

**OFFICE OF THE INSPECTOR GENERAL
REVIEW OF QUARTERLY DISCIPLINE REPORT
FOURTH QUARTER 2004
MARCH 23, 2005**

Introduction

The Consent Decree requires that the Department prepare a quarterly summary report regarding discipline imposed, including Categorical Uses of Force (CUOF) 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 2004. The Office of the Inspector General (OIG) and the Police Commission received their copies of the Department's Report on February 15, 2005, within 45 days of the end of the quarter, as required by Consent Decree paragraph 88. The OIG has reviewed the Department's Report, and submits this Report to the Board of Police Commissioners (Commission).

The purpose of the Department's Quarterly Discipline Report is to summarize the imposition of discipline during a particular quarter. Moreover, the OIG is charged with reviewing the Department's Report so as to assist the Commission in assessing the appropriateness of the actions of the Chief of Police (COP) in imposing discipline during that quarter, which assessment shall be considered by the Commission in conducting the COP's annual evaluation (Paragraph 89).

During this Quarter, the OIG reviewed cases which had been adjudicated pursuant to a "settlement" between the accused employee(s), their representatives and/or attorneys, and the Department. The concept of settling discipline cases within the Department was conceived in 2003. At that time, the Deputy Chief of Professional Standards Bureau had sought our input in this process. Specifically, a request was made that the OIG conduct a review of the cases periodically to determine if there were any issues that needed to be resolved to ensure the process was functioning properly.

As a general matter, we believe that the concept of settling cases is a good one, especially as a means to avoid overburdening an already saturated system with unnecessary Boards of Rights (BORs), Administrative Appeals,¹ and Civil Service hearings. Moreover, to the extent such settlements can ensure that, even where there are problems of proof and/or procedural issues in connection with the original investigation or adjudication, employees who are deemed to have committed misconduct are held accountable in some form, such settlements can assist in promoting an effective disciplinary system. Finally, even if such settlements involve less severe discipline (such as fewer suspension days) than was originally recommended, to the extent these lesser penalties are justified by the imposition of additional remedial measures (such as training, counseling or special ratings) where appropriate, such settlements can go a long way toward

¹ An Administrative Appeal, among other things, is a proceeding by which a sworn employee of the rank of lieutenant or below can challenge discipline which is not subject to a hearing before a BOR (i.e., discipline which involves a paper penalty only, such as an Admonishment or an Official Reprimand), or by which a sworn tenured employee can appeal a one-to-five day suspension, provided they waive their right to a BOR, admit guilt to the underlying charge, and the appeal is limited to the amount of the penalty imposed. (*See* Administrative Order No. 15, November 15, 2000).

fulfilling one of the goals of the Department's disciplinary system – to modify the employee's behavior. The reality is that in any system where there is substantial reliance on reactive case development and investigation, there will frequently be weaknesses in proving these cases (e.g. less than stellar witnesses; witnesses that refuse to testify; a lack of physical evidence, etc). The use of settlement agreements allows the parties (the Department and the accused) to weigh the cases, measure the proof and the potential penalties and make informed compromises. They are a tool that the LAPD is using on a very limited basis: since their first use in the LAPD in the fall of 2003, approximately 220 cases have been settled out of approximately 6,000 cases handled each year.

During the Fourth Quarter, the Department settled a total of 29 separate complaint investigations involving 24 employees.² The original allegations included such serious allegations as domestic violence and improper remarks of a racial or sexual nature, to more relatively minor misconduct such as a civilian failing to report to work on time. Of the 24 employees whose cases were settled during this period, 20 were sworn, and four were civilian. Eighteen of the complaint investigations that were settled were Department-initiated; four involved public complainants; and in four cases, the complainants were Department employees. In another two investigations, there were allegations by both the public and by the Department. In one case, separate allegations were brought by the Department and by a Department employee.

I. Review of Cases -- Methodology

In reviewing these cases, a matrix was utilized by the first and second level reviewers. This matrix contained 17 questions designed to assess the stated bases for the Department's decision to settle the case, whether these bases appeared justified in light of the evidence contained within the file, and/or whether a review of the file revealed another possible basis(es) to settle the case. In addition, the matrix sought to compare the originally sustained allegations and recommended penalties with the revised allegations and penalties after the case was settled. The matrix also sought to evaluate whether any remedial action, such as training, counseling, or quarterly ratings was either recommended as part of the original adjudication, incorporated into the settlement, or, if neither was the case, whether such training should have been included as part of a settlement. The matrix also attempted to assess whether the investigation generally appeared to support the original allegations and adjudication or whether there was an indication of possible problems in the original investigation which might have contributed to the decision to settle the case. No interview tapes were reviewed.

