

ORANGE COUNTY  
SHERIFF'S DEPARTMENT

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# Secondary Evidence Audit

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## Evidence Audit Report

### **A. Introduction:**

On January 24, 2018, an internal audit team launched a review of evidence collection and booking by OCSD deputies. Shortly thereafter, the Executive Command began to receive audit updates. Ultimately, on June 28, 2018, the audit team presented its findings and remedial measures to the Sheriff and Undersheriff.

On or about August 8, 2018, the Executive Command became aware that the initial audit, although very thorough, was not sufficiently broad to identify all potential issues regarding evidence retention. The audit did sufficiently capture issues with delayed bookings and whether or not there was an impact on any criminal cases resulting in jail time. The issues uncovered in the audit resulted in the implementation of remedial measures to address areas such as delayed bookings, software inadequacies, and lack of accountability. The audit team also identified specific deputies for internal criminal investigations, which resulted in an in-depth review of all their reports and evidence collected therefrom. The internal criminal investigations initiated from the audit, uncovered potential failures in retaining evidence--prompting this audit.

The constitutional significance of systemic issues related to the failure to retain and properly book evidence cannot be overstated. Often with unretained or destroyed evidence, it is unknown what was lost and the true significance of the item. Without hesitation, a subsequent audit to close the gap left in connection with evidence retention and booking began. Although there is no legal duty requiring a secondary audit, there are ethical obligations to ensure that deputies are performing their duties fully and completely. Also, if the initial audit were determined to be insufficient, then remedial measures taken because of that initial audit would also prove to be insufficient. This secondary audit focused on cases identified in the initial audit without retained evidence. The primary question is whether there are any global concerns or deficiencies with evidence retention or booking, and what remedies, if any, are needed to ensure that the constitutional rights of all persons with cases involving recovered evidence are preserved and protected.

## **B. Initial Audit Process and Findings:**

The Evidence Audit Working Group conducted the initial audit by reviewing cases from February 1, 2016 through February 1, 2018. The audit included 98,676 Department Records (DRs). Approximately 71,585 reports were determined to lack evidence. The team further audited the remaining 27,091 reports where items were booked with the Property/Evidence Division. The audit compared the date of collection with the booking date of the item and noted any delays. If delays in booking evidence exceeded 30 days from its collection, then a follow-up investigation began. If the reason for the delay was readily apparent-- for instance, an item of evidence was provided directly to investigations for follow up, or the item of evidence was the result of a subsequent investigation, then the inquiry ended. If, however, there was no readily apparent explanation for the delay, then a comparison with court records took place. If there was an impact on a criminal case, the parties involved in the criminal matters were immediately notified.

The initial audit was extensive and thorough. The audit identified the following areas for improvement: lack of consistent and accurate entries into Remedy, inadequate booking software, inadequate supervision and lack of proper checks and balances (system of accountability). It was unreasonable to address every booking delay identified because a blanket letter of reprimand would not prove useful in accomplishing the department's goals. Additionally, there appeared to be a cultural idleness to timely booking evidence and not any evidence of bad faith or impermissible animus.

Corrective measures began on a rolling basis and included: limits on open text fields in Remedy, locking out users after periods of inactivity; and requiring sergeants to review Remedy when approving reports to confirm items in the reports are booked with the Property/Evidence Division. Additionally, department memorandums and briefings on expectations and step-by-step guides on booking evidence were distributed department-wide. Also, multiple kiosks were strategically placed around the department to provide readily accessible information on how to properly book evidence. Lastly, where individual deputy's actions affected a criminal case,

criminal investigations commenced and were forwarded to the DA's office for possible criminal charges against the deputy, simultaneously Internal Affairs investigations were initiated to address any potential policy violations.

### **C. Secondary Audit Process:**

The primary question in this audit is whether there are any other global concerns or deficiencies with evidence retention or booking. More simply put, where Remedy does not have an entry, does that accurately reflect whether or not the deputy recovered an item of evidentiary value?

In order to maintain a statistically significant sample, this audit reviewed a randomized selection<sup>1</sup> of the 71,585 police reports from February 1, 2016 through February 1, 2018 determined to be without evidence in the initial audit. A sample size of  $n= 382$  would provide a 95% confidence level with a confidence interval of  $\pm 5\%$ . Out of an abundance of caution this audit included  $n= 450$ , resulting in a review of 450 police reports and a confidence level of 95% with a confidence interval of  $\pm 4.6\%$ . The reports were selected by division as follows: 375 patrol reports, 55 jail reports, 10 reports from John Wayne Airport, and 10 reports from Orange County Transportation Authority.

