

LOS ANGELES POLICE COMMISSION

***REVIEW OF THE DEPARTMENT'S
QUARTERLY DISCIPLINE REPORT***
4th Quarter, 2007



Conducted by

OFFICE OF THE INSPECTOR GENERAL

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Inspector General

April 25, 2008

I. Introduction

The Consent Decree requires that the Los Angeles Police Department (Department) prepare a quarterly report regarding discipline imposed, including Categorical Uses of Force (CUOFs) found to be out of policy, within 45 days after the end of each quarter. The Department has completed its report for the Fourth Quarter of 2007. The Police Commission (Commission) received its hard copy of the Department's Quarterly Discipline Report (Report) on February 15, 2008. As required under Consent Decree Paragraph 89, the Office of the Inspector General (OIG) has reviewed the Department's Report and submits its own Report to the Commission.

During this quarter, the OIG interpreted some of the statistical data contained in various tables within the Department's report. Section II of this Report contains the OIG's analysis of some of the information found within the tables contained in the Department's Report and expands upon the information contained therein.

In Section III, the OIG reviewed cases closed during the Fourth Quarter of 2007 that contained at least one allegation of Sexual Misconduct. The OIG reviewed these cases to determine the overall quality of the investigations. Areas focused upon included, but were not limited to, whether the investigation was fair and objective, whether the adjudication results were supported by the evidence and whether a reasonable effort was made to identify and interview relevant witnesses and gather pertinent evidence.

In Section IV, the OIG discusses cases closed during the Fourth Quarter of 2007 that were determined to be Out of Statute (OOS). The Report included six such cases that were closed during the Fourth Quarter. The OIG was provided with additional documentation to explain why these cases fell OOS and what remedial action, if any, was taken to avoid similar recurrences.

Section V contains our review of the discipline imposed relative to the seven CUOF incidents where the Commission adopted a finding of Out of Policy and/or Administrative Disapproval, which were closed during the Fourth Quarter, and which are enumerated on Table L of the Department's Report. Three of these CUOF incidents fell OOS and are also discussed in Section IV of this report.

Section VI contains information about how Training, Evaluation and Management System (TEAMS) Reports were updated to reflect CUOF incidents.

Finally, in Section VII we provide our overall conclusions about the cases we reviewed this quarter.

On April 7, 2008, OIG staff discussed our preliminary findings in this report with the Commanding Officer from Internal Affairs Group (IAG). On April 22, 2008, IAG submitted a written response to our preliminary findings. The information provided by IAG in our meeting and in their response was taken into consideration prior to finalizing this report.

II. ANALYSIS OF STATISTICAL INFORMATION WITHIN THE DEPARTMENT'S REPORT

As a result of our review of the Department's Report, we utilized the information provided and conducted some additional analysis to aid the Commission in its review and evaluation of the discipline imposed during this Quarter.

Sustained Information Summary

Using the information contained in the Department's Report, we determined that the percentage of Sustained allegations was 12% (total of Sustained allegations/total allegations = 419/3606 = 12%). Also using the information in the Department's Report, we determined that the percentage of Sustained allegations for each of the most common classifications were as follows, in descending order of sustained rate:

Allegation	Sustained Rate	No. of Sustained Allegations/ Total Number of Allegations
Neglect of Duty	15.48%	122/788
False Statements	8.96%	6/67
Unbecoming Conduct	6.00%	34/567
Unauthorized Tactics	2.80%	3/107
Discourtesy	2.35%	15/639
Unauthorized Force	0.98%	4/409
False Imprisonment	0.00%	0/275
Unlawful Search	0.00%	0/136
Racial Profiling	0.00%	0/76

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Allegation Summary / Bureau-Allegation Summary

We created an additional table, depicted below, which utilizes data from the Department's Tables C, E and II.

Classification	Sustained Allegations/ Total Allegations	Sustained Rate	Percentage of Total Allegations	Number of Accused Employees¹	Number of Employees w/ Sustained Allegations¹
Accidental Discharge	1/1	100%	0.03%	1	1
Alcohol Related	7/15	46.7%	0.42%	13	7
Discourtesy	15/639	2.3%	17.72%	407	9
Discrimination	0/26	0.0%	0.72%	22	0
Dishonesty	2/7	28.6%	0.19%	6	2
Domestic Violence	14/40	35%	1.11%	13	5
Ethnic Remark	3/33	9.1%	0.92%	28	3
Failure To Appear	20/24	83.3%	0.67%	23	20
Failure To Qualify	53/60	88.3%	1.66%	60	53
False Imprisonment	0/275	0.0%	7.63%	233	0
False Statements	6/67	9.0%	1.86%	57	6
Gender Bias	0/2	0.0%	0.06%	1	0
Improper Remark	5/31	16.1%	0.86%	24	5
Insubordination	9/18	50.0%	0.50%	9	6
Misleading Statements	3/4	75.0%	0.11%	4	3
Narcotics/Drugs	0/21	0.0%	0.58%	11	0
Neglect of Duty	122/788	15.5%	21.85%	527	79
Off-Duty Altercation	1/4	25%	0.11%	2	1
Other Policy/Rule	1/49	2.0%	1.36%	27	1
Preventable Traffic Coll.	111/118	94.1%	3.27%	117	110
Racial Profiling	0/76	0.0%	2.11%	58	0
Retaliation	0/8	0.0%	0.22%	3	0
Service	0/3	0.0%	0.08%	0	0
Sexual Misconduct	2/11	18.2%	0.31%	6	1
Shooting Violation	2/2	100.0%	0.06%	2	2
Theft	1/65	1.5%	1.80%	44	1
Unauthorized Force	4/409	1.0%	11.34%	261	3
Unauthorized Tactics	3/107	2.8%	2.97%	83	3
Unbecoming Conduct	34/567	6.0%	15.72%	322	27
Unlawful Search	0/136	0.0%	3.77%	102	0

¹ Data in this column was taken from Table II in the Department's Report. Employees are separately counted for each complaint and for each allegation type; thus a single employee may be counted repeatedly. Accordingly, the numbers in this column do not match the exact number of employees against whom the allegations were sustained.

Allegation Summary by Employee Rank – Listed by Allegation Type

Using the information in Table F, the OIG obtained Sustained allegation rates, broken-out by rank, calculated both by total allegations, and by total allegations excluding Preventable Traffic Collisions (PTCs), Failures to Appear (FTAs), and Failures to Qualify (FTQs). The results are depicted in the below table.

	Sustained Allegations/ Allegations	Overall Sustained Rate	Sustained Allegations/ Total Allegations (Minus PTCs, FTAs, & FTQs)	Overall Sustained Rate (Minus PTCs, FTAs, & FTQs)
Allegation Total	419/3606	11.62%	235/3404	6.90%
Staff Officers	0/2	0.00%	0/1	0.00%
Captain	0/16	0.00%	0/16	0.00%
Lieutenant	3/17	17.65%	1/14	7.14%
Sergeant	15/163	9.20%	7/153	4.58%
Detective	33/182	18.13%	14/163	8.59%
Police Officer III	74/618	11.97%	23/565	4.07%
Police Officer II	175/1592	10.99%	88/1496	5.88%
Police Officer I	37/192	19.27%	26/178	14.61%
Reserve Officer	4/10	40.00%	3/9	33.33%
Detention Officer	7/34	20.59%	7/34	20.59%
Civilian Management	0/4	0.00%	0/4	0.00%
Civilian Personnel	41/81	50.62%	40/80	50.00%
Unknown/Invalid	30/695	4.32%	26/691	3.76%

Twelve percent of all misconduct allegations were Sustained during this quarter. Seven percent of all allegations were Sustained when PTCs, FTQs, and FTAs were removed.

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III. REVIEW OF SEXUAL MISCONDUCT CASES

A. Methodology

This quarter the OIG conducted in-depth reviews of complaints that involved sexual misconduct allegations. During the Fourth Quarter of 2007, there were seven complaints with at least one allegation of sexual misconduct.

In conducting this review, a matrix was utilized by the first and second level reviewers. This matrix contained 36 questions designed to evaluate the quality, completeness, and findings of the completed investigation, including whether the discipline imposed was justified and appropriate in light of the surrounding circumstances, the employee's disciplinary history, and the standards enunciated in the Department's "Management Guide to Discipline" (July 2004) and the "Civilian Penalty Guide" to Discipline Standards (January 2008). In addition, a Crib Sheet was used to assist in answering the questions on the matrix.

OIG staff also reviewed all available recorded interviews.² In reviewing the recorded interviews in these cases, the OIG utilized a separate matrix containing 17 questions designed to evaluate whether: (1) the interviews were properly paraphrased to include all relevant testimony; (2) all allegations raised by the complainant were properly formed; (3) any additional allegations raised during the interviews were addressed in the completed investigation; (4) the interviews themselves were conducted properly (e.g., whether the interviewer used inappropriate or leading questions, or adopted a hostile or inappropriate tone with the witness); and (5) logical follow-up questions were asked by the interviewer. Second-level reviewers also listened to recordings that were recommended by the first-level reviewers to be essential to the review.

