

## **I. Introduction**

The Consent Decree requires that the 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 First Quarter of 2006. The Police Commission (Commission) received its copy of the Department's Quarterly Discipline Report (Report) on May 11, 2006, within 45 days of the end of the quarter, as required by Consent Decree Paragraph 88. As required under Paragraph 89, the Office of the Inspector General (OIG) has reviewed that Report and submits its own Report to the Commission.

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

Second, we reviewed cases closed during the First Quarter which contained at least one allegation of improper remark to evaluate whether these allegations were being properly classified as such, as opposed to ethnic remarks. We also looked at the cases closed during this quarter in which ethnic remark allegations were sustained to get a sense of the types of comments which the Department had determined constituted ethnic remarks. Overall, our review revealed that the comments which resulted in sustained ethnic remark allegations did not differ fundamentally from those in the improper remark cases which we believed had been misclassified. Our review revealed that in some cases the Department was misclassifying what the OIG believed to be ethnic remarks as improper remarks. In addition, the OIG also found instances where the Department was misclassifying gender biased remarks as improper remarks.

Though we began our inquiry looking at the issue of whether improper remarks were being properly classified, our review raised concerns about larger issues: whether cases which alleged activity by employees which could expose the City to potential liability for discrimination and hostile work environment were being properly investigated and adjudicated; whether appropriate discipline was being imposed; whether necessary training was being provided to employees involved in such activity; and whether, in the case of supervisors engaged in such behavior, issues of downgrade and/or demotion were being properly considered. Our review of these cases is contained in Section III. Section IV contains our review of the CUOFs deemed Out of Policy by the Commission, which were closed during the First Quarter.

## **II. Analysis of Statistical Information Within the Department's Report**

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

### **Executive Summary**

Using the information contained in the Executive Summary, we determined that the percentage of sustained complaints (complaints in which at least one allegation is sustained) was 21%, whereas the percentage of total sustained allegations was 14.3% (total of sustained allegations/ total allegations =  $576/4025 = 14.3\%$ ). Moreover, using the information in the Executive

Summary, we determined that the percentage of sustained allegations for each of the "Top Allegation" classifications were as follows:

<u><b>Allegation</b></u>	<u><b>Sustained Rate</b></u>	<u><b>No. of Sustained Allegations/ Total Number of Allegations</b></u>
Neglect of Duty	17.1%	148/866
Discourtesy	3.2%	26/817
Unbecoming Conduct	12.3%	93/755
Unauthorized Force	1.4%	5/348
False Imprisonment	0.4%	1/263
Unauthorized Tactics	9.8%	14/143
Preventable Traffic Collision	95.6%	109/114
Unlawful Search	0.0%	0/110
False Statements	14.1%	12/85
Racial Profiling	0.0%	0/73

Tables C and E – Allegation Summary / Bureau-Allegation Summary (Sustained Only)

We created an additional table, depicted below, which utilizes data from Tables C and E.

<b>Classification</b>	<b>Sustained Allegations/ Total Allegations</b>	<b>Sustained Rate</b>	<b>Percentage of Total Allegations</b>	<b>Number of Accused Employees</b>	<b>Number of Employees w/ Sustained Allegations</b>
Neglect of Duty	148/866	17.1%	21.5%	741	114
Discourtesy	26/817	3.2%	20.3%	671	23
Unbec. Conduct	93/755	12.3%	18.8%	586	51
Unauth. Force	5/348	1.4%	8.6%	273	5
False Impris.	1/263	0.4%	6.5%	232	1
Unauth. Tactics	14/143	9.8%	3.6%	137	14
PTC	109/114	95.6%	2.8%	112	107
Unlawful Search	0/110	0.0%	2.7%	98	0
False Statements	12/85	14.1%	2.1%	69	9
Racial Profiling	0/73	0.0%	1.8%	61	0
Theft	4/52	7.7%	1.3%	45	3
FTQ	42/52	80.8%	1.3%	52	42
Dom. Violence	24/44	54.5%	1.1%	20	8
Other Pol'y/Rule	4/44	9%	<1%	41	4
FTA	36/42	85.7%	1.0%	41	35
Ethnic Remark	8/41	19.5%	1.0%	35	6
Discrimination	1/36	2.8%	0.9%	28	1
Improper Remark	11/29	37.9%	0.7%	24	7
Retaliation	0/24	0.0%	0.6%	17	0
Narcotics	4/22	18.2%	0.5%	17	4
Sexual Miscond.	5/20	25.0%	0.5%	14	3
Alcohol	10/14	71.4%	0.3%	11	7
Insubordination	10/10	100%	0.2%	8	8
Misleading Stmts.	8/9	88.9%	0.2%	7	6
Neg. Discharge	1/1	100%	<1%	1	1
Dishonesty	0/7	0.0%	0.2%	7	0
Shooting Viol.	0/1	0.0%	<1%	1	0
Gender Bias	0/1	0.0%	<1%	1	0
Off-Duty Alt.	0/2	0.0%	<1%	2	0

The Note underneath Table E in the Department's Report states that the Office of the Chief of Police (OCOP) contains entities such as the Counter Terrorism and Criminal Intelligence Bureau (CTCIB), Consent Decree Bureau (CDB), and PSB. However, without breaking down the bureaus, the reader might be led to believe that employees working directly for the COP had 16 unbecoming conduct allegations sustained in the First Quarter. Further review of the information contained in Appendix II at the back of the Report reveals that of the 16 sustained allegations, none of the involved employees actually worked for the OCOP. Instead, 11 allegations involved one employee assigned to PSB, who improperly accessed the Department's computers to obtain personal information about the complainant for which the employee received a 22-day suspension. Five more allegations involved one employee, since removed, assigned to Audit Division who improperly used the Department's computer system for non-duty related activities. The final allegation involved one employee assigned to the former background investigation unit who discussed confidential information with unauthorized persons. That employee resigned.