Recognizing that settlements are done in a minority of cases for a wide variety of reasons, we inquired as to whether there was a written policy and/or protocol guiding the settlement of cases. PSB has developed a written checklist, which it utilizes for every Disciplinary Settlement Agreement. This "Checklist" (Checklist) which was included in the settlement files we reviewed, is described in more detail below.

Finally, we attempted to conduct a general, informal survey of other jurisdictions to assess whether they were also settling disciplinary cases. Electronic mails were sent to identified contacts at the civilian oversight bodies and/or police boards for the following agencies: New York Police Department, San Francisco Police Department, San Jose Police Department, Oakland Police Department, Philadelphia Police Department, Miami Police Department, San

² Several of the settlements involved multiple complaint investigations against the same employee.

Diego County Sheriff's Department and San Diego Police Department, Long Beach Police Department, Sacramento Police Department, Las Vegas Metropolitan Police Department, Portland Police Department, Seattle Police Department, and Los Angeles County Sheriff's Department. We received four responses to our inquiry, all from agencies who settle cases in some form or another – New York City Police Department, Los Angeles Sheriff's Department, San Francisco Police Department, and Chicago Police Department. Their responses are summarized below.

Further, we have been informed, that settlement agreements are utilized in many small to medium sized law enforcement agencies across the State of California.

II. Results of the Review³

a. Background

The Department established a special Settlement Unit in late November 2003 in order to support an increased effort to evaluate cases which might be appropriate candidates for possible settlement. In creating the unit, the Department consulted and worked with both the Police Protective League and the Los Angeles City Attorney's Office. Beginning in approximately 2004, the Department added additional staff to the Settlement Unit and began evaluating an increased number of cases for possible settlement. The OIG understands that, among those cases which the Settlement Unit endeavors to evaluate for possible settlement, are cases in which the employee has opted to have his/her disciplinary case heard by a BOR, all Administrative Appeals, alcohol-related complaints, repeat offenders with a behavioral pattern which may require early Department intervention, and cases in which civilian employees have indicated their intention to contest their proposed discipline to the Civil Service Commission or through a grievance with Employee Relations Group (ERG).

While we have some suggested improvements to the settlement process, we found the specific settlements we reviewed to be appropriate and reasonable. Further, we found that the settlement process in general has had a number of positive impacts for the LAPD, both in terms of the Department obtaining a result certain, i.e. a sustained complaint not subject to subsequent judicial attack, and the substantial time and cost savings of avoiding the Board of Rights process. Also, we believe overall that the Department, and the Settlement Unit in particular, are endeavoring to intelligently evaluate these cases and make informed assessments of appropriate penalties based on their knowledge, training, and experience in reviewing and evaluating these cases. Further, in some of the cases we reviewed, the settlement agreement included such necessary remedial action as a referral to Behavioral Science Services (BSS), anger management classes, and/or quarterly reviews, as well as downgrades and/or transfers out of the involved units, designed to avoid similar recurrences in the future. However, as discussed more below, in other cases, counseling or other remedial action which seemed appropriate to us from our review

³ As a preliminary matter, in this Report we made a conscious decision, based on discussions with both the City Attorney's Office and with Professional Standards Bureau (PSB), to avoid delving into any great detail on any particular case, given the fact that a number of factors go into the settling of cases, some of which may include a recognition by the Department that the case involves problems of proof, credibility issues with witnesses, and/or possible procedural infirmities, which the Department may not want revealed in a public report for a variety of strategic reasons, including in the event there is subsequent litigation relating to the underlying matter. The OIG will be prepared to discuss specific cases with the Commission in closed session.

of the file were either not contemplated in the original Letter of Transmittal (LOT) and/or not included as part of the settlement agreement.