Although we reviewed seven cases which were closed during the Fourth Quarter of 2007, there were a total of eleven sexual misconduct allegations, because some of these cases involved multiple allegations. Of the cases we reviewed, two allegations were sustained.

B. Findings

In summary, our review of sexual misconduct cases revealed that overall, we believe IAG conducted investigations that contained enough information for the adjudicators to utilize in making a final adjudication in all seven of the cases. Although there were some additional steps we would have preferred to have been taken by IAG, the OIG found that there was enough information gathered during the investigations to allow the adjudicators to make informed decisions and concurred with the resulting adjudications. We found in these cases that the Investigating Officer (I/O) made efforts to either canvass the area and/or interview possible witnesses, including a complainant who was incarcerated. We also found that I/O's went to great lengths to gather the relevant evidence related to the investigations.

² Of the seven cases reviewed, no recordings were available for three cases. Ten recordings were reviewed on the remaining four cases.

C. Case Summaries and Analysis

Summaries of cases and our analysis of investigations are listed below.

1. CF 07-003363

a. Summary

In this case, the complainant alleged that on an unknown date and time, unknown officers, while on duty, had sexual intercourse with her daughter. The complainant advised that her daughter was allegedly engaging in prostitution. The complainant also advised that several other prostitutes besides her daughter were sleeping with officers from this specific area. The complainant was allegedly told by her daughter that the daughter was never named in any LAPD investigation nor was she or other area prostitutes ever taken to the area station for booking, as a result of their sexual relationships with officers in that area. One allegation was framed against the unknown accused officers for having sexual intercourse with the complainant's daughter.

The allegation was adjudicated as "Unfounded" based on the following rationale: the complainant initiated the complaint on behalf of her 16 year-old daughter, who claimed to have had "sex with the cops" from a specific area. The adjudicator believed that when interviewed, the daughter denied telling her mother that statement, and further denied ever having sexual intercourse with any Los Angeles Police Department employee. The adjudicator stated, "It is not clear why [*the daughter*] would have made that statement, but there is absolutely no evidence to support such an allegation and even [*the complainant*] was uncertain whether or not she believes her daughter. [*The daughter*] is a frequent runaway and has lied to her mother many times in the past."

b. Analysis of Investigation

Overall, the OIG agrees with the Department's decision to Unfound the allegations since there was no evidence to support them. Both the complainant and her daughter were interviewed and there was enough information gathered to allow the adjudicator to make an informed decision. The OIG would have preferred that the I/O had asked the complainant's daughter more direct and in-depth questions about whether or not she had sexual contact with any officers and as to whether other prostitutes in the area were doing the same. However, after the interviews of the complainant and her daughter, no credible information was garnered which could support the allegations of misconduct.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and concurred with the resulting adjudication.

2. **CF No. 07-000778**

a. Summary

This complaint was filed against a police officer by a complainant who alleged that the officer grabbed her breast, outside her clothes, using an open palm and a squeeze action. The accused was part of a "buy bust" narcotics operation, which included an observer and other officers who were listening to the transaction by means of a hidden microphone. The complainant alleged that she asked the officer to touch her breast before she would sell him/her the drugs, to show that he/she was not a police officer. The complainant was dressed in baggy masculine clothing, which made her gender difficult to discern. The officer said he/she touched the complainant's shoulder area. Once the transaction was completed, the complainant was arrested and at that time advised a supervisor that the accused had touched her. In this complaint, the sexual misconduct allegation was framed against the accused for inappropriately grabbing the complainant's breast for personal satisfaction. The allegation was adjudicated as "Unfounded" based on the rationale that the officer only touched the complainant below the collarbone and that the officer assumed the complainant was a male.

b. Analysis of Investigation

We agree that there was not enough information gathered to sustain the allegation in this case. The I/O's investigation did not reveal misconduct by the accused officer. The OIG also notes that the I/O in this case interviewed the complainant who was in jail at the time. In the past, the OIG has noted that many incarcerated complainants were not interviewed. Although the OIG would have preferred that the I/O interview the other officers that were listening to the interaction between the accused officer and the complainant to provide additional perspective, if any, we do not believe that this matter compromised the overall quality of the investigation.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and concurred with the resulting adjudication.

3. **CF No. 07-002993**

a. Summary

The complainant alleged that during her arrest, she was sexually assaulted and raped by the two arresting officers. Specifically, the complainant alleged that one officer (Accused 1) penetrated the complainant's anus with his/her finger and the second officer (Accused 2) penetrated the complainant's anus with his penis.

The investigation revealed that the officers came into contact with the complainant when responding to a radio call of "Battery, Domestic Violence" at an apartment unit rented by an acquaintance of the complainant (Witness 1). The officers found no evidence of domestic

violence. The officers determined that the complainant was on probation, advised the complainant and Witness 1 to keep the noise level down and left the location.

Approximately five minutes later the officers were notified by Communications Division (CD) that the initial reporting party (Witness 2) had called again about the yelling coming from Witness 1's unit and requested a police response. The officers returned to the location and were given permission by Witness 1 to enter the unit. While in the unit, Accused 1 noticed narcotics and narcotics paraphernalia. The complainant was detained by the officers for violation of her probation. At this point, the complainant got very angry and began resisting the actions of the officers and ignoring their verbal commands. The complainant was then placed under arrest.

As the officers began to walk the complainant to the patrol vehicle, she went limp and fell to the ground. The officers immediately requested a supervisor. While on the ground, the complainant began yelling and kicking the officers. Additional units also responded to the location. A total of four officers, including both accused officers, picked the complainant up and carried her to the patrol vehicle. The complainant resisted and continued fighting the officers while being carried. A hobble restraint device was then placed on the complainant's legs, below the knee. The complainant was placed on the floor of the patrol vehicle and taken to the police station. The complainant subsequently advised Jail Division personnel that she had been beaten, pepper sprayed, and raped by the arresting officers. During an interview with the complainant, in addition to the allegations listed above, she also alleged that she was subjected to a derogatory ethnic remark.

In this complaint, two allegations were framed against Accused 1 for unauthorized force and sexual misconduct and two allegations were framed against Accused 2 for an ethnic remark and sexual misconduct. All four allegations framed against Accused 1 and 2 were adjudicated as "Unfounded." The adjudicator noted that he/she "Unfounded" the allegations because all three witnesses interviewed during the investigation provided sufficient evidence to refute the complainant's allegations against both accused officers. According to the adjudicator, the complainant's friend (Witness 1) corroborated the officers' statements that the complainant was hostile and aggressive throughout the incident. In addition, the adjudicator noted that a full medical exam conducted after the alleged sexual assault and rape found no evidence to suggest that a physical or sexual assault had occurred. Lastly, the adjudicator stated that "[s]ince the investigation proved the sexual assault did not occur, the ethnic remark allegedly made during the assault must also be false."

b. Analysis of the Investigation

The I/O gathered the relevant evidence in this case. The I/O included as Addenda to the investigation the Arrest Report, Sergeant's Report, results of the Sexual Assault Rape Test conducted by a physician, and photographs taken of the complainant's body to document thoroughly any alleged injuries incurred during the complainant's arrest. All of this evidence was important in corroborating the accused officers' version of events and contradicting statements made by the complainant that she was sexually assaulted. And, although we would have preferred that the I/O interview two other eyewitnesses, since they reportedly viewed the entire incident from start to finish and would have been able to provide a more thorough account

of the incident, we believe that enough information was gathered to allow the adjudicator to make an informed decision.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and concurred with the resulting adjudication.

4. CF No. 07-002232

a. Summary

This complaint was initiated following the receipt of a call from an individual who requested to remain anonymous. The complainant stated that she had observed an officer engaged in a lewd act in a black and white police vehicle behind a shopping center. The individual was able to provide the vehicle's identification number, hereafter referred to as the suspect vehicle, but was unable to provide a description of the officer other than it was a male and that the other occupant in the police vehicle was a female.

A supervisor immediately responded to the location but did not observe any police vehicle parked behind the shopping center. The supervisor did observe two officers, along with a defendant, parked in front of the shopping center, but they were ruled out as accused officers based on stop records. The supervisor further ascertained that another supervisor had also responded to a call at the center but further inquiry revealed that the supervisor was not driving the suspect vehicle.

