were submitted by investigators on or before the deadline. However, in one case an investigator's "plan" was approved forty-eight days after the investigator was assigned the case.[11] This case had already languished for thirty-one days because of an unexplained delay between the time the Department learned of the alleged misconduct and the date the IA request was made. As a result, before any work had begun on this case, there had been seventy-one days of investigative inactivity.

In most cases we reviewed, the investigator's "plans" were generic and guidance was scant. For example, in one "plan" the investigator wrote simply that he planned to interview the subject and witness and "determine if there are additional witnesses." It was approved with no additional comments or guidance. In another "plan," an investigator wrote, "Set up and review file; pull master personnel and background files; analyze allegations and possible violations; identify evidence and witnesses; schedule interviews." Again, after review of this generic plan, there was no specific documented direction provided to the investigator.

A "plan" can be a helpful tool for an investigator and, indeed, a conscientious investigator may regularly create a "to do" list for each case he or she handles. We do not believe, however, that it need take two weeks to craft a plan or that a formal written process is an

[11] This case is referenced earlier in this Report and involved allegations that a subordinate was unprofessional and created a hostile work place.

efficient way for supervisors to provide guidance. Our review of the current "plan" component of the process as applied to the actual cases appeared to slow the start of the investigation down without providing any tangible benefit. We learned just prior to writing this Report that, as a result of our questioning the usefulness of the "plans," Internal Affairs has re-evaluated the tool and decided to dispense with the "plan" requirement for future forthcoming investigations.

4. Lengthy Time Spans Between Date of IA Request and Case Conclusion

As mentioned above, IA cases took an average of 202 days to complete. The cases we reviewed were not particularly complex and did not involve an excessive number of subjects or witnesses to be interviewed. Still, cases inexplicably languished in the unit before being sent to Performance Management for final disposition. For example, in one case, a sworn employee admitted in his interview that his brother-in-law was living with him and that he was aware of his parolee status, a clear violation of Department policy. Even after the admission, this "open and shut" case remained at the unit—with no further investigative activity—for approximately 133 days before it was sent to Performance Management. Approximately ninety days of that delay was attributed to the time it took for the closing case summary to be prepared and submitted to the supervisor. The remaining delay was attributed to the time it took the supervisor and manager to review and approve the case before further processing. Currently, the case is still pending at the Performance Management unit with a statute of limitations fast approaching.

Apart from the delay issue, the case raises the question whether a formal investigation could have been avoided entirely. In this case, and others like it, where you have a clear violation and a subject readily admitting to his or her wrongdoing, the Department could benefit from an early intervention mechanism to resolve these matters, reaching a swift disposition and conserving investigative resources.[12]

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[12]The Los Angeles County Sheriff's Department's disciplinary process has such a mechanism. Where the facts are not disputed, the misconduct is of low to moderate seriousness and the subject takes full responsibility for his or her actions, the Sheriff's Department utilizes a Pre-Disposition Settlement Agreement. This tool can be a time-efficient and fair alternative to resolving a matter and obviate the need for a conventional investigation.

In another case, which is discussed above, a subject (an executive accused of abusing his authority and exercising preferential treatment) was interviewed eleven months after the IA investigation was initiated. In total, it took four hundred and four days to complete the IA investigation and determine that the allegations were "unsubstantiated." Though not reflected in the file, we learned that the subject was a sworn employee. Thus, had the findings been "substantiated" the Department would have lost its opportunity to hold that employee accountable.

B. Quality of Investigations

In our review of the quality and content of IA cases, we focused on whether the investigation was fair, thorough and effective. We analyzed the evidence and evaluated the investigative findings. We also reviewed transcripts and compared those for accuracy to the investigative case summaries. The following is a list of areas we identified as deficiencies in the quality of the investigations.

1. Improper Handling of Complaint

This case (which was cited earlier) was initiated by a Director who reported that a subordinate yelled at him and refused to leave his office. The designated Bureau Chief received the SIR and requested that IA investigate the incident. However, the Bureau Chief, then instructed the unit to make the complainant the subject of the investigation, stating, "Based on my knowledge of prior relationship difficulties between [the Director], a past secretary and some of his staff....I have some concerns about [the Director's] ability to handle situation in a fair and impartial manner particularly after reviewing some recent performance evaluations he submitted."

There is no evidence in the file that IA challenged the instruction. The unit investigated whether the Director "treated his subordinate unfairly." During the investigation, the subordinate (who was advised of his Administrative rights as a witness) admitted he "raised his voice" at the

Director and refused to leave the office. Ultimately, the allegations against the Director were not substantiated which appears to be the appropriate result.

A threshold question was whether there was a reasonable basis to make the Director the subject of his own complaint. The instruction from the Bureau Chief was conclusory and lacked specific justification. The Bureau Chief's rationale for flipping the focus of the case on the Director gives the appearance of manipulating the administrative discipline system to try to solve a managerial problem.

2. Conflicting Affidavits

In this case, a sworn employee was alleged to have permitted and watched three female minors swim nude or partially unclothed in a facility swimming pool. The employee admitted allowing the minors to swim in the pool with their clothes on but denied knowing or observing anyone take their clothes off. At the outset of the investigation, the minors were asked to draft affidavits describing the alleged incident. In total, each minor completed three affidavits. Two separate affidavits were drafted and signed by each minor one day after the Department learned of the allegation. The final affidavits were signed by each minor on the day of the minors' taped interviews. All of the affidavits are terse but they conflict with one another in material ways and raise questions about the veracity and credibility of the affiants.[13]

For instance, as shown below, in her first affidavit, Minor 1 states that she swam naked twice but does not mention the subject's presence. In her second affidavit (signed the same day) she states that she took her clothes off in the pool once and does not believe the subject saw her nude.[14] However, in her third affidavit (which was written immediately after her recorded interview had concluded) [15], Minor 1 changes her story and writes that the subject saw her and the other two minors nude. However, neither of the other two minors ever state in their affidavits or recorded interviews that they swam nude. Minor 2 writes that Minor 1 was the only

[13] The quoted text in the chart below is taken from portions of the minors' affidavits.
[14] There are no time stamps on the affidavits that were signed on the same day. For the purposes of this analysis, we assumed that the affidavit that contained more details was the second one drafted by Minor 1on that day.
[15] Minor 1 was interviewed approximately one month after she wrote her first two affidavits.

one that was "totally naked" and that the subject sat in a chair "the entire time facing away from the pool."