b. Protocols and Procedures for Settling Cases

The Checklist currently in use by the Settlement Unit, requires the evaluator to check with four different sources – PSB, Risk Management Group, ERG, and Medical Liaison Section – to determine whether the accused has been the subject of or has pending one of seventeen possible factors. In addition to questions regarding pending complaint investigations, duty restrictions, or firearm restrictions, or whether the employee has been involved in any rehabilitation programs or other disciplinary settlements, the form asks whether the accused has any of the following relating to the proposed disciplinary settlement agreement: 1) pending claims for damages against the City; 2) pending writs of mandate against the City; 3) pending lawsuits against the City; 4) pending administrative appeals; or 5) grievances. The Checklist also inquires as to whether the accused is the subject of any of the following related to the underlying settlement agreement: 1) any pending lawsuits; 2) writs of mandate; or 3) restraining orders. Finally, the Checklist asks whether the accused has any pending claims related to any of the following: 1) worker's compensation; 2) disability pensions; 3) non-disability pensions; and 4) stress claims.

The purpose of these comprehensive checks is to ensure that settlements are, as much as possible, global in nature. Moreover, the checklist ensures that an individual does not settle an internal affairs case while other related or unrelated issues are pending without the knowledge of the Department.

The Checklist contains appropriate foundational questions to evaluate whether the case is suitable for settlement consideration. From an oversight/audit perspective, the OIG discussed whether additional questions might be appropriate. Specifically questions which attempt to cover the common reasons for which cases are settled, such as whether there are problems with the investigation, improper adjudication(s) by the Commanding Officer (CO), statute of limitations issues, other legal issues (such as a lack of nexus between the employee's off-duty conduct and their employment with the Department), violations of the Government Code sections which guide the conduct of such investigations, lack of progressive discipline, mitigating medical issues, witnesses who are either unwilling to testify or lack credibility, and whether there exists additional exonerating evidence not included in the original investigation. We say this, however, with a recognition that a number of factors can contribute to a decision to settle a case, among them potential problems in proof and/or uncooperative victims/witnesses, statute of limitations concerns, and/or other mitigating circumstances, which can vary case by case, not all of which may be anticipated within a structured written protocol/checklist. Settlement agreements are most analogous to plea bargaining in state criminal prosecutions where the structured settlement result stems from a variety of reasons.

Moreover, from our cursory research, it appears that other agencies similarly do not have formal written protocols guiding the settlement of their cases. As it relates to the Chicago, New York, and San Francisco Police Departments, it was our understanding that such settlements often occur in cases which are otherwise set to be presented during an administrative hearing pursuant to which a police officer could be terminated, and that the attorneys presenting the cases on behalf of the Department would participate in such settlement discussions. From a civilian oversight perspective, both the San Francisco Office of Citizen Complaints and the

Office of Independent Review (OIR) for the Los Angeles County Sheriff's Department have the benefit of participating in and directing the investigations of⁴ some of the complaint investigations which are subsequently settled, as well as in participating in the settlement discussions themselves. This provides an added benefit in that when such settlement discussions occur, these oversight agencies have the advantage of knowing in advance what the potential weaknesses/problems with the case are, which allows them to more intelligently participate in the settlement discussions.

c. Involvement of the OIG

There is no established protocol as it relates to the involvement of the OIG in reviewing settlement cases. As the process has evolved, we have been consulted on an increasing number of cases. In fact, in at least one case where the OIG voiced an objection to the settlement, the proposed settlement was rejected⁵. We welcome the opportunity to be involved in this process, and encourage the Department to continue to involve us in settlement discussions, especially as they relate to cases in which allegations of retaliation, discrimination, workplace harassment/hostile work environment, and ethnic remarks, as well as any allegations against a supervisor for failing to report and/or failing to take appropriate action in response to such allegations, were initially sustained.

d. Documentation

As part of our review, we recently met with the Settlement Unit to discuss the settlement process in general, and some of our initial concerns about individual cases in particular. One of the issues we discussed with the Department was a concern that we noted in a few of the files we reviewed that there was insufficient documentation to justify the settlement. We did, however, acknowledge during our discussions our understanding that the Settlement Unit may not have anticipated in preparing these settlement files that the OIG would be scrutinizing the written documentation and attempting to evaluate the propriety of the settlements solely on the documentation itself.