Further inquiry also revealed that the suspect vehicle was not assigned to anyone on the day of the alleged incident and there was no record of anyone using the vehicle. When examined, the vehicle was found not to be in its assigned parking spot, which added some credibility to the complainant's allegation. An inspection of the vehicle resulted in the discovery of a day planner on the front seat, which belonged to an officer who had been assigned to the vehicle the previous day. A comprehensive investigation of this complaint provided no evidence to suggest that the officer was involved in any lewd conduct.

b. Analysis of Investigation

Our review revealed no investigative deficiencies. The Department made every effort to obtain evidence regarding the alleged misconduct, which included a canvass of the area for possible witnesses, along with interviews of officers determined to be in the area during the alleged incident.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and concurred with the resulting adjudication.

5. **CF No. 07-004119**

a. Summary

This complaint was filed against an officer (the accused), who was working an undercover prostitution detail, in plain clothes and driving an unmarked vehicle. Others involved included Officers A and B and Supervisor C, who were driving separate unmarked vehicles. The complainant was observed loitering in the area and entered the vehicle driven by the accused. In an attempt to verify if the accused was a police officer, the complainant exposed one of her breasts and insisted that the accused touch it. The accused requested they move to another location first. The complainant then aggressively attempted to place her hand inside the accused officer's pants and tried to open the accused officer's belt with the other hand. The accused officer immediately removed the complainant's hands from his/her groin area while simultaneously attempting to park the vehicle. During this interaction, the accused stated that there was unintentional contact between the back of his/her arm and the complainant's breast, which was exposed. At that time, the complainant requested to leave the vehicle, stating that she believed the accused was a police officer. The accused let the complainant out of the vehicle and signaled Supervisor C that there was sufficient cause to arrest the complainant.

Supervisor C approached the vehicle as the complainant stepped out and identified him/herself as a supervisory officer and the complainant begged not to be taken to jail. When Supervisor C informed the complainant that she was under arrest, she began to yell that the accused touched her breast. The supervisor informed the complainant that she could file a formal complaint. The complainant stated she would like to file a formal complaint, however, when transported to the station, the complainant refused to make a statement and stated she did not want to file a complaint.

The investigation revealed that Officers A and B, and Supervisor C were not in a position to see what happened once the complainant entered the vehicle, because they were in separate vehicles. In addition, there was no surveillance equipment inside the accused's vehicle.

In this complaint, one allegation was framed against the accused for sexual misconduct.

IAG conducted an investigation and made several unsuccessful attempts to contact the complainant. The adjudicator classified the allegation as "Exonerated." Upon review, however, the allegation was militarily endorsed by an Assistant Commanding Officer as "Insufficient Evidence to Adjudicate," as the allegation could not be properly addressed without a formal interview of the complainant.

b. Analysis of Investigation

Our review revealed no investigative deficiencies and it appears that the Department made every effort to develop evidence related to this allegation, despite the lack of cooperation from the complainant. Efforts taken included continued efforts to contact the complainant and the questioning of officers assigned to the area during the alleged incident.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and concurred with the resulting adjudication.

6. **CF 07-004891**

a. Summary

The complainant approached a police officer and alleged that two unknown undercover police officers placed an unknown substance in her drink and raped her. The police officer attempted to interview the complainant regarding the incident, however, the complainant walked away. The police officer attempted to locate the complainant with negative results.

The investigation revealed that the I/O canvassed the area in an attempt to locate the complainant but was unable to find her. Due to the lack of information provided by the complainant, it was not possible to investigate the complaint further.

In this complaint, one allegation was framed against the unknown officer for placing an unknown substance in the complainant's drink and raping her.

This one allegation was adjudicated as "Insufficient Evidence to Adjudicate" based on the following rationale: the I/O was unable to locate the complainant and the complainant provided extremely vague information during her conversation with the police officer.

b. Analysis of Investigation

Our review revealed no investigative deficiencies and it appears that the Department made every effort to develop evidence regarding the alleged misconduct, which included a canvass of the area in an attempt to locate the complainant since she just walked away and failed to provide any follow-up information.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and concurred with the resulting adjudication.

7. **CF No. 06-3364**

a. Summary

This complaint was filed against a supervisor, the accused. The original allegation was that the supervisor inappropriately grabbed the complainant's wrist as he/she attempted to reach for the telephone receiver during a counseling session. During the interview, the complainant made an additional allegation of sexual misconduct by alleging that the accused placed his/her hand inside the complainant's blouse.

Through the logical flow of questioning that took place, the I/O was able to identify possible witnesses to the alleged sexual misconduct. When the complainant was questioned as to why he/she had not report the sexual misconduct sooner, the complainant stated that there were several reasons including the fact that the accused was investigating a separate complaint of misconduct against him/her. The interview of one of the witnesses further revealed that a Department employee in a supervisory capacity was made aware of the alleged sexual misconduct and did not report it. Four allegations of misconduct were framed; three against the accused and one against the supervisor who did not report the alleged misconduct.

The allegation of inappropriate touching during a counseling session was "Sustained." The allegation raised in the investigation against the second supervisor for failure to report was "Sustained." The allegation that the accused failed to conduct a thorough investigation in regards to the complaint he/she was investigating was "Unfounded." Finally, the allegation of sexual misconduct was "Not Resolved."

b. Analysis of Investigation

We note that the I/O in this case interviewed relevant witnesses and gathered pertinent documents related to this case. The I/O conducted a comprehensive investigation.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and concurred with the resulting adjudication.

IV. DISCUSSION OF OUT OF STATUTE CASES

During the Fourth Quarter of 2007, six cases were closed which were determined to be Out of Statute (OOS).³ We reviewed these investigations to determine the causes and whether remedial actions were taken to prevent reoccurrence. We reviewed six Intradepartmental Correspondences (15.2s) related to these cases provided to us by the Department, as well as the full case files.

³ These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. All six cases are discussed herein.

A review of the 15.2s and related case files revealed that cases closed during the Fourth Quarter for being OOS were done so, for the following reasons:

- The party or parties responsible for processing cases miscalculated the statute dates once cases were no longer tolled by litigation or once the Board of Police Commissioners (BOPC) deemed the tactics or force in a CUOF to be administratively disapproved.
- The party or parties responsible for initiating complaints did not do so when initially advised by the Use of Force Review Board (UOFRB) that tactics had been administratively disapproved.

We note, however, that the Internal Investigations Course provided to investigators has been modified to include a specific section dedicated to training investigators on the proper calculation of statute dates, including when tolling is effectuated. The Department has taken affirmative steps to lessen the likelihood of these types of miscalculations going forward.

Summaries of the OOS cases are as follows:

CF No. 06-0195

This complaint involved allegations of Unauthorized Force, Discourtesy, Unbecoming Conduct, and Unlawful Search. A criminal investigation that included nine allegations of misconduct was conducted in conjunction with an Administrative Investigation that included a tenth allegation of misconduct. The allegation was discovered and framed in a timely manner by the I/O from the Administrative Investigation Section (AIS). It appears that during the final review of the investigation by the Review and Evaluation Section of IAG, it was noted that the tenth allegation was not addressed by the adjudicator in the Letter of Transmittal. Therefore, the tenth allegation, which was the second allegation of Discourtesy in this investigation, was considered OOS.

It appears to be an oversight on the part of the adjudicator that this allegation was not addressed.

CF No. 07-000729

This case stems from an Officer Involved Shooting (OIS) investigation where there was a finding of Administrative Disapproval (AD) for the tactics of officers that followed a vehicle and attempted to conduct a traffic stop. In July 2005, officers pursued a vehicle and the passengers eventually fled on foot. The officers separated and pursued each suspect independently. One of the officers fired one round at one of the suspects. The BOPC found that both officers' tactics that led up to the OIS warranted an administrative disapproval finding.⁴ As a result of the administrative disapproval, the Use of Force Review Division (UOFRD) emailed a complaint form on June 23, 2006 to four members of the Complaint Classifications Unit (CCU) of IAG for processing. However, no Complaint Form (CF) was processed.

On February 6, 2007, UOFRD contacted CCU inquiring about the status of the complaint. CCU staff located the complaint form, and processed it at that time, generating CF No. 07-000729.

⁴ A more detailed summary of the facts of this case will be included in Section V, below regarding OIS No. 05-053.

However, this was beyond the statute date of July 2006, rendering the allegations against both officers OOS. The CCU officers involved were counseled regarding the issuance of CF numbers and reminded to ensure that complaints generated as a result of administrative disapproval are handled and processed in an appropriate and timely manner.

CF No. 06-4805

This case involved an officer who allegedly "Failed to Qualify" (FTQ) with his/her Department issued firearm, as required. A complaint was initiated and an Area investigator conducted the complaint investigation. The investigation included speaking to an Area Firearms Coordinator, along with the accused officer. The accused officer claimed that he/she qualified during off-duty hours while firing for "bonus" firearm pay, but was unable to provide a qualification stub to support his/her claim. The Firearms Coordinator advised the investigator that an officer must also inform the Range Master of their intent to qualify when they shoot for bonus pay, and that failure to do so would result in a qualification stub not being generated.

