

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Policy Session Worksheet

Presentation Date: July 10, 2018 **Approximate Start Time:** 10:30 **Approximate Length:** 90 Minutes

Presentation Title: OIR Group Presentation of Review of the Clackamas County Sheriff's Office: Policies and Practices

Department: County Administration and County Counsel

Presenters: Michael Gennaco and Robert Miller, OIR Group
Don Krupp, County Administrator and Stephen Madkour, County Counsel

Other Invitees: Sheriff Craig Robert and District Attorney John Foote

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

No action is requested. This is a presentation of the findings and recommendations made by the consultant retained by the Board.

EXECUTIVE SUMMARY (why and why now):

After a competitive recruitment process, the OIR Group was retained by the Board of County Commissioners to perform a review of the Sheriff's Office policies and practices. This review was prompted by the circumstances involving Detective Jeff Green's handling of certain criminal investigations. The report has been completed and the OIR Group will now be presenting its findings and recommendations to the Board of County Commissioners in a public meeting, taking questions and offering advice regarding effective implementation of the recommendations.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? \$

What is the funding source?

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
- How does this item align with the County's Performance Clackamas goals?

LEGAL/POLICY REQUIREMENTS:

PUBLIC/GOVERNMENTAL PARTICIPATION:

OPTIONS:

RECOMMENDATION:

ATTACHMENTS:

OIR Group Review of the Clackamas County Sheriff's Office: Policies and Practices.

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval _____
County Administrator Approval _____



For information on this issue or copies of attachments, please contact Stephen L. Madkour, County Counsel @ 503-655-8362



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June 6, 2018

Commissioner Jim Bernard, Chair
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Marsha Schrader
Board of County Commissioners
Clackamas County
2051 Kaen Road
Oregon City, Oregon 97045

Re: Report Transmittal: Review of the Clackamas County Sheriff's Office: Policies and Practices

Dear Commissioners:

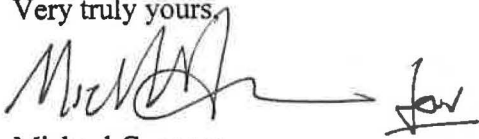
Per request and discussion, please find attached our Review of the Clackamas County Sheriff's Office: Policies and Practices. As indicated in the Report, any insights we gleaned would not have been possible without the important perspective provided by each of you and other County stakeholders. We also appreciated the cooperation displayed by the Sheriff and his Office with regard to our requests for materials and interviews.

As we have previously mentioned, we would be happy to present to your body regarding the matters contained in our Report, which would allow us to address any questions you might have in a public forum. Moreover, such a proceeding would allow the Sheriff's Office and other

County stakeholders the opportunity to also respond. We are also available to provide advice regarding effective implementation of our Recommendations to the degree they are accepted by the County.

We look forward to your guidance with respect to next steps.

Very truly yours,

Handwritten signatures of Michael Gennaco and Robert Miller. The signature of Michael Gennaco is on the left, and the signature of Robert Miller is on the right, connected by a horizontal line.

Michael Gennaco
Robert Miller
Principals
OIR Group

cc: Don Krupp
Stephen Madkour



Review of the Clackamas County Sheriff's Office: Policies and Practices

A Report by OIR Group

June 2018

Presented by:
Michael Gennaco
Robert Miller
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323821-0586

I. Introduction

In June of 2017, former Detective Jeffrey Green pleaded guilty to two counts of second degree official misconduct, both misdemeanors. Pursuant to a sentencing agreement, he was fined, placed on probation and stripped of his status as a law enforcement officer in Oregon. Green had worked for the Clackamas County Sheriff's Office (CCSO) for 26 years, most of it as a detective. The charges that formed the basis for his plea stemmed from two child abuse reports he had failed to process or investigate but his malfeasance encompassed alleged neglect of more than 50 cases assigned to him in the last few years of his career, many of them related to allegations of rape and child abuse. Evidence indicated that there had been little or no effort by Green to investigate these cases and, in several instances, he allowed the statute of limitations to expire, preventing the possibility of any prosecution of the accused.

The criminal investigation and the internal audit of Detective Green's activities identified additional misconduct. These included the possibility that, in some instances, he had fabricated evidence in order to close a case without further investigation, and that he may have tended to neglect certain types of cases or victims more than others based on their ethnicity and/or country of origin.

The public prosecution of a long-standing sworn detective regarding an extensive course of conduct brought significant attention to the Sheriff's Office and raised concern by County stakeholders. In July 2017, the Sheriff requested of the County Board of Commissioners that an independent review be conducted of CCSO investigative policies and procedures focusing on issues raised by the Green matter. In September 2017, the County Board of Commissioners selected OIR Group – a team of experts in oversight and police practices – to undertake an independent review of the matter. The goal was to help “ensure that the proper policies, procedures, controls, and communications steps are in place to guarantee timely and successful investigations and employee performance in the future.” This Report is the product of that review.

Our purpose here is not to relitigate the evidence in the Green case or opine on its outcome. Instead, it is to explore the underlying circumstances of the Green case with an eye toward assisting the Sheriff's Office to address such challenges more effectively in the future. The Report is organized into two main sections. The first section provides a detailed account of the events and circumstances that led up to the discovery of problems with Detective Green's case load and his eventual prosecution. The second section examines pertinent CCSO policies and procedures informed by the Green matter but not exclusive to it.

Finally, we also make recommendations designed to improve CCSO's internal accountability processes and related functions. These are intended to provide increased quality controls so that CCSO can more easily identify and address issues concerning employee performance, while ensuring greater levels of accountability and instilling increased trust in the Sheriff's Office.

We recognize that the focus of our report is primarily upon the Sheriff's Office's handling of the facts surrounding former Detective Green. As a result, there is not full recognition of the effective law enforcement work done by CCSO employees and detectives over the years. In fact, during our review, we had an opportunity to meet with detectives, deputies, and first level supervisors and were impressed with the work ethic, moral compass, and dedication to public service expressed by many of them.

In all, we interviewed 19 members and retired members of the Sheriff's Office from all ranks. All CCSO personnel that we met were cordial and cooperative and the Sheriff's Office diligently fulfilled our requests for a large volume of related documents that also formed the basis for our evaluation. Our conversations with other County residents and stakeholders yielded further relevant and helpful information. We are grateful to all whose candor and cooperation facilitated our inquiry.

We have been informed that the Sheriff's Office recognizes that every agency has room for improvement and we are hopeful that our recommendations are considered in that light. One of the striking observations we made during our review of the Green matter is that there has yet been no public pronouncement that CCSO could have handled any aspect of the attendant situation better. Increasingly, law enforcement entities have recognized that it is not necessary to defend every decision, that every organization makes mistakes, and that simply admitting when the agency could have performed better goes far in regaining trust of the community. We urge the Sheriff's Office to re-evaluate the way it responds to critique and controversy and recognize that it is not expected that it will always be perfect; what is expected is that it acknowledge when it is not.

II. Chronology of the Detective Jeff Green Matter: Background, Investigation, and Additional Concerns

A. A History of Performance Issues and Attempted Interventions

Jeffrey Green was hired by the Clackamas County Sheriff's Office in 1989. He had started his law enforcement career at the Willowa County Sheriff's Office four years earlier.

After four and a half years as a patrol deputy, he received a detective position and assigned to the Investigations Division central office. He remained a detective for the rest of his career,

assigned to the spectrum of cases handled by the Investigations Division, including burglary, theft, fraud and violent crimes such as murder, rape and robbery, but he developed a recognized specialty in sex crime and child abuse investigations.

In 2009, Detective Green was assigned to Wilsonville, one of two cities that contract with Clackamas County and the Sheriff's Office to provide police services. The CCSO Lieutenant who supervises the Wilsonville station is designated as the Wilsonville "Chief of Police" and the station functions as a semi-autonomous entity within the Sheriff's Office. Green took over as the lone detective at Wilsonville and was responsible for handling most investigative cases there. There was no Investigations Sergeant at Wilsonville.

The Investigations unit, housed at Sheriff's Office headquarters in Oregon City, where most other detectives worked, was not responsible for supervising Green, tracking his cases or approving his reports. That was the responsibility of the Patrol Sergeant at Wilsonville, who in turn reported to the Lieutenant who ran the station. For most of Detective Green's years at Wilsonville, the Patrol Sergeant who was his immediate supervisor had shifts that only overlapped with Green's shifts for part of the week. Another Patrol Sergeant would share some supervision responsibilities at other times of the week.

Green by this time had many years of experience as a detective. He did not provide frequent updates on the status of his cases. At one point while at Wilsonville, Green was allowed to "sign off," that is, approve his own reports which is contrary to standard police investigative protocols. On some occasions, he also signed off on the reports of patrol deputies. Green also arranged to have a fax machine moved into his office and asked that incoming child abuse referrals from the State Department of Health Services be faxed directly to him. This meant that no supervisor made note of incoming child abuse reports that might result in criminal investigations, and no clerk recorded their receipt.

CCSO had a long familiarity with Green's work habits and other performance issues. As far back as 1998, Green's first level supervisor had counseled him about overdue cases. In 1999, Green was again counseled by a different supervisor about timely case completion.

In 2002, when Green was assigned to the Child Abuse Team (CAT) of the Detective Division, his supervisor reported that the detective was very knowledgeable and skillful in child abuse investigations. He noted, however, that three quarters of Green's cases were overdue, and he seemed very challenged by the need to complete investigations on old cases. The supervisor also noted that, while Detective Green was off duty but listed as available, he had been called for assistance on four occasions but had only responded once.

The supervisor became sufficiently alarmed at the number of Green's overdue case investigations that he crafted a "performance improvement plan" to address the problem. This

is a remedial program of tasks and milestones designed to remediate an employee's specific work performance deficiency. Consequently, Detective Green was required as a condition of the plan to clear up his overdue cases and to meet with his supervisor twice a week so that his progress could be closely monitored.¹ While we found no documentation of the progress or satisfactory completion of the plan, Green received a favorable performance evaluation the next year.

In 2012, a supervisor again expressed concern about Green's work habits and case management. He wrote in Green's performance evaluation for that year that he had issues with keeping up with his caseload volume as a detective in Wilsonville and noted that he had been warned by both his sergeant and lieutenant of his excessive backlog of overdue follow-up investigations. The evaluation noted that because of this back log, he was not able to complete some cases before the statute of limitations expired – thus eliminating the chance that offenders would be held accountable.

The evaluator noted that Green was extremely difficult to reach when he was not on shift, and that this was unusual for a detective. The Lieutenant in charge of Investigations at the time also added a comment about Green's failure to respond to all-detective call outs after hours: "The lack of response by Detective Green to calls within the city of Wilsonville caused detectives not assigned to the city to take on the responsibility for Wilsonville call out cases." She added: "During one major homicide case outside the city, Detective Green was finally ordered to assist the overwhelmed detective division. He participated in one short assignment and then chose not to help further and returned to the City."

In 2013, Detective Green was assigned an investigation into a suspected stolen vehicle. He wrote the search warrant affidavit, planned the strategy to serve the search warrant, and briefed the participants beforehand. Another police agency was participating as well. An Investigations Sergeant agreed to assist Green with arrangements for a search warrant. When the warrant was executed, guns and other indicators of a much higher level of danger than anticipated were found. The Investigations Sergeant received complaints from many of the participants that they were not properly informed or prepared for the warrant. He concluded that Green had known of several risk factors that should have called for a mandatory SWAT entry under CCSO policy and had failed to inform the Sergeant about them.

The Investigations Sergeant was troubled by what he saw as Green's lack of diligence and preparation and the resultant increase in danger to both CCSO and the outside agency's

¹ That supervisor would eventually be appointed the Undersheriff of CCSO.

personnel. He shared his findings with the Investigations Lieutenant and they both brought their concerns to the Investigations Captain.

This incident gave rise to a Professional Standards Unit (PSU) investigation of Detective Green and a sustained finding of violating the policy on Performance of Duties in a Competent Manner. At approximately the same time, Green's performance evaluation found that over the past year he had failed to meet expectations. CCSO also adopted a temporary change in procedures whereby the Investigations Sergeant was assigned to review Green's homicide cases and another sergeant was assigned to review his child abuse cases. However, that system did not prove to be viable, given that Green remained in Wilsonville and the sergeants were housed at Sheriff's headquarters.

These findings apparently resulted in another remediation plan being devised in April 2013. This "work plan" noted that: "There have been numerous instances of call-outs being made for you to respond to felony crimes in the City of Wilsonville and you have either not responded or not been available for call-out. Detectives and Sergeants have all attempted to page you out on calls without results, and others have been called out in your stead." The plan also addressed Green's case load backlog and pointed out that, "You have been spoken to about this and at that time you were able to demonstrate that you were mostly caught up on your investigations, however the trend of not completing them seems to be continuing". The work plan concluded: "[T]here is an immediate need for a change in behavior and work ethic while working within the city of Wilsonville and the County of Clackamas." The plan then instructed Green to 1) manage his case load at an acceptable level as decided by his supervisor, 2) carry his pager and respond to call outs, and 3) take lunch and coffee breaks within the city of Wilsonville and be available for calls. The plan also adds a warning that "any issues brought forth in the next 12-month period [...] could result in progressive discipline."

The documentation of the April 2013 work plan does not indicate how much monitoring his supervisors performed over the next twelve months. Nor does it show whether Green complied with the relevant conditions to the satisfaction of his supervisors – or even if the plan ever expired or was terminated.

The events described above make it clear that the Sheriff's Office was well aware of Green's work habit deficiencies and had been engaged over at least a fifteen-year period with various efforts to resolve those deficiencies. The widespread knowledge of Detective Green's problems as an employee, as well as the Sheriff's Office's continued but unsuccessful efforts to address those problems, illuminate the final sequence of events that led to Green's prosecution.

B. Concerns Reach a New Level

Green did not receive a Performance Evaluation for 2013 or 2014. While subsequent revelations demonstrated that Green had not reformed his habits in compliance with instructions of the work plans and evaluations discussed above, there were no apparent additional supervisory actions until February 2015. This is when a new Sergeant arrived at Wilsonville with responsibility to supervise Detective Green as well as others.