"The two times I went swimming, I went naked. The third time...I did not go in the pool."	"As we were going swimming I [minor] got into the pool, with a shirt and panties and bra. This was on one occasion...I don't think [the subject] seen me take my clothes off in the pool."	"[The subject] was aware of me and two other minors nude in the swimming pool...."
"I got in the pool with my t-shirt, bra, and underwear on, but I took my shirt off once I got in the pool. Before getting out, I put my shirt on while still in the pool. [The subject] sat in a chair the entire time facing away from the pool. [Minor 1] got out of the pool totally naked."	[Minor 1] got out of the pool still totally naked and put her clothing on once on the deck of the pool. [The subject] sat in a chair the entire time in the southwest corner of the pool area, facing north."	"Refer to my statements made on tape."
[The subject] let us go swimming. So I did. I had shirt, bra and shorts. I was not paying attention to her [minor 1] while she was swimming, So I'm not sure."	"Yeah he let us go swimming But I went swimming and I wasn't paying any attention to her so I'm not really sure."	"Refer to my statements on tape."

It is unclear why the minors were asked to write three affidavits each and why they wrote two in one day. What is clear, however, is that the affidavits only highlighted the potential credibility issues. These issues could have been clarified during the minors' interviews, but the investigator did not confront the minors with their prior statements. The recorded interviews provide a better picture of what may have occurred on the day of the incident but weighed against the existing conflicting affidavits, they did little to prove or disprove the allegations.

Minor 3's affidavits reveal nothing about the core issue. They do suggest, however, that the sworn personnel who signed and "verified" the affidavits asked her a specific question or questions about one of the minors. If there is going to be a dialogue between a minor and a

member of the Department regarding an investigation, then that conversation should be in the form of a recorded interview conducted by an investigator.

Despite these unresolved issues, the Internal Affairs unit, with approval from unit's Director, recommended that the allegations be sustained and the case was forwarded to Performance Management which initially deemed the case a discharge. After a PM advocate reviewed the case more closely, however, the proposed discipline was reduced to a five-day suspension for neglect of duty and poor judgment. There was no documentation in the investigative file or in PM records of the basis for the reduction. We were informed from oral inquiry that the discipline was reduced because of "credibility" issues with the minors.

As we discussed above in Section IV. B 4, and as this case further demonstrates, rather than meaningfully contribute to fact gathering, the Department's process of obtaining affidavits actually works to undermine the integrity of the investigative process. The result in this case also highlights the lack of an effective quality control function at the investigative unit. IA's failure to "catch" the issues in a timely manner prevented them from weighing the evidence accordingly.

3. Failure to Interview Relevant Witnesses

A non-sworn contract employee was alleged to have had an inappropriate relationship with an adult female probationer. The subject admitted to knowing the female (who was also the complainant) but claimed he was unaware that she was on formal probation.[16] Here, the crux of proving a policy violation depended on the proof that the subject knew of the female's probationer status. Based on the statements given by both the complainant and the subject, the investigator recommended a "substantiated" finding which was approved by the IA Manager and forwarded to PM for final disposition. However, this was, essentially a "he said, she said" case. The case could have been more thoroughly investigated and potentially made stronger if the investigator had conducted additional follow-up on another claim made by the complainant.

[16] A copy of the subject's recorded interview and transcript were not included in the file. Statements attributed to the subject were gleaned from the investigative summary.

During her interview, the probationer told the investigator that the subject sent LASD deputies to her residence to retrieve a cellular phone that she paid for.[17] The subject claimed he contacted the Sheriff's Department to assist him in retrieving a phone that was his and that he had purchased. The LASD deputies were not interviewed and there is no evidence in the file that the investigator attempted to contact them. Deputies who went to the female's residence may have heard statements by either the subject or the female that would be valuable clues to whether the subject had knowledge of the female's probation status.

In another case, an anonymous caller alleged that a sworn officer was supplying alcohol and marijuana to a "minor"—a twenty year old neighbor. In his interview, the subject denied ever offering any drugs to the neighbor but admitted he drank alcohol with him on at least one occasion. It was learned through other witnesses that the twenty year old had a fake identification card. The subject claimed that he did not know that the neighbor was underage and the case concluded with an "unsubstantiated" finding. The twenty year old, arguably, the most critical witness of the investigation, was not interviewed. Interestingly, there was a notation in the file that the subject had been suspended for thirty days in 1993 for poor judgment, dishonesty and child endangerment (no other details were included). An interview with the twenty year old may have revealed information that contradicted or confirmed what was stated by the subject.

4. Unfocused Investigations

Staff at a Department office building, observing a closed circuit video camera monitoring a restricted parking lot, observed a male and female employee enter a car and engage in some kind of sexual activity. A staff member confronted the couple as they emerged from the car looking disheveled. The staff witness thought he recognized the two employees and reported their activity. The resulting Internal Affairs investigation went on for eight months. The basic

[17] Curiously, the investigator read the probationer "administrative rights" before she was interviewed. Administrative rights are a series of admonitions to witnesses or subjects that they have certain rights as Department employees as well as responsibilities, e.g., to cooperate with the investigation or risk being deemed insubordinate. The problem, of course, is that the probationer was clearly not a Department employee. Thus, in addition to being totally inapplicable and confusing to the witness the possible impact of reading such rights could be to inadvertently "chill" the witness. The reading of totally inapplicable warnings to a witness is another example of a glaring training deficiency.

evidence for the case was on video and well established within a few weeks. The couple had been necking in the car—unprofessional activity in a public place as well as a waste of county time—but there was insufficient proof that they had engaged in intercourse. It was also established within a week of the incident that one of the accused was the wrong person, a case of mistaken identity. The actual male employee owned up and took responsibility for being the one in the car.[18]

But the investigation pushed on, way past the initial issue. The couple's e-mail records were searched as well as months of timecards and electronic records of comings and goings of employees through the security barriers of the parking lot. The investigation did uncover some instances of one or both of the couple leaving early from work and using the Department e-mail to send personal correspondence. Some of the e-mail notes were explicitly sexual in nature. All of this deviates from professional conduct and violates Department policy. It is likely to enhance the discipline that would be appropriate for the original necking in the restricted parking lot. But the broad ranging, everything-but-the-kitchen-sink approach of the investigation raises the question of trade-offs and efficiency.