Each report was downloaded through WebXtender and personally read and reviewed. After review, any reports indicating the deputy collected item(s) of evidence were noted. The cases with evidence collected were compared with Remedy inventory records. The resulting list contained the following information: (1) was an item booked; (2) if item(s) were booked, what specifically was booked, by whom and when. The intent of this comparison was to address whether collected evidence was properly booked, whether all evidence collected had been accounted for, and whether there were any booking delays. Lastly, any cases with unretained evidence were analyzed further to determine any patterns or deficiencies.

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<sup>1</sup> Reports were randomized via Microsoft Excel.

#### **D. Findings:**

The examination began with a review of policies in place during the audit period. At that time, only the Field Operations Manual addressed evidence. Under Section 19(c)(4) of the Field Operations Manual:

“Once you have collected the item, retain physical control over it until it is booked in the evidence locker. Property and evidence WILL be secured in an authorized Property/Evidence locker by the end of shift. (Placing items in an employee locker or in your personal vehicle for temporary storage is strictly prohibited). Under extenuating circumstances, a supervisor may authorize temporary storage in an authorized secure area (example: locked office safe, closet or file cabinet) if that area is only accessible by the deputy or the supervisor.” (Emphasis in original)

A more detailed Property/Evidence Policy (Policy 802) is currently in the final approval phase and more clearly defines expectations. However, the FOM was directly applicable at the time.

Next, the examination reviewed the random sample of 450 cases noted to be without evidence. Without reading the entirety of the individual reports, one could not determine whether the deputy collected evidence and did not book the evidence, or whether the call for service resulted only in a report. Among the cases reviewed, 27% of the reports (121 cases) indicated the deputy collected at least one item of evidence. The remaining 73% of the reports (329 cases) were confirmed to not contain any physical evidence.

#### **Evidence Collected**

Further evaluation of the 121 cases involving at least one item of evidence took place to determine whether the collected item(s) were in evidence, who booked the evidence and when. Of these 121 reports, sixty-four (64) cases, approximately 53%, did have at least one item of evidence booked. Therefore, of the 450 cases reviewed, approximately 87% of cases either did not involve collected evidence or had at least one item of evidence booked. By contrast, fifty-seven (57) cases, approximately 47%, did not have any evidence booked. This represents 13% of the total cases reviewed.

## Evidence Categories and Booking

In order to identify potential trends, the audit reviewed the 121 cases with collected evidence to determine whether the category or type of evidence played a role in evidence retention. The list below indicates the evidence type and the number of times that type of evidence was or was not booked. The numbers below reflect individual items and not individual cases because some cases involved multiple items of evidence.

### **Types of Evidence Booked**

- Audio (4)
- Controlled Substances and/or Paraphernalia (27)
- Other<sup>2</sup> (25)
- Photos (16)
- Surveillance Videos (13)
- Weapons<sup>3</sup> (6)

### **Types of Evidence Not Booked**

- Audio (2)
- Controlled Substances and/or Paraphernalia (4)
- Other<sup>4</sup> (4)
- Photos (47)
- Surveillance Videos (4)

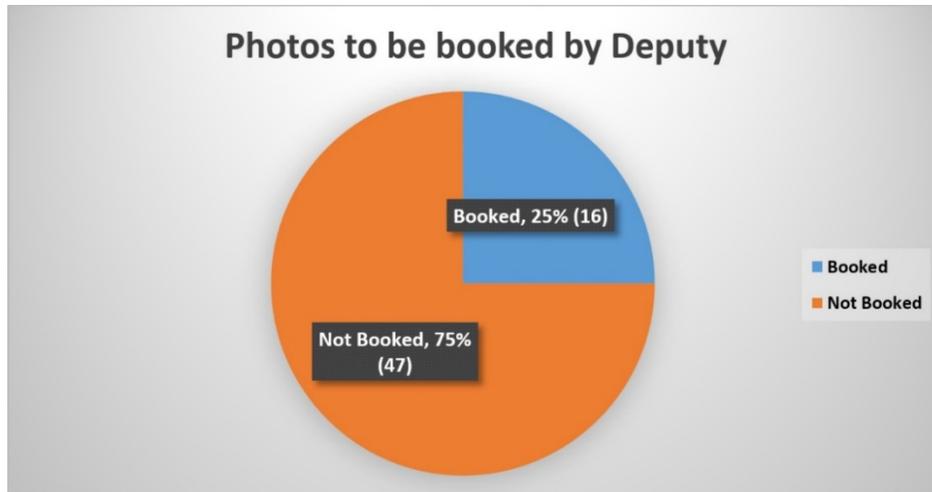
Except for photographs, there appeared to be no direct correlation between types of evidence collected and booked versus collected and not booked.

