

Santa Clara County

Office of Correction and Law Enforcement Monitoring:

# ANNUAL REPORT 2021

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Michael Gennaco  
Stephen Connolly  
Julie Ruhlin  
Teresa Magula

OIR  
GROUP

OIR  

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GROUP

323-821-0586  
7142 Trask Avenue | Playa del Rey, CA 90293  
[OIRGroup.com](http://OIRGroup.com)

# Introduction

This Report of the Santa Clara County’s Office of Correction and Law Enforcement Monitoring (“OCLEM”) summarizes our activities since the initiation of our work in January of 2020. For us, that span of time has had two defining features that overlap with American society as a whole, and one that has been distinctive to our circumstances in the County.

The first two are, of course, the COVID-19 pandemic and the unprecedented reckoning with racial justice issues that has followed the murder of George Floyd. As discussed below, both have shaped our initial experiences in a variety of practical and substantive ways.

The third, more specific to OCLEM and its operations, is the ongoing effort to establish access to a range of Sheriff’s Office internal records that are necessary to meaningful independent oversight. This process has gone through a variety of phases, including the Board of Supervisors (“BOS” or “Board”) taking action in November of 2020 to provide authorization for the power to subpoena materials as a last resort. On a separate track, we continue to seek an information-sharing agreement with the Sheriff; we have signed a limited agreement that the Sheriff herself proposed, but we are still awaiting a final response from the Sheriff.

Our inability to travel regularly, establish a physical presence in the jails and other County facilities, and engage in robust, case-specific systems oversight have been impediments to progress that we look forward to transcending. In the meantime, though, we are able to point to several areas in which we have managed to work through or around obstacles in productive ways.

This includes a recent report on Custody Health – the leadership of which has been fully cooperative and transparent during a time of real challenges. We have also written extensively in response to a referral from the Board in the summer of 2020, when the Floyd case and subsequent protest movements raised numerous questions for law enforcement agencies around the country. The Board asked us to evaluate Sheriff’s Office policy and practice across several specific content areas relevant to use of force and crowd control. Our resultant findings and recommendations generated constructive dialogue with the Sheriff’s Office, with concrete reforms occurring as a result. And we have applied our knowledge of best practices to identify several concerns about a high-

profile incident in which an inmate named Andrew Hogan was able to harm himself irreparably after experiencing a mental-health crisis. Our work on that matter, particularly with regard to the Sheriff’s Office internal accountability and review measures, is continuing – and has prompted the first exercise of our subpoena power as to relevant records.

This Report, part of our regular public communication responsibilities under our founding County Ordinance and Board Policy 3.64.4, recounts our experiences to date. If some of OCLEM’s full potential has yet to be realized, we are nonetheless gratified by the accomplishments that we detail below. We are appreciative of the relationships we have built in the County, both within and outside the government, and for the assistance that many people have provided in these months. And we are optimistic that the coming year will provide expanded opportunities for us to contribute to the transparency, accountability, and reform that the public increasingly expects.<sup>1</sup>

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<sup>1</sup> All of the reports referenced and summarized here can be accessed at the OCLEM website: <https://board.sccgov.org/office-correction-and-law-enforcement-monitoring-oclem>

# Overview of OCLEM Activity: 2020-2021

## Creation and Staffing

The concept of an independent entity to monitor County corrections and law enforcement emerged from the extensive reform initiatives that followed the Michael Tyree murder at the hands of jail deputies in 2015. Following up on recommendations from its Blue Ribbon Commission on Improving Custody Operations, the Board of Supervisors worked to develop an ordinance that established the new “Office of Correction and Law Enforcement Monitoring.”

As stated in the initial section of the Ordinance, which was finalized in 2018, “It is the intent of the Board that the Office will assist in the County's efforts to reimagine the culture and operations of the jails, as well as the Sheriff's law enforcement operations, to better align those services with the County's ongoing public safety reform efforts.”

The new Office was meant to have “monitoring and reporting” functions that would contribute to accountability, help ensure the appropriate resolution of complaints, and provide independent review of serious incidents. It was also designed to have “research and policy recommendation” functions in order to promote continuous improvement and alignment with evolving best practices.