5. "Unripe" Investigation

An investigation was launched on the basis of an anonymous complaint which accused a non-sworn employee of failing to comply with a court-ordered drug program and using methamphetamines and marijuana. The Department was aware of the employee's drug case in court for possession of drug paraphernalia, and had originally informed him of its intent to discharge him but later agreed to a settlement including a thirty day suspension and ten drug counseling sessions in addition to requiring completion of the court-ordered program. The new investigation concluded that the employee was out of compliance with the court-ordered program but that the drug use allegation could not be substantiated. A subsequent evaluation, however, determined that the court had granted an extension to the employee and he still had five months to complete his ten counseling sessions under his original settlement agreement with the

[18] The original subject employee whose mistaken identity was cleared up within a week of the incident was sent a letter six months later informing him that the case against him had been deemed "unsubstantiated."

Department. The investigation and initial charges were therefore, in large part premature. The IA unit, however, had sent the "substantiated" case to Performance Management which initially categorized it as a discharge. To its credit, PM caught the error before it issued the intent to discharge letter.

6. Handling Request for Anonymity

In this case, the complainant had claimed that her father, a sworn officer, used and sold marijuana. The complainant failed to show up to two scheduled interviews then told the investigator that she feared retaliation from her father and asked if she could change her name for the interview. The investigator referred the issue to the supervisor who left the complainant a message to call her back to discuss her concerns but never received a call back. The case was eventually closed and recorded as "not substantiated."

Here, the investigator was unclear on how to handle the complainant's request (which essentially was a request to remain anonymous). We learned that, although there is no written policy regarding the disclosure of a complainant's identity, as a practice, the unit works hard to discourage an individual from remaining anonymous. Although there may be practical reasons why the unit may not be able to guarantee anonymity (i.e. the complainant is the victim or sole witness of the misconduct), this inflexible approach has a potential chilling effect on the reporting of these incidents, particularly for those witnesses who (like the complainant in this case) may have legitimate concerns about revealing their identity. The unit should establish a clear policy on the issue, train its investigators accordingly and enforce the policy uniformly.

C. "Unsubstantiated" Cases

Similar to CASIU cases, at the conclusion of each administrative investigation, IA makes a recommended finding regarding whether the evidence supports the alleged misconduct. If the allegations are not substantiated the original file remains in the IA unit, the finding is logged in IA's internal database and the file is stored.

As mentioned earlier in this Report, we reviewed six "unsubstantiated" cases. The "unsubstantiated" cases in Internal Affairs had the same timeliness and investigative deficiencies as the "substantiated" cases. As we discussed above in Section IV. C, these cases are not reviewed by any other unit in the Department. This is a glaring shortcoming in the process. To ensure the integrity in the process, final disposition of the case should not rest with the unit that investigated the allegations. Currently, an "unsubstantiated" finding is conveyed to the Bureau Chief, the subject employee, and to Performance Management, which coordinates any employee reassignments if the subject had been initially removed from his or her assignment during the pendency of the investigation. However, the case file and reasons for the unsubstantiated result do not leave the investigative unit. It is critical to the process that unsubstantiated cases be recorded in a unified tracking system. The information can be valuable and serve as a tool to detect behavior patterns of individuals and/or determine if there are global Department issues, like training deficiencies or sources of liability, that need to be addressed.

D. Complaints

Citizens can file complaints by completing a form available on the Department's website, by mailing or faxing in a complaint or by submitting a form in-person at any Probation Department facility, including headquarters. Also, a complaint filed with the Probation Department Ombudsman alleging employee misconduct will be forwarded to the IA office. The complaint form has IA's mailing address on it. The IA office also handles the Department's "complaint line" and receives complaints by telephone. IA keeps a log of all the calls and paper-initiated complaints it receives.

If the alleged misconduct involves the following issues, then IA will open an immediate investigation:

- Fraud, embezzlement
- Other potential State Code violations
- Incidents involving law enforcement
- Complex incidents involving other County departments or government agencies

- CORI violations[19]
- Off-duty conduct unbecoming a Peace Officer
- Caseload reporting falsification (computer systems)
- Time abuse*[20]
- Hostile work environment*
- Conflict of interest*
- Threats, workplace violence*
- Outside Employment*
- Harassment*

If a complaint does not meet the IA criteria then a memo is drafted and the complaint is forwarded to the subject employee's Bureau Chief for proper investigative handling. Typically, the subject employee's Director/Superintendent is then directed by the Bureau Chief to handle the investigation. When the investigation is complete, the Bureau Chief reports back to IA regarding the final disposition.

Every year, the Probation Department is required to provide the State data on all citizen complaints filed against peace officers. IA collects and reports that data. The current process, however, makes us question whether the data is reliable. Complaint forms are not numbered so there is no true tracking system. The total number of complaints (against sworn and non-sworn) at any given time may never be known, in part, because facilities that receive a complaint directly from a citizen can determine, on its own, that an allegation does not trigger an IA investigation and simply keep the complaint and resolve it "in-house." That data is not forwarded to IA. As with other aspects of the system, these unit level complaints or investigations are not entered into a centralized database to record and store that information for purposes of detecting patterns or systemic issues.

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[19] A "CORI" violation would be an unpermitted disclosure of a client's Criminal Offender Record Information.
[20] Pursuant to Department policy, depending on the "level of complexity" individual facilities rather than IA may handle cases that have an asterisk. Department protocols indicate that the more complex the case, the more likely IA will assume the investigative responsibility.