It soon became apparent to us in discussing in more detail the specific reasons justifying the settlement in certain cases that there was more behind the decision to settle these cases than what was contained in the file itself. After we discussed these cases with the Settlement Unit, we reached a better understanding as to why they settled these particular cases. We explained to the Settlement Unit that the absence of such additional information in these files made it difficult for an outside observer, such as ourselves, who had not necessarily been involved in the investigation from the outset, who had not had the opportunity to assess the strength or weakness of the case to truly evaluate the propriety of such settlements.

⁴ The San Francisco Office of Citizen Complaints investigates all complaints against sworn members of the San Francisco Police Department which are initiated by citizens. The OIR is involved from the outset in connection with investigations which it designates for review, which investigations tend to include the more serious cases and/or high-profile cases.

⁵ In that case, PSB had presented to the OIG a proposed disposition of 15-22 days. The case involved allegations that the accused struck two minor females, unrelated to the accused, on the buttocks. The OIG believed that based on the severity of the accused's actions, the accused's position of trust, and the accused's prior disciplinary history, the accused should have been directed to a BOR. Unfortunately in that case, the accused proceeded to a BOR and was found not guilty. This disappointing result serves as an example of the necessity of settlement agreements.

The Settlement Unit understood the OIG's perspective and agreed to remain cognizant of same as they move forward and evaluate whether all the factors which contributed to the decision to settle a particular case could be gleaned by reviewing the four corners of the settlement file itself. Nevertheless, the ability to sit down and discuss the cases in depth was quite productive.

e. Training and Other Remedial Actions

It appears from our discussions with the Settlement Unit as well as our review of these settlement cases, that one of the goals of the Department in settling cases is to try to assist employees with behavioral patterns and/or other concerns, such as alcohol problems or anger management issues, who could benefit from early Department intervention. However, in several of the cases we reviewed, specific remedial and/or training recommendations, such as anger management or conflict resolution classes or supervisory training, which were originally included in the LOT did not get incorporated into the ultimate settlement agreement. We presented these cases to the Settlement Unit, and they agreed to pay special attention to the recommendations made by the involved CO in the original LOT.

Along these same lines, in those cases in which the original recommended penalty is to direct the accused to a BOR, such cases do not normally contain a recommendation for remedial action, given the possibility that the accused could be terminated by the BOR. However, a number of these types of cases have ultimately resulted in a settlement, with the employee being given suspension days in lieu of a directed BOR. We asked the Settlement Unit to be cognizant of such cases, and to endeavor to include in such settlements any appropriate remedial training or other measures which might help to deter similar behavior in the future. Among other things, the Settlement Unit committed to us that in such cases, while the case was being evaluated for possible settlement, they would encourage the involved CO to direct the accused, where appropriate, to BSS so that the accused could get any necessary help and evaluation could be made as to whether further remedial action was required while the case was pending. This practice would also help ensure that the accused's CO would be kept apprised by BSS as to whether the accused was attending the sessions as well as whether the sessions were having a positive impact on the accused's behavior.⁶

The Settlement Unit also committed to us that they would endeavor to be more proactive in following up on training and other remedial recommendations included in settlements to ensure that such recommendations were being followed. In one settled case, though we had initial concerns regarding the ultimate suspension days imposed given what we believed to be the severity of the accused's actions, after the Settlement Unit explained the procedural infirmities and other potential problems of proof in the case, we had a better understanding of the reasons justifying the lighter penalty. Moreover, when the Settlement Unit indicated their understanding that the accused, after returning from extended leave, would not be going back to the same exact unit where the problems had occurred, we had a greater comfort level with the settlement. However, the Settlement Unit acknowledged that they had not followed up since the settlement to verify that the accused would not be returning to the involved unit, and they promised to do so subsequent to our meeting.

⁶ It is our understanding from our discussions with the Department that if the accused attends BSS sessions on a voluntary basis, BSS cannot even verify that the accused was attending the sessions, let alone whether the sessions were having a beneficial impact. However, if the accused is directed to by the CO to go to BSS, the CO can confirm not only that the accused is attending the sessions, but can also inquire as to whether the sessions are helping.

f. Counseling by the Settlement Unit

Another thing we learned during our meeting with the Settlement Unit was that in a number of cases, members of the Settlement Unit personally discuss the case and the proposed settlement with the accused officer, during which Settlement Unit personnel engage in candid discussions with the accused regarding the severity of his/her actions, the consequences should they fail to uphold the provisions of the settlement agreement, and the impact that any subsequent similar behavior could have on their future career. According to the members of the Settlement Unit, it is their belief that these counseling sessions are generally very effective and that in most cases the accused employees accept responsibility and show remorse for their actions, are grateful that their case is being resolved via a settlement agreement, and commit to attempting to change their behavior so that such incidents do not reoccur. The OIG believes this is an added benefit to the settlement process, as a "heart to heart" discussion of this nature can reinforce the severity of the situation and the importance of changing one's behavior.