Table E lists 29 sustained neglect of duty allegations under the Office of Support Services (OSS). The Department's Report explains that OSS includes the Information and Communications Services Bureau (ICSB), Administrative and Technical Services Bureau (ATSB), and TEAMS II. However, a close examination of Appendices I and II reveals that this relatively high number of sustained neglect of duty allegations from a non-geographic bureau is partially explained by the fact that 16 of these 29 allegations involved Police Service Representatives (PSRs) assigned to Communications Division (CD). PSRs assigned to CD have significant contact with the public, and these contacts are usually tape-recorded, which facilitates proving the allegations.

Table F – Allegation Summary by Employee Rank – Listed by Allegation Type

Using the information in Table F (and elsewhere), 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). Our results are depicted in the below table.

	<b>Allegation Total</b>	<b>Staff Officer</b>	<b>Captain</b>	<b>Lieutenant</b>	<b>Sergeant</b>	<b>Detective</b>	<b>Police Officer III</b>	<b>Police Officer II</b>	<b>Police Officer I</b>	<b>Reserve Officer</b>	<b>Unknown Officer</b>	<b>Civilian Employee</b>
<b>Total Sustained Allegations / Total Allegations</b>	<b>576/4025</b>	0/22	3/45	10/70	27/208	74/317	104/669	205/1677	14/84	15/21	19/720	105/192
<b>Overall Sustained Rate</b>	<b>14.3</b>	0.0	6.7	14.3	13.0	23.3	15.5	12.2	16.7	71.4	2.6	54.7
<b>Total Sustained Allegs/ Total Allegs. (Minus PTCs FTAs, &amp; FTQs)</b>	<b>389/3817</b>	0/22	1/43	5/65	17/197	50/292	73/634	106/1564	7/76	13/19	19/720	98/185
<b>Overall Sustained Rate (Minus PTCs, FTAs, &amp; FTQs)</b>	<b>10.2</b>	0.0	2.3	7.7	8.6	17.1	11.5	6.8	9.2	68.4	2.6	53

Whereas 14.3% of all misconduct allegations were sustained during this quarter, 10.2% of all allegations were sustained when PTCs, FTQs, and FTAs were removed.

### **III. Review of Cases**

#### **a. Analysis of Improper Remarks Complaints**

##### **i. Methodology**

This quarter the OIG looked at whether cases which involved ethnic remarks were being properly classified as such, as opposed to, for example, improper remarks. This distinction in classification has several significant implications. To begin with, pursuant to Consent Decree paragraph 93, complaints involving ethnic remarks are to be investigated by Internal Affairs Group (IAG), whereas complaints involving improper remarks are normally investigated by the involved area or division. Further, if sustained, the Department's "Management Guide to Discipline" (January 2002) for sworn employees (Penalty Guidelines) recommends a five to nine-day suspension for a first-time sustained complaint for ethnic remark. For a first-time sustained improper remark complaint, the recommended penalty is a written penalty through a four-day suspension. Finally, complaints involving ethnic remarks should not normally be adjudicated as Non-Disciplinary since this adjudication is normally reserved for cases involving relatively minor, or no misconduct. In contrast, in some circumstances, improper remarks could appropriately be the subject of a Non-Disciplinary adjudication.

The Department includes within its definition of "improper remark" an "improper remark to/regarding a fellow employee," and an "improper remark in the workplace" (*see, e.g.*, Penalty Guidelines at page 66;<sup>1</sup> IAG's "2004 Review and Evaluation Chronicles" (Chronicles), at page 68). An ethnic remark is defined as "an improper remark(s) showing ethnic/culture bias." (Penalty Guidelines, at page 67). Among the definitions of Gender Bias is an "improper remark(s) showing sexual/gender bias" (*Id.*) The companion classification to Gender Bias is Sexual Harassment, which the Department includes in its definition to "create/allow hostile work environment showing sexual/gender bias" (*id.*) as well as "quid pro quo"<sup>2</sup> sexual harassment.

Of the 22 complaints closed out this quarter which involved improper remarks, eight were adjudicated using one of the several Non-Disciplinary classifications. The rest were handled as Disciplinary matters, of which seven were sustained. The OIG reviewed the 21 cases which were available at the time of this writing. In connection with our review, a matrix was utilized which contained ten questions, focusing on whether the allegations at issue were properly classified, whether the investigation was properly assigned, whether it was adjudicated as Non-Disciplinary, and if so, whether this was appropriate, whether the complaint revealed the need

---

<sup>1</sup> Though improper remarks to another Department employee fall under the general heading of "Discourtesy" in the Penalty Guidelines, the Department's practice has been to separately classify these types of comments as "improper remarks." The Chronicles, at page 68, reflects the Department's current practice of classifying improper remarks made to another employee, as opposed to a member of the public, as "improper remarks" and not "discourtesy."

<sup>2</sup> Quid pro quo sexual harassment is when a person's submission to or rejection of sexual advances or conduct of a sexual nature is used as the basis for employment decisions affecting the individual or the individual's submission to such conduct is made a term or condition of employment.

for directed training and, if so, whether such training imposed, and whether any penalty imposed was appropriate.

After we conducted our review of these cases, we sent a draft of our findings to IAG. On July 10, 2006, the OIG met with IAG to discuss our findings, and any concerns or questions they may have had. They indicated that they agreed with most of our findings, and we discussed those few areas in which they raised questions regarding our preliminary findings. The following are the cases which we believed merited further discussion.

ii. Misclassified Complaints

The OIG's review revealed that in six<sup>3</sup> of the 21 complaints, the improper remark allegations were misclassified. One<sup>4</sup> was investigated by the area.<sup>5</sup> All six cases are described below.

CF No. 05-2204

In this Department-initiated complaint, the accused, a civilian supervisor, said to another subordinate employee,<sup>6</sup> "Your wife isn't a mail order bride, is she?" Though this complaint was initially classified as ethnic remark and assigned to IAG, according to the accused's TEAMS, it was adjudicated as an improper remark, for which the accused received an admonishment.