Prior to arriving at his new assignment, the Sergeant had become aware of the concerns about Green's ability to complete investigations on his case load. Before arriving, the Sergeant instructed Green to "reconcile his cases," and brief him. However, this never occurred. Shortly after arriving at Wilsonville, the Sergeant examined some of Green's case files, asked for status updates about some cases that appeared to have been neglected for years, and received answers he found unsatisfactory and, in some instances, deceptive.

Some of the cases related to rape, child abuse and domestic violence. The Sergeant was alarmed by Detective Green's repeated inability to explain why he could not move forward, locate or interview suspects, or in some cases, find records that he believed justified closing the case. On a Thursday afternoon, the Sergeant notified his Lieutenant, the "Chief" of the Wilsonville office, of his concerns and his belief that Green had committed "gross misconduct" by failing to investigate his assigned cases and his concern about Detective Green continuing in his current position given what was then known. The Lieutenant replied that afternoon and suggested to the Sergeant that they meet to discuss the next Tuesday or Wednesday, when they were both next scheduled to be at work together. The Sergeant responded by indicating that he did not believe the matter could wait and that he intended to file a report about Green with the Professional Standards Unit (PSU), the Sheriff's Office internal affairs unit.

The Sergeant filed the report with PSU through the dashboard on-line form designed for the purpose; he also notified the head of PSU of the allegations. He included a detailed description of his initial audit and findings about Green's negligence and the unsatisfactory explanations about cases. He included his conclusion that what he had uncovered "leads me to believe Green has neglected his cases and violated the Law Enforcement Code of Ethics, etc."

C. Additional Conflicts Arise

A few days later, the PSU Lieutenant rejected the filing and asked that it be resubmitted in a bare bones form without the extensive detail or the opinions expressed in the original. The initial Sergeant was taken aback by this request and said that he thought it was improper to change his original submission. The PSU Lieutenant then suggested that he put the original writing in memo form and submit it as a supplement to the on-line report and assured the

Sergeant that the memo supplement would be preserved and remain with the complaint file. The Sergeant followed this instruction.²

Fearing that Green would destroy evidence in his files, the Sergeant also requested that Green be put on administrative leave and not allowed access to his files. However, this was not done. Green remained on the job, but in within a week of his discovery of potential misconduct, the Sergeant informed Green that he had filed a formal complaint against him. He ordered the detective to do no further work on his open cases, and to open no new cases.

Meanwhile, the Sergeant repeatedly requested detective assistance to address the delinquent cases and the newer investigations that he no longer believed Green could handle. However, CCSO denied the request by citing a lack of available resources. As a result, the Sergeant ended up investigating some of Green's cases himself and assigned some of the open cases to patrol sergeants and deputies.

The PSU Lieutenant opened the Investigation of Green and referred it back to the Lieutenant of Wilsonville as a "low-level" Service Investigation.³ The Wilsonville Lieutenant in turn assigned the investigation to the initial Sergeant who had requested the investigation. The Sergeant expressed concerns about the propriety of this arrangement, but eventually accepted the assignment. However, shortly after doing so, he received a phone call from a previous

² The Sergeant stated in the Memorandum that he had "uncovered misconduct and a gross disregard for the duties of a police officer, the oath of office and the Law Enforcement Code of Ethics".

³ CCSO's Policy Manual defines two types of investigations:

(1). **Service Investigation** – an administrative investigation, which typically involves employee behavior, such as rudeness, offensive language, procedural errors or general misconduct, and conducted by the employee's chain of command; or

(2). **PSU investigation** – an administrative investigation, which typically involves serious allegations of misconduct, and conducted by PSU.

CCSO reported to us that at the outset of the Sergeant's complaint, the nature of Green's conduct appeared to PSU to be a serious neglect of his work. The Sheriff's Office explained to us that typically a matter of this nature would be assigned to Green's sergeant to put him on a work plan, oversee his performance and get him to work. As the recital of events set out here establishes, that response had repeatedly been proven to be ineffective as to Detective Green.

Sergeant of Green's, who expressed unhappiness that the Sergeant had opened an investigation that might make him look like a bad supervisor.

This telephone call compounded the Sergeant's concerns about the way his allegations were being handled – or mishandled – by higher-ranking members of the agency. Accordingly, he spoke to PSU and articulated his dismay over the way the complaint had been handled, accusing his immediate supervisors and PSU of attempting to minimize his concerns.

As a result, two Lieutenants and a Captain reported the initial Sergeant's new allegation against *them* to the Undersheriff. Eventually, in April of 2015, the Undersheriff asked the Investigations Captain to assign an investigator to look into the allegations against Detective Green as well as the allegations against the three command staff members. The Investigations Captain tasked the Investigations Lieutenant to conduct the investigation.

D. Outcome of the Internal Misconduct Investigation

The Lieutenant interviewed the initial Sergeant about his observations of Green and any concerns about the way that the three command staff members had handled his complaint. Detective Green officially retired the next day, April 17, 2015, in keeping with plans he had announced some three weeks earlier. As a result, the Lieutenant ended the investigation against Green without pursuing the allegations raised by the Sergeant.

The Investigations Lieutenant continued with the part of the investigation involving command staff. He ultimately concluded that there was no evidence that there was any level of conspiracy, neglect of duty or a cover-up by any of the named employees and recommended a finding of Unfounded.

An additional issue arose in connection with Green's retirement status. This pertained to his certification with the Oregon Department of Public Safety Standards and Training (DPSST). Among its functions, DPSST is responsible for devising standards that all Oregon law enforcement officers must meet to be certified. DPSST can also revoke certification, ending a person's capacity to be employed as a law enforcement officer. Upon the departure of a sworn officer from service, a law enforcement agency is required to send DPSST a form regarding that employee. It contains a series of check boxes where the employer specifies the circumstances of separation.

Though the choices include the appropriate "Retired while under investigation" the CCSO Undersheriff instead checked the "Retired" box on Green's form. This categorization preempted any inquiry regarding a pending investigation that DPSST would routinely make for purposes of determining whether decertification (and thus ineligibility to perform other work as a peace officer) was appropriate.

Ten months later, on February 16, 2016, the initial Sergeant met with the Undersheriff and the Sheriff and informed them that the completion of the DPSST failed to inform that Green had retired while under investigation. The Undersheriff then directed a PSU Detective to contact DPSST to seek any written guidelines for completing the form. A representative of DPSST emailed PSU indicating that no written guidelines existed for completing the requisite form but that staff was available to assist if questions arose.

On February 25, 2016, the Undersheriff met with the Detective who had conducted a subsequent audit of Green's cases. During that meeting, the Undersheriff determined that with regard to one particular case, Green's conduct might have been potentially criminal. On that date, the Undersheriff completed an amended DPSST form indicating that the circumstances of Green's separation were, in fact, "Retirement while under investigation".

In a letter accompanying the changed form, the Undersheriff indicated that the form was changed "based on new information". The letter indicated that while there had indeed been an "open investigation" at the time of Green's retirement, the information available to the Undersheriff at the time was that the investigation was "low level" involving "general laziness" and that it did not appear likely that it would lead to information that would support a termination. The Undersheriff informed DPSST that since the time that he submitted the initial form, additional information about the depth of Detective Green's work performance had come forward that if known at the time would have led him to elect "Retirement while under investigation." The Undersheriff indicated that, in the absence of written guidelines, he generally believed that the phrase "while under investigation" applied only to investigations of conduct that could lead to termination and about which DPSST may wish to further investigate.

The receipt of the amended form caused DPSST to finally seek records of the investigation. Before the DPSST review was completed, Green relinquished his DPSST certification as a condition of his guilty plea in the subsequent criminal prosecution.

E. Further Ramifications and Attendant Administrative Issues

After Green left the Sheriff's Office, the Sergeant continued to monitor the open cases that he had reassigned to patrol deputies and to further peruse Green's case files. He completed an informal audit of the sex abuse case files in July 2015 and presented his findings to the Captain of Investigations. The Sergeant found 13 cases with troubling components, and some of these implicated the performance of supervisors as well as Green himself.

Following the initial Sergeant's update on the sample of sex abuse cases, in August 2015, the Captain of Investigations informed the Undersheriff by memo that the Sergeant alleged that the performance of Green was not properly supervised "throughout the course of several supervisors during his tenure in Wilsonville." The memo pointed out that the Sergeant's more

detailed assessment of Green's cases had expanded the allegations to include claims that Green's supervisors had been aware of his deficiencies but failed to address them properly. The Captain recommended a complete and thorough audit of Green's case load over the previous five years. He also suggested it be performed by "an outside investigator so an unbiased review and evaluation of his cases and how they were managed can be done."⁴ The Captain further advised that the audit should address, among other issues, the need for systemic changes in the tracking and supervision of assigned cases.

The Captain proceeded with a more extensive audit of Green's cases and in September 2015 assigned this formidable task to the new incoming Detective assigned to fill Green's position at Wilsonville. The new Detective examined the case load and saw a pattern of inconsistencies and lack of follow up in many of them. He informed the Captain, who then approved the new Detective's plan to audit even more of Green's cases.

F. Results of the Formal Audit

The new Detective eventually examined 154 cases that Green had opened and found 40 cases that required further investigation or raised questions about the method or rationale used to "clear" the case. He followed up on each of the 40 cases and, in October 2015 documented his findings for the Captain of Investigations.

The Detective had placed the 154 cases into a spreadsheet and color coded them to express his assessment of the degree of diligence or negligence evident in the investigations files. Based on the documentation in the file he classified each case investigation as either acceptable, borderline/not enough information, or unacceptable. He designated 59 of the cases as "unacceptable," later described as "not properly investigated." Additionally, he observed a pattern of neglect to follow up on child abuse cases that arrived via "307 reports" from DHS.

The new Detective also noted some broad trends and problems he observed:

- More than half of the "unacceptable" cases involved allegations of rape, sodomy, child sexual abuse or physical abuse of a child. Many of them sat for years uninvestigated. Groups of such cases would be effectively cleared on the same day, convincing the Detective that when a supervisor told Green to "clean up his cases," he would simply suspend them with generic justifications such as: "The victim told her father she didn't want to pursue this case;" "I couldn't locate the suspect for a statement;" or "They never returned my calls."

⁴ The Captain's recommendation to assign the audit to an outside investigator was not accepted by the Sheriff's Office.

- The Detective also found a pattern in the cases where the investigation was acceptable. Those required little effort, and most of the work was performed by patrol deputies or outside agency personnel.
- According to the Detective, Green had an excessively high rate of failure to locate suspects, victims and witnesses. He also had a high percentage of “victims who didn’t want to proceed further.” The Detective noted that after Green’s cases were assigned to patrol deputies, in every case the patrol deputies were able to locate the victims, suspects and witnesses with simple follow-up.
- The new Detective found missing evidence or documentation in many of the “borderline” case files. As examples he cited a child physical abuse case where Green had determined that the mother had no criminal intent when she hit her child, even though there was no documentation that Green ever spoke to the mother. In a forcible sodomy case, the identified suspect was never interviewed. Another case file showed that the victim repeatedly tried to contact Green about the progress of the case. A transcript of the victim interview finally surfaced after the Sergeant asked Green about the case in which the victim referred to text messages from the suspect, but most of these were missing from the file.
- The Detective said that Green had a practice of diverting some of his cases to patrol deputies, then overseeing or even signing off on their reports and, in some cases, on his own reports.

The Detective opined that there were likely a number of potential cases that escaped scrutiny altogether because, though Green may have been aware of them via phone call, fax or outside agency report, his failure to take action would have gone unnoticed if he kept them from ever entering a tracking system in the first place.

The Detective continued to research the problem cases, contacted more of the victims and witnesses, and completed the spreadsheet. In late February 2016, he presented the final documentation of his audit at a meeting at CCSO headquarters with the Sheriff, the Undersheriff, Captain of Investigations, Lieutenant of Wilsonville and the PSU Lieutenant. The Detective briefed these executives on the number and types of deficiencies he had found in Green’s cases. He gave examples of what he believed to be untruthfulness by Green, as well as missing evidence and dubious claims that reports “must have been lost by Records.” He also shared problematic “case-clearing” reports “signed” by the previous Wilsonville Lieutenant after that Lieutenant had already left Wilsonville. During the meeting, the Sheriff himself shared a story from a time in the 1990s when he and Green had worked together as detectives.

The story revolved around Green's poor performance, which in the Sheriff's view had almost cost them an important case.

When the new Detective completed his briefing, the Undersheriff stated that the evidence should be criminally investigated. The attendees discussed the possibility of the Detective conducting the criminal investigation, but he informed the group that he did not believe he would be the appropriate choice. CCSO decided to request assistance from the Milwaukie Police Department to conduct the criminal investigation.

G. Criminal Review of Investigator Green's Misconduct

On March 15, 2016, the new Detective met with detectives at the Milwaukie Police Department and presented the evidence CCSO had gathered so far. The Milwaukie Detective visited some of the victims from the cases and confirmed many of the new Detective's earlier findings, including evidence that Green may have fabricated reports about trying to contact unresponsive or elusive victims.

Milwaukie also followed up on an issue that the Wilsonville Detective had thus far pursued only preliminarily: Green's apparent failure to open or conduct investigations in response to "Form 307" Child Abuse Cross Reports. The DHS 307 Reports are reports of suspected child abuse that Oregon's Department of Human Services (DHS) receives from mandatory reporters such as schoolteachers, physicians, and the clergy. When DHS receives a "307 Report", it is required to forward it to the local law enforcement agency for review and investigation. Once a law enforcement agency receives a suspected child abuse referral, Oregon statutes require that an investigation be undertaken by the agency.

In October 2016, Milwaukie Police Department completed its preliminary investigation and referred the case to the Clackamas County District Attorney's Office. The District Attorney's Office requested further investigation on the DHS 307 Reports issues. At that time, Milwaukie informed the District Attorney that it could not devote further resources to the investigation and requested the Portland Police Bureau to assist. After reviewing the reports, the Portland Police Bureau Commander advised that it would have handled the matter administratively and that while there was potential criminal conduct, he did not believe the significant follow up effort would be worth the investment and declined to assist.