E. Recommendations for Internal Affairs

In light of the foregoing discussion, we make the following recommendations for Internal Affairs Investigations. We reiterate our previous Recommendations 3 through 12 as they apply to the Internal Affairs unit. Additionally, we recommend:

- **Recommendation 13 -- The Department should closely review the bottlenecks** identified in this report and take measures to assure complete and expeditious processing of internal affairs investigations.
- **Recommendation 14 -- The Department should establish a policy addressing which personnel can "initiate investigations"** so that POBR dates are accurately calculated.
- **Recommendation 15 – Where subjects are high ranking personnel, the Department should develop more specific guidelines** regarding which unit should handle investigations.
- **Recommendation 16 -- Establish policy that IA managers are not to assign themselves investigations** so that they can be freed to actively supervise the unit.
- **Recommendation 17 -- Establish policy that all potential witnesses be interviewed.** Internal guidelines and training should be developed requiring that investigative efforts to contact a witness are documented in the file so that a reviewer and decision-maker can easily ascertain the lengths to which an investigator went to pursue each investigative lead.
- **Recommendation 18 -- Adopt an early resolution mechanism**—bypassing a formal investigation—in cases where an employee is willing to take responsibility for his or her actions.
- **Recommendation 19 -- Devise a more effective and substantive screening mechanism** for requests for initiation of investigations so that the administrative investigative process is not used in lieu of effective management and supervision.
- **Recommendation 20 -- Develop policy and training on how to handle requests for anonymity.**
- **Recommendation 21 -- Number sequentially all complaints received** to assist

in centralized and accurate tracking.

VII. "Bureau"/Work Location Investigations

If the alleged employee misconduct involves rudeness to staff and/or the public, workplace performance issues, failure to return telephone calls, disagreement with findings in Probation Officer's Report, unsafe driving and hall or camp use of force, then the work location/facility (e.g., hall or camp) where the employee is assigned will conduct the investigation. The investigations can be triggered the same way an IA or CASIU case is initiated (i.e. citizen complaint, a grievance submitted by a minor or employee, SIR, etc). These investigations are typically conducted by supervisory personnel at the work location and reviewed by the Director and Superintendent.

Similar to the IA process, the Director or Superintendent will make a recommended finding of substantiated or unsubstantiated. Unlike CASIU or IA cases, however, the Director or Superintendent may propose formal discipline.[21] The recommendations are then sent to PM for review and follow the usual process as any other substantiated case. If the Director or Superintendent determines that the misconduct only warrants a supervisor conference/counseling then he or she takes that corrective action and maintains a record of that disposition at the facility. There is no notification to PM or secondary review conducted by PM or any other unit or executive for non-formal disciplinary corrective action results. Additionally, with approval by PM leadership, there is no secondary review for work location investigations that involve unauthorized absences, uniform violations or failure to attend required training. For these types of cases, the Director/Superintendent can issue formal discipline without seeking review from PM. The results of the investigations, however, are sent to PM for recording purposes.

In our review, we compared the number of these types of investigations conducted at a camp and at a hall. In 2009, one Department camp conducted only three work location investigations. By contrast, during the same period, the hall had initiated two hundred and

[21] Under the Department's matrix, formal discipline includes: letter of warning, letter of reprimand, suspension (1-30 days), demotion and discharge.

seventy-four of these types of investigations. The difference in the statistics is largely explained by the different investigative requirements demanded by the Department of Justice for the halls. The majority of "work location" investigations at the hall consist of standard use of force reviews formalized under the DOJ agreement rather than disciplinary investigations.

- **Recommendation 22 -- We recommend that the Department require centralized tracking of unit level (Bureau) disciplinary investigations.**

VIII. Performance Management

The Performance Management unit, formerly called the Discipline unit, now encompasses discipline and advocacy. Performance Management is the final stop for all internal investigations before discipline is imposed. With the exceptions noted in section VII above, substantiated cases investigated by Internal Affairs, the Child Abuse Special Investigations Unit or by the camps or halls themselves funnel into PM. PM staff reviews the investigative file for sufficiency of the evidence, recommends specific discipline to the final decision maker, drafts the letter of intent and the letter of imposition informing the subject employee what the discipline is, and defends the Department's disciplinary decisions if they are appealed to the Employee Relations Commission or to the Civil Service Commission.

Performance Management also maintains the Department's "arrest desk." When law enforcement agencies or the employee himself notifies the Probation Department that an employee has been arrested, these notices are funneled into PM's arrest desk, which opens a file on the case and monitors its progress through the criminal justice system. When the case has been resolved in the criminal system, the arrest desk activates an administrative investigation. Rather than refer all those cases out to IA, Performance Management has begun to handle the more straightforward investigations, such as drunk driving cases, by themselves, using borrowed investigators from the background investigations unit. This procedure may prove to be promising and efficient, but has not yet established a sufficient track record to evaluate.

This new responsibility, as well as all other functions of the arrest desk need be closely monitored by the Department. Recently, a PM supervisor discovered a drawer with eighteen arrest desk cases that had been filed and ignored for over a year. These arrests ranged from drunk driving to prostitution to vandalism and, in one instance, sex with a minor. The sex with a minor case did not result in a criminal filing but the arrest itself places a firm obligation on the Department to evaluate the circumstances administratively. At present, at least ten of the eighteen arrests have resulted in criminal convictions. Some, if not all of the eighteen cases may have expired statutes of limitation and the Department may well be precluded from imposing discipline on the subjects. An administrative investigation is currently underway with regard to the failure to timely process these cases. Arrest desk case monitoring should be particularly important to the Probation Department because of the relatively high number of employee arrests. In 2009, the same number of Probation employees were arrested as Sheriff's Department employees, but the Sheriff's Department has three times the personnel that Probation employs.

A. Timeliness and Quality

The most salient feature of case flow in the Performance Management unit is a "just-in-time" approach to the Peace Officer Bill of Rights one-year statute of limitations. In a review for timeliness of 22 Performance Management cases, where discipline was imposed on sworn personnel, in 15 of those cases, the "letter of intent" was served upon the subject employee —— with only one to five days left before the expiration of the one year time limit. We are mindful that Performance Management has no control of when it receives cases or how much of the one-year clock has already been taken up by the investigating unit, but the last minute pattern held for over half the cases regardless of when they came into PM. In a sample of ten recent cases that made their way through Performance Management, it took an average of just over 100 days for each to be reviewed and processed by the unit. The halting case flow in PM is illustrated by what happens when an investigation is first received by the unit. The accepted pattern for cases moving through PM is for the unit director to do an overview then pass the case to the manager who does another overview before assigning the case to an advocate. What this multi-stop process produces is obscure at best and takes up valuable weeks.

These problems are further exacerbated by the disappearance or tardy input of some data. A few of the cases we tracked from CASIU to Performance Management simply did not show up in the "Performance Management System," PM's case tracking database, despite documentary evidence that the files had been delivered to PM. PM managers were able to locate these cases and report their status to us but not the reason they had not been entered onto the database.