We believe the accused's comment had racial overtones that should have resulted in a sustained ethnic remark allegation and consideration of a stronger penalty. (There were several witnesses to the accused's comment, and the accused stated that he/she "probably did" make the comment.) Although the subordinate employee did not claim to have been offended by the statement, the accused made the comment in the presence of other employees. The investigation in CF No. 05-2204 revealed that the accused had received two prior comment cards for a "tendency to 'blurt' out inappropriate remarks or questions." Moreover, though the Letter of Transmittal (LOT) recognized that the accused, as a "tenured supervisor," "has a responsibility to . . . ensur[e] [his/her] conduct is professional," there was no recommendation for any training.

However, we commend the Department for subsequently engaging in what appears to be progressive discipline as it relates to this employee. Six weeks prior to CF No. 05-2204, the accused had been listed on another complaint, CF No. 05-1677, for making improper remarks. That earlier complaint was adjudicated after CF No. 05-2204. CF No. 05-1677 alleged that the accused used profanity in several instances, including referring to a colleague as a "bitch" in an e-mail and then writing, "Not you, her. If I want to call you a bitch I'll do it to your face." In connection with CF No. 05-1677, the accused was given a five-day penalty, and was removed from a supervisory rank.

CF No. 04-1854

This complaint concerns a series of alleged incidents with discriminatory subtexts. Among other issues, the complainant alleged that the accused Commanding Officer (CO) had, on numerous

---

<sup>3</sup> CF Nos. 04-1854, 04-5288, 04-6441, 05-0975, 05-2204, and 06-0067.

<sup>4</sup> CF No. 06-0067.

<sup>5</sup> Some of the other cases contained additional allegations, such as sexual harassment and retaliation, which caused the cases to be assigned to IAG for investigation.

<sup>6</sup> The employee to whom this question was directed was Korean-American. His wife was also Korean-American.

occasions, said to both the complainant and other African American subordinates, "I'm down with the brothers." The complainant felt the statement was "demeaning and inappropriate for the workplace." One allegation of improper remark was sustained against the CO. The rest were unfounded. The accused employee retired prior to the conclusion of the investigation, so no penalty was imposed, though an official reprimand (OR) had been recommended.

We believe the "I'm down with the brothers" comment should have been adjudicated as an ethnic remark, as the investigation revealed that the accused made this comment in reference to African American officers. Nonetheless, the entire investigation was assigned to IAG who otherwise handled it appropriately. The OIG was particularly encouraged to see the Department sustain this allegation against a command staff officer.

#### CF No. 04-5288

During a meeting between the complainant and the two accused supervisors (A1 and A2), A1 referred to the complainant, a subordinate, as a "whining female." A2, a superior supervisor, did not take any action in response to A1's comments. During the meeting, the complainant also referenced an earlier incident in which A1 had referred to another employee in the unit as a "f\*\*king c\*nt." The investigation also revealed that A1, after speaking to a third supervisor on the phone, stated "bitch," to no one in particular when A1 hung up the telephone.

Four allegations were sustained against A1: that A1 called the complainant a "whining female;" that A1 referred to another employee as a "f\*\*king c\*nt" on two separate occasions; and that A1 stated "bitch" when hanging up the telephone. One allegation was sustained against A2: that A2 failed to take appropriate action when A2 became aware of potential misconduct – the male supervisor referring to complainant as a "whining female." IAG conducted the investigation.

Initially, the Department imposed a five-day penalty on A1 and an OR on A2. However, the COP decreased A1's penalty to an OR and changed the adjudication for A2 to No Misconduct. No explanation was provided, other than that the original penalties were "too severe."

A1's comments referring to an employee as a "whining female," "f\*\*king c\*nt" and "b\*tch" were ultimately adjudicated as improper remarks.<sup>7</sup> We believe they should have been adjudicated as gender bias. Indeed, in the investigation, three of the four allegations are phrased as involving "gender biased remarks." We also believe that A1's penalty should have been higher (the suggested penalty for a first-time gender bias comment ranges between a written penalty and ten days), given the potential that A1, as a supervisor, could expose the Department to liability for discrimination and/or the creation of a hostile work environment. Moreover, A1 had a prior sustained complaint within five years for telling a defense attorney who requested to interview the victim in a criminal case, "You don't know how close we are to kicking your ass."

Finally, we were concerned that there was no directed training for A1 as a result of this incident, even though the LOT specifically states, "[A1] needs to hone [A1's] management and

---

<sup>7</sup>During our discussion with IAG, it was revealed that these allegations had initially been improperly classified by IAG's Classification Section, but then IAG's Investigative Section caught the mistake and properly reclassified these allegations prior to sending the investigation back to the area for adjudication. However, the Area subsequently adjudicated these allegations as improper remarks.

communication skills to further enhance a positive work environment. [A1's] leadership skills and training attributes were sorely lacking in A1's dealings with a subordinate. . . . Leaders have to show composure at all levels and when that does not happen, morale, good order and credibility begin to erode from the work environment."<sup>8</sup> Further, the LOT recognized that A2, a senior supervisor, needed to "hone [his/her] management and communication skills" and that his/her "leadership skills and training skills were sorely lacking in [his/her] dealings with a subordinate." A2 similarly was not directed to specific training as a result of this incident.

A1 and A2 were subsequently removed from the unit, and according to the LOT, the replacement supervisor had resolved the myriad workplace issues which had arisen under A2's leadership. Though we commend the Department for removing A1 and A2, we are also concerned that despite the deficiencies in A1's and A2's supervisory skills as recognized by the adjudicator in the LOT, there was no consideration of downgrade or demotion for either supervisor. At a minimum, we believe there should have been directed training for both of the accused supervisors to address the specific issues raised by the investigation.

#### CF No. 05-0975

This complaint was initiated by a civilian employee of another City department who worked around a number of LAPD employees. According to the complainant, the accused Department employee, A1, attempted to befriend the complainant, asked the complainant numerous personal questions, and repeatedly asked the complainant out on dates. The complainant alleged the complainant made it clear to A1 that he/she did not desire to date A1 and that A1's advances toward complainant were unwanted. One time, the complainant was bending over, when he/she heard someone say, "Umm, umm, umm." Complainant turned around and saw that A1 was behind him/her. A1 then moved within about eight inches of the complainant and whispered into complainant's ear, "So, when are you going to let me f\*\*k?" The complainant immediately reported the incident to his/her supervisor.