As a result, the Office of the District Attorney pursued the investigation with its own resources and the assistance of the Detective from CCSO who had conducted the internal audit. Based on that follow up investigation, the District Attorney's office determined that in five child abuse cases there had been no investigation whatsoever, contrary to the requirement of Oregon

Revised Statute (ORS) 419B.020.⁵ Those five cases served as the basis for the five counts of Official Misconduct in the Second Degree filed by the District Attorney. These charges, in turn, formed the basis for the guilty pleas entered by Green.

H. Additional Reviews and Investigations

The conviction of Detective Green did not end the problems associated with his cases, his neglect, or his supervisors. Nor did it end the CCSO response. The Sheriff's Office continued to pursue the few criminal cases that had not surpassed their statute of limitations. And, as detailed below, CCSO also launched relevant revisions of policies and procedures. The systemic revisions are largely designed to provide more quality control so that the Sheriff's Office is better able to detect and remediate performance issues of the sort that plagued this matter.

Consultant Review: In March 2016, the Sheriff hired a law enforcement operations consultant – the retired Undersheriff of a nearby county – to review the investigation that had originally been conducted by the Investigations Lieutenant as to the initial Sergeant's collateral concerns about his supervisors. These were the two Lieutenants and the Captain who, according to the Sergeant, had undermined his efforts to appropriately address the full scope of misconduct implicated by Detective Green's performance failings. The Sheriff also asked this consultant to make recommendations designed to prevent further misconduct by employees who work semi-autonomously.

The retired Undersheriff concluded that the investigation of the allegations of a possible cover up by the Captain and two Lieutenants had been thorough, and that there had been no cover up. Additionally, the retired Undersheriff made three recommendations about supervision of semi-autonomous employees:

- The PSU procedure manual should carry a clear instruction that only factual information, rather than investigative material or opinion, should be entered into the complaints intake page;
- Training on the PSU complaints process should be annually;
- Routine random audits of detective cases should be done annually.

The PSU procedure manual has been updated to address the first recommendation. There has been no specific training initiative to address the second recommendation. CCSO has

⁵ The pertinent language states that if "a law enforcement agency receives a report of child abuse", the agency shall "immediately cause an investigation to be made to determine the nature and cause of the abuse of the child".

implemented several procedure changes aimed at the third recommendation, including mandatory sergeant approval of any case closings.

Chief Deputy Investigation: In May of 2017, during a meeting with the Sheriff, the initial Sergeant accused three members of the command staff of lying. He stated that the Undersheriff knew that Green was under investigation when he retired, so the failure to check the DPSST form as a “retirement while under investigation” constituted a lie. He also alleged that a Captain, and a current Captain who had been a Lieutenant at the time, had both lied to him in the course of conversations about the Green matter.

The Sheriff tasked the Chief Deputy with conducting an inquiry into these allegations. As to the allegations of lying by the two Captains, the Chief Deputy interviewed all the parties and concluded that the accusations were not supported by the evidence.⁶ In the course of looking into these matters, however, the Chief Deputy determined that some of the communications one Captain had with the Sergeant (about an article on the Green matter in the *Oregonian* newspaper) were unprofessional and violated policy.

The Sheriff agreed with this finding. Accordingly, he issued a written reprimand to that Captain for the messages, because they were both unprofessional and could have been perceived as retaliatory. The reprimand, however included a second basis: a finding that the Captain had contributed to the CCSO’s failure to prevent and discover Detective Green’s malfeasance. The discipline imposed on this Captain was the only formal adverse outcome relating directly to deficiencies in the supervision of Green.

I. Noteworthy Prior Episodes: A Pattern of Under-Reaction?

The Grahn Murders – In February of 2010, Sergeant Jeffrey Grahn of the CCSO walked into a crowded restaurant in Gresham, shot his wife and two of her female friends and then killed himself. The three women died.

Sergeant Grahn had worked for the Sheriff’s Office for 15 years. A year before the shootings, police had responded to a domestic violence call at Grahn’s house. Sergeant Grahn was not arrested at the scene.

CCSO eventually learned of the incident of alleged domestic violence through a series of disclosures from other law enforcement that eventually reached the Sheriff’s Office. The Sheriff directed that a request be made to the Portland Police Bureau to investigate.

⁶ As detailed below, and in contrast to the allegations against the two Captains, the Chief Deputy engaged in no fact finding with respect to the integrity allegation against the Undersheriff.

The Portland Police completed the domestic violence investigation and referred the file back to CCSO, concluding that while the case might not support a criminal filing, it nonetheless should be sent to the District Attorney for review. However, the CCSO leadership decided not to forward the investigation to the Clackamas County District Attorney or to confer with the District Attorney on the matter.

After the subsequent murder-suicide, the County Board of Commissioners appointed an Advisory Committee on Best Practices to examine CCSO and the circumstances surrounding the incident, and to devise recommendations designed to lessen the likelihood of a future tragedy. In January 2011, the Committee issued a public report with 14 recommendations. Subsequently, CCSO indicated agreement with most of the recommendations, and pledged to implement those for which there were supporting resources.

Bowman death: In 2000, Deputy William Bowman was accidentally shot and killed in a “friendly fire” incident during a training exercise of the SWAT team. Dummy rounds were to be used in the exercise involving entry into a mock building. However, due to inattention and poor communication between two deputies, one deputy’s weapon was loaded with a live round. Deputy Bowman was struck in the head by that round.

The six-member Shooting Review Board within the Sheriff’s Office determined that the team was never briefed on safety rules before beginning the training scenario, and that unspecified members of the team violated basic range safety rules and firearms safe-handling practices. In response, the Sheriff’s office reorganized the SWAT team and put new written safety guidelines in place. But it did not impose discipline on any individual involved in the exercise.

A number of the CCSO employees we interviewed in the course of our review, as well as individuals well-informed about the Sheriff’s Office, cited one or both of these incidents as exemplifying a historic reluctance by CCSO leadership to confront major incidents with appropriate rigor. This tendency put the Office in an unflattering light, and in the views of some reflected a pattern of denial that provided a backdrop for the many problems associated with the Green incident. Regardless of the legitimacy of that connection, an internal perception to that effect continues even some eight and eighteen years after the incidents.

III. Issues and Recommendations

As mentioned above, our review of the Green matter served as a springboard for familiarizing ourselves with a range of CCSO operational and procedural issues. These had obvious relevance to the Green case and its related implications. Just as importantly, though, we intend the following observations and recommendations to be applicable and beneficial in a variety of

ways to the strengthening of the CCSO, its internal review mechanisms, and its relationship with the public.

A. The Complaint Process

Law enforcement has recognized the importance of having a complaint process that ensures appropriate intake, handling, triage, scoping and documentation of complaints. When a complaint is received, the law enforcement agency should ensure that an objective and thorough fact collection process ensues, and that an evidence-based disposition is made. CCSO has a detailed protocol in its policy manual providing guidance to its employees on how complaints are to be received and handled. It also has an on-line complaint form on its website that can be downloaded. To its credit, CCSO indicates that it will accept third-party complaints, such as a complaint about unnecessary force used during an arrest that comes from a bystander rather than the arrestee.

Dated Complaints

CCSO's policy manual provides discretion to PSU regarding whether to accept complaints that are over 90 days old. Under current policy, if an over 90-day old complaint is reported within a reasonable time to allow for a thorough investigation, and if the complaint raises an issue that warrants further investigation⁷, it is to be investigated. However, if PSU determines that one of these factors does not exist, it can close out the complaint without any action.

While dated complaints can present investigative challenges, this is true of fresh complaints as well. Instead of making an arbitrary distinction that treats 90-day old complaints differently, the better course is to accept any complaint, no matter when received, and conduct the best investigation possible with the information available.

Recommendation 1: CCSO should remove the provision from its policy manual which distinguishes treatment of complaints received over 90 days from the date of the incident.

Discovery of Potential Misconduct: Delay in Action

When the Sergeant initially began his audit of Detective Green's cases, he informed his Lieutenant supervisor that he believed he had uncovered what appeared to be "gross misconduct" that needed to be thoroughly investigated and asked his supervisor to meet with him as soon as possible. In particular, the Sergeant expressly indicated his concerns with Detective Green continuing in his current position. The response from the Lieutenant was a

⁷ It is unclear what is meant by "an issue that warrants further investigation"; one would assume any complaint that, if true, would implicate a potential violation of policy meets this criterion.

suggestion that they meet to discuss nearly a week later, when their regular work schedules next coincided. The Sergeant indicated that he believed that the suggested meet date was too long to wait and that there were victims of sexual assault whose cases had not been investigated for years. The Sergeant stated his belief that he needed in “good conscience” to report the matter to PSU within 24 hours, which he did.

After the Sergeant reported the matter to PSU, CCSO was not vigilant in getting an investigation started. Because of a concern that the Sergeant had placed too much information on the complaint dashboard, his request for investigation was rejected by PSU with a request to resubmit. It was nearly a week before the investigation was accepted into the system. In the meantime, Detective Green had returned to work, and even though nearly a week had transpired since his discovery of potential “gross misconduct”, the Sergeant had received no guidance from either his supervisor or PSU on how the investigation was to be handled or what to do with Green in the interim.

The response of both the supervisor and PSU to the Sergeant’s concerns shows an apparent lack of urgency about the revelations. Despite the Sergeant’s expressed concerns about serious misconduct and having Detective Green continue in his current position, the Lieutenant’s first reaction was that the matter could wait until he and the Sergeant were next regularly scheduled to be in the Office at the same time. That tepid response likely was the beginning of the Sergeant’s formulating the view that CCSO was insufficiently concerned and lacked the urgency that the allegations warranted.

When a supervisor receives a communication from a first-level supervisor that he may have uncovered “gross misconduct” by a sworn employee, it is incumbent upon that second level supervisor to respond quickly and vigorously to address the problem even if it means meeting “after hours” or speaking on a day off. A more passive response sends the wrong signal to the reporting party and can lead to a belief that the agency is not sufficiently interested in uncovering misconduct. As importantly, it lacks the proper engagement with a matter of intrinsic urgency. Certainly, after the Lieutenant suggested a meeting several days in the future, in the follow up email, the Sergeant was unambiguous about his belief that the matter was both acute and time sensitive, and later events bore out his suspicions. The supervisory chain should have prioritized a meeting about the Sergeant’s allegations.

Recommendation 2: CCSO should devise protocols and train its supervisors that when a supervisor brings forward information suggesting “gross” or intentional misconduct by a subordinate employee, there should be an immediate meeting to learn the circumstances and devise timely next steps.

B. Initiation and Procedures for Investigations

Under current CCSO policy, when a complaint is received, a supervisor is expected to enter the substance of the complaint on an intranet-based PSU Complaint Dashboard. As detailed above, the initial Sergeant in the Green matter became concerned when he was told to delete some of the information that he had entered onto the dashboard. The response from PSU at the time was that surplus, inappropriate, and inaccurate information had been entered onto the dashboard by the Sergeant.

Without re-litigating this issue, it seems that concerns about entry of complaint information on the dashboard was a “form over substance” problem in this case. To protect against concerns of “inappropriate” information being placed on the dashboard, the better approach is to have the dashboard interface become an exclusive PSU function. In reality, PSU already reviews the information entered onto the dashboard in determining how the case is going to be investigated, and the added responsibility of entering the preliminary information is not unduly burdensome. It would seem preferable to have PSU receive any complaint in any form and reserve for itself the task of entering the information into the system.

Recommendation 3: CCSO should change its policy so that it accepts all complaints, whether generated internally or by a member of the public, in their original form, and gives PSU the exclusive responsibility to enter the appropriate information into the dashboard.

Triage of Complaint, Assignment of Investigation, Initiation of Investigation, and Internal Deadlines

Once a complaint is received, PSU determines whether it will investigate the matter or assign it out to the field as a service investigation, depending in large part on the severity of the allegation. The PSU manual thoughtfully includes a matrix intended to assist in determining the appropriate designation. However, deciding when a lack of competency or conscientiousness rises to the level of serious misconduct is often a difficult task, especially at the beginning of the fact-finding process. Periodic audits of the “Service vs. PSU” investigation decision could greatly assist efforts to maintain consistency and fairness and enhance the confidence of CCSO employees and the public in the process.⁸

Another positive feature is that CCSO has developed internal guidelines for the completion of an investigation: 90 days for PSU investigations and 30 days for service level investigations.

⁸ As noted elsewhere, the 2013 “work performance” investigation against Green was conducted by PSU, yet the “work performance” 2015 allegations were categorized as a Service Investigation providing an example of inconsistency in how similar allegations were handled.

Additionally, if there is a request for extension, it must be approved, and the subjects must be notified.

Current policy instructs investigators to notify the subject in writing when a PSU investigation is initiated, but subjects of service investigations only receive a verbal notification. While the likely intent is to keep service investigations less formal, it would seem preferable, from a risk management and better documentation perspective, to inform all subjects of internal investigations in writing when investigations are opened against them.

Recommendation 4: CCSO should plan objective audits of PSU's complaint triage process aimed at enhancing consistency, fairness and the confidence of CCSO employees and the public in the process.

Recommendation 5: CCSO should modify their policy to ensure that subjects of all internal investigations are notified in writing.

Allegations of Potential Criminal Conduct: Notification Protocols and Brady concerns

As noted above, once the allegations surrounding Green were raised by the involved Sergeant, it took almost a year before the matter was referred to an outside agency for a criminal investigation. Moreover, when the allegations involving Green initially surfaced, there was no consultation or referral of the matter to the Office of the District Attorney. Certainly, an extensive audit was undertaken before the potential criminal nature became more crystallized, although, the initial Sergeant had raised serious allegations of misconduct much earlier.⁹ This incident featured a repeated concern that both pre-dates¹⁰ and post-dates the Green matter:

⁹ When interviewed by the Chief Deputy in 2017, the Sergeant indicated that when the allegations first surfaced in February 2015, he thought it “was possible that there were some crimes but we didn’t know the full scope of the things that Jeff Green had done at that point.” Later in the interview, the Sergeant indicated that at that time he “hadn’t necessarily formed that opinion that he had committed those crimes, much less that we would’ve been able to prove it”. The Sergeant’s statements and his own apparent lack of certainty about whether Green’s acts constituted criminal conduct further support the need to have serious allegations referred and reviewed by the experts in assessing potential criminality, namely the prosecutors in the District Attorney’s Office.