Finally, another important tool being utilized by the Department which we learned about during our meeting is the implementation in more recent settlement cases of what is commonly referred to as a "Last Chance Agreement." This document, which the accused is required to sign in connection with a proposed settlement (generally in connection with cases in which alcohol is a factor) requires the accused to adhere to a number of conditions, which may include attending Alcohol Anonymous meetings, abstaining from alcohol, attending BSS counseling, and receiving special rating reports. In addition, the employee also signs a resignation letter, and the Last Chance Agreement provides that should the employee fail to comply with any of the terms of the agreement, his/her letter of resignation shall become effective immediately.

The OIG believes that a Last Chance Agreement in concept can be an important complement to certain settlement agreements, as it reinforces the severity of the situation and the Department's zero tolerance for future similar behavior. The OIG anticipates analyzing settlement agreements again in the future, and will endeavor to focus on cases which involve Last Chance Agreements.

g. Conclusion

Overall, we believe that the Settlement Unit is on the right track and is assisting the Department in streamlining the disciplinary system, while also helping to ensure the system's effectiveness. We encourage the Department to continue to involve us in settlement discussions regarding the most serious cases, and we look forward to working with them in connection with these matters in the future. It should be noted that the Department was very receptive to our review of those files settled during the Fourth Quarter of 2004, and they have agreed to be continue to work with the OIG in assisting us in our review and assessment of future cases. We commend them for the professional way they received our comments and for their commitment to incorporate our suggestions into future settlement agreements.

III. Review of Categorical Uses of Force

During this Fourth Quarter, five (5) Categorical Uses of Force (CUOF) incidents were closed in which the Commission adopted a finding of Out of Policy or Administrative Disapproval. There was one (1) Officer-Involved Shooting (OIS); three (3) Accidental Discharges; and one (1) Law

Enforcement Related Injury (LERI). In all five cases, the Commission concurred with and adopted the findings of the COP. These five cases are described below.

A033-03 (Law Enforcement Related Injury – Head Strike)

Employee #1 and #2 were pursuing a Toyota whose driver was wanted for carjacking the vehicle at gunpoint approximately 30 minutes prior. The pursuit ended when the Toyota collided into a parked car south of an entrance to an alley. The driver exited the Toyota and ran toward the alley. Employees #3 and #4 arrived in their police vehicle, observed the suspect running, and unsuccessfully attempted to block the suspect's path with their police vehicle. As the suspect ran into the alley, Employee #2 drove the police vehicle into the alley and followed the suspect until he stumbled, and he fell to the pavement. Employee #1 and #2 stopped the police vehicle and Employee #1 exited. The suspect then regained his footing and continued running.

Employee #1 chased the driver on foot as the driver exited the alley, and continued running. At that time, Employee #1 observed a stainless steel handgun in the suspect's left hand. The suspect stumbled and fell into a prone position on the sidewalk. Employee #1 drew Employee #1's service pistol, pointed it at the suspect, pinned the suspect's left arm to the ground with Employee #1's free hand, straddled the suspect, and told him to let go of the gun. The suspect did not comply and held the gun under his left hand.

To get the suspect to comply and release his grasp on the gun, Employee #1 used the service pistol in Employee #1's right hand as an impact weapon and delivered one distraction strike to the top rear area of the suspect's head. The suspect released his grasp on his gun and left it on the sidewalk close to his left hand. Employee #1 holstered Employee #1's service pistol. The suspect then pushed up with his arms, raised his torso, and threw his right elbow back in an attempt to push Employee #1 off. Employee #1 then delivered a distraction strike with Employee #1's closed right fist to the right side of the suspect's face to stop the suspect's efforts and prevent the suspect from rearming himself. The suspect again fell into a prone position with his hands under his chest. The suspect was ultimately handcuffed by Employee #1, with the assistance of an on-duty outside agency officer.