The complaint was "Sustained" with a recommended penalty of admonishment. However, no penalty was imposed as the complaint was determined to be OOS after the complaint investigator erroneously computed the statute date from the time he/she received the complaint for investigation, versus when the Department first became aware of the fact that the officer had FTQ.

Professional Standards Bureau (PSB), which initially provided each Bureau with the names of officers that had FTQ, amended its FTQ future notice process to reflect the date that the FTQ printout was generated, which should prevent a future re-occurrence of the problem. PSB also recommended that the Area investigator receive training regarding this incident, which was provided.

CF No. 05-4571

This complaint involved two officers who failed to secure the complainant in a seatbelt during transportation in a patrol car, inappropriately drove Code-3 with the complainant in the back seat, failed to provide personal safety for the complainant while in custody and submitted an inaccurate Daily Field Activities Report (DFAR). Each officer had four allegations framed against him/her. The only sustained allegations were for Neglect of Duty for filling out an inaccurate DFAR. The statute lapsed because the I/O believed that the case was tolled due to filing of a lawsuit by the complainant. However, the complainant's lawsuit was voided by a Superior Court judge due to the non-payment of filing fees, but the Department was not notified because the Deputy City Attorney in charge of the case was unaware that the lawsuit was voided. The Department became aware that the lawsuit was voided only after a follow-up call to the courts was made approximately one year after the lawsuit was filed.

The Department's conclusion is that the case primarily fell OOS due to the lack of communication between the court, Deputy City Attorney, Risk Management Group (RMG) and the I/O. In the 15.2 from the Department, it was noted that it is the responsibility of the I/O to maintain communication and liaison with the City Attorney rather than relying on RMG's tracking system. As a result, the Department discussed this issue with the Investigators for the Area at a squad meeting.

CF No. 07-000314

This case involves an OIS investigation where there was an AD finding for the tactics used by officers that pursued two suspects on foot after a short vehicle pursuit. While responding to a radio call, officers heard gunshots in the area and observed an oncoming vehicle approaching them at a high rate of speed. Officers pursued the vehicle and both the driver and passenger eventually fled on foot. The officers separated and pursued each suspect independently. One of the officers fired two rounds at one of the subjects. The Commission found that this officer's tactics warranted an AD finding. A complaint form was generated as a result of the Commissions' findings.⁵

The allegations against one officer were found to be OOS because the UOFRD supervisor that initiated the complaint incorrectly documented the date reported to the Department. This supervisor incorrectly used the date the UOFRB deemed the tactics AD instead of the date of occurrence. The date of the UOFRB's findings was almost eight months after the actual date of the incident.

Administrative personnel also did not note the incorrect reporting date, nor did the I/O or supervisor that ultimately approved the investigation. Therefore, believing that the statute date was many months away, the Division Commanding Officer reviewed other complaint investigations ahead of this investigation. As a result, the officer was not Skelly'd until several weeks after the correct statute date.

The Department employees that failed to note the discrepancy between the date of the incident and the date reported to the Department received training regarding this issue.

CF No. 05-4741

This case involved Unlawful Search, Discourtesy and False Arrest allegations originating from the arrest of the complainant's granddaughter. A thorough investigation of the complaint, which included interviews with the complainant, all accused officers, along with an inquiry with a Deputy District Attorney, produced sufficient information to "Exonerate and/or Unfound" all of the allegations had the statute date for the complaint not expired.

The Criminal Investigation Division (CID) of IAG investigated the complaint, and the complaint was tolled. The complaint was found to be OOS because of an erroneously reported statute date, which the investigator established once the case was no longer tolled. The erroneous date was

⁵ A more detailed summary of the facts of this case will be included in Section V, below regarding OIS No. 039-06.

not detected when the case was reassigned from the initial investigator to another at CID for completion. To avoid a reoccurrence of the problem, the CID Commanding Officer provided training to the involved officers.

Conclusion

It should be noted that OOS complaints represent a very small percentage⁶ of the overall number of complaints that closed during the Fourth quarter. In a large organization, it is inevitable that mistakes will happen and to the Department's credit, efforts were made to identify the causes for cases falling OOS. It should also be noted that the number of cases falling OOS decreased from the Third quarter.⁷ We determined that there was an incorrectly calculated statute date in at least four of the six cases. Further, training or some other remedial action was recommended in all of the cases.

V. CUOFS ADOPTED OUT-OF-POLICY OR ADMINISTRATIVE DISAPPROVAL BY THE COMMISSION

During this Quarter, seven CUOF incidents were closed in which the Commission adopted a finding of Out-of-Policy or AD. Four incidents were OIS cases and three were Negligent Discharge cases.⁸ Three of the incidents fell OOS and are also discussed in Section IV of this Report. In all of the cases, which are summarized below, the Commission adopted the findings of the Chief of Police (COP).

OIS No. 097-06

Officers A and B, and Detective A were driving in an unmarked police vehicle, fitted with emergency lights and sirens. Officer A was driving, Officer B was in the front passenger seat and Detective A was in the rear passenger seat. The officers and detective were wearing raid jackets and had their Department badges displayed on their belts.

The officers observed a group of males crossing the roadway outside of any designated crosswalks. Officers A and B noticed that the group of males forced traffic on the roadway to brake in order to avoid hitting them. Officer A recognized one of the individuals, Subject 1, as a possible suspect in a homicide investigation. Officer A also knew that Subject 1 was a member of a local street gang.

The group of males reached the opposite side of the roadway and continued to walk in the roadway. Officer A decided to initiate contact with the group and "chirped" the police vehicle's siren to get their attention. The officer also put his/her hand out the window and made a "stop" motion toward the group. Officer A observed Subject 1 stop walking at this point.

⁶ Only six of 1527 (.0039%) complaints that were closed during the 4th quarter of 2007 were adjudicated as OOS.

⁷ Only eight of 1813 (.0044%) complaints that were closed during the 3rd quarter of 2007 were adjudicated as OOS.

⁸ It should be noted that the Department now uses the term Negligent Discharge in these types of cases, however in the Report these incidents are referred to as Accidental Discharges which are denoted with the initials ACC.

Officer A stopped the police vehicle near a vehicle that was parked along the curb. Officer B then directed Subject 1 and the other three subjects with him to move onto the sidewalk and face away from the officers. The three subjects, who were with Subject 1 complied with Officer B's commands. Meanwhile, Officer B observed Subject 1 duck down behind the parked vehicle. Detective A and Officers A and B then exited their police vehicle.

Officer B walked toward the rear of the parked vehicle while Officer A moved toward the front. Officer B then observed that Subject 1 had repositioned himself by placing his back up against the wall of a store, still facing the officers. Officer B also observed Subject 1 angle his body slightly away from the officers, raise his hands above his shoulders and then drop his hands to his waistband. Officer B told Subject 1 not to place his hands near his waist, but Subject 1 continued to raise and drop his hands and lift his shirt up. When he/she noticed that Subject 1 was not obeying his/her commands and reaching toward his waist, Officer B drew his/her service pistol.

At this time, Detective A and Officers A and B observed Subject 1 begin to run along the sidewalk. Officers A and B ran after Subject 1 while Detective A stayed with the other three subjects. Detective A subsequently lost sight of Subject 1 and Officers A and B.

As he/she pursued Subject 1, Officer A ordered Subject 1 to stop and to put his hands up. Subject 1 moved his hands toward his hip area and Officer A drew his/her service pistol. Meanwhile, Subject 1 ran into a lot and through an open bay door into a building situated on that lot. As Subject 1 ran, he removed his jacket and dropped it to the ground. Officer A entered the lot and took cover behind some vehicles that were parked outside of an open bay door. Officer B also entered the lot and ran past Officer A, toward the open bay door.

As Officer B was just about to enter the building, he/she saw Subject 1 reaching toward the side of his body and grabbed hold of a handgun that was tucked into his waistband. Subject 1 then pulled out the handgun and angled himself so that he was facing toward Officer B. In response, Officer B fired four rounds at Subject 1.

Subject 1 then turned and continued running through a short hallway into another room within the building. Officer B ran after Subject 1, stopping at the edge of the short hallway. Officer B then carefully maneuvered around the corner of the hallway in order to relocate Subject 1. Officer B observed Subject 1 near a doorway along the side of the building. The doorway led into a rear yard behind the business where a number of vehicles were parked. Officer B then saw Subject 1 turn, bringing his arm across the front of his body and his shoulder back toward Officer B. Officer B fired one more round at Subject 1.

About this time, Officer A joined Officer B at the edge of the small hallway inside the building. Officers A and B then saw Subject 1 run into the rear yard, and they followed behind him. Meanwhile, from the sidewalk, Detective A heard shots being fired.