¹⁰ As discussed above, in 2010, after CCSO Sergeant Grahn tragically killed his wife and two others, it was learned that he had been investigated for an allegation of prior domestic violence – but that the District Attorney was never notified. The Board of Commissioners convened an Advisory Committee on Best Practices to examine the incident with an eye toward systemic reform. As one of their recommendations, the Committee recommended that CCSO should

namely CCSO's promptness in notifying prosecutorial authorities when an employee has committed a potential criminal act.¹¹

The Office of the District Attorney has commented publicly about its concern that it has not been timely notified of potential criminal allegations involving CCSO personnel. CCSO responds that it has instituted a notification policy that is sound and satisfies the Brady obligations. The current policy instructs PSU to notify the Undersheriff of any complaint that has the potential to result in a criminal investigation. The policy provides for the Undersheriff to make the determination of notification to the appropriate prosecuting authority.

While the notification policy appears sufficient on its face, the repeated and recent claims of delayed or no notification by the District Attorney indicates that the policy need provide more guidance regarding *which* allegations are subject to notification, *when* notification is to be made, and *how* notification is to be documented. Moreover, as written the policy could be interpreted as providing the Undersheriff discretion on whether to inform the prosecuting authority. The revised policy should clearly instruct PSU to interpret the requirement broadly so that any allegation that potentially has a criminal component is forwarded to the Undersheriff, who will then automatically forward the information to the prosecutor. Second, the policy should indicate that notification should be as soon as practicable. Finally, the policy should create a recording and documentation function, so that the PSU data base contains documentation of all notifications, when the allegation of potential criminal conduct became known to CCSO, when the referral was made to the prosecutor, and the prosecutorial response.

Recommendation 6: CCSO's current policy should be revised to ensure robust and timely notification to prosecutors when potential criminal conduct of a CCSO employee becomes known. The policy should clearly state:

a. The interpretation of potential criminal conduct should be broad.

"coordinate with the District Attorney's office to establish written notification of alleged criminal misconduct by deputies."

¹¹ In addition to the need to timely apprise prosecutors of potential criminal conduct by CCSO employees so that the conduct can be evaluated for criminal liability, notification is also important regarding the County's "Brady" obligations (pursuant to Brady v. Maryland, 373 U.S. 83 (1963)). If an allegation of criminal conduct is lodged against a deputy, the prosecutor may well have an obligation to disclose the information to the defendant and/or the information may be a basis to dismiss any extant criminal charges, depending on the nature of the allegation. If the District Attorney is not aware of any allegations of criminality, it cannot effectively discharge its Constitutionally-mandated Brady disclosure requirements.

- b. The Undersheriff should inform the prosecutor's office when a referral is received from PSU.***
- c. The notification to the prosecutorial entity should be prompt.***
- d. There should be contemporaneous and robust documentation of the referral and the prosecutorial response.***

Allegations of Misconduct Involving Supervisors

Currently, CCSO's manual is silent on who should handle complaints against supervisors. As discussed above, in the Green matter, when an internal investigation was launched against the Captain and two Lieutenants, the investigation was assigned to a Lieutenant. When an investigation is assigned to a person of equal or lower rank than the subject employee, it presents a significant challenge to the investigator. That investigator, for fear of the lasting repercussions after the conclusion of the investigation, may be reticent about pressing the subject employee who is equal or higher in rank. Sergeants are generally assigned to internal affairs investigations so that peers are not investigating each other. For the same reason, many law enforcement agencies have a policy or practice of not assigning internal investigations to persons of equal or lower rank than the subject employee. CCSO should do the same.

Recommendation 7: CCSO should develop policy that disallows internal investigations being assigned to persons of equal or lesser rank than the subject employee.

Administrative Leave Determinations

At times, allegations are received that are of such serious nature that employees need to be reassigned during the pendency of the investigation, such as a sexual harassment allegation where the complainant is supervised by the subject. In other situations, it is appropriate to place the employee on administrative leave, where the employee continues to be paid, but he/she is assigned to home until the investigation is concluded. As discussed above, in the Green case, the Sergeant who complained of the conduct strongly advised that Detective Green needed to be placed on administrative leave, which CCSO declined to do.

CCSO informed us that it did not want to "reward" a Detective who was alleged to have been lazy and not finishing his cases by paying him to stay home. CCSO further replied that it was not aware of the full gravamen of Detective Green's actions until the audit was completed. However, the initial Sergeant indicated that if CCSO had fully engaged with him and interviewed

him promptly once he had unearthed some preliminary concerns, CCSO would have been aware much earlier of the depth of the problem.¹²

CCSO has scant substantive written guidance regarding decisions on whether to reassign subject employees or place them on administrative leave, indicating that employees can be placed on leave “when it appears that such action is in the best interests of the Sheriff’s Office”. It would be helpful for CCSO to develop substantive guidelines so that employees are aware of the types of allegations that might be subject to reassignment or administrative leave. Moreover, such guidelines would help ensure consistency of treatment to employees by those making the administrative leave decision.¹³

Secondly, when a supervisor has initiated the investigation, he/she should be fully consulted regarding whether the employee should be reassigned or sent home.¹⁴ While ultimately those decisions should be made by individuals of high rank within the law enforcement organization, they should be informed by, and appropriately responsive to, the substantive input of the supervisor who requested the investigation.

Finally, any decision about whether to place an employee on administrative leave should be fluid and open to further discussion as events unfold. Because in the Green case the decision was made not to place Green on administrative leave, the Sergeant indicated that he was left to hold Green accountable through other means. This led to his writing a “counseling memo”, putting restrictions on the detective’s work, reassigning his cases to patrol deputies, and issuing him a reprimand. As a result, Green ended up doing little or no work after all, thereby obviating CCSO’s stated rationale for keeping him on the job site.

Recommendation 8: CCSO should create written policy providing further guidance regarding the factors to consider in determining whether to reassign an employee or place her/him on administrative leave during the pendency of an investigation into serious alleged misconduct.

¹² There was an inexplicable delay of six weeks between the time the Sergeant alerted his agency to the Green misconduct allegations and when he was first interviewed about them.

¹³ Any articulated concern that the employee might destroy inculpatory evidence or commit other potential actions designed to undermine the effectiveness of an investigation should weigh heavily in any decision to place the subject employee on administrative leave. In fact, this concern was central in the Sergeant recommending that Green be placed on immediate administrative leave.

Recommendation 9: In cases in which a supervisor has initiated the complaint against the subject employee, CCSO should inquire whether and why the supervisor recommends that the employee be reassigned or placed on leave.

Recommendation 10: The decision about whether to place an employee on administrative leave should be fluid and subject to ongoing review.

The Challenges of Assigning an Internal Investigation to the Complainant Supervisor.

As detailed above, in this case, the Sergeant who conducted an audit of Detective Green's cases and requested that an internal investigation be initiated when he discovered potential misconduct was initially requested to conduct the investigation as a Service Investigation.¹⁵ While the idea of assigning the investigation to the supervisor most knowledgeable of the possible misconduct has some appeal, the downsides to doing so significantly outweigh any perceived advantages.

Complainants are not generally assigned to conduct investigations, in part because of inherent concerns about their objectivity. Even if that supervisor were genuinely able to overcome the unconscious bias he or she might bring to the investigation, the subject employee could challenge potential findings on the basis of the instigating supervisor's presumed interest in being "correct" about the initial allegations. In addition, if the allegation involves serious work performance, such as in this case, the investigation could well distract the complaining sergeant from other important and directly affected responsibilities.

Recommendation 11: CCSO should create policy that discourages the assignment of an internal investigation to the complainant supervisor.

Consistency in Tape Recording Investigations

In the investigation into the conduct of the Captain and two Lieutenants that emerged from the Green case, the handling Lieutenant initially decided not to tape record the interviews of the complainant sergeant or the subject supervisors. However, one of the subject Lieutenants insisted that the interview of him be tape recorded, and that he be afforded the admonitions that are generally provided subjects. As a result, the investigation included interviews of subjects, some of whom were taped while others were not. This incongruous result stems, in

¹⁵ Interestingly, and in contrast to the 2015 decision, two years earlier when questions arose regarding Green's performance in devising a risk assessment as well as some potential integrity concerns, the investigation was conducted by PSU as opposed to sending it out for a Service Investigation.

part, from insufficient guidance by CCSO on whether interviews in internal investigations are to be tape recorded.

The PSU procedural manual mandates that all interviews conducted in the PSU office are to be audio and video recorded, but it is silent regarding interviews conducted outside of the office. Whether an interview is recorded should not be dependent on the location of the interview. Best practices are to have interviews relating to any internal investigation tape recorded, unless impracticable or when a non-CCSO witness declines to be interviewed on tape.

Recommendation 12: CCSO policy should be revised to indicate that all interviews relating to an internal investigation should be tape recorded, unless it proves impracticable or when a non-CCSO witness declines. Should these exceptions occur, the file should document all reasons why an interview was not tape recorded.

Failure to Conclude Investigation

In the Green case, once the Detective retired, pursuant to past practice, CCSO no longer pursued the allegations against him. CCSO reasoned that because the Detective was no longer employed by CCSO it could no longer take any action against him and there was thus no interest in completing the investigation. This perspective takes a very narrow view of the reasons for conducting internal investigations and should be revisited.

It is true that one of the primary reasons for initiating an internal investigation is to address and remediate the potential policy violations of law enforcement agency personnel. When a subject employee is no longer employed by the agency, that response is no longer available. Moreover, if the subject employee has left the organization, he/she will not likely cooperate in the investigation.

However, there are other reasons for conducting an internal investigation that go beyond the goals of individual employee accountability. Particularly in this case, an investigation could have provided better insight on how Detective Green was able to perform as he did for as long as he did. Moreover, the investigation could have (and should have) been more broadly scoped to consider whether the Detective's former supervisors performed consistent with CCSO expectations, or whether more effective supervision would have resulted in earlier identification and potential remediation of Green's performance deficiencies.¹⁶ From a

¹⁶ As detailed above, in early 2016, a retired Undersheriff from a neighboring County was asked to do a review of the investigation of the two Lieutenants and the Captain who reported their concern that the Sergeant believed they had conspired to cover up the investigation. He was also asked to make any recommendations that might prevent further misconduct by employees who work semi-autonomously. This endeavor, though worthwhile, was also obviously a

systemic perspective, a factual inquiry could have shed light on what caused the supervision system to break down so that a Detective Green was able to continue in the way he did so long as he did. Closing the investigation as to Green resulted in CCSO forfeiting these opportunities. Other law enforcement agencies recognize the value in persisting and concluding all internal investigations, regardless of whether the employee leaves the organization.¹⁷

Recommendation 13: CCSO should develop policy that requires all internal investigations to be completed regardless of whether the subject employee separates from the organization prior to or during the pendency of the investigation.

Failure to Follow Up with Additional Received Information

While, unfortunately and as noted above, the initial allegations against Green were not investigated as a result of his impending retirement date, the initial Sergeant's allegations of "cover up" were. They were found to be not sustained. However, the Captain who reviewed this investigation informed the Undersheriff of his belief that there remained an underlying issue of whether supervisors of Green had failed to address his deficiencies. The Captain recommended that an audit be undertaken by an outside investigator so that an unbiased review and evaluation of the cases and the management of them could be accomplished.

While an audit was eventually undertaken by a CCSO detective, the focus of the audit was on identifying deficiencies in the Green cases and salvaging any cases for potential prosecution. The Captain's recommendation to also focus on the supervision of Green's cases, or lack thereof, was apparently not accepted nor was the recommendation to have the audit done by an outside investigator.¹⁸

belated one that a more robust initial investigation could have encompassed. Also, as discussed above, the 2017 investigation by the Chief Deputy resulted in a Lieutenant being taken to task for his ineffective supervision of Green. However, that reopened investigation stemmed from concerns raised by the Sergeant directly to the Sheriff and not because of any inherent interest by CCSO.

¹⁷ To CCSO's credit, a larger audit was eventually conducted into Green's cases, initially to determine whether any of the cases could be salvaged for prosecution. It was this audit that led to the eventual criminal investigation and conviction of Green.

¹⁸ After the audit's preliminary findings conducted by the CCSO detective were reviewed, the Captain informed the Undersheriff that there remained ongoing concerns about lack of oversight on case assignments. Again, the Captain's disquiet about the failure to supervise Green was apparently not pursued.

During his interview with the Lieutenant assigned to the Green investigation and allegations of cover up, the initial Sergeant was asked whether there were other witnesses who should be interviewed about Green's alleged misconduct. Green retired shortly after the interview with the initial Sergeant, the investigation was closed as to Green without any further facts being developed by the Lieutenant, and the additional witnesses identified by the Sergeant regarding Green's misconduct were never interviewed. Months later, after learning that the investigation against Green had been closed without any further fact gathering, that Sergeant wrote to the same CCSO Captain that he believed that Green may have destroyed evidence, had been untruthful to him, had been insubordinate, and failed to investigate cases because he could get away with it and because the victims were minorities, vulnerable, or otherwise powerless to complain about his conduct.¹⁹ The Sergeant also alluded to concerns that prior supervisors had failed to ensure that Green performed his work.²⁰

The Sergeant further informed the Captain that he had been told that Green had made statements to the effect that "Mexican women report rapes so their families can come to this country." At a later point, the Captain informed the Undersheriff of the Sergeant's concern about possible racial bias in the way Green handled investigations. On their face, these claims are alarming in both their scope and severity. However, with the key exception of the extensive audit conducted into Green's cases, these specific and distinct allegations were never formally investigated by CCSO.

The Sheriff's Office has advised that the Undersheriff was informed in September 2015 by a Captain of the possible racial bias of Detective Green's actions. CCSO reported to us that the Undersheriff then asked the Detective assigned to the Green audit whether there was evidence of a pattern of bias, was informed that there was no pattern, and based on that statement did not pursue the matter further. There is no apparent contemporaneous documentation of this discussion between the Undersheriff and the Detective making it impossible to learn post hoc

¹⁹ The Sergeant also apparently talked to the Captain about some of these concerns. According to the Captain, he instructed the Sergeant to raise any additional issues with his chain of command.