The OCLEM Ordinance stipulated that the position of “Monitor” was to be filled by an independent contractor; what followed was a lengthy selection process that consisted of a request for proposals, an initial screening, and an evaluation of finalists by a special committee selected by appointment of the individual Supervisors. In December of 2019, and based on the committee’s recommendations, the Board chose OIR Group to serve in the position.<sup>2</sup> It then approved a three-year contract with OIR Group, which took effect on January 15, 2020.

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<sup>2</sup> OIR Group is a team of police practices experts that has provided independent oversight of law enforcement for more than two decades. Its founding member is Michael Gennaco. Mr. Gennaco is a former Assistant U.S. Attorney who specialized in civil rights matters, and he is nationally recognized leader in the oversight field. OIR Group relies on a core team for its responsibilities in Santa Clara County. It also works as needed with a number of associates, each of whom brings an extensive background in law enforcement policy, operations, and internal review mechanisms.

## Initial Outreach Efforts

OIR Group team members made their initial trips to Santa Clara County in February of 2020. This included meetings with individual members of the Board of Supervisors, as well as an introductory session at Sheriff's Headquarters with the Sheriff and members of her executive staff. We also met several members of the County Executive Office and County Counsel; both Offices have proven to be generous collaborators and a valuable resource to OCLEM across a variety of projects.

Our hopes to build on these first steps, however, were thwarted by the growing emergence of concerns about COVID-19. A trip that was planned for mid-March, and was to include meetings with several Sheriff's Office executives and a tour of the County's jail facilities, was postponed at the last minute. It would be nearly a year and half until we were able to participate in that tour while complying with County travel and pandemic safety guidelines.

Fortunately, in spite of rapidly established restrictions, we were able to make further initial headway in our introduction to the County. This occurred primarily through the remote, virtual meeting opportunities that have become ubiquitous since March of 2020.

One such meeting was a gathering in May of 2020 that afforded us the chance to meet with representatives from several community and activist groups in the County. These included Silicon Valley DeBug, PACT (People Acting in Community Together), and the Bill Wilson Center. In maintaining our connections with these groups, we have benefitted from the important perspective of people with a strong commitment to jail safety and justice system reform.

We also had the opportunity to remotely observe and participate in the monthly meetings of Board policy committees, which are led by two Supervisors, and which cover specific content areas in detail for later reporting and action items at public meetings of the full BOS. For example, the May 2020 meeting of the Public Safety and Justice Committee gave us new insight into the ways that the County justice system was adjusting to the realities of the pandemic. This included the adjustments – born of necessity – that the offices of both the District Attorney and Public Defender had made in an effort to provide service. But, for obvious reasons, there was a special focus on the custody environment, and efforts to reduce the impact of COVID-19 through reductions in the jail population as well as internal safeguards.

The pandemic – and its health impacts on those working and housed in the jails – has required ongoing attention, with a troubling rise in new cases reported as recently as this month. Meanwhile, the policy committees have continued to evaluate key issues that the pandemic affects, in conjunction with larger scale re-evaluations of spending priorities and approaches to public safety. These have included jail staffing, recruiting efforts by the Sheriff’s Office, and the status of reform recommendations that date back to the work of the Blue Ribbon Commission. OCLEM has appreciated its involvement in these committees, and has welcomed the opportunity to offer its perspective in the ongoing conversations around these issues.

## Summer of 2020: A Nationwide – and Local – Movement toward Racial Equity and Justice System Reform

As we continued our efforts to navigate COVID restrictions and establish an understanding with the Sheriff’s Office regarding access to files and records, the murder of George Floyd on May 25, 2020 introduced a period of nationwide demonstrations and intense focus on issues relating to policing, racial justice, and inequality. Locally, the City of San José’s direct, extended experience of the protest movement was particularly noteworthy, but it was far from isolated among Santa Clara County jurisdictions. In the aftermath, government officials responded to their own concerns and the groundswell of public activism by addressing a range of relevant topics.

The Board of Supervisors proved to be highly engaged in these issues, and took affirmative action within weeks of Mr. Floyd’s death. Below, we offer a detailed summary of our involvement in the subsequent County response. Several different law enforcement policies and operational practices had come under renewed scrutiny; these included particular force options that had generated concern as well as broader practices relating to crowd control and emergency response. We had the chance to evaluate these issues as they related the Sheriff’s Office and other County departments, and to make recommendations that we discuss below.