Detective A told the three suspects to get down on the ground. He/she then returned to the police vehicle and retrieved a radio from the backseat. One of the three subjects then fled the location. Detective A broadcast a help call, indicating that shots had been fired and identifying the

officers' location. Detective A then went into the building through the bay door, drawing a service pistol before entering.

As Officers A and B neared the exit of the business, Officer A observed a loaded revolver lying on the ground. In the rear yard, Officer B saw Subject 1 standing on the far side of one of the vehicles parked in the yard, and then he/she saw Subject 1 going down to the ground at that location. Officer B heard Subject 1 screaming, "You shot me. I'm shot."

Officers A and B approached Subject 1. Officer B observed that Subject 1 no longer had a gun in his hands. Officer A then used his radio to broadcast his/her location, and to request backup and a supervisor. Officer B then went to handcuff Subject 1, but realized that he/she did not have his/her handcuffs. Officer B asked Officer A for his/her handcuffs, then re-holstered his/her weapon and handcuffed and searched Subject 1. Officer A broadcast a request for a Rescue Ambulance (RA).

Upon review of the incident the COP found Detective A and Officers A and B's drawing of their weapons to be in policy and Officer B's use of force to be in policy. The COP found Officer A's tactics to warrant administrative disapproval and found Detective A and Officer B's tactics to warrant formal training. Regarding Officer A's tactics, the COP determined that Officer A failed to notify CD of the officers' status and location. This was significant as Officer A had previously been directed to training regarding this same issue.

The COP further noted that when Officer A and B left Detective A with the three subjects that were neither searched nor handcuffed to pursue Subject 1, neither officer was in a position to render assistance to Detective A had it become necessary. The COP further noted that when officers become separated, they are trained to maintain voice or radio contact with each other; however, even though Detective A attempted to maintain a line of sight with Officers A and B, the situation prevented him/her from being able to see Officers A and B, or to verbally communicate with them. Furthermore, it was noted that Detective A left his/her radio in the police vehicle, which further limited his/her ability to communicate with Officers A and B.

The COP noted that Officers A and B made sound decisions during the foot pursuit of Subject 1 when they used parked vehicles as cover. Furthermore, that Officer B had carefully maneuvered around the corner of the doorway when he/she observed Subject 1 running toward an open bay door leading to a rear yard.

As a result of the AD findings, a related complaint investigation, CF No. 07-003711, was initiated. The Department framed one allegation against Officer A for "Unauthorized Tactics," which was sustained. Officer A received a penalty of Admonishment, which was within the Department's guidelines for a first time offense.

OIS No. 053-05

Officers A and B were patrolling in a marked police vehicle. Officer A saw a Sport Utility Vehicle (SUV) one block to the north of the officers' location. Both officers had prior knowledge of a similar SUV that had been associated with a number of crimes, which included a drive-by shooting and an incident where an armed passenger had fled from the SUV during a traffic stop. Another officer had also informed both Officers A & B that the registered owner of the SUV was driving with a suspended license and had an outstanding warrant. Furthermore, Officer A had been informed that the driver of the SUV carried a gun.

As the officers drove towards the SUV, they saw the license plate and realized it was the same vehicle they were familiar with from the prior incidents. The officers saw that the vehicle had two occupants: Subject 1 (passenger) and Subject 2 (driver). The officers decided to stop the SUV.

As the officers followed the SUV, Officer A broadcast to CD that they were conducting a traffic stop. Officer B activated the police vehicle's forward-facing red light and sounded the horn, but the SUV did not stop. Officer B activated the police vehicle's overhead lights and sounded the siren as the officers continued to follow the SUV at an estimated speed of 15 to 30 miles per hour.

The SUV turned onto a narrow roadway that dead-ended at a fire road. As the vehicle turned, Subject 1 exited and began to run alongside it.

As the officers continued to follow, Officer A saw that Subject 1 was holding a pistol in his left hand. Officer A told his/her partner that Subject 1 had a gun and broadcast that he/she was going in foot pursuit. The SUV then drove toward the fire road. Meanwhile, Subject 1 ran into the gated driveway of a residence. The officers lost sight of Subject 1 as he turned into the driveway.

Officer B stopped the police vehicle and Officer A exited. Officer A drew his/her service weapon and maneuvered around the corner of the driveway. As he/she came around the corner, Officer A saw that Subject 1 was attempting to scale the gate. Officer A told Subject 1 to "Stop." As Subject 1 attempted to climb over the gate, it swung open and Subject 1 fell to the ground. As Subject 1 fell, the pistol he was carrying fell to the ground.

Subject 1 began to run away from Officer A, but then turned back and reached towards the dropped pistol. Officer A told Subject 1, "Don't pick up the gun." Subject 1 did not pick up the pistol, but turned and ran from Officer A. According to Officer A, as Subject 1 fell from the gate, he had his right hand at his waistband. Officer A further stated that, as Subject 1 turned back and reached for the pistol, he changed hands and put his left hand at his waistband.

According to Officer A, as Subject 1 ran away from him/her, he/she gave repeated verbal commands to Subject 1 to "Stop." Subject 1 stopped, with his right hand towards the front of his waist, then turned to his right and faced towards Officer A. This enabled Officer A to see that Subject 1's right hand was inside his pants at the waist. Officer A, whose weapon was aimed at

Subject 1, then saw Subject 1 “jerk” his hand out of his pants. Officer A believed that Subject 1 had a gun in his hand. Fearing that he/she was about to be shot, Officer A fired a single round at Subject 1. Once the round was fired, Subject 1 immediately turned to his left and continued to run away. Officer A temporarily lost sight of Subject 1 due to a tree blocking his/her view. Officer A repositioned and saw that Subject 1 was stopped with his hands up.

The round fired by Officer A did not strike Subject 1. Officer A ordered Subject 1 to the ground and to crawl towards him/her so that Officer A could reposition himself/herself in order to maintain visual contact with Officer B.

Meanwhile, Officer B watched the SUV as it drove on the fire road and stopped at a gate. Officer B saw Subject 2 exit the SUV and run behind a large bush. Officer B exited the police vehicle. As he/she did so, Officer B heard a single gunshot from the direction of the driveway. Officer B did not know who had fired the shot. Officer B broadcast that shots had been fired.

Officer B walked back towards the driveway where Officer A was located. He/she saw that Officer A had Subject 1 held at gunpoint and that Subject 1 appeared to be under control. Officer B then saw that Subject 2 had re-entered the SUV and was slowly reversing back down the fire road, toward the police vehicle. Officer B moved back to the police vehicle. As the SUV stopped next to the police vehicle, Officer B drew his/her service weapon and ordered Subject 2 to park and exit the SUV. Both officers held their respective subjects at gunpoint until additional officers arrived on the scene.

The COP determined that Officers A and B's tactics warranted administrative disapproval. Specifically, Officers A and B did not effectively communicate with one another about their plan to stop the vehicle. Officer B told investigators that he/she intended to conduct a high risk stop on the vehicle, while Officer A stated that he/she believed they would walk up to the vehicle. Given the officers' prior knowledge of the vehicle, the COP would have preferred that the officers had requested an additional unit and an air unit prior to attempting the traffic stop.

The COP noted that, as the officers attempted to conduct a traffic stop on the vehicle, Officer A advised CD that they were Code-6. The vehicle failed to yield and continued traveling. The COP noted that the officers did not advise CD that the vehicle failed to yield nor did the officers update their location. The COP also noted that Officer A's foot pursuit broadcast did not include the officers' location and the suspects' direction of travel.

The COP's review also revealed that Officer A exited the police vehicle and followed Subject 1 on foot, while Officer B pulled the police vehicle forward a short distance and stopped to monitor Subject 2 and the vehicle. As Officer B remained in the police vehicle, Officer A followed Subject 1 approximately 25 to 30 feet into the driveway. The COP noted that, by pulling the police vehicle forward, Officer B exposed himself to Subject 2, who was armed with a gun. In addition, the COP noted that the officers' actions resulted in them separating from one another, which resulted in Officer A confronting Subject 1, who was also armed, alone. Furthermore, as Officer A followed Subject 1 along the driveway, he/she did not use cover that was available to him/her.

As a result of the AD findings for Officers A and B's tactics, CF No. 07-000729 was initiated. Officers A and B each had one allegation framed against him/her for "Unauthorized Tactics," which was not adjudicated because the complaint was deemed to be OOS. A review of each officer's complaint history revealed no prior sustained complaints for "Unauthorized Tactics" within five years of CF No. 07-000729 being initiated.⁹

OIS No. 098-06

This incident involved a negligent discharge of a weapon during the use of a bathroom by an officer. Prior to using the facility, the officer removed his/her Sam Browne belt and placed it on a sink. The officer next removed his/her service pistol and radio from their holsters and placed them on the flat portion of a sink. The shooting investigation revealed that the officer routinely removed his/her belt prior to using the bathroom and would place the belt, pistol, and radio in his/her locker. However, in this case, the officer sought to expedite his/her use of the bathroom by placing the belt, pistol, and radio on the sink.