²⁰ In addition, the Sergeant informed the Captain that as a result of making the complaint, he had received a harassing phone call and misinformation was used to mock him. Later, the Sergeant also challenged negative statements made in his subsequent performance evaluation and indicated he had received information from CCSO supervisors that the evaluator had placed untrue statements in the evaluation. According to CCSO, these matters were referred to County Human Resources to follow up with the Sergeant regarding his concerns.

what precisely was discussed. And even if the audit did not show a “pattern” of bias by Green toward minorities, specific statements of bias had been allegedly made by Green to CCSO employees, yet the Sheriff’s Office never interviewed those witnesses about them. Moreover, there is no specific finding as to this allegation in CCSO’s PSU database. In short, the level of CCSO “fact-finding” and subsequent documentation regarding this allegation is underwhelming and disappointing. It cannot be said that CCSO “investigated” this disturbing allegation in any real sense.

It is incumbent upon a law enforcement agency that whenever it receives additional information of employee misconduct that it investigates the allegations, even if the employee has left the organization. Moreover, the allegations made by the Sergeant here went beyond allegations of Green’s misconduct and extended to concerns over the performance of prior supervisors of Green.²¹ CCSO nonetheless opted not to pursue these additional allegations. CCSO should use this episode as a “lessons learned” event and revise its protocols to ensure that all allegations of misconduct be fully and thoroughly investigated.

Recommendation 14: CCSO should modify its policies to ensure that when it receives additional allegations of misconduct, the allegations should be fully investigated.

Additional Investigation and Review: Out of Process

As noted above, in May 2017, the Sergeant met with the Sheriff and alleged that the Undersheriff had failed to inform DPSST that Green was under investigation when he retired and that two other command staff members had also made false statements. As a result, the Sheriff assigned the allegations to the Chief Deputy for follow up.

The Chief Deputy interviewed the Sergeant and the two command staff members and concluded that the integrity allegations could not be sustained. However, during the course of his inquiry, the Chief Deputy learned of inappropriate communications made by one of the command staff members to the Sergeant and found that the communications were inconsistent with CCSO policy. The Chief Deputy should be credited for identifying the additional misconduct and incorporating that violation into his inquiry. It is important that, as occurred here, additional misconduct is also addressed as it is discovered during an evolving investigation.

²¹ After the Sergeant was interviewed by the Chief Deputy, he wrote the Chief Deputy raising another issue: his view that the CCSO statements to the media about Green were not accurate. We discuss that issue later in this Report, but despite the Sergeant raising the additional allegation, it was never internally investigated or subject to formal review by CCSO.

Although the Chief Deputy conducted a creditable inquiry into two of the three allegations against command staff, including conducting tape-recorded interviews of witnesses and subjects, his inquiry into the DPSST allegation involved no interviews, not even of the Undersheriff himself. Instead, with regard to the DPSST allegation, the Chief Deputy simply collected documents pertaining to the matter and opined that because the matter had already been reviewed, no further investigation was necessary. The Chief Deputy further concluded that based on the documents, there was no misconduct.

In fact, CCSO never formally investigated the alleged false entry on the DPSST form.²² While, as explained elsewhere, a corrected form with explanation was sent to DPSST several months after the initial submission, no investigation was conducted into the inaccurate information originally communicated to DPSST. CCSO informed us that when the Sergeant raised the DPSST matter, the Sheriff found no support for the claim of dishonesty. Thus, CCSO asserted that when the matter was raised again, the Chief Deputy did not need to take any further action.

Regardless, the finding by the Sheriff that the allegation of dishonesty regarding the Undersheriff's submission of the DPSST was without merit was made without any formal investigation. Nor is there any apparent contemporaneous written documentation or analysis supporting the decision.

Recommendation 15: When CCSO receives an allegation of misconduct, CCSO should ensure that there is an investigation into the matter, no matter the rank of the subject employee.

Supervisory Failures Not Fully Investigated or Reviewed

As discussed above, a Captain who, as a Lieutenant, had sent unprofessional messages to the initial Sergeant was eventually officially reprimanded. Among the bases for the discipline was a finding that the Lieutenant had played a role in the collective failure of the Sheriff's Office to "prevent and discover the malfeasant acts of" Detective Green. This articulation of an aspect of the Green matter points out that CCSO clearly recognized that the supervision problems were not just the responsibility of one person. However, the sanction fell only on one person; moreover, it was blurred by the other policy violation for professional conduct in communications. This response was, at best, an incomplete way for the Sheriff's Office to address the significant and repeated deficiencies in the supervision of Detective Green.

²² If the Chief Deputy had conducted fact finding into the DPSST matter, he would have been investigating an employee of equal rank with the attendant problems that can cause as discussed elsewhere in this Report.

Recommendation 16: When a significant supervision failure involving more than one supervisor is identified, CCSO should ensure that any subsequent investigation or review be comprehensive and identify all supervisory lapses.

Timely Investigative Assistance Not Provided

As discussed above, when the Sergeant grew concerned about Green's delinquent cases and was accordingly reticent for him to have access to them, the Sergeant repeatedly requested assistance for additional resources to work on the case load. However, assistance was not provided for approximately six months. During that time, the Sergeant was forced to assign detective cases to deputies with no detective experience as a stop gap measure.

CCSO initially responded to the Sergeant's request by indicating that it could not spare detective assistance and showed no sense of exigency despite the Sergeant's repeated communications. According to the Sergeant, at one point he asked for a detective who was on light duty status but was informed that the detective was needed elsewhere to reduce overtime. In such a situation, especially when statutes of limitation are at risk of expiring, it would have been more constructive for CCSO evaluate the request in a more considered way, balance the relevant priorities, and document its decision to reduce ambiguity and potential frustration.

Recommendation 17: When a supervisor requests additional investigative help to address delinquent cases or other resource shortages, CCSO should evaluate the need, balance it against other resource needs, and make a considered decision about whether and how to provide assistance.

CCSO: Ensuring Cooperation with Criminal Investigations

As discussed above and to its credit, eventually CCSO assigned a detective to conduct an extensive audit of Green's Wilsonville cases. The detective prepared a spreadsheet of the cases reviewed and identified defects in performance. When the case was referred to an outside agency for a criminal investigation, the detective provided a copy of the spread sheet to the outside investigator. Later, immediately prior to a scheduled meeting between the CCSO detective and the prosecutor supervising the investigation, the CCSO detective was asked to see if he could subtly "get back" the spread sheet from the District Attorney's Office because it would look bad for CCSO. The detective reported back that there was no opportunity for him to do so.

We were informed that the request to retrieve the spread sheet originated with the Undersheriff. It was explained that CCSO believed that the detective's notes and impressions about the adequacy of Green's investigations as depicted in the spread sheet were not evidentiary, and that this work product should not have been provided to the Office of the District Attorney.

Historically and nationally, there have been issues regarding information sharing between the investigating agency and the prosecutor. Oftentimes, the breakdown is no more than the investigating agency believing that certain material in the file is not important for the prosecutor to have. Sometimes the information involves investigative leads regarding other potential subjects that did not pan out. However, and particularly as a result of the increasing emphasis on discovery obligations under *Brady*, the prosecutor needs to be aware of all information in the investigative file, because such information might be construed as exculpatory.

Regarding the Green matter, it is incongruous and extraordinary to have a law enforcement agency which has already provided information try to get the information back. Certainly, if the agency believes it important to impress upon the prosecutor that the information deserves qualification for some reason, then sharing that view would be a reasonable approach. But an attempt to "subtly" retrieve the document does not seem to advance any law enforcement purpose. For the reasons articulated above, the trend among law enforcement agencies is to share more information with prosecutors, not less.

Recommendation 18: CCSO should devise protocols accompanied with training to ensure that its detectives recognize the importance of informing prosecutors of all that is included in the investigative file and to provide any requested information.

CCSO Feedback to Sergeant

After the announcement that criminal charges had been filed against Green, the Sheriff issued an email to all sworn CCSO personnel indicating his view that the initial Sergeant had done the right thing in initiating a complaint. In addition, this support was enhanced with a meeting, initiated by the Sheriff, where he personally thanked the Sergeant for reporting Green's misconduct. This type of command support for a sergeant who has come forward with an allegation of misconduct against a subordinate is critical, and the Sheriff should be credited for providing it. By doing so, he both affirmed the Sergeant's actions on a personal level and sent an important message to the rest of the agency.

Recommendation 19: As in this case, when a supervisor or deputy comes forward with information that eventually leads to a prosecution of a CCSO employee for criminal acts, CCSO

should continue to communicate to its personnel an acknowledgement of the fortitude and courage such an act requires.

Recommendation 20: In addition to an internal agency-wide notification, CCSO should also continue to ensure that its leadership reach out personally to the individual who came forward in order to express appreciation for fulfilling the ethical values of the organization.

Reviewing Claims and Lawsuits for Accountability and Reform

When an individual believes he or she has been aggrieved by peace officers, the person can file a complaint with the agency. In some instances, though, however, people choose the court system as their vehicle for relief and file a claim or lawsuit instead. The choice of forum tends to have a significant influence on an agency's response: complaints are investigated as personnel matters, while the evidence-gathering for litigation has a different and inherently defensive orientation. This is a dichotomy that we understand – but believe merits further consideration.

Among other things, a claim or lawsuit is essentially a “citizen complaint with a price tag attached.” If a jurisdiction handles these matters solely in litigation mode, it may overlook important questions of potential misconduct, or resist the kind of investigation that might produce unwanted evidence.

For that reason, CCSO should be routinely reviewing claims and lawsuits to ensure that such an appropriate internal inquiry does occur in addition to other responses. When the allegations suggest criminal conduct, there should be a referral to the Office of the District Attorney. In a similar vein, CCSO should monitor civil litigation to identify potential individual deputy performance issues as well as systemic issues that may be revealed.

Recently, allegations that first appeared as part of a tort claim filed by a CCSO former employee was received by the County on March 28, 2018. PSU received the information included in the tort claim a week later and began a preliminary inquiry. Even though the tort claim expressly identified a CCSO employee as committing a potential act of a crime of excessive force, the Sheriff's Office did not contact the District Attorney about the allegation until May 17, 2018. The following day, the District Attorney interviewed the former employee and referred the matter for further investigation to the Multnomah County District Attorney's Office who referred the investigation to the Portland Police Bureau. CCSO needs protocols and a system to more timely review claims and lawsuits with an eye toward promptly notifying the District Attorney should the allegations be potentially criminal and initiating investigations of potential criminality or misconduct.

Recommendation 21: CCSO should review claims and lawsuits as soon as they are received for purposes of identifying potential criminal and/or administrative misconduct and take prompt action if District Attorney notification and/or an investigation is warranted.

Imposing Discipline: The Roundtable Process

For internal affairs matters that indicate serious misconduct in violation of law or policy, CCSO has instituted a roundtable process as an aid to the discipline decision. At the weekly Captains' meeting, the PSU Lieutenant attends the personnel discussion to report on all pending investigations. Newly opened investigations are identified, existing investigations are updated, and findings are reviewed for those concluded investigations that are ready for disposition. Typically, the discussion with Captains regarding appropriate discipline is then led by the Sheriff, Undersheriff or Chief Deputy.

The Captains' meeting roundtable personnel discussion was implemented by the Sheriff to inform personnel decisions across agency division captains and to provide consistency of practice among patrol, community corrections, civil and jail divisions. Personnel matters not necessarily related to policy violations are also discussed at Captain's meetings to determine how to support an employee experiencing such things as divorce, health issues or family hardship.

Most agencies impose discipline through paper review. The roundtable process devised by CCSO affords more discussion about the appropriate accountability measure and promotes greater consistency in disciplinary outcomes. With participation by a greater array of command staff, the eventual decision can be benefitted by the various perspectives each might have. The roundtable concept is a forward-thinking way to make discipline determinations. However, to provide greater transparency and permanence in the procedure, CCSO should also commit the process to policy.

Recommendation 22: CCSO should institutionalize the disciplinary roundtable process by including it in policy.

Devising Responsive Closing Letters to Complainants

Per policy, CCSO provides a notification letter to complainants regarding the outcome of internal investigations. Confidentiality rules sometimes limit the amount of detail that can be shared, but these letters can nonetheless contribute to public confidence in the process and its outcomes. This is especially true in cases for which the allegations are not sustained: the effects of a disappointing result are potentially mitigated by specific indications that the

investigation was taken seriously and that the disposition was based reasonably on available evidence. Too often, though, many law enforcement agencies simply provide terse form letters that give no insight into the process or its legitimacy.

Well-crafted letters that are tailored to the complaint provide an opportunity to inform that a thorough investigation was conducted. To that end, constructive closing letters provide information about the number of witnesses interviewed and the nature of any other evidence collected and reviewed. Even if the result may not be satisfactory to the complainant, the more that an agency is willing to show its work, the more confidence there will be in the legitimacy of the process. In the investigations that we reviewed, the letters composed by CCSO all read the same and provide no detailed information to the complainant. The Sheriff's Office would be well-served to go beyond a "boilerplate" or minimalist approach in communicating outcomes.

Recommendation 23: CCSO should craft closing letters that provide more detail about the investigation, such as the number of witnesses interviewed and the nature of any additional evidence reviewed.

Staffing at PSU

In 2011, the Advisory Committee on Best Practices formed after the Grahn incident recommended that staffing at the Professional Standards Unit be increased to two full-time sergeants. While supportive of the recommendation, CCSO responded that because the Board of Commissioners had not allotted sufficient resources to fully implement the recommendations, it intended to supplement PSU with part-time detectives. Very recently, and seven years after the initial recommendation, we were informed that CCSO finally approved an increase in staffing at PSU to two full-time sergeants. Currently, PSU is in the process of identifying the second sergeant for PSU assignment. This should be beneficial, allowing PSU to achieve more consistency in its investigations and conformity with the unit's stated procedures. Staffing needs for this vital function should be reviewed frequently to determine if the current staff resources dedicated to PSU is sufficient.

Recommendation 24: CCSO should continue to prioritize, evaluate, and effectuate sufficient staffing levels for the functions of the PSU.