The widespread public interest in reform issues also led to our teaming with the County Executive Office to host two virtual “Community Input” listening sessions in July of 2020. These well-attended events allowed residents to share their concerns and priorities and helped to shape the subsequent reports we prepared for the Board.

## Custody Review Projects

Below, we summarize our ongoing effort to establish an agreement with the Sheriff's Office that would allow us to begin accomplishing in earnest our core mission: namely, the outside independent review of individual incidents, department policies and practices, and investigations. But, in the face of a lingering impasse in that arena, we worked with the Board of Supervisors on developing a sharper focus regarding projects that were not directly dependent on Sheriff's Office information or cooperation. In particular, we initiated reviews of Custody Health operations – which overlap with but are distinctive from Sheriff's Office functions in the jails – and responded to a longstanding Board request for a progress report on the hundreds of recommendations that emerged from the reform process that ensued from the 2015 death of inmate Michael Tyree at the hands of deputies in the Main Jail.

We discuss our work on those projects – and the public reports we produced this year – in more detail below. Certainly, though, the opportunity to engage with the County Custody operations in this way provided us with the chance to enhance our understanding of key historical issues and key aspects of the relevant systems.

We anticipate the jails being a major focus of our upcoming efforts. Indeed, the pandemic and the larger conversations around justice and public safety have shown how central the jails – and their future – are to the fulfillment of the County's evolving vision.

One major step in our own efforts to make meaningful contributions in this arena was a two-day, in-person tour of the County jail facilities. This trip took place in August of 2021; we expect it will be the first of many as the COVID restrictions hopefully abate in coming months. The chance to physically visit for the first time was invaluable. And the gracious hosting by our Sheriff's Office guides made a positive impression as well. Their candor, insights, and patience with our many questions seemed to bode well for the sort of collaborative, constructive relationship we hope to build as our access expands.

## CCLEM

A part of the Board's original vision for the independent monitoring of the County's justice system was an emphasis on formal engagement with County residents who were interested in helping to shape accountability and future practices. Accordingly, the Board

established the “Community Correction and Law Enforcement Monitoring Committee” (“CCLEM”) through County Ordinance in 2018.

OCLEM was designated as an entity that would coordinate with the CCLEM in advising the committee, responding to requests for information, and assisting in the accomplishment of the committee’s goals. Pursuant to the Ordinance, each Supervisor nominated one member to the Committee and OCLEM was able to nominate four members. The nine residents who were ultimately selected held their first regular meeting in May of 2021, and have quickly begun to focus on key issues relating to the custody environment, force policies, and other aspects of Sheriff’s Office Operations. An OCLEM representative regularly attends the Committee’s monthly meetings and gives presentations as requested.

# Information Sharing: Moving Beyond Impediments to Access

As noted above, the Sheriff's reluctance to provide OCLEM with investigative records and other internal materials has been a fundamental obstacle to the Office in fulfilling its mandate under the County Ordinance. Our delineated responsibilities include the following, all of which require some level of access to the operational information generated by the Sheriff's Office:

- Periodically reviewing the Sheriff's Office and Department of Correction's use of force patterns, trends, and statistics.
- Reviewing the Sheriff's investigations of use of force incidents and allegations of misconduct.
- Conducting its own periodic audits and inspections of the Sheriff's Office and the Department of Correction.
- Monitoring the use of force in the jails and law enforcement operations.
- Monitoring the Sheriff's Office's response to inmate and public complaints.
- Monitoring and reviewing investigations of serious incidents.

The Ordinance also expressly calls for the cooperation of the Sheriff's Office and other County Departments in providing OCLEM with needed information:

*The Sheriff's Office, the Department of Correction, Custody Health Services, and all other County agencies/departments shall cooperate with the Office and promptly supply information or records requested by the Office, including, to the extent permitted by law, confidential peace officer personnel records, inmate medical and mental health records, and related records as necessary for the Office to carry out its duties.*

Despite these clear directives, we have been unable to perform a significant portion of our monitoring functions due to lack of access to information from the Sheriff's Office.

Protracted negotiations, as facilitated by the Office of County Counsel, failed to produce an information-sharing agreement during the entirety of 2020 and much of 2021. More recently, two significant developments have altered the landscape, and we are hopeful that they will further OCLEM's ability to monitor various components of Sheriff's Office operations in such areas including use of force, critical incidents, investigations into misconduct allegations, responses to external complaints, and handling of the inmate grievance system.