After using the facility, the officer walked back to the sink, put his/her belt back on and prepared to place the pistol back into its holster. As the officer began to insert the pistol in the holster, he/she placed his/her right index finger along the side of the barrel. The pistol jammed on the holster, and the officer rocked the pistol forward while applying downward pressure on the pistol in an attempt to seat the pistol into the holster. In so doing, the officer's index finger slipped inside of the trigger guard and the continued downward pressure on the pistol caused the officer's finger to squeeze the trigger, which resulted in a single round being discharged from the pistol, striking the bathroom floor.

The COP determined that the act of removing the pistol from its holster was inappropriate. The COP also found that the officer's use of force was "negligent, administrative disapproval." The COP directed that the officer receive formal training in the proper handling of his/her service pistol.

As a result of the AD finding, personnel complaint, CF No. 07-000041, was initiated. The complaint investigation resulted in one allegation of a negligent discharge no injury, being sustained against the officer, resulting in a three-day suspension. A review of the officer's TEAMS Report reflected no instances of the officer negligently discharging his/her weapon during his/her tenure with the Department. Accordingly, the OIG believes that the penalty imposed against the officer was appropriate and within the range for a negligent discharge of a weapon for the first occurrence.

⁹ This case was discussed previously in Section IV of this report.

OIS No. 048-06¹⁰

An Area Senior Lead Officer (Officer A) received telephone calls as well as information from “people in the street,” indicating that a local male (Subject 1) was involved in narcotics and was carrying a gun. Officer A was specifically told that Subject 1 kept the weapon in his backpack and that if the backpack was seen, then the weapon would probably be inside of it. Officer A was also told that Subject 1 kept the weapon in his apartment when he did not have it on his person.

Officer A was familiar with Subject 1 from previous encounters. Officer A decided to look for Subject 1 and requested to be partnered with Officer B in order to do so. Officers A and B drove in a black-and-white police vehicle to where they believed Subject 1 might be located. While driving, Officers A and B spotted Subject 1 standing on the street. Officers A and B decided to contact Subject 1, drove toward his location, and stopped their vehicle.

As the officers opened their doors to exit the vehicle, Officer A noticed that Subject 1 looked like he was about to flee the area on foot. Officer A yelled, “Hey,” after which time Subject 1 began to run away. Officer A began to pursue Subject 1 and observed that he was wearing a backpack as he ran away. Meanwhile, Officer B’s seatbelt became entangled with his/her swivel holster, preventing him/her from exiting the police vehicle as quickly as Officer A. Once Officer B had untangled his/her holster, he/she drew his/her pistol and also ran in pursuit of Subject 1.

Subject 1 ran toward a nearby apartment building that Officer A believed was his residence and Officer A used his/her radio to broadcast that he/she was engaged in a foot pursuit. Subject 1 ran northbound through the outer gate of the apartment building and into the building’s parking lot.

Officer A followed Subject 1 through the gate and observed him reach into his backpack as he continued to run. Subject 1 then ran toward a pickup truck that was parked in a lot and pulled out an object that appeared to Officer A to be a gun. Officer A then drew his/her pistol and began to acquire Subject 1 as a target. At the same time, Officer A observed Subject 1 slam his weapon down inside the bed of the pickup truck. Officer A believed that Subject 1’s backpack fell to the ground near the pickup truck at approximately the same time that Subject 1 slammed his weapon down inside the bed of the truck.

Officer A then ordered Subject 1 to show his hands, but Subject 1 did not comply. About this time, Officer B ran through the outer gate of the apartment building and joined Officer A and Subject 1 in the parking lot. Just as Officer B arrived, Subject 1 ran southbound toward the street, and toward the gate that he had previously entered. As Subject 1 approached Officer B’s position, Officer B unsuccessfully attempted to holster his/her firearm in order to grab hold of Subject 1. As Subject 1 ran past him/her, Officer B kept his/her right hand on his/her pistol and

¹⁰ These cases (OIS Nos. 048-06; 071-06; and 039-06) were included in a correspondence to the Board of Police Commissioners with the subject entitled: “Discipline Imposed on Categorical Uses of Force Adjudicated as Administrative Disapproval/Out of Policy by the BOPC – Closed Session Report,” dated December 18, 2007. We included these incidents in this report since unlike the aforementioned report, our objective is to comment on the consistency of the application of discipline.

used his/her left hand to grab Subject 1's shirt. Officer B tore off a piece of Subject 1's shirt, and Subject 1 continued to run back toward the street.

Officer B then pursued Subject 1, along with Officer A. After reaching the street, Subject 1 turned eastbound. Officer B also turned eastbound and again tried to holster his/her pistol unsuccessfully. Upon exiting the outer gate, Officer A began to holster his/her pistol as well. Subject 1 then turned northbound and ran into the parking lot of an apartment building. At this time, Officer B again tried to holster his/her pistol and in the process heard a gunshot.

Officer A also heard the gunshot and he/she used his/her radio to broadcast the possibility that a shot had been fired. He/she also removed his/her pistol from its holster for the second time. Shortly thereafter, Subject 1 stopped running and complied with Officer B's orders to place his hands on top of his head. Officer B successfully re-holstered his/her pistol, as did Officer A. Officer B then placed Subject 1 into handcuffs.

Officer A used his/her radio to broadcast that Subject 1 was in custody and to request the response of one additional unit to secure the location where Subject 1 had been running. Officer A then quickly returned to the parking lot and located Subject 1's revolver in the bed of the pickup truck. Officer B maintained control of Subject 1 and placed him in the back of a police vehicle. Meanwhile, numerous backup units arrived at the scene in response to Officer A's "possible shots fired" broadcast.

Witness 1 indicated that after Subject 1 was placed in the police vehicle, a number of officers who were at the scene, including Officer B, began searching for the cartridge case of a bullet. During their search, an unidentified male approached Officer B and asked him/her what he/she was looking for. Officer B replied by saying, "The casing." The unidentified male then said, "Okay... it's right there." Witness 1 then saw Officer B pick up the cartridge case.

Among the officers who arrived at the scene was Officer C. When he/she arrived, Officer C approached Officers A and B to find out what had happened. Officer C indicated that, at around this time, Officer A told him/her "that there may not have been a shot fired. It could have been a backfire or firecracker."

A number of the officers who had responded to the scene by this time then conducted a search in the parking lot in order to locate Subject 1's backpack, but the backpack was never found.

Before being transported to the area police station for booking, Subject 1 was searched by Officer D. During the search, Officer D found a bullet in one of Subject 1's pockets. It was later determined that this bullet was of the same brand and caliber as six additional bullets that were found loaded in Subject 1's revolver.

When Officer B arrived at the station, he/she asked Officer E to ask Subject 1 (in Spanish) whether he had heard any gunshots during the incident. Subject 1 stated to Officer E, "Yeah... I heard a shot when the officer shot at me." Officer E then asked Subject 1 when he heard the shot, and Subject 1 responded that he heard it when he was being chased. Officer E then verified with Subject 1 that he was not hurt and he/she relayed Subject 1's answers to Officer B.

After hearing Subject 1's responses to Officer E's questions, Officer B decided to walk to the parking lot of the police station and check the number of rounds loaded into his/her pistol. He/she discovered that the pistol's magazine contained only 12 rounds, not the 13 rounds he/she had expected to find. Officer B told Officer A of his/her discovery and both of them returned to the scene of the incident in an attempt to obtain additional information.

After arriving back at the scene, Officer A called his/her watch commander, Officer F, and advised him/her that he/she and Officer B had returned to the scene in order to determine whether Officer B had fired a round during the incident. While Officer A was speaking with Officer F, Officer B located a cartridge case on the ground that he/she determined was consistent with the ammunition he/she had loaded into his/her pistol.¹¹

In discussing his/her discovery of a cartridge case at the scene, Officer B indicated that it was "at that time [of the discovery]" when Officer A immediately called Officer F to inform him/her that a negligent discharge had occurred.

In discussing the subject, Officer A also stated that he/she was on the phone with Officer F as soon as he/she arrived back at the scene, and that the call was placed prior to identifying that a negligent discharge had taken place there.

Officer B picked up the cartridge case in order to verify that it was his/hers. He/she decided not to replace it in the location where he/she found it because he/she did not want to tamper with the scene unnecessarily. Officer B also located an impact on the sidewalk that appeared to be consistent with a strike from a fired bullet.

Meanwhile, Officer F directed Officer C to return to the scene. Officer F also notified Force Investigation Division (FID) personnel about the incident. When Officer C arrived back at the scene, Officer B handed him/her the cartridge case he/she had found and showed him/her from where it was recovered. Officer C marked the location on the sidewalk where the impact of Officer B's bullet was thought to be and taped off the location to preserve the scene. He/she then separated Officers A and B and told them not to discuss the incident. Officer C also indicated that while he/she was at the scene he/she located a bullet fragment in a gutter on the street, near the location where the cartridge case was found.