Ineffectual Response from the Performance Evaluation Process

As discussed above, during several periods, Detective Green failed to meet standards because of his failure to complete cases in a timely fashion, and his repeated failure to respond to detective call-outs. While, at times, it is evident that Green's supervisors candidly identified performance issues in the written performance evaluation, it does not appear that the CCSO performance evaluation process effectively addressed or remediated those issues.

As part of our review, we requested all of Green's performance evaluations since 2005. Upon first review of the documents, we noted that there were no evaluations of Green since 2013. Accordingly, for the two-year period prior to Green's departure from CCSO, there was no written evaluation of his performance.

This lapse is all the more stark in light of the performance failure cited in his last completed evaluation: namely that Green's case load had become so delinquent that cases had been allowed to lapse beyond the statute of limitations. For a detective, this is an especially serious charge; simply indicating that Green needed to do better is an insufficient response to the issue. This was, of course, compounded by the lack of subsequent evaluations.

Even in the nine prior years where Green was found to have met or exceeded expectations, in several of them, the supervisor had documented issues with Green's delinquent management of case load and poor showing for call outs. However, despite the identification of these issues, the performance evaluation process clearly did little to improve performance; the last recorded finding was still a "failure to meet expectations."

The performance evaluations completed in 2010-11 and 2011-12 have virtually identical language in many parts of the narrative. It is clear that the 2010-11 evaluation prose was to some extent simply lifted and inserted into the 2011-12 evaluation, including Green's performance goals. This "cookie cutter" approach to evaluations indicates a lack of attention and care by the first-level supervisor, and insufficient monitoring of the process at higher levels of the organization.

Ineffectual Response from the Work Plans

As noted above, in both 2002 and 2013, Green was placed on a work plan as a result of performance concerns. While both plans candidly explain the reason for the work plan and set out tasks designed to improve performance, there is no discussion about monitoring and no definition of "success." While the 2002 plan has due dates for certain tasks to be completed, there is no follow up documentation indicating whether they were. The 2013 plan has no discussion regarding milestones but simply indicates that the imposed conditions are for a one-year period. The 2013 plan is not signed by the parties, and there is no subsequent documentation regarding compliance or the lack thereof.

CCSO's work plans need additional formality and monitoring. First, the supervisor who prepares the work plan should be responsible for obtaining signatures on the "contract" from the employee. If the employee declines to sign, a notation to that effect should be placed in the file.

Second, the work plan should set out some milestones and indicate what actions by the employee are necessary to achieve compliance and success. After the plan is implemented, the supervisor should create log entries at various intervals to document the progress (or lack thereof) of the employee. Before the work plan is terminated, there should be documentation in the file indicating indicia of compliance. If the issues continue despite the work plan, the supervisor should recommend more drastic remedial action.

Ineffectual Response from the Formal Disciplinary Process

As noted above, in 2013 a formal investigation was initiated against Green for poor work performance and concerns about integrity. The matter stemmed from concerns about how Green performed the risk assessment of a search warrant, implicating peace officer safety concerns. While the integrity issue was not founded, CCSO found that Green's poor work performance constituted a sustained violation. However, there was no apparent effective remediation emanating from the investigation. Moreover, CCSO did not apparently consider the other performance issues as reflected in Green's evaluation in determining the appropriate accountability action.²³

In sum, CCSO attempted to address Green's performance issues through the performance evaluation process, the devising of work plans and the formal disciplinary process. But none proved effective, each for avoidable reasons that reflect managerial lapses.²⁴ The issues identified in the performance evaluations should have been subject to more intense monitoring and consequences. The work plans should have been accompanied by subsequent documentation on Green's progress (or lack thereof). The investigations should have reviewed and considered the other historical and repeated performance issues when determining the level and type of accountability.

One way that each of these attempts at addressing performance could be enhanced is by CCSO having a more integrated and uniform response when repeated and significant performance

²³As early as 2004, CCSO launched an investigation into Green's excessive use of the Internet for non-work-related functions, resulting in a sustained finding of a policy violation.

²⁴We were also informed anecdotally that over the years several supervisors had run Green out of their detective unit and required him to find another detective assignment. CCSO indicates that there were appropriate reasons to support changes in Green's field assignments. While we do not dispute this fact, a change in field assignments without further remediation is not beneficial to the organization, since the moved employee simply becomes another supervisor's problem.

issues arise. While the preparation of performance evaluations should continue to be the primary responsibility of the employee's immediate supervisor, it would be helpful to have a centralized unit responsible to see that evaluations are regularly prepared, signed by the employee, and meet minimum qualifications. When work plans are devised, there should be a supervisor tasked with reviewing the plans as they are being created, ensuring that there are milestones in the plan with which to adjudge success, and that there is documentation indicating the degree to which the employee adhered to the dictates of the work plan. Finally, when a formal investigation is launched, in determining the appropriate level of accountability, the employee's performance as indicated in performance evaluations and work plans should be considered.

Recommendation 25: CCSO should devise a monitoring program that ensures that every employee has an annual performance evaluation, that the evaluation is signed, and that evaluations are reviewed to determine whether they meet minimum standards.

Recommendation 26: For every case in which the supervisor finds that an employee did not meet expectations CCSO should ensure that the evaluation is reviewed to learn whether a work plan should be devised or an investigation should be initiated into the performance deficiencies.

Recommendation 27: CCSO should provide guidance to its supervisors on the preparation of work plans and develop written protocols so that every work plan has milestones and measures of success and remediation.

Recommendation 28: CCSO work plan protocols should require the supervisor to regularly log reports of the employee's progress (or lack thereof). The work plan protocols should also require a memorandum from the supervisor documenting successful completion or recommending more serious remediation if the plan's goals have not been achieved.

Recommendation 29: The new auditing unit of CCSO should regularly audit performance evaluations and work plans in order to achieve consistency and ensure a level of quality control.

Recommendation 30: When a formal investigation is launched and results in a founded determination, employee work performance as indicated in performance evaluations and work plans should be considered in determining the type and level of accountability and discipline.

Corrective Action in Response to Litigation

In the United States, law enforcement agencies are frequent targets of litigation due to the risk and consequences of policing actions. Lawsuits are often generated in the aftermath of a deputy-involved shooting, other uses of force, arrests, or other enforcement actions, based on alleged violations of Constitutional rights, or negligent acts of involved deputies. In addition to potentially high liability, the litigation often generates a high degree of media and public attention and potential criticism.

When the litigation results in an adverse judgment or large settlement, one common reaction in law enforcement is to cite external factors – evidentiary rulings, jury instructions, composition of juries, quality of the advocacy – in explaining the result. The better response, in our view, is for any substantial payout to trigger additional internal review of the case. Ideally, this would include thoughtful consideration of deputy performance, training, policy, supervision, or other factors – including perhaps the quality of any previous internal investigation – that may have contributed to the outcome. In spite of their earlier advocacy, agency executives, County risk managers, and their lawyers should strive to properly and objectively identify individual performance or systems issues that may have weakened the jurisdiction’s litigation position.

With this principle in mind, CCSO should move past a disappointing result as quickly as possible, in favor of embracing a routine and formal reassessment of the various factors contributing to the outcome. Progressive agencies effectively use a large settlement or adverse verdict as a cause for this sort of reflection and self-examination. Case attorneys are well-situated to participate in this process by helping to identify the thorny facts that supported the plaintiffs’ theory, and that resulted in a determination that the risk of liability was too great to take to trial or else caused a jury to agree that the conduct of the deputies was deficient.

Where applicable, this analysis can lead to the formation of “corrective action plan” that is designed to address and remediate the identified individual performance issues. This can happen in a variety of ways. Accountability, training, or debriefing may be relevant to individual deputy performance; moreover, improved policy and procedure, equipment upgrades or other reforms can be implemented to address broader systemic issues. Akin to “root cause analysis,” the objective and introspective review is intended to identify liability concerns and devise ways to remediate those issues to enhance future risk management.

We urge CCSO and the County to adopt this introspective approach to adverse litigation, particularly for cases on which the public’s attention is understandably focused. Further, the Sheriff’s Office and County leadership should find appropriate ways to share the insights gained from their review with the public, so that the community is aware of constructive steps the County has taken in response to the significant litigation payout.

Recommendation 31: After a civil judgment or significant settlement involving CCSO activity, CCSO should take lead in a coordinated county assessment of the factors contributing to the outcome, should devise corrective actions as relevant and needed, and should inform the public of any systemic reforms resulting from this process.

Early Intervention System

It is a phenomenon common to law enforcement agencies that a small number of deputies tend to generate a disproportionately high number of complaints and other risk-associated activities and incidents. Although these patterns of behavior have potentially profound effects, they are often only recognized and addressed in a formal way when it is “too late.” The lack of earlier intervention compounds the regrets that problematic behavior can ultimately provoke. And, interestingly, this can be true for the involved deputy as well as the agency, particularly if an earlier or more concerted response to issues could have prevented a larger harm.

In response to this reality, law enforcement agencies throughout the country have established tracking systems for purposes of identification and remediation of potentially problematic trends. Generally referred to as an Early Intervention System (EIS), the concept has been widely accepted as a tool to enhance accountability, strengthen supervision, and improve community trust.

An EIS program aggregates data regarding risk-related activities such traffic accidents, public complaints, and uses of force. When deputies exceed the established threshold in one or more of the designated performance measures, it triggers the system and prompts a further review and response. Agency personnel analyze the incidents to determine what sort of intervention and remediation may be appropriate.

Importantly, the EIS program is not intended to be punitive. Instead, it provides the agency with an additional vehicle to monitor performance and offer constructive intervention. This can take the form of mentoring, closer supervision, or additional training to get that peace officer’s career on the right path.

A successful EIS program has several key features. These include “alert” thresholds that are neither over- nor under-inclusive; engaged supervisors; a plan for regularly monitoring and tracking progress of the program; an approach to gaining understanding and buy-in from affected personnel; and a commitment to meaningful and personalized interventions.

Nor should the system cannot rely on computer analysis alone – either for selection or omission of individual deputies from a mentoring program. First-level supervisors can and should be an effective resource in this regard, for example, and a review of underlying facts and

circumstances should accompany any computerized initial identification before a decision about inclusion is made.

In 2011, after the Grahn incident, the Advisory Committee on Best Practices recommended that CCSO develop an Early Intervention System. In its response to the recommendations, CCSO expressed support for the recommendation but indicated that it would require an additional allotment of resources to devise an EIS. The final correspondence from CCSO reported that because insufficient resources were provided by the Board of Commissioners to accomplish this recommendation, it intended only to hire consultants to advise on the types of data and programs to incorporate into the system. It is unclear whether the consultants were ever retained.

Seven years after the Advisory Committee's recommendation, we urge CCSO and the County to develop a robust EIS. While there is no way to know whether the EIS could have assisted in addressing Green's concerning performance and while, as noted above, Green's performance was clearly not unknown to CCSO, EIS's have been shown to be helpful to law enforcement in identifying and addressing deputy performance.

Recommendation 32: CCSO should implement the 2011 Advisory Committee recommendation and devise an Early Intervention System.

Recommendation 33: Once the EIS is operational, CCSO's Early Intervention System should regularly incorporate the input of first-level supervisors to identify deputies who might benefit from the remedial aspects of the program.

Mediation

As detailed above, when a complaint is filed about deputy conduct, CCSO conducts an internal investigation and if the investigation establishes a violation of policy, the disciplinary process includes some form of remediation. At the completion of the investigation, the complainant is notified about the results of the investigation. Other than being responsible for the initiation of the investigation, being interviewed as a witness, and being notified at the end, the complainant is not otherwise involved in the process.

Other law enforcement agencies have handled some complaints through a mediation process. Under mediation, the complainant and the involved deputy are brought together in a dispassionate setting to express their respective points of view, as guided by a neutral third party. For mediation to be successful, the law enforcement agency incentivizes deputies to participate by taking the matter out of the formal disciplinary process if the deputy agrees to participate. The complainant must also agree to voluntary participation, which is more likely to be achieved if the mediator selected has a modicum of community trust.

The mediation process has been found to work best involving allegations of discourtesy or similar allegations of misconduct during police/civilian encounters, where the stakes for accountability are somewhat smaller and where differences of perspective are frequently factors in the contention. The mediation process provides a unique opportunity for the complainant and the deputy to discuss their positions on the law enforcement/civilian encounter. When the mediation is successful, it proves to be consistent with principles of “restorative justice”, allows both participants a window into each other’s perspectives, and provides an opportunity for productive dialogue.

Recommendation 34: CCSO and the County should devise and promote a mediation program to resolve civilian complaints outside of the traditional disciplinary process.

“Restorative Justice” and Alternatives to Traditional Discipline

Currently, CCSO has a range of disciplinary responses to policy transgressions ranging in severity from oral and written reprimands to discharge. However, there are many instances involving lesser transgressions for which we favor alternative responses to the traditional menu of reprimand or short suspension. This is in keeping with the corrective spirit that is a foundation of an effective disciplinary approach.

Some law enforcement agencies have devised ways to tailor their remediation program beyond traditional discipline to a more effective response. Consistent with principles of restorative justice,²⁵ law enforcement officers who are found to have violated performance policies are invited to address the violation more holistically.

For example, law enforcement agencies often need to address policy violations when peace officers cause a preventable traffic accident. Some agencies, instead of reprimanding the deputy, request that the deputy attend remedial classes and write a memorandum describing the lessons from the class.²⁶ This type of response is much more likely to remediate the law enforcement officer than a letter of reprimand could ever do.

²⁵ “Restorative justice” is a concept where the emphasis is on constructive repairing of harm as an alternative to punitive action.

²⁶ In addition to the training component, some agencies devise remediation plans whereby the deputy also provides briefing on the importance of the policy and his or her experience to his peers. That way, the remediation can extend beyond the individual deputy.

Other law enforcement agencies have used these remedial principles in a broader array of situations. For example, peace officers who have been discourteous or who have violated a department's social media policy could be asked to write a letter of apology to the complainant. This type of remediation more directly addresses the transgression and has the added benefit of atonement to complainants in the true spirit of restorative justice. We invite CCSO to consider exploring its options in this area.