LAFD personnel treated the suspect for a one-inch laceration to the left side of his head, and transported him to a hospital where he was treated by a physician at the hospital and released to be booked. Employee #2 recovered a stainless steel, six-shot revolver, with six rounds of live ammunition in the cylinder, from the location.

The Chief of Police was critical of the following tactics used during the incident:

- 1) Employee #2, the senior officer, allowed Employee #1 to pursue a suspect they believed to be armed while Employee #2 followed in the police vehicle, which resulted in Employee #1 engaging the armed suspect alone;
- 2) Employee #2 arrived at Employee #1's location, observed Employee #1 and the armed suspect struggling, and did not immediately assist Employee #1 in controlling the armed suspect.
- 3) Employee #1 did not immediately alert Employee #2 when Employee #1 observed that the suspect was armed.

4) Employee #1 observed the suspect fall to the ground and approached and engaged the suspect, rather than taking a position of advantage by taking cover, issuing verbal commands to the suspect, and awaiting the arrival of additional officers.

5) Employees #3 and #4 attempted to stop an armed suspect on foot by using their police vehicle to block his escape.

The Chief found Employee #2's tactics to be seriously deficient and warrant Administrative Disapproval. The Commission agreed with the COP's findings. Employee #2 was given an Admonishment and a direction to attend Law Enforcement Tactics Application Training (LETAC) in connection with the complaint investigation which was initiated as a result of the Administrative Disapproval finding, **CF No. 04-4508**. The OIG believes this to be an appropriate penalty. The COP also directed that Employees #1, #3 and #4 receive additional tactical training.

The Chief also determined that Employee #1 acted appropriately when Employee #1 drew Employee #1's pistol to confront the armed suspect, used a fist to strike the suspect in the face, and struck the suspect on his head with the pistol. Employee #1's drawing of the pistol and Employee #1's uses of force were found to be in policy with no further action necessary.

044-03 (Accidental Discharge)

Employee #1 and #2 returned a shotgun to the kit room at the end of their watch. Five hours later, Employee #3 checked out the same shotgun at the start of Employee #3's watch. Employee #3 the conducted a safety check on the shotgun in the parking lot and visually looked inside the chamber to ensure it was clear. Employee #3 held the shotgun by the stock with Employee #3's right hand and had Employee #3's right index finger along the frame. Employee #3 then used Employee #3's left hand to close the side action discharging a single round upward.

The Chief was concerned that Employee #3 did not follow proper firearm safety procedures. The officer did not properly examine the shotgun to ensure it was unloaded. In addition, it is apparent that Employee #3 had the safety in the "off" position and Employee #3's finger on the trigger when the accidental discharged occurred. The COP found Employee #3's use of force accidental, warranting Administrative Disapproval. In addition, he directed Employee #3 to receive additional firearms training at Continuing Education Division (CED).

The Chief was critical that Employees #1 and #2 did not ensure that the shotgun was empty prior to turning it into the kit room. He was also concerned that kit room Employee #4 did not ensure the shotgun was unloaded prior to placing it in the storage rack and that Employee #5 did not ensure it was unloaded prior to issuing it to Employee #3. The COP indicated that he would direct the Employees to receive additional firearms training at CED. However, though the COP's report indicted that all five Employees would be scheduled for firearms training, a review of all five employees' TEAMS reports indicted that only Employee #4 received Firearms/Tactical Rifle Update Training subsequent to the issuance of the COP's report.⁷

⁷ Employee #5's TEAMS indicated firearms training on October 30, 2003, on ".45 pistol transition." However, given that this training occurred only two months after the underlying incident and six months before the COP's report in which he indicated he would direct all five employees to additional firearms training, we do not believe this training was what the COP intended for the five employees.

Moreover, the COP in his report directed that a personnel complaint be initiated against the four employees who failed to ensure that the shotgun was properly unloaded, as well as the complaint against Employee #3 in response to the Administrative Disapproval finding. The Department initiated one personnel complaint to cover all five employees, **CF No. 04-3613**. Employee #3 was given a two-day suspension. The other four employees' actions were classified as "Non-Disciplinary/Employee's Actions Could Have Been Different." The OIG does not take issues with these penalties. However, we are concerned that though the COP directed that all five employees receive firearms training, the Letter LOT for the complaint provides no specific direction for any of the five accused to receive such training. Instead, the LOT contains only the following general language: "The proper handling of weapons and weapon safety is a regular topic discussed in roll call and with supervisors and their squads. The return of Divisional Training would be beneficial in order to enforce perishable skills."