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<sup>2</sup> Written statements or greeting cards, Taser prongs/cartridge/wires, debit cards, and buccal swabs

<sup>3</sup> In all cases reviewed, deputies booked each weapon collected as evidence.

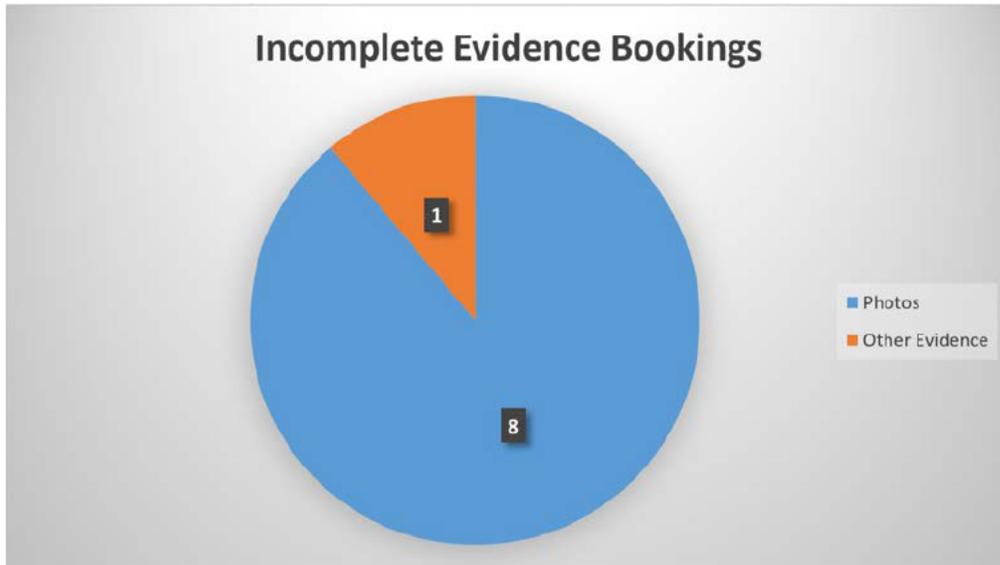
<sup>4</sup> Bank statements, contaminated greeting cards, and debit cards.



Photos taken by the deputy responding to a call for service are critical. Routinely, deputies are advised that they should photograph their observations, whenever possible. In fact, for prosecution purposes, the Office of the District Attorney has regularly required photographic evidence of injuries or other damage/loss before making a filing decision. If photos were booked through the channels available in 2016-2018, without alternative copies otherwise available, the case could risk rejection by the District Attorney's Office. In an attempt to fully document the case and provide our justice partners with the information they need, the Investigative Assistants and Court Liaisons were obtaining the photographs informally and outside the official booking process. Although well intended, this was outside the scope of Section 19(c)(4) in the Field Operations Manual. After the initial audit, a solution was implemented; however, the mechanics of the solution and how the new procedure was communicated remains unclear. A consistent procedure with oversight is needed to assist the deputies who are properly documenting their observations for criminal prosecution, while still timely booking and inventorying the items in Remedy.

## Thoroughness of Bookings

Within the sixty-four cases with booked evidence, there were nine cases where the bookings were incomplete. Again, photographs were the predominately missing evidence type.



Interestingly, there was only a single case with incomplete evidence other than photographs. In that case, Remedy reflects booking of 0.02g of methamphetamine and a straw. However, it appears the methamphetamine vial with 0.01g inside, a methamphetamine pipe, CD with photos of checks, and two checks were not inventoried in Remedy.<sup>5</sup> Without opening the evidence package, it cannot be determined if this was a failure to book evidence or an incomplete inventory record due to combined evidence packaging. This single case was an outlier.