Recommendation 35: CCSO should consider creating a restorative justice disciplinary program to address courtesy violations or other low-level violations involving deputy/civilian contacts.

Creating an Integrated Quality Assurance Unit

The following units are essentially dedicated toward assuring a certain level of internal quality among CCSO personnel and the organization as a whole:

- Pre-hiring Background Investigations Unit
- Professional Standards Unit
- Training Unit
- Policy Development Unit
- Employee Wellness Unit

While each unit has different tools with which to accomplish its objective, all are intended to ensure that CCSO deploys deputies that are right for the job, have the requisite skills, have sufficient guidance through clear policies, are personally healthy and well, and are held accountable and remediated when they stray from the agency's mission. Nonetheless, these units currently reside in disparate parts of the organization and have little connectivity regarding their common objectives. If the units were reorganized and integrated into one unit, CCSO could well benefit from a more coordinated response to employee challenges. Most importantly, housing each program under one roof would increase the opportunity for each to learn and benefit from the issues and successes each unit is experiencing individually.

We have been informed that this concept has been informally discussed within CCSO, but there has been no initiative to push the concept forward. In our view, the idea is sound and well worth additional consideration.

Recommendation 36: CCSO should consider integrating the work of background investigators, professional standards, training, policy development, and the wellness program into one unit.

Devising a Robust Auditing Unit

To date, the risk management functions of CCSO have been largely limited to assisting with claims and lawsuits. As a result, CCSO has not regularly conducted systemic audits of vital law enforcement functions. Other law enforcement agencies are increasingly conducting audits of those functions, including the following areas:

- Recruiting, hiring and promotion practices
- Background investigations
- Supervisor performance
- Email, MDC and texting
- Academy and in-service training
- Performance evaluations
- Promotional and special assignment processes
- Potential bias-based policing in stops or searches
- Stop and frisk practices
- Complaint intake procedures
- Appropriate use of the PSU/Service Level matrix
- Transparency and public reporting of data by the police agency
- Crisis intervention practices and/or interactions with the homeless
- CCSO outreach

Were CCSO to develop a robust auditing program²⁷, it would begin to develop quality controls that would lessen the likelihood of a Green situation from occurring. As importantly, internal auditing functions can often lead to more effective and efficient ways for law enforcement to perform its public safety function. Finally, publicizing the results of any audit and any reform emanating from them provides County stakeholders and the public assurances that an agency is interested in critical self-examination with an objective to reform and improvement.

Recommendation 37: CCSO should regularly conduct and publicize systemic audits of key functions that impact the quality of the Department and the service provided to its public.

CCSO Reporting Duties with Oregon Department of Public Safety Standards and Training

²⁷ Ideally, the auditing program would be housed with other accountability subunits such as PSU and Training as discussed elsewhere in this Report.

Pursuant to state statute, when a peace officer separates from a law enforcement agency, the employer is to inform the Oregon Department of Public Safety Standards and Training (DPSST) of the circumstances surrounding that departure. The reporting requirement is intended to provide notice to DPSST for reasons that may implicate questions of whether the employee should retain her/his certification as a peace officer, and which DPSST has the authority and responsibility to review. When Green left CCSO, the mandatory Personnel Action Report (PAR) signed by the Undersheriff indicated that Green had "retired" from the agency.

At the time, there was an option on the PAR form that accurately described Green's situation: "Retirement while under investigation." However, though an investigation had been opened into Green's performance and by all accounts had spurred his decision to retire, the Undersheriff decided not to check that form entry.

In February 2016, almost a year later and shortly before a criminal investigation was to be commenced against Green, the Undersheriff filed an amended PAR, indicating that Green had, in fact, retired while under investigation. In a supporting letter, the Undersheriff stated that initially it decided not to inform DPSST that Green had retired while under investigation because it believed that the investigation was "low level", that Green had retired voluntarily and not in lieu of termination, and that the investigation would not have led to termination. In that letter, the Undersheriff explained that based on new information indicating that the "depth" of Green's failed work performance was significantly greater he determined that the more appropriate entry was "Retirement while under investigation".

The argument advanced by CCSO about why it initially chose not to accurately report to DPSST the conditions under which Green retired is not persuasive. The purpose of the form is to alert DPSST about circumstances that might warrant its further review of the deputy's status. We have been informed that in cases in which an employing agency designates "Retirement while under investigation", DPSST routinely requests a copy of the investigation for review and possible decertification action. In cases where the employing agency simply lists "Retirement," DPSST is not put on notice of any underlying investigation and further inquiry cannot and does not occur.

It is not for the employing agency to determine whether the investigation is of the sort that might impel DPSST to revoke certification. More significantly, CCSO knew that it was not coincidental that Green decided to retire once allegations were brought forward and an investigation had been initiated. In short, the type of situation presented in Green's departure from CCSO, by all indicia, is precisely the circumstance that the form entry "Retired under investigation" is intended to capture.

CCSO notes that in the absence of written guidelines from DPSST, the Undersheriff initially and reasonably believed the service investigation was a performance matter that would not result in termination and therefore not trigger a review by DPSST and points out that the potential criminality of Green's neglect of work was not then known. However, when the initial form was prepared, CCSO did not seek guidance about which entry to check. Moreover, the form does not suggest that the agency not notify DPSST if the investigation that triggers retirement is not sufficiently "serious". In short, Green did "retire while under investigation" and CCSO should have so notified DPSST. It was a serious misstep that it declined to initially do so.

Recommendation 38: CCSO should interpret the DPSST notification requirements upon separation of an employee liberally, so that DPSST can be fully informed of the circumstances surrounding any employee's departure and should not reinterpret "retirement under investigation" to mean "retirement under serious investigation".

CCSO Public Information and Media Policies

As noted above, when the Green matter became public with the filing of criminal charges against him, CCSO prepared a public statement regarding the matter. The statement indicated that at the time of Green's retirement, "the Sheriff's Office had an active internal affairs investigation of Green's work place conduct that involved possible administrative violations of Sheriff's Office policies".

In fact, as detailed above, while the Sergeant had filed his complaint, and an investigation against Detective Green was technically opened, the only person interviewed about the allegations was the Sergeant who had requested the investigation, and when Green officially retired the very next day, the case was closed. The description of the investigation as "active" was misleading at best, as no investigative work had been done nor contemplated.

When law enforcement communicates with its public, it is essential that any public information is entirely accurate. Currently, CCSO's public information and media policy has no overarching statement denoting this tenet. More significantly, when the Sergeant who initiated the complaint challenged the accuracy of the statement, there was no apparent consideration by CCSO of retracting or clarifying the questioned statement. Finally, while the public statement was attributed to the PIO, it is unclear who generated the substance of the release. CCSO policies should be modified to address these current gaps.

Recommendation 39: CCSO's Public Information and Media Release Policy should contain overarching language recognizing the importance of accuracy in information released to the public.

Recommendation 40: When a press statement is challenged, CCSO should examine the challenge and take appropriate action, including clarifying the challenged information when appropriate.

Recommendation 41: CCSO Policy should instruct the PIO to document and maintain the author or contributor of any media release.

C. Supervision

Centralized Review of Potential Child Abuse Referrals

At the time Green was assigned to Wilsonville, child abuse referrals from mandated reporters were directly sent to him for review and follow up. Detective Green's failure to investigate a number of the referrals became the basis for the criminal charges for which he was convicted. During the audit, at least one of the child abuse referrals sent to Green during the relevant time period was found months later behind the station FAX machine.

In an effort to better maintain, track, and centralize the receipt of child abuse referrals, CCSO determined that all mandatory reporters should be instructed to forward any referrals to the Child Abuse Team Sergeant at headquarters. Under the new practice, that person is responsible for reviewing the information, determining the initial appropriate course of action, and assigning the matter to a detective for any follow up. As a result of the new practice, instead of the contract city detective receiving referrals directly, the referrals are vetted at headquarters and then assigned out based on that initial triage process.

The new practice does allow for more centralized and efficient tracking of child abuse referrals. It also promotes more consistent vetting of referrals. While the practice is sound and addresses some of the breakdown that occurred in the Green matter, it does raise a potential to slow down action on referrals if the documents get "stuck" at headquarters. The protocols should set some time limits for the central detective unit to review and process incoming referrals.

Additionally, the new procedure was initiated by a series of emails but has yet to be integrated into CCSO policy. It should be.

Recommendation 42: CCSO should devise policy that sets out the new child abuse referral review process.

Recommendation 43: In setting out the new child abuse referral review process, CCSO should set time limits for when the initial vetting by the Child Abuse Team should be accomplished.

Imposition of Time Lines and Supervisory Monitoring

In response to issues that arose in the Green matter, CCSO adopted more rigorous policies relating to follow up investigations. Under the new directives, every 60 days sergeants are to report the status of all open cases to their supervising Lieutenant/Watch Commander. Lieutenants are instructed to monitor progress of all follow up cases and to report the status of all open cases to their Division Commander on a 90-day interval.

It is hoped that clear time-line expectations on sergeants and lieutenants will provide greater checks to ensure that investigators do not become delinquent on cases. The creation of these standards is a positive step towards internal accountability created due to CCSO's own initiative.

CCSO's New Case Management Unit

As discussed throughout this Report, the Green case demonstrated some gaps in supervision and case management that allowed the detective to continue for years without satisfactorily investigating cases assigned to him. Apart from the particular concerns raised in the Green case, CCSO has recognized the benefit of forming a new Case Management Unit (CMU) intended to increase the quality of investigations and reports and the Unit is in the process of being formed. In addition, CCSO has very recently brought on line a new case management system.

According to the originating documents, The CMU's objectives are to:

- Support uniformity of investigations and report writing
- Develop streamlined submissions of reports to CMU for review and approval
- Lead case management review strategies
- Create centralized report writing oversight
- Through the new system, create support to provide oversight of timeliness of investigations and track requests for follow-up.

While too early in the process to tell, if effective, the new CMU and case management system could improve the quality and efficiency of reports and address some of the systemic deficiencies identified in the Green matter.

"Lead with Conversations" Leadership Training

CCSO leadership believed that one takeaway from the Green matter was that supervisors could benefit from more training on effective supervision. More specifically, there was a concern that supervisors were reluctant to have "difficult" conversations with their subordinates and thus important corrections in behavior, conduct, and accountability were not occurring. Recently, in

an effort to provide additional training to supervisors on how to have such communications, CCSO retained an outside consultant to present “Lead with Conversations Leadership Training”. The interactive presentation is to be provided to all CCSO supervisors. We have reviewed the Power Point accompanying the presentation and expect it to be a facilitative device to encourage important conversations between first level supervisors and line employees.

D. The Challenges of Contract Cities

Currently, CCSO contracts with two independent cities to provide law enforcement services. Detectives assigned to the contract cities have a primary responsibility to investigate crimes that occur in the City limits. This arrangement can strain both supervision and connectivity to CCSO’s central detective units.

The contract city detectives deploy out of the contract city stations and are supervised by patrol sergeants assigned to the contract city. Historically, contract city sergeants often have no detective experience yet are expected to supervise the station detective’s work. This creates a challenge for the sergeant in reviewing operations plans and search warrant applications, approving reports or case closings or supervising additional specialized detective work that he/she may have never actually done.

The supervision issue has been somewhat ameliorated as a result of increasing the number of sergeants assigned to the contract cities. However, there still may be situations in which sergeants with no detective experience are being asked to supervise and/or evaluate the station detective. In determining the supervisors assigned to the contract cities, CCSO should consider ensuring that at least one sergeant has the type of experience to effectively supervise the contract city detective work.

In addition, any training, briefing, or knowledge about suspects, crime trends, priorities or other aspects of detective work that are being shared daily by the headquarters detectives is not as readily available to the contract city detectives. Simple geography causes those detectives to be isolated from the day to day interactivity that occurs at headquarters. Recognizing this, CCSO should adopt some ameliorative measures and expectations to ensure that the contract city detectives remain integrated with the centralized investigative units.

Recommendation 44: In selecting sergeants for contract city assignment, CCSO should work to ensure that at least one sergeant so assigned has sufficient investigative experience to effectively supervise the station detective.

Recommendation 45: CCSO should set out expectations to its contract city detectives to regularly “check in” with the headquarters units to attend briefings, training, or receive updates from the supervisors of the detective teams.

E. CCSO Sergeants and Representation

The critical importance of first-level supervision is a consistent theme in our work with law enforcement agencies around the country. Similarly, there is a shared sense of how difficult a transition the newly promoted sergeant tends to experience. The “learning curve” of new duties is complicated further by the adjustment to supervising other deputies who are longtime colleagues and – until quite recently – were peers. The potential for strained relationships is obvious, and issues of accountability and ensuring compliance with agency standards are an especially acute challenge in this regard.

A source of potential ambiguity in Clackamas County is its current agreement with the Clackamas County Peace Officers Association (CCPOA). The Association’s responsibilities are to negotiate for their membership for pay, benefits, and working conditions. Another fundamental responsibility is to represent their membership when allegations of misconduct arise, and associations are tasked to do their best to minimize (or even undo) accountability and discipline. Associations are also responsible for helping members lodge grievances against management decisions that are believed to be unfair to the individual deputy or the bargaining unit as a whole. As a result of their responsibilities, peace officer association representatives are often adverse to management when their members’ interests are not congruent with the interests of the administration.

Many peace officer agencies have separate associations representing first level supervisors. Those associations are certainly interested in many of the same issues (pay, benefits, and working conditions), but because they are also representing supervisors, the tension that exists between deputies and management is usually significantly lessened. Moreover, as part of the management team, supervisors’ interests are likely to be more often aligned with those of the administration.

At CCSO, however, CCPOA also represents all sergeants. As a result, what are often competing interests of sergeants and deputies are being represented for all labor purposes by one union. This joint representation raises inherent incongruities – and inherent problems for sergeants who are attempting to hold their subordinates accountable.

In agencies where we have experienced sergeants and deputies placed in the same union, we have seen situations in which sergeants who have recommended that deputies be investigated, caused to be subject to a performance improvement plan, or issued a poor evaluation were shunned informally by association members. Perhaps more significantly, the association is often in the position of advancing a grievance against a sergeant who they are also tasked with

representing, creating a potential or real conflict.²⁸ In sum, having supervisors placed in the same bargaining association as the deputies is not philosophically coherent, can create perceived or real conflicts, and can impede supervisors who are intent on accountability and real supervision.