The first shift in this regard occurred at the end of last year, when the Board of Supervisors moved to establish subpoena authority for OCLEM. We recently exercised this authority for the first time. We did so in an effort to require production of documents as well as access to Sheriff's personnel with knowledge related to the self-harm suffered by Andrew Hogan while in Sheriff's Office custody in 2018; a focus of the request is the concerning deactivation of an underlying Internal Affairs investigation relating to the incident. (We discuss that incident, and our work to date in addressing it, below.) The subpoenas have recently been served, and we expect they will provide us with a heightened opportunity to evaluate and report out on important aspects of the Sheriff's Office handling of that matter.

The second major step was our continued efforts to reach a tentative agreement with the Sheriff's Office on increased – if still limited – access to a proposed set of relevant records. We provided a status report on this process in late August of 2021. In spite of our serious concerns about the amount and nature of information that would still be withheld, we determined that signing the agreement still constituted progress – at least relative to the near-total embargo on internal information that we have encountered since beginning our tenure.

Unfortunately, as of this writing, even that partial access has yet to be finalized. (The Sheriff cited the need to address its contents with the relevant labor associations of her agency.) Our hope is that, should the Sheriff sign the agreement, it would provide additional, though incomplete, access to materials as a first step toward the sort of robust, constructive review protocols that OCLEM is meant to provide for the County. And we have not given up on our longer-term efforts to achieve the more comprehensive access that was originally envisioned when the Office was formed.



# Board Referral: June 2020 and Calls for Reform

In jurisdictions all over the Country, the “8 Can’t Wait” list of policing standards (popularized by the influential “Campaign Zero” organization of activists) quickly became a template for the evaluation of local law enforcement. It consisted of model policies that were presented as best practices and as a vehicle for reducing instances of deadly force. Community members were urged to engage with elected officials and police leaders to assess compliance with the model policies and to call for reform as needed.

The Santa Clara County Board of Supervisors used the contents of the 8 Can’t Wait initiative as a springboard for its own response to the post-Floyd reckoning with justice system dynamics. At a June meeting, within weeks of Mr. Floyd’s death, the Board issued a multi-faceted referral that sought responses from every public safety and emergency services entity within the County government. And it directed OCLEM to conduct its own independent review of several relevant County practices. This encompassed not only the 8 Can’t Wait group of policies but also five other topic areas that the Floyd incident and protest enforcement operations had brought to the forefront of attention.

This referral became the basis for OCLEM’s first public report, which was submitted to the Board in August of 2020. The project provided us with our first specific forum for engaging substantively with the Sheriff’s Office (which proved to be a constructive partner in this endeavor) as well as the District Attorney’s Office, the Probation Department, and Behavior Health Services.

In responding to the Board’s request, we had several productive discussions with a knowledgeable representative from the Sheriff’s staff, and got our first access to materials that the Sheriff was willing to share for purposes of this assignment. Our August of 2020 report featured the following conclusions regarding 8 Can’t Wait and Santa Clara County:

- A. The 8 Can't Wait platform of policy standards offers a helpful frame of reference to begin a discussion about public safety reform.*
- B. The 8 Can't Wait initiative is primarily focused on decreasing deadly force in the context of patrol or enforcement operations, whereas review of the efficacy of Sheriff's Office policy and procedure need also encompass custody issues.*
- C. In spite of receiving a low score for compliance on the "Campaign Zero" web site, current policies of the Sheriff's Office are generally but not completely aligned with the goals and/or specific components of the 8 Can't Wait policy versions.*
- D. To the extent there are differences between the 8 Can't Wait model and current Sheriff's Office approaches, we offer explanation, clarification, and/or recommendations for attainable improvement.*
- E. Recent legislative amendments to the California Penal Code (through AB 392 and SB 230) speak to many of the same principles as the 8 Can't Wait standards with regard to authorized use of deadly force by officers.*
- F. While still a work in progress on the custody side, Sheriff's Office policies generally appear to align with the new state law requirements, and officials are staying abreast of evolving training standards and curricula.*
- G. The Sheriff's Office describes strict hiring standards that contemplate past law enforcement performance history where applicable; we encourage the formalization of these approaches, and look forward to conducting an audit of hiring procedures.*
- H. The Sheriff's Office has shared with us a listing of its lethal and less-lethal armaments; we encourage it to follow through on a stated inclination to publicize that list in the interest of transparency.*
- I. The Sheriff's Office has a minimal amount of "military-style" equipment obtained from the federal government, and the current nature of its inventory does not seem to implicate the concerns about local enforcement practices becoming militarized in their orientation or particulars.*