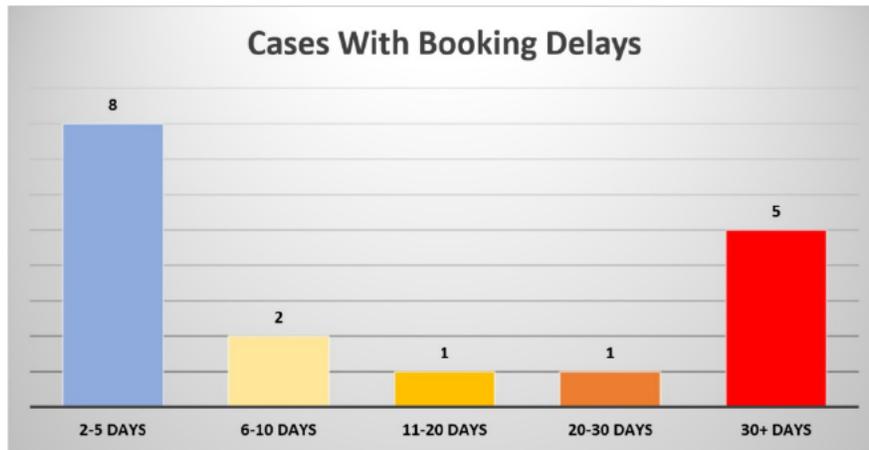
## Timing

Further evaluation of cases with secured evidence took place to identify any booking delays. Among the sixty-four cases with evidence booked, the review showed that forty-seven cases (73%) were booked within 24 hours. The remaining seventeen cases (27%) involved

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<sup>5</sup> DR# [REDACTED]

delayed bookings. These delays were predominantly minor, and again reflected the idleness of the deputies.

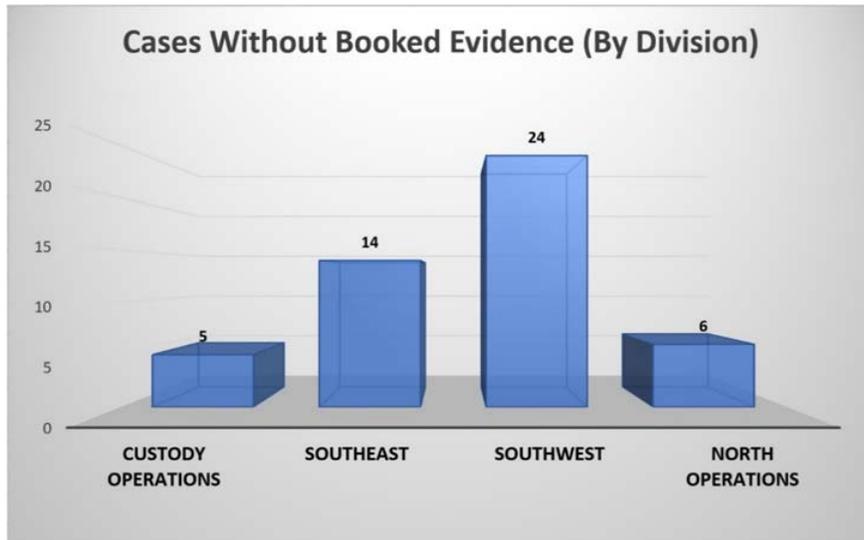


There were five cases where delays exceeded thirty days. Among the five cases with over thirty days of delay, one case ( [REDACTED] ) was quickly identified to be the result of a subsequent investigation and evidence gathering and not a delay outside policy. The remaining cases do not have a readily apparent cause for the delay. Unless a further review of those cases is conducted, then the potential reasons for the delay will remain undetermined. The chart below details the delayed cases.