The tradition by PM of usually taking a year to wrap up the Department's major disciplinary cases and notifying its employees of its intent to discipline them has significant deleterious ramifications for the program. First, of course, waiting until the last day or two runs the risk that last minute unanticipated circumstances will prevent the Department from serving the letter in the requisite time period, denying the Department the ability to impose discipline. Indeed, PM staff failed to have subjects served on time in thirteen cases during calendar years 2008 and 2009. These cases included arrests for DUI as well as non-arrest related Probation policy violations such as Negligent Supervision, CORI violations, Inappropriate Relationship, and Misuse of County Time. The failure to timely serve a discipline notice means that thirteen employees who should have been held accountable for violations of policy were not. As a result, the Department is left with an employee who escaped discipline simply because the Department's discipline machinery was too slow. In addition to any opportunity for remediation being lost, in cases in which the Department did not finish its work on time, stakeholders' confidence in the process is eroded and the Department runs the risk that public skepticism will grow about the Department's actual resolve to hold its members accountable who do violate policy.

Even in cases where the Department is able to complete the one year requirement and notifies the employee on the last few days of the statutory clock, any last minute scramble to get a letter out the door will increase the likely result that the work product will be rushed and contain errors. Finally, simply taking a year to process a discipline case because you can, runs contrary to the tenets of due process and accountability, namely, that the complainant should be entitled to a timely investigation and resolution of the allegations, that the subject employee should be entitled to the same level of attention and service, and that any discipline or remedial action becomes less effective any time it is substantially delayed.

B. Review of the Investigative Files

In the files we examined, we found no evidence by PM of a critique of investigations or evaluation of the sufficiency of evidence. In our discussions with PM supervisors, however, it was clear that they are acutely aware of the problems that a poorly investigated case can encounter during the appeals process. Performance Management, however, seems unable or reluctant to embrace its role in improving the quality of investigations. Investigators and managers at the investigative units have indicated that they do not receive feedback from Performance Management about case quality or sufficiency of evidence. They do not even receive regular notice of the disposition of cases even where a substantiated violation has been dropped or revised by PM in the course of case settlement or where the grievance process at the Civil Service Commission has modified or vitiated a disciplinary decision. Thus, a potential feedback loop that could assist the investigative units in improving their product and methodology does not exist in the Department.

PM could convey much value to the investigative units by sharing promptly and fully with them the results of all dispositions, negotiated settlements or appeals judgments and the reasons for these outcomes. It is also instructive that the investigative units themselves have not requested that PM consistently provide them this feedback. The Department's internal investigations units could greatly benefit from accepting a model of self-improvement through unvarnished feedback from the entity that moves the case forward on behalf of the Department.

C. Discipline Recommendation

There are many factors that a law enforcement Department should take into account before imposing discipline on an employee. These include severity of the misconduct, premeditation, honesty during the investigation, years of service and performance record, prior disciplinary record, job nexus to the misconduct, and supervisory status. The PM unit lists these and more in its "decision factor" form, a list that theoretically acts as a guideline for discipline decision-makers. Moreover, the Department has developed a disciplinary matrix, setting out the

appropriate range of discipline available for potential policy violations. But the current Performance Management process neither requires nor encourages decision-makers to show explicitly that they have considered the disciplinary matrix in arriving at the disciplinary decision nor weighed the relative importance of these factors or any other aggravating or mitigating circumstances. No memorandum is expected of decision-makers expressing their logic or the facts they have found determinative. Likewise, PM rarely articulates the basis for their recommendation to the decision-maker in either the file or in the Performance Management System database. We found at best an occasional scant record of these important thought processes on an e-mail exchange between PM and the decision-maker regarding the eventual discipline decision.

This lack of documentation at Performance Management memorializing this important deliberation foregoes an important opportunity to introduce consistency to the disciplinary assessment and help ensure principled decision making. The lack of a record of this consideration also undermines the Department's ability to defend its discipline decisions in any future appeal procedure.

Currently, the disciplinary determination is reached as a result of discussion between PM personnel and the Bureau Chief. With the exception of termination cases, the Chief of Probation is not involved in the disciplinary determination. Individuals higher in the Department's hierarchy are also not directly involved in disciplinary decisions. We believe that the more substantial disciplinary cases could benefit from more involvement in the decision-making process by the Chief and/or other executives. A round table format in which executives consider and opine regarding appropriate outcomes of the more significant cases could help ensure a fleshing out of the issues and that the disciplinary philosophy of the Department's leadership is considered in making these important decisions.

D. Letters of Intent

A "letter of intent" is the important distillation of a substantiated disciplinary investigation. It lists the Department policies at issue and the basis for concluding that they have

been violated by the subject employee. It provides the subject employee with the legal notice of the case against him or her. It usually serves as the template for the "letter of imposition," which, once served on the subject employee, cannot be modified. It articulates the precise charges and theories of misconduct upon which the Department must stand through the appeals process.

We found that the letters formulated by Performance Management were well-formatted and include much pertinent information, including a detailed list of the subject's disciplinary history as well as his performance history in the Department. It has to be noted that some of the PM files we examined did not contain a copy of the letter of intent. We found incompleteness and missing documents to be a widespread problem with Performance Management files. As the official files upon which the discipline is based, it is critical that the files be well maintained and contain the requisite documents.

E. Exporting Information Learned During Investigations to Other Areas of the Department

Important information about training or systemic issues may be learned through the investigative process. It is critical that the information is shared with the appropriate Department stakeholders so that individuals receive the appropriate follow-up and/or the Department can effect change in a timely manner. The case below illustrates how opportunities to pinpoint and address training deficits can be missed.

A minor, using the grievance procedure, anonymously alleged that two sworn officers were selling marijuana and lighters to other minors housed at a Department hall. Although a search of the facility recovered some contraband -- "jailhouse" pipes filled with marijuana and a cigarette lighter -- the evidence was insufficient to prove the allegations. The subject interviews, however, revealed that, while some staff members had a rudimentary idea of the need to confiscate contraband from minors, they had no knowledge or training about how to document and preserve evidence of illegal substances found in possession of minors. This may be a training issue specific to the needs of these subjects or it could point to a widespread skill

deficit. There is no evidence in the file that any investigators or reviewers of the case shared any of this information with the director of the facility or with Department executives or with the training unit.