During the investigation, it was discovered that the complainant was involved in a personal relationship with A2, whom complainant had told about A1's actions and who wrote a statement outlining his/her observations regarding an interaction between complainant and A1. A2 did not disclose this relationship to the I/O when initially interviewed.

Though the investigation alleged that A1 sexually harassed the complainant, according to A1's TEAMS report, this allegation was ultimately classified as unbecoming conduct, and unfounded. The OIG believes that both the classification and adjudication were inappropriate. The complainant alleged that A1 made numerous, unwanted requests for dates, which, if true, would appear to constitute a hostile work environment based on the complainant's sex, and, therefore, sexual harassment. Moreover, the adjudicator unfounded the complaint because the adjudicator believed the evidence revealed that the complainant and A1 had a friendship which changed when the complainant became involved with A2. The OIG believes there was equally sufficient

---

<sup>8</sup> A1's TEAMS indicates that A1 received "Sexual Harassment Training for Supervisors" after this incident occurred. However, this training was required of all supervisors pursuant to California Assembly Bill 1825. We would have preferred that A1 received specific training regarding the supervisory deficiencies identified in the LOT.

evidence that A1's advances were never welcomed (e.g., complainant's and A2's statements, as well as another fresh complaint witness). Thus, this allegation should have been not resolved.

We believe the improper remark allegation was also misclassified. Though the allegation regarding A1's statement to complainant, "so, when are you going to let me f\*\*k?" was framed as one involving a "an improper sexual comment," it appears on A1's TEAMS as an improper remark. This allegation was not resolved as there were no witnesses to the comment.

Ironically, the only sustained allegation in this complaint was against A2 for failing to disclose his/her relationship with the complainant. The CO initially recommended a 10-day penalty, reasoning that A2's decision not to reveal the relationship with the complainant was unethical and a violation of the Department's core values. In A2's *Skelly* response, A2 claimed that the CO's rationale and penalty were a "moral indictment against" A2 because, as the CO noted in the LOT, A2 had a relationship with the complainant while the complainant was married, which A2 argued was irrelevant to the investigation. The bureau CO prepared a Military Endorsement and recommended that the adjudication be changed to "Non-Disciplinary – Employee's Actions Could Have Been Different" (Comment Card). The bureau CO reasoned that A2 was not obligated to disclose the relationship with the complainant since they were employed by different departments and their relationship was not relevant to the allegations against A1. We commend the CO for avoiding what could have been an anomalous outcome in this case.

#### CF No. 06-0067

This case involved an anonymous complaint in which the accused was alleged to use "Black street slang" and "jive," which the complainant felt was offensive. Moreover, the complaint alleged that the accused would walk into a room and yell "what up, brother man," spoken in a "African American youth type accent." The complaint further alleged that the accused's supervisor "does not seem to mind and has not stopped or discouraged [the] behavior."

This complaint was initially classified as unbecoming conduct and handled by the area, who did no investigation whatsoever. Though the complaint was anonymous, the accused was clearly identified, and it would have been simple to survey the other employees in the unit to shed light on the allegations, as well as to interview the accused employee and the supervisor. Instead, the complaint was closed out as "Non-Disciplinary/Employee's Actions Did Not Rise to the Level of Misconduct," and it was classified as an improper remark.

The adjudicator's rationale for the No Misconduct finding was that the complainant "hints to [the accused's] accent and manner of speech as speaking a dialect commensurate to [sic] African American street slang. The anonymous author does not allege that [the accused] speaks in this fashion with only Black employees." Further, the adjudicator reasons that "police officers and firefighters greet each other with the endearing term `brother.'" To support this claim, the adjudicator attached a copy of the "Fireman's Prayer" by an unknown author, which contains repeated reference to a firefighter's "fallen" "brother."

However, given that the anonymous complainant describes the phrase "brother man" as "misconduct" which the complainant found offensive, it was disingenuous to label the accused's use of the word "brother" as *endearing*. According to the anonymous complaint, it was anything

but. At a minimum, the investigation should have attempted to ascertain the context in which and to whom such statements, if any, were directed, and whether the supervisor failed to take appropriate action.

During our discussion with IAG, they indicated that this case would be reactivated for a supplemental investigation to be conducted by IAG.

#### CF No. 04-6441

This investigation was based on an anonymous complaint which alleged that the accused, a high-level supervisor, made "inappropriate comments with sexual and racial overtones." (The complaint also alleged that the accused inappropriately accessed the internet and the accused's e-mails via the Department computer for non-duty related purposes – which allegations were sustained – and that the accused failed to report for duty and improperly submitted overtime reports while accessing the internet, which allegations were unfounded). The accused received an OR for the two sustained counts involving the improper use of Department computers.

Though we commend the Department for adding an allegation of ethnic remarks against the accused (even though it was adjudicated as Insufficient Evidence to Adjudicate (IETA) because no one interviewed claimed to have heard the accused make any sexual or racial comments) they should have also added an allegation of gender bias for the sexual remarks. Instead, these remarks were classified under an improper remark allegation, and similarly adjudicated as IETA.

Even though these allegations were not sustained, we believe it would have been important to have properly documented such allegations, given the accused's prior complaint history. According to the face sheet for CF No. 99-1438, a subordinate of the accused alleged that the accused requested that the complainant "go to bed" with the accused on several occasions, and that the accused called the complainant at home requesting that the complainant sleep with the accused. In addition, the complainant alleged that the accused threatened the complainant with a negative performance rating if the complainant did not sleep with the accused. One count of gender bias was adjudicated as not resolved against the accused.<sup>9</sup>

#### iii. Improper Remarks Complaints Properly Classified But Inappropriately Handled.

The OIG believes the improper remark allegations in the following complaints were appropriately classified given the Department's current classification system, though we had concerns with the overall handling of the investigations themselves.