Upon review of the incident, the COP noted that his analysis identified several instances of prudent tactical decisions and proper actions. Officer A received several complaints from citizens regarding Subject 1 selling narcotics and carrying a handgun in a backpack near his residence. Based on this information, Officer A, who commonly worked alone, properly requested that Officer B work as his/her partner while investigating the citizen complaints. Additionally, Officer A briefed Officer B, advised him/her of the details contained in the citizen complaints and provided a photo of Subject 1 to assist Officer B in identifying Subject 1 as they patrolled the area of the complaints.

¹¹ Further testing on the expended cartridge case found by Officer B confirmed that it had been fired from his/her pistol.

Areas were identified where improvements could be made. Upon observing Subject 1 in front of his residence and wearing a backpack, just as the citizen complaints described, Officer A advised Officer B of Subject 1's location and stopped the police vehicle approximately three car lengths east of Subject 1. However, the COP noted that neither officer advised CD of their updated location or that they were on scene of a possible man with a gun, prior to attempting to make contact with Subject 1.

The COP further noted that the officers had enough reasonable suspicion to detain Subject 1 and investigate whether or not the citizen complaints were valid. However, the COP was critical of the tactics employed by the officers. Specifically, that Officer A called out to Subject 1 while exiting his/her police vehicle, which afforded Subject 1 the opportunity to flee, before the officers were in a position to confront the subject.

The COP also noted that Officer B was unable to initially exit the police vehicle as his/her weapon became entangled in the vehicle's seatbelt. This resulted in a three to four second delay before Officer B was able to join Officer A in the foot pursuit. Furthermore, Officer B did not advise Officer A that he/she was not able to exit the police vehicle and created the potential for a situation where the officers could have become separated. Officer B was reminded that communication between partners is essential for officer safety. It was further noted that Officer A's failure to advise CD of pertinent information prior to initiating the pursuit of Subject 1 could have prevented or delayed other officers from responding to assist Officers A and B, if required to do so.

Both Officers A and B believed Subject 1 was armed. However, both officers elected to chase Subject 1 without utilizing the available cover to monitor Subject 1's movements to establish a perimeter for containment purposes. Subject 1 led Officers A and B into a parking lot and removed and discarded a stainless steel revolver while the pursuing officers remained in the open without sufficient cover. The lack of cover exposed Officers A and B to an unnecessary risk of injury.

It was also noted that both officers pursued Subject 1 with their service pistols drawn. Officer B attempted to holster his/her service pistol several times, but was unable to as the holster swayed as he/she ran. This created the circumstance where Officer B grabbed Subject 1's shirt while his/her service pistol was still drawn. The COP believed both officers should have holstered their service pistols in order to prevent an unintentional discharge.

After Subject 1 was taken into custody, Officer B, unaware that a negligent discharge of his weapon had occurred and believing that there may be an additional outstanding suspect that had fired upon him/her or his/her partner, requested one unit to respond to "lock down a possible location for a man with a gun running through the apartment complex." The COP noted the request for one unit was not sufficient to contain a man with a gun that had presumably demonstrated willingness to fire upon officers. Additionally, while Officer B was walking Subject 1 back to the police vehicle, Officer A separated from Officer B and returned to the location where he/she had observed Subject 1 drop the revolver. The COP noted that it would have been tactically safer for Officers A and B to remain together and direct additional resources

to the location of the revolver or transfer custody of Subject 1 to another unit and return to recover the revolver as a team.

The COP determined that Officers A and B would benefit from additional training. The COP directed the Commanding Officer to schedule Officers A and B for training at Training Division with specific emphasis on:

- Lawful detention and consensual encounters;
- Foot pursuit tactics; and
- Pedestrian stops.

The review further revealed that when Officer B pushed his/her service pistol straight down into his/her holster, a tactical negligent discharge occurred. Scientific Investigation Division personnel analyzed Officer B's holster, found no apparent abnormality or defects and were unable to discharge Officer B's pistol by inserting it into the holster. Accordingly, the COP was critical of Officer B's failure to adhere to the basic firearm safety rules while handling his/her service pistol and found that Officer B's use of force was negligent, requiring administrative disapproval.

As a result of the AD finding complaint investigation, CF No. 06-3201, was initiated. Allegations of Neglect of Duty¹² and False Statements were framed against Officer B and Neglect of Duty against Officer A, as a result of the complaint investigation. The Neglect of Duty allegations were Sustained against Officer B and it was recommended that Officer B receive a 22-day suspension. The 22-day suspension was subsequently militarily Endorsed by the acting COP and Officer B was directed to a Board of Rights, with a recommendation that Officer B be removed from his/her position with the Department. In a Pre-Board review, the acting COP approved a recommended Disciplinary Settlement Agreement. After this reassessment, the allegations of Neglect of Duty remained Sustained against Officer B, but the penalty was amended back to a 22-day suspension, while the False Statements allegation was adjudicated as Not Resolved. The Neglect of Duty allegation was Sustained against Officer A and he/she received a penalty of an admonishment. These penalties were within the Department's Guidelines, in light of the fact that a review of each officer's complaint history revealed no prior sustained complaints for "Unauthorized Force, Neglect of Duty or False Statements" within five years of CF No. 06-3201 being initiated.

OIS No. 071-06¹³

This case involves the negligent discharge of a weapon by an officer while fearing for the safety of his/her spouse and child.

While off duty, an officer was asleep in his/her bedroom, his/her spouse was watching television in their living room and their small child was asleep in another bedroom. The sound of a dog barking, followed by the sound of their driveway gate being rattled, garnered the attention of the

¹² Two counts of Neglect of Duty were framed against Officer B; one for the negligent discharge and one for failing to timely notify a supervisor of the negligent discharge.

¹³ See footnote 9.

officer's spouse. The officer's spouse got up and peered through the blinds in their living room window and noticed a person with blonde hair that he/she felt was attempting to get into their gate. The officer's spouse screamed at the person to get away from the gate and continued to yell.

The officer was awakened by the sound of his/her spouse screaming and feared for the safety of his/her spouse and their child. Several months prior to this incident, the family was the victim of a residential burglary, while the officer's spouse and child were asleep in the home. The officer grabbed his/her revolver, which was on top of their dresser and went to the aid of his/her spouse. The officer asked his/her spouse, "What?" The officer's spouse was unable to respond and continued to scream. As the officer entered the room, he/she unintentionally pressed the trigger and discharged one round. The round went through the living room window and did not cause any further damage or injuries. After the round was discharged, the officer's spouse saw the red glow of a vehicle light near the driveway and heard the sound of a car door open or shut.

The COP determined that the officer failed to adhere to the basic firearm safety rules while handling his/her weapon and that his/her use of force was negligent, requiring administrative disapproval. The COP directed that the officer receive formal training. In addition, the COP recommended that the officer's Commanding Officer discuss the importance of safe and proper storage of off-duty firearms at a family residence with the officer, which is of significant importance since the officer had a small child in the home.

As a result of the AD finding, personnel complaint, CF No. 06-006288, was initiated. The complaint investigation resulted in one allegation of a negligent discharge no injury, being sustained against the officer, which resulted in a one-day suspension.

A review of the officer's TEAMS report showed no other negligent discharges during the officer's tenure with the Department. Accordingly, the OIG believes that the penalty imposed against the officer appears to be appropriate and within the range for the first occurrence of a negligent discharge of a weapon.

OIS No. 039-06¹⁴

While driving to a radio call, Officers A and B heard numerous rifle shots being fired in the area. Officer B drew his/her service pistol and held it at a low ready position as they drove in the direction of the shots. An oncoming SUV, driven by Subject 1, approached the officers from the opposite side of the street at a high rate of speed. Attempting to stop the vehicle, Officer A activated the forward facing red light and steered into the vehicle's path. The vehicle drove around the police vehicle. Meanwhile, Officer B broadcast to CD that the officers needed back up.

Officer A turned to follow the speeding vehicle. A short vehicle pursuit ensued during which Subject 1's vehicle made numerous moving violations. The vehicle eventually slowed and Subject 1 exited and fled on foot. Subject 2, the passenger, attempted to exit the vehicle but became entangled in the seatbelt.

¹⁴ See footnote 9.

Officer A ran after Subject 1, who attempted to climb a fence. Officer A drew his/her service pistol and ordered Subject 1 to stop. Subject 1 stepped back from the fence and pointed a handgun towards Officer A. Officer A, who had slowed from a run to a walk, responded by firing two rounds at Subject 1.

Officer A took cover behind a telephone pole. Officer A peeked around the pole and saw Subject 1 running. Officer A decocked and reholstered his/her service pistol and continued to follow Subject 1.