055-03 (Accidental Discharge)

The employee was at employee's desk, preparing for the end of the shift. The employee removed employee's gun from the holster and set it down on the desk. The employee reached around employee's back to retrieve the employee's handcuffs and accidentally knocked the gun off the desk. The employee reached down and caught the falling gun, causing a round to discharge into the ceiling. No one was injured as a result of this incident.

The COP was concerned that the employee did not immediately transition the firearm from the employee's duty holster to a second holster, which may have prevented the accidental discharge. The COP found the employee's use of force accidental, warranting Administrative Disapproval and directed the employee receive additional firearms training (however, we were unable to verify from the employee's TEAMS that the employee received such training). The employee was subsequently given a two-day suspension as a result of the subsequent personnel complaint, **CF No. 04-3816**. The OIG believes this was an appropriate penalty.

054-03 (Accidental Discharge)

The employee was at home outside the city, wiping down employee's motorcycle and shotgun in preparation to return to work the next day. The employee sprayed polish on the motorcycle and the shotgun, which was locked in the shotgun rack affixed to the right rear side of the motorcycle, then used a rag to wipe down the bike. The employee stated that the employee wiped from the barrel of the shotgun back to the trigger guard, then inadvertently placed the rag inside the trigger guard and pulled it out. The shotgun discharged one round in a downward direction, striking the motorcycle and the garage floor.

The employee checked to see that no one was injured, and then checked the motorcycle and saw that the right side cover and the shotgun's metal support plate were broken. The employee removed and inspected the shotgun, but stated that the employee did not see any defects to the shotgun's barrel. The employee removed the remaining rounds from the magazine and the spent shell casing from the shotgun barrel, placed the shotgun back into the rack and locked the rack.

The following day, the employee rode the motorcycle to work but did not advise anyone of the accidental discharge of the weapon or the damage to the motorcycle. Over two and one half hours after coming to work, and while conducting a traffic stop, the employee noticed a defect in the shotgun's barrel and realized that the accidental discharge should be reported to a supervisor.

The employee remained in the field for another three hours, then returned to the motor garage and spoke to the mechanic about the damage to the motorcycle.

Half an hour later, the employee entered the station and told a supervisor about the accidental discharge. The supervisor told the employee that the employee should have reported the discharge in a timely manner, then left the employee with the assistant Officer-in-Charge (AOIC) while the supervisor made notifications. The AOIC and the employee discussed what had happened, and the AOIC also told the employee that the employee should have reported the incident the previous night or at the beginning of the employee's watch. The supervisor returned and directed the employee not to discuss the incident with other officers, then monitored the employee until Critical Incident Investigation Division (CIID) detectives arrived.

The COP was concerned that the employee failed to follow the basic firearms safety, and directed that the employee receive additional firearms training at CED. The COP was also concerned that the employee did not make a timely notification to a supervisor regarding the accidental discharge, and the Chair of the Use of Force Review Board directed the employee's CO to initiate a personnel complaint for the employee's failure to make a timely notification to a supervisor and the Department regarding the accidental discharge; for carrying a shotgun with a round in the chamber with the safety button off; and for carrying the shotgun empty after the accidental discharge.

The personnel complaint which was subsequently initiated, **CF No. 04-1311**, contained these three allegations, as well as an allegation that the employee was negligent in handling the shotgun, resulting in an accidental discharge. Originally, all three allegations were sustained, and the employee received a 22-day suspension. However, the Bureau CO Militarily Endorsed the penalty down to a 7-day suspension, based on part on a finding that the allegation that the employee carried an empty shotgun on the motorcycle should not be sustained because the Department does not even require motorcycle officers to carry a shotgun. It is at their own preference. Moreover, the Bureau CO believed that given the employee's lack of a prior sustained complaint history, a less severe penalty was warranted. The OIG does not take issue with the adjudication of this complaint.