#### CF No. 05-0089

This complaint involved allegations that the accused supervisor danced too close to a subordinate (S1) during a holiday party, and made an improper remark when the accused stated to another subordinate (S2), "officers like that [in reference to the complainant] have no business on the Department, if something as simple as that intimidates them." The allegation regarding the dancing was classified as unbecoming conduct and was adjudicated as Non-Disciplinary/

---

<sup>9</sup> This same supervisor was accused in a subsequent complaint, CF No. 05-4895, of again making a remark that was inappropriate for the workplace. This case was closed as Non-Disciplinary during the Second Quarter of 2006, and we anticipate discussing it in our review of the Department's next Quarterly Discipline Report. IAG has indicated that, as a result of our meeting, they are currently reviewing this case.

Employee's Actions Could Have Been Different -- Comment Card.<sup>10</sup> The improper remark was not resolved because the accused denied stating that S1 had no business in the Department and the only witness to the complaint, S1, did not recall hearing that or a similar phrase.

The accused was observed to approach S1, who was seated in a chair, place the accused's left foot on top of a table next to S1, and proceed to move the accused's groin area within close proximity (four inches according to S1) from S1's face. The accused then gyrated his/her hips back and forth across S1's face for ten seconds. S1 was embarrassed. One witness claimed that S1 looked shocked, and that it appeared as if the complainant was receiving a "lap dance" from the accused.

As it relates to the dancing, we believe this allegation was improperly classified as unbecoming conduct and should not have been handled as Non-Disciplinary. The accused's actions arguably constituted sexual harassment as the accused was a supervisor, who danced in a sexually suggestive way in front of a subordinate during a department holiday party. Moreover, the accused's claim that the lighting was dim, he/she was nearsighted and not wearing glasses that evening, and, thus, mistook the complainant for his/her daughter's friend, was, according to the CO, "not supported in the investigation." Indeed, the investigation revealed that, though both of a similar height and build, the complainant was Asian, with short hair, while the daughter's friend was 14 years younger than the complainant, Hispanic, and had long hair. Given the severity of the accused's conduct both during and after the dancing incident, we believe that handling this matter as Non-Disciplinary and giving a comment card was insufficient to address the accused's behavior.

#### CF No. 04-5189

This complaint arose in connection with an earlier complaint where the complainant in CF No. 04-5189 was the accused. The complainant, a civilian supervisor, alleged retaliation related to that earlier complaint (CF No. 03-0559); specifically, that a sworn supervisor, A1, retaliated against him/her for complaining about supervision and other workplace issues in the unit by initiating CF No. 03-0559 for which the complainant received a three-day suspension for referring to A1 as a liar during roll call. CF No. 04-5189 also alleged that the I/O, A2, assigned to investigate CF No. 03-0559 should not have conducted the investigation, due to his/her ongoing friendship with A1 and that A2 shared information with A1 regarding CF No. 03-0559.

CF No. 04-5189 also alleged that A1 made two improper remarks in reference to the union activities of some of A1's subordinates, including the complainant. One was that the A1 made a threatening remark when stating in a meeting, "To those who will be the hunter, beware, because the hunter will become the hunted." The other allegation was that A1 referred to the complainant as an "industrial terrorist." Both allegations were exonerated. The adjudicator believed that the statements were taken out of context, not directed toward any particular person(s), and did not have any particular nexus to union activities.

---

<sup>10</sup> This was the adjudication indicated on the face sheet signed by the area CO. Indeed, the employee did subsequently receive a comment card. However, the employee's TEAMS lists the adjudication as Non-Disciplinary/No Misconduct, which adjudication was also indicated on the close-out letter to the complainant.

We believe these allegations should have been not resolved. Several witnesses indicated hearing the statements and A1, though he/she denied the connotation of the statements as taken by the complainant, admitted to possibly making similar statements in roll call, but directing them to the whole unit. Moreover, the investigation revealed that some felt that the statements fostered an atmosphere of intimidation with respect to participating in union activities and were improper coming from a supervisor.

The allegation that A1 engaged in conduct that led to a hostile work environment was unfounded though several witnesses indicated A1 fostered an environment of hostility and intimidation, by, among other things, inappropriately usurping the civilian supervisors' authority and interfering with their attempts to discipline and supervise their own subordinates. Moreover, a workplace biopsy concluded that issues were present in the unit that fostered workplace hostility. Therefore, we believe this allegation should have been not resolved.

The OIG also believes that the allegations that A1 attempted to influence the outcome of the investigation and that A2 allowed A1 to become personally involved with the investigation were inappropriately adjudicated as unfounded. The adjudicator reasoned that no witness provided any specific information suggesting that A1 attempted to influence any interview or the outcome of the investigation, and that any contact between A1 and A2 was unrelated to the investigation. However, A1's presence at the location of the interviews (A1 admitted to possibly greeting A1's subordinates as they entered the interview room) could have created an intimidating atmosphere. Moreover, A1 and A2 both admitted to discussing A2's ongoing personal issues at work while A2 was conducting the investigation. Once again, it seems that these allegations should have been adjudicated not resolved, since only A1 and A2 knew what was said behind closed doors, and several witnesses believed that A1's behavior was inappropriate.

#### CF No. 06-0034

In this case, the accused employee confronted an employee who had been involved in a previous complaint against the accused<sup>11</sup> for which accused received a five-day suspension, and stated, "Your reporting my misconduct cost me \$1500, and your misconduct goes unnoticed. You take more than a half-hour lunch everyday." The complaint was handled by the area, even though, according to a desknote from the CO's adjutant, the complainant felt that the accused's statements were "in retaliation for reporting [the accused's prior] misconduct."

The investigation did not contain any tape-recorded interviews. The only reference to any conversation with the complainant is in the adjutant's desk note. Further, the investigation contains an "informal" interview with the accused by an area supervisor, in which the accused "admitted to the misconduct." However, the accused stated that the accused "made the comment out of frustration and not to intimidate [the complainant] for [the complainant's] previous actions." At a minimum, given the severity of the complainant's initial allegations, she should have at least been interviewed.