F. Alternatives to Discipline

Holding an employee accountable for misconduct is essential to an effective discipline process. However, the traditional disciplinary system that the Probation Department relies upon (i.e. suspension days) does not always address the behavior in a way that will remediate the employee and reduce the likelihood that the conduct will reoccur. The traditional system is inflexibly punitive in nature and may have the unintended effect of putting financial burdens on an employee's family. Suspensions can also encumber the Department when employee substitutions and overtime are required to fill in for suspended staff members.

Creative alternatives to suspension days can sometimes better address both the goals of accountability and remediation. Under an "alternatives to discipline" program, subjects in suitable cases can agree to take courses, receive training, make presentations to their peers, complete written apologies, or do other projects that can provide professional growth for them and their peers. Meanwhile, the Probation Department's records would reflect the suspension days issued to the employee, but in lieu of serving those days, an employee would be given the option of completing a remedial plan tailored specifically to the misconduct that warranted the discipline.[22] This type of alternative discipline is not suitable for every case. The most serious misconduct requires the most serious punitive measures to hold the employee accountable and to deter other employees from similar misconduct. But cases where the central problem was poor judgment and where the employee has acknowledged the mistake can be ideal for this alternative.

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[22] Recognizing the deficiencies and punitive nature of the "days off" approach, in early 2009, the Los Angeles County Sheriff's Department implemented a new disciplinary program called "Education Based Discipline" and has been able to address discipline in a more constructive and meaningful way. One other benefit of the program is that it has facilitated early dispositions/settlements in cases where subjects readily admit to the wrongdoing and take responsibility for their actions.

In one case we reviewed, for instance, a subject staff member taunted a minor in front of other minors about "looking gay" in photographs that the minor had received in the mail. The Department imposed a ten-day suspension for the offence. This type of case would be suitable for an "alternatives to discipline" program. Here, a tailored plan might include training and education. In addition, as part of the plan, the subject could conduct briefings to other employees about Department expectations and policies regarding this issue.

Implementation of this type of program would not change the way disciplinary decisions are made. It is simply a program designed to remediate past misconduct and improve future behavior.

G. Civil Service Cases

Any Probation Department employee who receives significant discipline may appeal that decision to the Civil Service Commission. Ordinarily, the matter is assigned to a hearing officer who then conducts a hearing and makes recommendations to the Commission regarding whether the imposition of discipline by the Department should be sustained. The Commission has the authority to modify or reject any disciplinary determination made by the Probation Department.

As part of our review, we examined several Probation Department cases that proceeded through the civil service process to learn why hearing officers and the Civil Service Commission had not sustained the Department's decisions to discipline employees. There is no single cause for why cases fared poorly but, as discussed below, the rigor of the appeals process reveals some clear Department weaknesses.

1. The Cubicle Case

In this case, the appellant (a sworn officer) was loud and boisterous when he argued with a female fellow employee about who was going to occupy an available cubicle. The facts were not disputed. Six months after the date of the incident the appellant was sent a letter of intent to discipline him for twenty days. Two and one half years later, the Department reduced the

suspension to fifteen days and sent the appellant the imposition letter. The appellant petitioned for a Civil Service hearing which was heard in late 2009.

The hearing officer found that the appellant was joking, the incident was a misunderstanding and that the discipline was "grossly excessive".[23] He further opined that "[w]ith an appropriate apology, the matter could have been resolved the next day." Indeed, when the incident was first investigated, the appellant offered to apologize to the offended employee in-person, in writing or both. By imposing a punishment that seemed greatly disproportionate to the underlying facts, the Department made itself appear to have reacted to the misconduct in an arbitrary or erratic fashion.

The hearing officer also appeared to be particularly annoyed that the Department waited two and one half years before imposing the discipline. When asked why there was such a long delay, a Department executive testified, "Well, the Department has lots of discipline." The hearing officer made a point to state, in the Report, that the Department "ought to bear some consequence for its unconscionable delay in resolving the matter." That consequence ended up being a reduction in discipline to a one day suspension. The Department did not file objections. The Civil Service Commission affirmed the hearing officer's decision.

This case turned into a waste of Department time and resources. There is no insight into why it took two and one half years to impose discipline in this case, but we can fathom no good reason why that might be the case. Even more damaging, the Department lost credibility before the hearing officer and at Civil Service for bringing this case to hearing.

2. Failure to Report Force Case

In this case, an officer used excessive force on a female minor. Another sworn officer allegedly witnessed the force but failed to complete an SIR. In the investigation, the third officer

[23] The Department defended the fifteen day suspension arguing that it was progressive discipline to a 2004 suspension for similar conduct. Under the theory of progressive discipline, a Department may increase discipline for subsequent offenses by the same employee. Unfortunately for the Department, in this case, the hearing officer reminded the Department that because the employee's 2004 case was still on appeal, progressive discipline did not apply.

asserted that she did not complete an SIR because she was not involved in the force and did not observe it. The case against the alleged witness officer was investigated and, within five months of the date of the incident, the Department sent a letter of intent to suspend the subject for ten days. She was charged for failing to complete an SIR and for being untruthful during her investigative interview. Approximately a year and a half later, the appellant was served a "notice of suspension" imposing the ten day discipline.[24] The officer appealed the discipline to Civil Service.

The Civil Service hearing officer's report was not in the case file, but the Department's written objections to the report indicate that the ten day suspension was undone in its entirety. It appears that the Department lost the case because it failed to provide sufficient evidence that the appellant actually witnessed the force. It also appears that the Department failed to provide evidence of the training the appellant received regarding reporting protocol. Here, it appears that an inadequate investigation and lack of adequate preparation and thoroughness caused the demise of the Department's case. The Civil Service Commission sustained the hearing officer's findings.

3. Assault Case

In this case, the appellant and another sworn officer allowed minors into the room of another minor to assault him. The attack was reported by the minor victim the next day. The investigation was completed relatively rapidly. The appellant was sent a notice of intent to discharge six months after the date of the incident. Notwithstanding the Department's belief about the appellant's culpability in the assault on the minor, the appellant continued to work for another eleven months until the Department finally imposed the discharge. The appeal was heard by a hearing officer who reduced the discharge to a thirty day suspension.[25]

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[24] This is the second Civil Service case in which the imposition of discipline took an inordinate amount of time, longer than what is statutorily allowed for an investigation to be completed. There is no good reason that the gap between the notification to the employee of the Department's intent to discipline and the actual imposition of discipline should take so long. To delay the imposition of discipline for these lengths of time undermines the fundamental principle that in order for discipline to be effective it must be timely.