Meanwhile, Officer B exited the police vehicle. Officer B observed Subject 2 exit the vehicle and run. Officer B reholstered his/her service pistol and initiated a foot pursuit. Officer B heard the gunshots fired by Officer A, which caused Officer B to abandon the foot pursuit, redraw his/her service pistol, and proceed in the direction of the gunshots. As Officer B approached the location, Officer B saw Officer A running. Officer A instructed Officer B to return to the police vehicle as the keys were still in the ignition and the windows were open.

Shortly after Officer A fired his/her service pistol, Air Support arrived over the scene and other responding units established a perimeter of the area. The subjects were not apprehended. Additionally, neither Subject 1's handgun nor corroborating physical evidence to its existence was recovered.

Upon review of the incident the COP found that, after hearing numerous gunshots, Officer A drove the police vehicle in the direction of the gunfire. The COP noted that the officers observed an SUV accelerate at a high rate of speed away from the gunfire and in the opposite direction of the police vehicle. The COP determined that Officer A believed that the vehicle was associated with the gunfire and drove into the opposing lanes to force the SUV to stop. The COP observed that, although this is generally not a recommended tactic, the UOFRB determined that the alternative of passing the SUV created a circumstance where the officers would have been more significantly exposed to potential gunfire from the fleeing vehicle.

According to the COP, Officer B broadcast, "I need a back-up, [intersection omitted]!" The COP determined that it would have been beneficial to the responding units had the broadcast included the fact that shots had been heard, a description of the suspect's vehicle and the desired direction of travel for the responding units.

The COP also found that the SUV swerved onto the curb, sped past the officers and Officer A conducted a U-turn and initiated a vehicle pursuit. The COP noted that, although Officer A stated that he instructed Officer B to advise CD that they were in pursuit of a possible Assault with a Deadly Weapon vehicle with possible shots fired, Officer B's broadcast to CD was, "show us in pursuit, southbound on [street name omitted] from [street name omitted]." The COP noted that Officer B's broadcast omitted pertinent information to include a description of the suspect's vehicle, reason for the initiation of the pursuit and a request for a back-up or air unit.

The COP noted that, as the SUV neared an alleyway, the driver and front passenger exited the still moving SUV and fled in different directions. Officer A then yelled to Officer B, "Let's get

him!" and that, although Officer A was referring to the driver suspect, Officer B thought Officer A stated, "Let's get them!" The COP noted that this misinterpretation led Officer B to believe that he was to pursue the passenger suspect. As a result, the officers went in different directions, lost sight of one another, created a circumstance where they were unable to render immediate aide to one another and were unaware of each other's location at the time of the OIS.

The COP was concerned that the miscommunication resulted in substantially compromised tactics, and that it was incumbent upon Officer A, who was functioning as a Field Training Officer, to effectively coordinate the tactical response. The COP further noted that Officer A was responsible for providing his/her partner, a probationary officer with three months of field experience, with clear and concise instructions that would facilitate the use of sound tactics. Additionally, the COP was critical that Officer A did not continually evaluate the situation and amend his/her tactics after it became apparent that the officers had separated.

The COP noted that, while officers are taught that the vehicle remains a viable threat and requires being cleared before engaging in a foot pursuit of a fleeing suspect, Officer A initiated a foot pursuit of the driver suspect without first clearing the SUV. The COP was further critical of this tactical oversight because Officer A observed that the driver suspect was not armed with a rifle, increasing the likelihood that additional suspects remained in the SUV and were armed with rifles. The COP believed that it would have been tactically advantageous to clear the SUV to ensure that there were no additional suspects inside, and to direct responding units to establish a perimeter. Thus the decision to initiate a foot pursuit without first clearing the SUV left Officer A vulnerable and placed Officer A at a serious tactical disadvantage.

The COP found that when the driver suspect ran further down the alley after the OIS occurred, Officer A, with the knowledge that the suspect was armed with a pistol, left cover and continued to pursue the suspect down the alley. The COP noted that officers should not attempt to follow a suspect who was reasonably believed to possess a firearm unless the surroundings provide a reasonable amount of cover to allow the officer to move from one position to another. Therefore, the COP determined that Officer A should have established a perimeter with the intent of apprehending the suspect with a coordinated and systematic search of the area.

The COP noted that Officers A and B both engaged in foot pursuits of suspects that fled from the SUV, but that neither officer broadcast that they were in foot pursuit, the location of the foot pursuit, or the suspects' description. The COP noted that the first broadcast from either officer mentioning a foot pursuit did not occur until after the OIS occurred. Further, the COP indicated that, to Officer B's credit, Officer B ceased his/her foot pursuit upon hearing shots being fired and returned to render aide to Officer A.

The COP noted that there were several instances of poor communication between the officers as this incident unfolded. The COP noted that, as Officer B pursued the passenger from the SUV, the SUV fled from the location, but that Officer B did not advise CD that the vehicle had left, the direction it was traveling, the description of the SUV, or that there were an unknown number of suspects inside. Additionally, the COP noted that Officer B did not advise Officer A that the SUV had fled.

The COP noted that Officer A did not remove the keys from the police vehicle prior to engaging in the foot pursuit, resulting in the police vehicle being left unattended in the roadway with the windows down and the keys in the ignition, vulnerable to theft. The COP further noted that Officer A left his/her baton in the police vehicle and did not carry a collapsible baton on his/her gun belt. The COP noted that Officer A should be instructed to carry a baton at all times to ensure that he/she does not limit his/her force options.

The COP determined that Officer A's tactics warranted administrative disapproval and directed that Officer A be scheduled for training at Training Division. The COP also determined that Officer B would benefit from additional tactical training and directed that Officer B be scheduled for training at Training Division.

As a result of the statute having expired, no penalty was administered.¹⁵

OIS No. 057-05

The OIG reported a more detailed version of the facts of this OIS in our review of the Quarterly Discipline Report for the 3rd Quarter of 2007. Therefore, only the following shortened summary will be included herein.

Officers responded to a call for assistance in which a male subject was holding victims hostage at a secured business location. Many officers responded to the scene, including Officer A. Officers exchanged gunfire with the subject before making entry into the business. During the exchange, Officer A fired 11 rounds from his Urban Police Rifle (UPR). Later other officers, not including Officer A, made entry into the building at which time, the subject and his hostage were killed during the exchange of gunfire.

The COP noted that Officer A stated that he/she observed the subject standing at the opening of the inner office doorway, firing a handgun in his/her direction, and that Officer A fired 11 rounds from his/her UPR. The COP noted that the projectile path and impact analysis identified the trajectory of five of Officer A's rounds. These rounds were determined to have traveled in a northwest direction, impacting the east office wall, three to four feet north of his/her purported target.

The COP noted that Officer A arrived in the alley after the subject had entered the interior office and closed the door and could not have seen the subject, and thus fired without a target.

The COP noted that Officer A knew that hostage(s) were present and showed disregard for their safety. The COP also noted that Officer A knew that other officers were positioned on the opposite side of the lot and were potentially in his/her line of fire. The COP determined that Officer A's use of lethal force was out of policy, warranting administrative disapproval.

As a result of the AD findings for Officer A and another officer, two related complaint investigations were initiated, CF Nos. 06-006372 and 06-006036. We reported about the

¹⁵ A discussion regarding why this case fell OOS is contained in Section IV, "Discussion of Out of Statute Cases."

discipline issued to the other officer in CF No. 06-006372 in our review of the Quarterly Discipline Report for the 3rd Quarter of 2007. CF No. 06-006036 was not available for the OIG's review at the time that report was written. The Department framed allegations of misconduct in CF No. 06-006036 against Officer A for Unauthorized Force, Unauthorized Tactics and Unbecoming Conduct. All of these allegations were sustained. The penalty for Officer A was a twenty-two (22) day suspension. This penalty was within the Department's Guidelines, in light of the fact that a review of the officer's complaint history revealed no prior sustained complaints for Unauthorized Force, Unauthorized Tactics or Unbecoming Conduct within five years of CF No. 06-006036 being initiated.

VI. TEAMS II Reports

During our reviews of the CUOF cases included herein, we noted that in three of the cases the officers' TEAMS II reports were not updated to include the CUOF incidents or the CF Nos.¹⁶ We forwarded these issues to the Department and they were remedied within a few days of our correspondence.

VII. Conclusion

Overall, the OIG noted that the reviewed sexual misconduct cases were properly investigated. The Department is fully aware of its duty to investigate and adjudicate these cases in a thorough and thoughtful manner. We also found that the number of cases that were found to be OOS decreased from the 3rd quarter, and that the Department is identifying and taking action with respect to the causes. Finally, with the exception of the OOS cases, in all CUOF cases reviewed, we found that the COP issued appropriate penalties.

¹⁶ OIS No. 071-06, OIS No. 097-06 and OIS No. 098-06.