The complaint was adjudicated as Non-Disciplinary/Employee's Actions Could Have Been Different. The accused was given a comment card in which it is reiterated that the complainant

---

<sup>11</sup> That previous complaint, CF No. 05-4711, involved the accused employee stating to a much younger subordinate employee, "If I give you a twinkie, will you sleep with me?" The accused was given a five-day suspension.

considered the accused's comments to be retaliatory. Furthermore, despite the inappropriate behavior exhibited by the accused in this incident, as well as the earlier incident involving the improper "twinkie" remark to a subordinate of the opposite sex, no training was provided to the accused. For all of the above reasons, we believe this complaint was improperly handled.

Based on our discussion with IAG, they indicated that they would be re-activating CF No. 06-0034 for supplemental investigation.

## **b. Ethnic Remark Cases**

We reviewed the four complaints closed during this First Quarter in which at least one allegation of ethnic remark was sustained. In CF Nos. 05-0757 and 05-0686, no penalty was imposed, either because the accused had already been discharged or because the Department was unable to identify the specific employees responsible for ethnic remarks which appeared on ASTRO radios. In the two other ethnic remarks cases, described below, significant penalties were imposed. However, our concerns were that in both of these cases, the accused were supervisors and that, in neither case, were the accused either demoted or downgraded.

CF No. 05-2377 involved allegations that the accused supervisor made two separate inappropriate comments to a subordinate of Middle Eastern descent. The first comment involved the supervisor stating that people should watch the complainant, as the complainant "might blow things up." The second comment implied that the accused was a member of the Palestinian Liberation Organization. Both allegations were sustained, as well as a third allegation that the accused made a misleading statement when he/she denied making one of the comments. Instead, the accused claimed another subordinate had made the comment. The accused received 15 days.

Though this complaint was properly classified upon intake as involving ethnic remarks, it was assigned to the division for investigation. Overall, we believe the complaint was properly investigated, but we are concerned that it was not assigned to IAG. Further, we are concerned that the LOT indicates no consideration of downgrade/demotion with respect to the accused. Not only did the investigation reveal that the accused made racist remarks to a subordinate, to which there were either independent or fresh complaint witnesses, but the accused denied making the statements, and, indeed, attributed them to another subordinate. Though we commend the adjudicator for removing the accused from the involved unit "due to the fact that it is believed [the accused's] credibility with [the accused's] subordinates is tainted," some consideration should have been given to whether the accused should remain a supervisor. Finally, the LOT indicates that no training was provided to the accused as a result of this complaint. We believe, at a minimum, the accused should have been sent to some form of cultural diversity training.

CF No. 04-5563 involved supervisory employees against whom allegations of ethnic remarks, and, as against Supervisor No. 1 (A1), allegations of discrimination, were sustained. A1 was accused of treating the complainant in a disparate manner due to her ethnicity, as well as directing ethnic remarks toward her, including asking her if she knew the difference between being enslaved and slavery. On another occasion, A1 asked her if she knew that the word "picnic" had a negative connotation among African Americans. Moreover, A1 asked the

complainant "where's my 40 acres?" The complainant believed that these comments implied that she was responsible for slavery and was a racist.

A1 was also accused of failing to take appropriate action when Supervisor No. 2 (A2), who was of the same rank as A1, referred to the complainant as the "little White girl." A2 received a sustained allegation for ethnic remarks for making these comments. A1 received a ten-day penalty. A2 received a five-day suspension. Supervisor No. 3 (A3), of a lower rank than A1 and A2, received a sustained complaint for telling the complainant that she needed a "Black name" and proceeded to refer to her by a different name. A3 received a five-day penalty.

On the one hand, we believe that the treatment of A1, as compared to A2, who were of the same rank and who both made ethnic remarks, was on the harsh side. We are unsure whether the additional allegation of discrimination against A1 for treating complainant in a disparate manner by making unnecessary ethnic remarks was justified, since one could argue that A2 should have received a similar sustained complaint for doing the same thing. Perhaps this could be explained by the fact that A1 was complainant's direct supervisor.

At the outset, we commend the Department for recommending that formal training be provided to A1-A3, and for imposing significant penalties to reflect the severity of the accuseds' actions.<sup>12</sup> However, though it appears that consideration was given to whether A1 and A2, who were heads of individual units, as well as A3, should have been downgraded, we do not believe that enough detail was provided as to the basis for the ultimate decision not to downgrade them.<sup>13</sup> Though the LOT specifically says that "consideration was given to recommending a downgrade" for all three, the next line states that it "was determined that this is not appropriate," without saying why, other than "these employees can continue to function in their present roles."

Based on our review of these two cases, we attempted to identify the specific guidelines for an adjudicator in determining whether downgrade or demotion would be applicable in a particular case involving ethnic remarks. We consulted various Department resources, including the 2006 Department Manual §§ 3/763.55, 3/763.60, 3/764.30 and 3/764.50, the 2002 Management Guide to Discipline (pp. 23, 45), and the Chronicles (pp. 118, 137). As to sworn employees, these resources reference the accused's demonstrated failure or inability to satisfactorily perform the duties of the position. They also suggest that when such failures result in the initiation of a complaint, reassignment to a lower paygrade *shall* (Manual § 3/763.60) be accomplished prior to the adjudication and disposition of the complaint. The resources indicate that in addition to the inability to perform the duties of the position, a civilian employee may be reassigned to a lower paygrade when the best interests of the Department will be served (Manual § 3/764.30). The OIG believes that there is a lack of specific recognition within the Department resources that a supervisor's making of ethnic remarks and/or failure to take appropriate action when such remarks are made may constitute a failure to satisfactorily perform the duties of a supervisor. In contrast, the City's current Discrimination Free Workplace Policy (City Policy), as amended in

---

<sup>12</sup>However, only the TEAMS of A1 and A2 indicate that they subsequently went to cultural diversity training.

<sup>13</sup>This was one area in which we had a slight disagreement with IAG who believed that the significant penalties imposed on all three accused employees, combined with the recommended individualized training, adequately addressed the involved misconduct, especially in light of the adjudicator's finding that productivity in the unit had not been affected by the accuseds' actions.