DR#	Date of Incident	Date of Evidence Booked	Days
[REDACTED]	1/2/2016	2/12/2016	30+
[REDACTED]	5/2/2016	5/6/2016	4
[REDACTED]	5/24/2016	5/26/2016	2
[REDACTED]	7/4/2016	12/5/2016	30+
[REDACTED]	7/20/2016	7/25/2016	5
[REDACTED]	9/23/2016	9/30/2016	7
[REDACTED]	9/25/2016	9/27/2016	2
[REDACTED]	12/18/2016	1/11/2017	24
[REDACTED]	1/18/2017	1/20/2017	2
[REDACTED]	3/29/2017	5/17/2017	30+
[REDACTED]	9/27/2017	10/29/2017	30+
[REDACTED]	11/20/2017	11/22/2017	2
[REDACTED]	11/30/2017	12/6/2017	6
[REDACTED]	12/7/2017	12/12/2017	5
[REDACTED]	12/17/2017	12/19/2017	2
[REDACTED]	12/20/2017	7/31/2018	30+
[REDACTED]	6/18/2017	6/29/2017	11

## Evidence Not Booked By Division

The remaining fifty-seven cases had no evidence booked. As discussed earlier, the types of evidence not booked were overwhelmingly photographs. The chart below reflects the divisions which were having the most difficulty with booking collected evidence.<sup>6</sup>



The following chart lists all the cases with documented evidence in the report, but not inventoried in Remedy. The twelve highlighted cases involved missing items of evidence other than photographs. Those twelve cases represent 3% of the cases reviewed. The types of evidence missing in these twelve cases are: audio (2 cases); contaminated greeting cards (2 cases); controlled substances and/or paraphernalia (2 cases); surveillance videos (4 cases); debit cards (1 case); and bank records (1 case).

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<sup>6</sup> Custody Operations prepared reports in eight additional cases with evidence collected by Sheriff's Identification, but without an inventory record in Remedy. These cases are not reflected in the chart because it was not the responsibility of the deputy inside Custody Operations to book those items of evidence.

Evidence Not In Remedy			
	DR #		DR #
1		30	
2		31	
3		32	
4		33	
5		34	
6		35	
7		36	
8		37	
9		38	
10		39	
11		40	
12		41	
13		42	
14		43	
15		44	
16		45	
17		46	
18		47	
19		48	
20		49	
21		50	
22		51	
23		52	
24		53	
25		54	
26		55	
27		56	
28		57	
29			

**E. Conclusion**

When initiating this audit, the goal was to ensure that the constitutional rights of all citizens with cases involving recovered evidence are fully preserved and protected. The review has determined that for the most part there are no major concerns about evidence preservation. Although approximately 18% of the cases involved some form of deviation from policy, the majority of the cases (97%) either did not include any item of evidence or were only

missing photographs of evidence.<sup>7</sup> Still, the department takes evidentiary issues seriously, and management took some of the responsibility by immediately initiating a series of corrective measures. Further illustrating the department's commitment to resolving any remaining issues related to evidence retention, the department has a new Property/Evidence policy and completed two comprehensive audits of department records. The combined effect of the previous corrective measures, and the continued quality improvement and oversight measures suggested in this audit will continue to ensure collected evidence is booked, as required by law and policy. The additional corrective measures suggested will assist the deputy in efficiently performing their expected duties. Upon full implementation, the department can be confident that the proper tools and oversight measures are in place to realize the important goals of evidence preservation.

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<sup>7</sup> Deviation of policy includes delayed bookings, incomplete bookings or missing evidence.

## **Further Recommendations**

**RECOMMENDATION #1:** Review the current booking process for photos taken by patrol deputies. Confirm and streamline the process for more straightforward booking of these items, while taking into consideration the Office of the District Attorney's filing decision needs.

**RECOMMENDATION #2:** Assign the appropriate division to conduct spot checks on the sergeant's review process currently in place, to ensure compliance.

**RECOMMENDATION #3:** Although briefing items have been distributed explaining the booking process and the sergeant's review process, additional briefings are recommended. These briefings should emphasize any changes as a result of Recommendation #1, the constitutional significance of following policy, how policies are drafted to protect the deputies and to ensure legal compliance—especially as it relates to preservation of evidence. Lastly, due to turnover in assignments, this briefing item should be calendared to reoccur on a regularly scheduled periodic basis.

**RECOMMENDATION #4:** Complete the pending investigations through internal affairs or internal criminal investigations of any previously identified policy violations related to the booking of evidence.

**RECOMMENDATION #5:** Investigate the additional cases located with delayed bookings over thirty days, using the initial audit protocol including potential Internal Affairs or Internal Criminal Investigations.

**RECOMMENDATION #6:** Consider further investigations of identified cases with recovered evidence and no Remedy inventory record, excluding cases involving only photographs.