*J. The Sheriff's Office has a specific "Crowd Control Unit" whose members are specially trained in the tactics, equipment, and force options associated with enforcement responses to large scale public events. We look forward to working with the department in examining the policies, protocols and training that regulate the use of these options, and that presumably help mitigate the potential for misuse that has prompted calls for their elimination.*

We welcomed this initial opportunity to engage with the Sheriff's Office and other County departments – and we appreciated the Sheriff's ultimate amenability to several specific recommendations that we made as a result of the assignment. These recommendations related to refinements or enhancements to existing policies, and the Sheriff's Office worked to accomplish many of the changes.

Indeed, by the time of our most recent progress report on these content areas (which was issued in May of 2021), the Sheriff's Office had implemented 12 of the 15 recommended changes we had advanced and had made substantial progress regarding two others. The exception related to the Sheriff's Office reluctance to impose new limits regarding the use of tear gas and other less lethal munitions for crowd control. (It took the position that existing safeguards were sufficient to avoid improper deployments; impending changes in state law will now *require* policy changes consistent with our recommendations.)

It should be noted that the momentum toward law enforcement reform that was generated in the summer of 2020 has resulted in several new state statutes that relate to issues identified in the original BOS referral. These include new requirements for the purchase and use of military equipment by local agencies, new restrictions on force techniques that block airways or otherwise impede respiration, new obligations – including potential criminal sanctions – for witness officers to intervene in stopping excessive or unnecessary force applications. The use of tear gas and other munitions for crowd control is also the subject of new statutory guidelines. These laws will take effect on January 1, 2022. The Sheriff's Office will, of course, be required to make any necessary adjustments to its own policies and procedures; this is a process we anticipate monitoring in the coming months.

In short, the Board of Supervisors engaged promptly with the movement that was galvanized by George Floyd's tragic death. This provided OCLEM with a substantive window into several critical aspects of public safety operations in the County at large, and the Sheriff's Office in particular. We were pleased to offer our perspective in these important operational areas.

# Custody Health: Collaborative Monitoring of Jail Operations

In stark contrast to the standoff with the Sheriff over access to her department's investigative materials and personnel, OCLEM has begun to work effectively with the leadership of Custody Health Services – and has received full cooperation in the process. This has included full access to requested documents and information, multiple opportunities to meet with personnel, and even the chance to attend internal meetings relating to topics of interest.

After introductory interactions with new director Dr. Eureka Daye and her staff, we presented a Custody Health work plan for consideration by the Board of Supervisors. Our proposal included an examination of the review process for in-custody deaths, suicide prevention efforts, and handling of inmate grievances related to medical service or care. Each has obvious implications for inmate welfare, and we were encouraged by our initial impressions. The various Custody Health processes that we evaluated were thorough, thoughtful, and effective.

Our key findings were summarized as follows:

*For the inmate deaths and attempted suicides we reviewed, we found the identification of issues and areas for potential improvement to be laudable, with corresponding action plans and compliance measurement strategies that are specific and inclusive. We noted this applies more commonly to remedial measures impacting Custody Health policy and personnel than to Custody Bureau staff, and make a couple of recommendations aimed at improving the specificity with which those non-medical or mental health matters are identified and evaluated.*

*With respect to grievances regarding medical, dental, and mental health care, we were impressed with how quickly staff was responsive to inmate's concerns, often within just a few days, depending on the urgency of the expressed need. We also found the tone of Custody Health's written responses to inmates to be remarkable for their politeness, expressed concern for inmate's wellbeing, and willingness to show humility and apologize where appropriate.*

Our report also featured five specific recommendations that were intended to refine existing approaches:

*RECOMMENDATION 1: Custody Health should ensure that all remedial measures involving Custody Bureau are specifically identified in Root Cause Analysis reviews as a plan of action, assigned to specific personnel, with a defined completion date and measurement strategy.*