1999, specifically recognizes that “supervisors . . . who either participate in any [discriminatory activities, including the making of ethnic remarks or jokes], or who knowingly allow verbal or visual discrimination to occur in the workplace and do not take action to eliminate the activity, will be disciplined for *failing to carry out their supervisory responsibilities* and for violating City affirmative action/equal employment opportunity policies.” (City Policy, emphasis added).

The OIG is concerned that there is not sufficient guidance to compel adjudicators to evaluate whether a supervisor who made ethnic remarks or failed to take action in response to such remarks has failed to satisfactorily perform the duties of the position. Given the City's potential liability for the creation of a hostile work environment and/or discrimination in such situations, we believe that: a) serious consideration should be given to downgrading/demoting the supervisor and b) if no downgrade/demotion is imposed, the LOT should contain sufficient documentation to justify this decision.

### **c. Conclusion**

As indicated above, our review pointed out issues relative to the Department's classifying, assigning, investigating and/or adjudicating complaints involving improper ethnic and/or gender biased remarks on a consistent basis. Moreover, we are concerned that penalties are not being applied consistently nor appropriate training being considered, especially in cases involving supervisors.

## **IV. CUOFS Adopted Out-of-Policy or Administrative Disapproval by the Commission**

During this First Quarter, six CUOF incidents were closed in which the Commission adopted a finding of out of policy or administrative disapproval. There were two Law Enforcement Related Injury (LERI) cases, and four Officer Involved Shootings (OIS). In all six cases, the Commission adopted the findings of the COP. These six cases are described below.

### OIS No. 04F087

CD broadcast a robbery in progress at a drug store, with two to three suspects armed with handguns. CD was advised by the alarm company that the suspects were inside threatening to kill employees. Partner Officers Nos. 1 and 2 and partner Officers Nos. 3 and 4 arrived within minutes of each other and broadcast their arrival to CD but not their actual positions at the location. Officers Nos. 3 and 4 faced the location. Officers Nos. 1 and 2 were on the opposite side. Officers Nos. 3 and 4 observed a van parked directly in front of the location with its door open. Officers Nos. 3 and 4 did not advise either CD, or Officers Nos. 1 and 2 of the van.

As Officers Nos. 3 and 4 approached the front of the location, they observed a male exit the van and walk around the rear of the vehicle towards the front entrance of the robbery location. The male then fled in a westerly direction towards Officers Nos. 1 and 2 and out of sight. Again, Officers Nos. 3 and 4 did not advise either CD, or Officers Nos. 1 and 2 of their observations and instead continued walking towards the robbery location in a staggered position. Officers Nos. 1 and 2 observed the fleeing male and after a brief foot pursuit took him into custody without incident, with the assistance of Officers Nos. 5 and 6 who had arrived at the location.

Officers Nos. 3 and 4 observed another male run out of the location towards the van with a handgun in his right hand. The male turned towards Officer No. 3 and pointed the handgun at Officer No. 3. Officer No. 3 fired three shots at the suspect who then stumbled toward the front of the van and fell to the ground. Officers Nos. 1 and 2 heard the shots fired, but had not observed the shooting. Officer No. 1 broadcast that he/she heard the shots. Officer No. 4 then notified CD broadcast that Officer No. 3 was involved in an OIS and requested assistance.

Officers Nos. 1 and 2 then observed Officer No. 4 standing over the suspect in front of the van. Officer No. 1 was directed by Officer No. 4 to guard the suspect on the ground. Officer No. 3 re-deployed to the rear passenger side of the van while Officer No. 4 moved over to the front of the business. At this point the van had not yet been searched or cleared of additional suspects and was now being used as cover for Officers Nos. 1, 3, and 4. The suspect had yet to be searched or handcuffed. Further, Officers No. 3 and 4 neglected to inform either CD, or Officers Nos. 1 and 2, that the male had a handgun. Shortly thereafter, Officer No. 4 returned to where Officer No. 1 was and handcuffed the suspect. Officer No. 4 then directed Officer No. 7 to guard the suspect. At this point, the van had still not been searched or cleared of additional suspects and continued to be used for cover.

As additional officers arrived, a tactical plan was formulated to enter the location to rescue victims, and to arrest any outstanding suspects. Officer No. 8, a supervisor, arrived and guarded the front door of the location while two separate search teams entered the location.

Officers located two victims inside the store and were provided with information that led them to believe that another suspect may be hiding inside the location. While being de-briefed by the victims, Officer No. 3 looked in the direction of the suspect on the ground and observed the butt of a handgun in his right jacket pocket. Officer No. 3 then removed the handgun from the suspect's pocket and gave it to Officer No. 8. While waiting for additional resources to continue the search for additional suspects, Officer No. 4 re-entered the building to use the restroom. K-9 and SWAT personnel subsequently found a third suspect in the store, as well as a loaded .38 caliber revolver. The injured suspect sustained a non-lethal gunshot wound to his left arm.

The Chief of Police (COP) had the following concerns about the incident:

- Officers Nos. 1 through 4 did not communicate to CD their exact position or deployment at the location. Ultimately, this could have led to a crossfire situation.
- The officers did not develop a tactical plan at the location and failed to take control or appropriately communicate. Instead, they immediately responded to the front of the location.
- Officers Nos. 3 and 4 parked in the immediate line of sight with the business's entrance. Additionally, Officers Nos. 3 and 4 ignored the warning signs of a robbery in progress in that the van was parked in front of the location during non-business hours. Approaching the van immediately, without a unified tactical plan, was not advisable.
- Officer No. 4 did not advise Officer No. 3 or broadcast to other units that Officer No. 4 observed a suspect near the van flee on foot.