As an aside, the Chair of the UOFRB also directed the CO of Training Group to develop a plan to initiate a protocol for motor officers to conduct regular shotgun inspections. Traffic Divisions were also to initiate protocols for weapons inspection for motor officers prior to going on duty. The OIG subsequently learned that Training Group was finalizing a project outlining procedures for regular shotgun inspections for all Department motor officers, and that on July 20, 2004, the CO of the involved division issued a divisional order requiring regular shotgun inspection procedures to ascertain that shotguns are in good working order and secured to Department motorcycles in a safe condition.

039-03 (Officer Involved Shooting)

As Employees #1 and #2 approached an apartment unit, Employee #1s and #2 observed a group of men drinking outside the location. As the Employees approached, the men went into the apartment, and then a group of men exited the unit and walked toward the officers. One of the men held a rifle in both of his hands with the muzzle pointed toward the ground. Employee #1 drew Employee #1's .45 caliber pistol, pointed it at the suspect, and said, "Stop, police." Employee #2, observing the wood stock of a weapon in the suspect's waistband area, drew

Employee #2's .45 caliber pistol and took cover behind a wall. The suspect turned and ran in the opposite direction, while the others in the group ran back inside the unit.

Employee #1 ran past the doorway of the apartment, and subsequently spotted the suspect running near vehicles on the adjacent street, and again yelled "Stop, police." The suspect then turned and pointed the muzzle of the rifle toward Employee #1. Employee #1, believing the suspect was about to fire the rifle at Employee #1, fired four rounds at the suspect in rapid succession from distances decreasing from 31 to 14 feet. The suspect was hit once in the left front hip/buttocks area. The suspect did not fire at Employee #1.

Still armed with the rifle, the suspect ran to the rear of a parked vehicle, emerged without the rifle, then fell to a prone position on the grass, and then crawled a few more feet. The suspect was subsequently transported for medical treatment. A rifle was later found under one of the vehicles near where the suspect had been observed running.

The COP found the tactics of both Employee #1 and #2 to be seriously deficient, warranting Administrative Disapproval. The COP was especially concerned with the employee's communications and coordination as the incident unfolded. Employee #2 did not advise Employee #1 that Employee #2 had observed several members of the original group outside the apartment holding their waistbands as they ran back into the apartment. The COP was also concerned that the employees approached the area where they saw a group without requesting back-up. The COP was also critical that, after observing an armed suspect run from them, the employees separated and lost sight of each other, with Employee #1 engaging the suspect alone.

The COP was also concerned that as Employee #1 chased the armed suspect, Employee #1 ran past the doorway where the other suspects had fled. Moreover, Employee #1 left cover and deployed on the roadway while pursuing an armed suspect, which placed Employee #1 at a tactical disadvantage and in an unsafe position.

The COP found that both Employee #1's and Employee #2's decision to draw their weapons to be justified based on them having sufficient information to believe that the situation might escalate to the point where deadly force might become necessary. Moreover, the COP found Employee #1's decision to fire four rounds from Employee #1's service pistol at the suspect to be in policy, no action, based on Employee #1's reasonable belief that the suspect presented an immediate threat of serious bodily injury or death.

Finally, the COP was concerned that the responding supervisor had included Employee #1 in the arrest team that approached and handcuffed the suspect, since Employee #1 had been involved in the OIS and there were other officers present who could have assisted in the handcuffing of the suspect. The COP directed the involved CO to provide the supervisor with appropriate training.

In connection with the subsequent complaint investigation that was initiated due to the Administrative Disapproval finding as to Employee #1's and Employee #2's tactics, **CF No. 04-3432**, Employee #1 was given a four-day suspension and Employee #2 a two-day suspension. The increased penalty given to Employee #1 was based on the fact that this was the third instance in which the Department had expressed concerns over Employee #1's tactics at an OIS. The OIG believed that the penalty as to each employee was appropriate.

IV. Conclusion

The OIG commends the Department for undertaking a concerted effort to settle certain disciplinary cases. We believe that this is an important practice, both as a means to avoid clogging an already burdened system with unnecessary BORs, Administrative Appeals, and Civil Service Hearings, while also ensuring that employees who have committed misconduct are held accountable in some form. More importantly, in those cases in which the investigation reveals that the employee is in need of remedial action, such as training, counseling, and/or transfer out of the involved unit, the ability to settle the case allows the Department the opportunity to ensure that these employees get the necessary help they need, even if it comes at the expense of imposing a lighter penalty than originally desired. We look forward to continuing to work with and provide our input to the Department as they settle an increased number of cases.