[25] The Appellant had been issued prior discipline for failing to submit a SIR. The hearing officer arrived at a 30 day suspension by using the principle of progressive discipline and applying the Department's Disciplinary guidelines which recommends 10-30 days for similar second offenses.

At the outset of the Report, the hearing officer states that eight of the ten policies that the appellant purportedly violated were not proved by the Department. The main problem with the Department's case is that, with the exception of one minor, the investigator never personally interviewed percipient witnesses to the beating of the minor. With regard to the minors' affidavits, the hearing officer found them to be "not entirely legible." The hearing officer warned, "Management decisions based on such a house of cards are often found wanting when subjected to the scrutiny of a quasi-judicial adversary proceeding and this is such a case."

Another problem was that the Department only called one of the minors involved in the incident to testify. The Department characterized the witness as a "strong" witness pointing out that he had to testify by phone from Iraq, where he is now stationed as a member of the United States Army.[26] Though the hearing officer commended the witness for turning his life around, he believed that he was not credible and that he "fabricated" parts of his story. In the end, the Department was only able to prove that the Appellant exercised poor judgment by failing to properly notify his superiors (via an SIR) of the lock down that occurred prior to the attack. The hearing officer found that the Department did not prove that he knew of the beating or attempted to cover it up. The Civil Service Commission sustained the reduction to a thirty day suspension.

The Civil Service process can be frustrating. Civilian witnesses, particularly minors can be difficult to locate and cannot be compelled to testify at the hearings. And, as this case demonstrates, affidavits from minors are unreliable and no substitute for in-person interviews. The challenges of shepherding a case through civil service are all the more reason for the Department to strive for high quality and prudence in their investigations and assignments of

[26] Additionally, PM may have focused so much on the attempt to get a witness to cooperate that the objective search for the truth was forgotten. In seeking the witness's testimony, the Department Advocate wrote in a letter, "I am working on a case [where] ...one minor was assaulted by several other minors...[Appellant] was also involved in the incident....It is my job to make sure that [Appellant] does not get his job back....I need to talk to you about the case. I really, really need you to testify about what happened. You are not in any trouble. Our case has nothing to do with you—only with [name of Appellant]. I would really appreciate your help." In a letter addressed to the minor victim, the Advocate wrote "I am working on case involving the discharge (firing) of [Name of Appellant]...due to an event...in which you were assaulted by several minors who were let into your room by [name of Appellant]....It is my job to make assure that [Appellant] does not get his job back...We need you to testify about what happened to you so that [Appellant] does not get his job back. I would really appreciate your help." This type of zealous attempt to persuade a witness who has not yet testified will invariably harm the Department's case and call its impartiality into question.

culpability. The crucial decisions made in the course of developing a misconduct case—what evidence to gather, what charges are appropriate, what discipline is fair—must be logical, well documented and persuasive if they are to withstand the test of the appeals process.

The Department must become more mindful of the potential deficiencies in a case and address those deficiencies at every stage of an investigation's life cycle. One important way to enhance this process is to take a clear eyed look at every Civil Service outcome, whether successful or not, and debrief the lessons of the case with the investigators, Performance Management personnel who evaluated the case, and the decision-maker who approved the discipline. We saw no evidence that there is a process in place to ensure that Civil Service outcomes are systemically treated as a learning experience by the Department.

H. Recommendations

To address some of the issues identified above concerning the Performance Management Unit, we recommend that the Department:

- **Recommendation 23 -- Develop and enforce internal guidelines** that impose reasonable limits on the period between when an employee is notified of the Department's intent to discipline and when the Department actually imposes discipline.
- **Recommendation 24 -- Implement a system to provide timely feedback** from Performance Management to the investigative units regarding sufficiency of the evidence, choice of relevant policy violations and findings about policy violations. This should include the results of any internal and external appeals. We recommend that the Department take a critical look at all cases scheduled for civil service hearings and develop a post-civil service debriefing process to learn the available lessons from the appeal.
- **Recommendation 25 – Export investigation information.** We recommend that the Department take advantage of information learned during investigations and export that information to the proper Department stakeholders for purposes of training, risk

management, supervision, policy development and other Department functions.

- **Recommendation 26 -- Require and facilitate creation of a disposition memo** by the decision-maker for every case that results in discipline, formatted to require a record of case evaluation with regard to application of the Department's disciplinary matrix, aggravating and mitigating circumstances, as well as disciplinary background and professional record of the subject.
- **Recommendation 27 – Discipline alternatives.** The Department should consider creating alternatives to traditional punitive discipline (i.e. training, apology letters, etc.) in the appropriate cases.
- **Recommendation 28 -- Require accurate, detailed case logs in PM.** In many cases, we found it impossible to determine what case work, evaluation or decision-making activities had taken place in PM because case work task logs were sparse or not current.
- **Recommendation 29 -- Implement a "round table" case evaluation and discipline decision-making process for significant cases.** This process would be rigidly scheduled and include the decision-maker, designees from the investigative unit and PM, and a designated senior executive representing the Chief of Probation. This process would encourage on-time case evaluation and processing and help achieve a measure of transparency and consistency within the Department.
- **Recommendation 30 -- Track "Arrest Desk" cases** in a manner accessible to PM management, as well as IA and CASIU in real time. Require CASIU and IA to monitor the arrest cases periodically. This may provide a failsafe against the problems with expired statutes experienced recently with arrest desk cases.

IX. Related Department Programs

The Probation Department has long been under scrutiny by County government as well as by the U. S. Department of Justice and its problems widely discussed. Additionally when knowledgeable persons inside and outside the Department talk about these problems, they often resort to phrases like, "entrenched culture." In light of this history, and at this important juncture

for the Probation Department, it is essential to note that there are significant instances where Department personnel responded with vigor and creativity to challenges. Within the subject matter OIR examined, we found reasons for optimism in some of these promising initiatives. .