*RECOMMENDATION 2: Custody Health should work with Custody Bureau to develop a mechanism to ensure that the Root Cause Analysis review process includes a comprehensive evaluation of the timeliness and thoroughness of welfare checks performed by Custody Bureau staff in the hours preceding an inmate death.*

*RECOMMENDATION 3: Custody Health and its Quality Improvement team should work with the Custody Bureau to ensure identified issues relating to performance of Custody Bureau personnel are thoroughly addressed, with a mechanism for follow-up and verification of completion.*

*RECOMMENDATION 4: Custody Health Services should work with Custody Bureau to develop a mechanism for referring back any grievances routed to Custody Health that also reference the impact of conduct or behavior by Custody Bureau personnel.*

*RECOMMENDATION 5: Custody Health Services should develop a mechanism for simultaneously handling grievances that contain complaints related to both Medical and Mental Health care.*

Interestingly, several of these related to the potential value of increased coordination with Custody Bureau (which is part of the Sheriff’s Office) in areas of overlapping responsibility. We should note that we witnessed effective collaboration between Custody Health and the Custody Bureau in a few different contexts during our review. For example, the dynamic in a “Suicide Prevention Committee” meeting that we attended – and that included representatives from both entities as well as County Counsel – was notably constructive and forward-looking. We hope that OCLEM can further promote this dynamic in the near future as we develop our own role and relationships.

# Jail Reforms Initiative: Ensuring Meaningful Change in Custody Operations

In the aftermath of Michael Tyree’s death in 2015, the County engaged in a large-scale and multi-faceted effort to review and reform its jail operations. A multitude of recommendations emerged from that initiative, including well over a hundred from the Blue Ribbon Commission appointed by the BOS. County staff eventually consolidated the reform ideas of fifteen different entities into a master list of 623 items for implementation by the Sheriff’s Office and other County departments.

Since that time, the project of subsequent coordination and monitoring has been a challenging one – in part because of both the number and the occasionally overlapping or duplicative nature of the myriad recommendations that were produced. The Board of Supervisors turned to OCLEM in December of 2020 in an effort to centralize and re-focus the process.

In response to this referral, OCLEM issued its first interim Audit report in September of 2021. It was the product of interactions with a range of knowledgeable parties with longstanding familiarity with the County’s Jail Reforms movement. We also received valuable information and assistance from both Custody Health and the Sheriff’s Office.

The original Master List of 623 recommendations continues to exist, but it has been supplemented with a list of 80 “Summarized Recommendations” that group the individual items together based on their similarity or close connectivity. Our initial audit addressed 10 of the 80 Summarized Recommendations (which encompassed 49 from the Master List); this was a group that had been represented to us as complete, implemented, and ready for review.

Our report was able to verify the completion and successful implementation of eight Summarized Recommendations. For two others, we were awaiting further information before finalizing our assessment. The most significant Jail Reform recommendation that has not been accomplished is the implementation of an automated Jail Management System, which has created serious challenges at all phases of jail responsibilities. Still, our first experiences with this project have given us an appreciation of the considerable work that has been done, and we look forward to continuing our audit in the new year.

We know from our own experience in multiple jurisdiction that the identification of issues and the development of responsive recommendations is critical but not sufficient: the “devil is in the details” when it comes to maintaining momentum, overcoming obstacles, and confirming accomplishments toward implementation of reforms. The scope of the recommended changes to the County jail system was obviously vast – all the more reason for this auditing project to continue. In the five years since the list originally began to come together, the County has made important strides. We welcome the opportunity to play a role in the confirmation of progress and the highlighting of ongoing areas of need.

# The Hogan Case:

## Independent Monitoring of a Critical Incident

Andrew Hogan was in the custody of the Sheriff's Office and housed at the Elmwood jail facility when he experienced a mental health crisis in August of 2018. During transport to the Main Jail in a Sheriff's Office van, Mr. Hogan continued a pattern of self-harm that had begun earlier that day. He struck his own head multiple times on the roof and steel support beams within the van, which had no seat belt restraints. Once he arrived at the Main Jail, it took several more minutes to assemble personnel, remove him from the van, and initiate medical attention. Mr. Hogan suffered permanent, incapacitating injury as a result of the incident.