We recognize that unlike many of our recommendations, any effort to unwind the current situation and move sergeants to a supervisor's union would be difficult because of staunch resistance anticipated by the CCPOA. Moreover, doing so would require a change in the current contract between the County and CCPOA. While we recognize that accomplishing this would undoubtedly be a heavy lift, we were not tasked to simply devise recommendations that were easy.

Moreover, we are heartened by past experience whereby, based in part on our recommendation and the strong will of the Chief and City Manager, a police agency we reviewed successfully moved first level supervisors out of the deputies' union and into a supervisors' union where they rightly belonged. We would be remiss not to identify this structural problem and potential impact on CCSO sergeants' orientation in the organization and suggest that the County work to rectify the situation.

Recommendation 46: CCSO should work with the County and the CCPOA to consider the feasibility of moving sergeants to a separate bargaining unit.

F. Transparency

Annual Report

Law enforcement organizations, as a whole, have a long history and culture of confidentiality and insularity. Of course, some of this emphasis on confidentiality stems from a legitimate need to protect investigative integrity and individual privacy rights. However, in many law enforcement organizations, this shroud of secrecy has extended to other functions and decision making within the organization in ways that are unnecessary and no longer appropriate given present-day community expectations.

In years past, CCSO published an Annual Crime Report that focused on crime trends and traditional law enforcement activity, but no report has apparently been prepared since 2013. More significantly, even when the Annual Crime Reports were being prepared there was no information provided about certain CCSO operations, including the frequency and type of force

²⁸ We note that this problem did not arise in the Green matter. Union leadership in fact showed overt support for the Sergeant later in the process.

incidents, citizen complaints, allegations of misconduct, and the Sheriff Office's efforts to respond to these events.

To improve transparency, CCSO should resume publishing its Annual Crime Report but with a broader focus. In addition to setting out crime statistics, the Annual Report should discuss CCSO's community policing initiatives and other ways in which it has positively engaged with its public.²⁹ Most importantly, CCSO should regularly publish cumulative data and analyses regarding the use of force, civilian complaints, and administrative investigations.

Recommendation 47: CCSO should resume publishing regular Annual Reports including crime data but also publish CCSO community engagement initiatives.

Recommendation 48: CCSO should regularly publish on its website cumulative data and analysis regarding the use of force, civilian complaints, and administrative investigations.

G. The CCSO Policy Manual

Effective guidance to law enforcement employees is critical to ensure that each person understands the agency's expectations. CCSO has an extensive policy manual that sets out the "ground rules" for the organization, some of which we discuss above. While policy manuals have traditionally been considered by law enforcement as internal documents, communities have recently displayed an increased interest in learning the governing materials of its peace officers. President Obama's Task Force on 21st Century Policing accordingly recommended that law enforcement make its policy manuals publicly available. Currently, though, the CCSO manual is not available to the public. We recommend that CCSO accept the Task Force recommendation.

Recommendation 49: CCSO should place its Policy Manual on its website.

Independent Oversight

One of the key pillars of reform identified by President Obama's Task Force on 21st Century Policing recommended that law enforcement agencies "establish civilian oversight mechanisms with their communities." The call for formal oversight reflected a growing sentiment in the United States, where the outcomes of individual high-profile incidents in recent years have heightened a sense of division between law enforcement and segments of the public. Increasing public involvement is an important way to bridge gaps of distrust, alienation, and misunderstanding.

²⁹ To its credit, CCSO regularly publishes news alerts that discuss community-based initiatives. These alerts could form the basis for an annual report summarizing these programs.

Consistent with the Task Force recommendation, the potential of meaningful civilian oversight is not only to increase public confidence through greater scrutiny, accountability, and transparency but also to enhance law enforcement effectiveness through greater understanding and responsiveness. CCSO could benefit from outside, independent review in the form of periodic audits of key functions. Ideally, those reviews or audits would examine:

- CCSO's response to civilian complaints to ensure appropriate categorization, investigation, and outcome;
- CCSO administrative investigations into allegations of misconduct to assess thoroughness and objectivity;
- Use of force reports to evaluate thoroughness and fairness as well as identify trends or concerns about particular types of force;
- Sufficiency of CCSO policies and training to address areas of concern identified by other auditing activities.

Moreover, to the degree that the Recommendations in this Report are accepted, a subsequent audit could evaluate the degree to which they had been successfully implemented.

Recommendation 50: The County and CCSO should work with an outside entity to periodically review or audit key CCSO functions relating to transparency and accountability, including the complaint process, administrative investigations, uses of force, policy development and enforcement, and training issues and to issue public reports regarding the findings.

Recommendation 51: To the degree that the Recommendations in this Report are accepted, the County should engage with an outside entity to report publicly on the success of implementation.

IV. Conclusion

The evolving saga of Detective Jeffrey Green has dominated public discussion of the Clackamas County Sheriff's Office since the announcement of criminal charges against him. As set out above, the overarching drama has obscured some constructive aspects of the experience within the Sheriff's Office. Supervisors and executive staff recognized and responded to Green's shortcomings in various ways over the course of two decades. Yet those responses were diffuse and erratic, and even the well-targeted remedies that were devised lacked appropriate follow through. At times, Green was placed under heightened supervision, but then was allowed to transfer and remain in an outpost where he set his own rules.

Hindsight allows us the luxury of recognizing that the varied responses to a talented but problematic employee lacked coherence and sustenance. Even when the Sheriff's Office finally recognized the gravity of Green's actions and inactions, the outcomes of its various inquiries and investigations were driven more by the persistence of a lone sergeant than by institutional adherence to a standard of integrity and performance. In short, the Green matter revealed significant shortcomings regarding the approach of the Sheriff's office to issues of employee accountability and remediation. This is disappointing and concerning. But, importantly, the acknowledgment of this reality could also set the stage for a more constructive approach to similar challenges in the future.

We commend the CCSO on the changes undertaken thus far. This Report is intended to build on those reforms, and to use its lessons as vehicles for future and lasting systemic improvement. Of course, no institution can completely guard against an employee whose priorities deviate from the core values of the organization. However, we believe that CCSO can and should do more to detect and address problems at the earliest opportunity, thereby mitigating the overall consequences for the agency and the public at large.

Finally, we reiterate the value of confronting the gravest concerns with the highest levels of urgency and effectiveness. We recognize that this can be a challenge for any organization, where internal dynamics and high stakes can easily fuel denial, or at least reluctance in grappling with the problem. However, as it true in the many contexts where it is held to a higher standard, law enforcement's need to overcome this very human impulse is especially urgent.

The best response to a crisis-level allegation of performance failure is a full-throated attempt to substantiate (or refute) the claims, to render accountability as needed, and to draw lessons for the future from the event. Accomplishing this is easier said than done. Our hope is that the concrete suggestions we offer for CCSO's various internal review processes will assist in this process, and we believe the effort is worthwhile. When a law enforcement agency does the work of rigorous self-scrutiny and reform, it not only strengthens its effectiveness but also sends a powerful message to its own members and the community it serves.

RECOMMENDATIONS

Recommendation 1: CCSO should remove the provision from its policy manual which distinguishes treatment of complaints received over 90 days from the date of the incident.

Recommendation 2: CCSO should devise protocols and train its supervisors that when a supervisor brings forward information suggesting “gross” or intentional misconduct by a subordinate employee, there should be an immediate meeting to learn the circumstances and devise timely next steps.

Recommendation 3: CCSO should change its policy so that it accepts all complaints, whether generated internally or by a member of the public, in their original form, and gives PSU the exclusive responsibility to enter the appropriate information into the dashboard.

Recommendation 4: CCSO should plan objective audits of PSU’s complaint triage process aimed at enhancing consistency, fairness and the confidence of CCSO employees and the public in the process.

Recommendation 5: CCSO should modify their policy to ensure that subjects of all internal investigations are notified in writing.

Recommendation 6: CCSO’s current policy should be revised to ensure robust and timely notification to prosecutors when potential criminal conduct of a CCSO employee becomes known. The policy should clearly state:

- a. *The interpretation of potential criminal conduct should be broad.*
- b. *The Undersheriff should inform the prosecutor's office when a referral is received from PSU.*
- c. *The notification to the prosecutorial entity should be prompt.*
- d. *There should be contemporaneous and robust documentation of the referral and the prosecutorial response.*

Recommendation 7: CCSO should develop policy that disallows internal investigations being assigned to persons of equal or lesser rank than the subject employee.

Recommendation 8: CCSO should create written policy providing further guidance regarding the factors to consider in determining whether to reassign an employee or place her/him on administrative leave during the pendency of an investigation into serious alleged misconduct.

Recommendation 9: In cases in which a supervisor has initiated the complaint against the subject employee, CCSO should inquire whether and why the supervisor recommends that the employee be reassigned or placed on leave.

Recommendation 10: The decision about whether to place an employee on administrative leave should be fluid and subject to ongoing review.

Recommendation 11: CCSO should create policy that discourages the assignment of an internal investigation to the complainant supervisor.

Recommendation 12: CCSO policy should be revised to indicate that all interviews relating to an internal investigation should be tape recorded, unless it proves impracticable or when a non-CCSO witness declines. Should these exceptions occur, the file should document all reasons why an interview was not tape recorded.

Recommendation 13: CCSO should develop policy that requires all internal investigations to be completed regardless of whether the subject employee separates from the organization prior to or during the pendency of the investigation.

Recommendation 14: CCSO should modify its policies to ensure that when it receives additional allegations of misconduct, the allegations should be fully investigated.

Recommendation 15: When CCSO receives an allegation of misconduct, CCSO should ensure that there is an investigation into the matter, no matter the rank of the subject employee.

Recommendation 16: When a significant supervision failure involving more than one supervisor is identified, CCSO should ensure that any subsequent investigation or review be comprehensive and identify all supervisory lapses.

Recommendation 17: When a supervisor requests additional investigative help to address delinquent cases or other resource shortages, CCSO should evaluate the need, balance it against other resource needs, and make a considered decision about whether and how to provide assistance.

Recommendation 18: CCSO should devise protocols accompanied with training to ensure that its detectives recognize the importance of informing prosecutors of all that is included in the investigative file and to provide any requested information.

Recommendation 19: As in this case, when a supervisor or deputy comes forward with information that eventually leads to a prosecution of a CCSO employee for criminal acts, CCSO should continue to communicate to its personnel an acknowledgement of the fortitude and courage such an act requires.

Recommendation 20: In addition to an internal agency-wide notification, CCSO should also continue to ensure that its leadership reach out personally to the individual who came forward in order to express appreciation for fulfilling the ethical values of the organization.

Recommendation 21: CCSO should review claims and lawsuits as soon as they are received for purposes of identifying potential criminal and/or administrative misconduct and take prompt action if District Attorney notification and/or an investigation is warranted.

Recommendation 22: CCSO should institutionalize the disciplinary roundtable process by including it in policy.

Recommendation 23: CCSO should craft closing letters that provide more detail about the investigation, such as the number of witnesses interviewed and the nature of any additional evidence reviewed.

Recommendation 24: CCSO should continue to prioritize, evaluate, and effectuate sufficient staffing levels for the functions of the PSU.

Recommendation 25: CCSO should devise a monitoring program that ensures that every employee has an annual performance evaluation, that the evaluation is signed, and that evaluations are reviewed to determine whether they meet minimum standards.

Recommendation 26: For every case in which the supervisor finds that an employee did not meet expectations CCSO should ensure that the evaluation is reviewed to learn whether a work plan should be devised or an investigation should be initiated into the performance deficiencies.

Recommendation 27: CCSO should provide guidance to its supervisors on the preparation of work plans and develop written protocols so that every work plan has milestones and measures of success and remediation.

Recommendation 28: CCSO work plan protocols should require the supervisor to regularly log reports of the employee's progress (or lack thereof). The work plan protocols should also require a memorandum from the supervisor documenting successful completion or recommending more serious remediation if the plan's goals have not been achieved.

Recommendation 29: The new auditing unit of CCSO should regularly audit performance evaluations and work plans in order to achieve consistency and ensure a level of quality control.

Recommendation 30: When a formal investigation is launched and results in a founded determination, employee work performance as indicated in performance evaluations and work plans should be considered in determining the type and level of accountability and discipline.

Recommendation 31: After a civil judgment or significant settlement involving CCSO activity, CCSO should take lead in a coordinated county assessment of the factors contributing to the outcome, should devise corrective actions as relevant and needed, and should inform the public of any systemic reforms resulting from this process.

Recommendation 32: CCSO should implement the 2011 Advisory Committee recommendation and devise an Early Intervention System.

Recommendation 33: Once the EIS is operational, CCSO's Early Intervention System should regularly incorporate the input of first-level supervisors to identify deputies who might benefit from the remedial aspects of the program.

Recommendation 34: CCSO and the County should devise and promote a mediation program to resolve civilian complaints outside of the traditional disciplinary process.

Recommendation 35: CCSO should consider creating a restorative justice disciplinary program to address courtesy violations or other low-level violations involving deputy/civilian contacts.

Recommendation 36: CCSO should consider integrating the work of background investigators, professional standards, training, policy development, and the wellness program into one unit.

Recommendation 37: CCSO should regularly conduct and publicize systemic audits of key functions that impact the quality of the Department and the service provided to its public.

Recommendation 38: CCSO should interpret the DPSST notification requirements upon separation of an employee liberally, so that DPSST can be fully informed of the circumstances surrounding any employee's departure and should not reinterpret "retirement under investigation" to mean "retirement under serious investigation".

Recommendation 39: CCSO's Public Information and Media Release Policy should contain overarching language recognizing the importance of accuracy in information released to the public.

Recommendation 40: When a press statement is challenged, CCSO should examine the challenge and take appropriate action, including clarifying the challenged information when appropriate.

Recommendation 41: CCSO Policy should instruct the PIO to document and maintain the author or contributor of any media release.

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Recommendation 51: To the degree that the Recommendations in this Report are accepted, the County should engage with an outside entity to report publicly on the success of implementation.