A. EIS and Related Databases

The Department of Justice Project Management Bureau was established in 2004 as a result of the Probation Department's ten years of engagement with the DOJ. It is responsible for coordinating and enforcing the Department's compliance with more than fifty tasks listed in the Settlement Agreement and for communicating that compliance to the Justice Department. Among its other duties, the unit has focused on quantifying operational trends throughout the Probation Department, including type and frequency of uses of force. The unit has also recently begun to track individual employee achievements and problems in a sophisticated manner. The primary tool for this is called the Early Intervention System. The EIS is divorced from the internal disciplinary system, but it flags strengths and weaknesses of individual employees by tracking a host of job related events, such as performance evaluations, commendations, public complaints, civil claims, tardiness, use of force, and disciplinary actions. The objective of the EIS is to identify employees who are at risk of performance problems or disciplinary actions, so that they can be retrained or assisted in some other way by the Department to become more productive employees.

The unit pursues these objectives through the creation of accurate and timely databases. The unit was able to identify a talented individual within the Department and capitalize on his abilities to custom design easy to use databases that work well for the unique requirements of the Probation Department. The unit has also placed its own employees into the facilities it monitors who are responsible for collecting timely and accurate data so that the unit has the opportunity to spot up-to-the-minute trends.

It is no small accomplishment that these databases are compatible with one another and easily accessed, in stark contrast to the three stand-alone and disparate case tracking databases in use by Internal Affairs, Child Abuse Special Investigations, and Performance Management. We

also found it surprising and instructive to discover that knowledge of this data collection or the EIS is not widely distributed through the Department. It could be useful to managers in many areas as a basis for diagnostics about operations, strengths and problems in all juvenile bureaus.

The efficacy of the EIS and related databases does not have a sufficient track record to be tested, but the fact that they exist and were created and maintained by the Department holds a useful lesson. The Department has demonstrated that, when necessary and under pressure from external sources, it is clearly capable of gathering data from many different areas in a timely fashion and maintaining an up to date profile of its many employees. This accomplishment could easily be exported to its disciplinary case tracking challenges that we have sounded above.

B. Risk Management Processes and Documentation

The head of the Department's Civil Litigation office functions as the Department's risk manager. With a staff of a clerk and two student workers she endeavors to track all incoming civil claims and lawsuits, to respond to them and to evaluate the Department's potential liability. When a case is resolved, the office also creates and documents corrective action plans describing the actions that the Department has taken or will take to correct the problem exposed by the lawsuit. The head of the office also provides formal training to Department personnel in topics such as laws relevant to detention of juveniles, evidence preservation, confidentiality of criminal offender records, conflict in the workplace, and general risk reduction. The office has created a sophisticated tracking system and useful templates for the evaluation and response to claims and lawsuits. Its corrective action plans also provide a useful model for exporting lessons from litigation to Department leaders. Its proactive training aimed at long-term risk reduction should be expanded and replicated by the Department as a whole. The office appears to be painfully under resourced given these important functions and the significant liability that the Department suffers each year from claims and lawsuits. According to the Civil Litigation office's records, Probation has paid out several million dollars in each of the last two years for general civil liability (excluding workers compensation) and this bill is rising steeply.

One aspect stemming from the civil litigation process that has apparently not occurred is development of a referral pipeline between the Civil Litigation unit and IA. A claim or lawsuit is simply a complaint with a price tag attached. Civil Litigation and IA must work together to ensure that allegations of misconduct that come to the Department's attention through Civil Litigation are timely referred for review by those responsible for initiating administrative investigations. An integrated system that allows for such information sharing will help ensure that the Department avails itself of all streams of information regarding allegations of misconduct.

C. Transparency

We found that the workings of the internal investigative units were particularly mysterious and unknown to individuals both within and outside the Department. Because each unit devoted to the internal investigations and discipline processes seems to work in a silo, an integrated understanding of the various processes is known to virtually no one. To the degree that Department managers are largely in the dark regarding the internal investigative function, the line employees' knowledge of the niceties of the discipline system is largely learned through rumor and locker room talk.

This lack of transparency within the Department extends more strongly to those outside the Department. Important stakeholders such as the courts, advocacy groups, and the general public know and learn almost nothing about individual case outcomes and systemic issues besetting the Probation Department. The Department provides almost no information about the methodology, case outcomes, or systemic issues to its personnel or the general public. With the exception of the information demands by the Department of Justice, most of what is known about internal investigations remains in the files of a few individuals. As noted in our recommendations, it is incumbent upon the Department to provide more transparency and help remove the mystery of its internal investigative process and its efforts to address the issues of employee misconduct.

D. Oversight

As noted in various parts of this report, much of the meaningful and positive change in the areas of internal investigations and related areas has been the result of external influences. Most prominently, the Department of Justice has been the driving force behind much change, such as the creation of the CASIU. However, the Department of Justice and its monitors may not be around forever and its role as a catalyst for change is circumscribed by the parameters of the settlement agreement. Accordingly, the establishment of a permanent independent oversight group would be important to continue to foster change and reform, assist in providing quality control and fairness with regard to internal investigations, continue to advocate for systems change and reform, and help ensure transparency for other stakeholders and the public. The Probation Department has much to do to provide reform in this area. An independent group with expertise in this area would help ensure that reform stays on track in the future.

E. Recommendations

In addition to the recommendations enumerated in sections V, VI, and VIII of this report, we make the following recommendations:

- **Recommendation 31 -- Department leadership should express and reiterate a clear commitment to consistent and professional internal investigations** and accord the internal investigative units the resources and prominence commensurate with that message. Basic investigative support such as a professional and secure working environment, interview rooms, cellular phones, and vehicles should be provided to the investigative units.
- **Recommendation 32 -- Department leadership should foster an ethic of responsibility** for unit managers, directors and bureau chiefs to embrace their role as ultimate decision-makers within the disciplinary system.
- **Recommendation 33 -- The Department should find ways to provide increased transparency** regarding its handling of allegations of misconduct, disciplinary decision making, and systemic issues.

- **Recommendation 34 -- The Department should seek permanent on-site independent review** of their internal investigative and disciplinary functions to ensure continued reform, fair and thorough investigations and principled decision-making.

X. Conclusion

The Probation Department performs a unique and vital function within the County's adult and juvenile justice systems. A well-functioning internal investigation and disciplinary system is essential to maintaining integrity within the Department and the public's confidence in that Department. During our brief acquaintance with the Department's processes and personnel, we have seen it respond to crises with energy and adaptability. We are optimistic that the Department's proactive attitude and willingness to respond to the above recommendations will help improve its investigative process, increase efficiency and better address critical issues.