In March of 2020, the Board of Supervisors approved a multi-million-dollar settlement of the legal claim for damages that Mr. Hogan's family had initiated on his behalf. It was at this point that OCLEM became aware of the case. Ultimately, the Board directed OCLEM to make use of available materials to begin a formal assessment of the Sheriff's Office internal response.

We eventually did receive significant – but limited – materials from the Sheriff's Office in response to multiple requests over the course of several months. These included reports, videos, and photographs relating to the incident. We also relied on information provided to us by other sources that had emerged in the course of the litigation. We were accordingly able to produce a public report in September of 2021 that offered a detailed reconstruction of key events and identified several key issues that were implicated by the actions and decision-making of Sheriff's Office personnel. We also noted, with some concern, that the Sheriff's Office appeared to have deactivated its Internal Affairs investigation into potential policy violations and/or performance shortcomings by its involved personnel.

In doing so, though, we characterized our report as “preliminary,” since important questions relating to accountability and internal reforms remained unanswered. This was because of the Sheriff's ongoing resistance to providing OCLEM with access to relevant investigative materials. We have also been rejected in our efforts to meet with knowledgeable decision-makers within the department to discuss the case – a normal

element of our review process and one that ensures the agency's own perspective is fully understood.

We characterized the significance of the blocked access this way in the report:

*[T]he Sheriff's Office apparently implemented some changes in procedure to prevent mentally ill inmates being transported the way in which Mr. Hogan was in August 2018. But while the aforementioned changes are commendable, they accomplish only part of a thorough and legitimate review process. The forward-looking reforms must be accompanied by an appropriate reckoning with accountability issues for involved personnel – including potential disciplinary consequences for those whose performance violated agency policy, training, or expectations. Based on available information, we believe, as did the Sheriff's Office initially, that a formal Internal Affairs investigation was necessary for such a reckoning. Moreover, the heretofore unexplained closure of the Sheriff's Office administrative case is itself highly irregular and problematic. In light of the incomplete information we have to date, we are not in a position at this time to make definitive findings or conclusions, but we have identified questions and concerns that merit further inquiry.*

As we explain in our report, the Hogan case is highly significant in its own right. It exemplifies the challenges of appropriate custodial responses to mentally ill individuals who are accused or convicted of crimes. It shows how daily practices such as transport protocols and use of safety equipment merit regular scrutiny and adaptation. And it reflects the extent to which officer performance and supervisory decision-making are fundamental to operational effectiveness – and therefore worthy of review and remediation.

More broadly, the case also shows the potential value of robust independent monitoring. Among its other functions, OCLEM was designed to give critical incidents such as this one its careful consideration. Ideally, the involvement of our Office in reviewing the Sheriff's Office internal accountability, and in contributing to policy reforms and new approaches, will provide a variety of benefits.

With these goals in mind, we are continuing our efforts to obtain the records and other information about this matter that have thus far been withheld. This includes the recent issuing of our first subpoenas, pursuant to the authority we received from the Board at the end of 2020.

# Conclusion

OCLEM's core members all share approximately two decades' worth of full-time experience in the field of civilian oversight of law enforcement. Like so many other aspects of society, our profession has evolved considerably in that time. But even as a group steeped in law enforcement practices, we have been struck by the speed and intensity with which recent substantive reform has altered policing in jurisdictions all over the country.

It is, of course, true that the process of establishing OCLEM preceded the pandemic and the tragic, galvanizing death of George Floyd. Santa Clara County had turned its attention to the Sheriff's Office and to jail reform much earlier, and with a range of tangible results. But OCLEM began its actual operations in 2020 at what has proven to be a time of real transition. State law, public expectations, and new ways of thinking have challenged fundamental precepts about safety, incarceration, police power and accountability, and the allocation of resources.

Naturally, we are enthusiastic about what this backdrop means to the significance of our work – even as we contend with frustration over obstacles to our own progress. We are gratified by many aspects our experiences in the County to date. We have appreciated the chance to familiarize ourselves with relevant systems and recent history, and we have benefitted from the relationships we have begun to form with stakeholders within and outside of official County government circles. And our public reports have begun to contribute to heightened transparency, recommended reforms, and the beginnings of meaningful outside scrutiny of Sheriff's Office operations.

There is much more to be done. Looking back on this initial period, we see it as a foundation that we are determined to build upon in the coming year. Certainly, we are grateful for the opportunity to do so.