- Officers Nos. 3 and 4 approached the injured and armed suspect, but failed to immediately handcuff or search him. A weapon was later recovered on the suspect.
- Officer No. 4 exhibited a shotgun and placed a foot on the suspect's hands, which were at the small of his back. This created a tactical disadvantage and the potential for unnecessary injuries and/or an accidental discharge.
- Officer No. 4 walked past the open doors of the business without cover and past the vehicle without clearing it for additional suspects.
- Officers Nos. 3 and 4 failed to advise responding officers that the suspect had a weapon, had not been searched and the weapon remained unaccounted for.
- Officer No. 3 declined a request by Officer No. 1 to handcuff the suspect because Officer No. 3 believed watching the entrance was more critical.
- Officer No. 4 directed Officer No. 1 to guard the injured suspect, who had not yet been searched or handcuffed.
- Officer No. 4 re-entered the location alone to use the restroom knowing that possible suspects were still inside the location. The results could have had disastrous consequences.
- Officer No. 4 slung the shotgun over his/her shoulder when handcuffing the suspect.
- Officer No. 4 directed Officer No. 7 to guard the suspect; however, Officer No. 4 did not advise Officer No. 7 that the suspect had not been searched.

The COP found that Officers Nos. 3 and 4's tactics were seriously deficient and required administrative disapproval (AD). Further, Officers Nos. 1-4, and Officer No. 8, would benefit from additional training at Training Division (TD).

The Commission adopted the COP's recommendations related to this incident.

#### Related Investigation

CF No. 05-3725 was generated as a result of the AD finding. Allegations of unauthorized tactics against Officers Nos. 3 and 4 were sustained. The penalty was an OR for each and formalized tactical training. According to their TEAMS, neither Officer No. 3 nor Officer No. 4 had prior sustained complaints for unauthorized tactics or use of force.

Although the tactics employed by both Officers Nos. 3 and 4 were ultimately effective in rescuing victims inside, they were deficient and could have had negative results. However, given the fluid nature of the incident and the fact that the officers had the best of intentions to rescue victims exposed to grave danger, we cannot say a penalty of an OR was unreasonable.

LERI No. 04F092

Officers Nos. 1 and 2 were working in plainclothes. Several days prior, Officers Nos. 1 and 2 had received information from a source indicating a male with distinguishing characteristics was selling narcotics at a motel in the area. On the day of the incident, Officer No. 1, driving an unmarked police vehicle, drove into the motel parking lot looking for narcotics related activity. Upon entering, Officer No. 1 observed a male matching the physical description provided earlier. Officer No. 1 lifted his/her shirt and displayed a Department badge. After a brief conversation between Officer No. 1 and the male, the male suddenly fled on foot.

Officer No. 1 chased the male on foot, following him onto the adjoining property. Officer No. 1 advised CD of the on-scene investigation, switched over to the specialized unit's frequency and broadcast the direction of travel for Officer No. 1 and the male.

Officer No. 3, a supervisor, heard the pursuit of Officer No. 1 on a specialized frequency but was unable to reach Officer No. 1 on the radio. Officer No. 3 then heard Officer No. 1 reference the name of a well-known retail store. Officer No. 3, in an attempt to locate Officers Nos. 1 and 2, drove to the wrong store and never advised CD that the officers were involved in a foot pursuit.

Officer No. 1 continued pursuing the male while holding the radio in one hand and a handgun in the other hand. Officer No. 1 again identified himself/herself as a police officer and ordered the male to get down. The male continued running through a parking lot. Officer No. 2, who was trying to locate Officer No. 1, spotted the male running into the parking of a fast food restaurant. Officer No. 1 caught up with the male and again identified himself/herself as a police officer, drew his/her weapon and ordered the male to get down. Instead, the male ran. Officer No. 1 again began pursuing the male. Officer No. 2 paralleled the male with the police vehicle and attempted to block the male's path by turning the vehicle in front of him. The male then turned toward Officer No. 1 who drew his/her handgun and ordered the male to the ground. The male did not comply and ran towards Officer No. 1.

Officer No. 1 immediately holstered his/her handgun and grabbed the male's shirt collar as he attempted to run around Officer No. 1's right side. As Officer No. 1 attempted to hold onto the male with a one-handed grip, the male punched Officer No. 1 in the upper torso. As the male attempted to punch Officer No. 1 a second time, Officer No. 1 utilized his/her hand-held radio and attempted to strike the male in the left upper torso. Prior to contact, the male changed his body position, ducking down, causing Officer No. 1 to strike the male on the head with the radio. Both Officer No. 1 and the male lost their balance and fell to the ground. The male fell on top of Officer No. 1's legs, as Officer No. 1 landed in a sitting position. Officer No. 1 took hold of the male's left arm, and then applied body weight on his body to hold him down.

Officer No. 2 placed both knees on the male's back. Officer No. 1 continued to struggle with the male. Officer No. 2 then attempted to pull the male's right arm down from an extended position above the shoulder. Officer No. 1 held the male's left arm by the wrist along the left side of his body and attempted to move his arm behind his back. Officer No. 2 continued to pull at the male's right arm, while he continued to resist the efforts of Officer No. 1 and No. 2.

Officer No. 2 deployed three distraction strikes with a knee to the male's right side between the waist and rib cage. The male continued to struggle and at one point pulled his arm down underneath his body towards his waist. Eventually, Officers Nos. 1 and 2 handcuffed the male, placed him in the police vehicle and returned toward the motel. Officer No. 1 requested an additional unit to meet them at the motel, and Officer No. 3 responded on the radio.

While at the motel, Officers Nos. 1 and 2 observed several people milling around the location of the initial contact with the male. One of them indicated they were on active probation, so a search of a motel room was conducted, which did not result in the recovery of any contraband.

Officers Nos. 4 and 5 responded and Officer No. 1 informed them that a use of force had occurred. Officers Nos. 4 and 5 canvassed the area. Officer No. 3 arrived and was briefed by Officer No. 2 of the head strike by Officer No. 1. Officer No. 3 did not recognize the incident as a CUOF. Officer No. 3 allowed Officers Nos. 1 and 2 to resume the narcotics investigation while still detaining the male involved in the CUOF. Officer No. 3 then contacted Officer No. 6 and directed Officer No. 6 to assist Officers Nos. 1 and 2 with the narcotics investigation.

While at the motel and after the search of the motel room, the male told Officers Nos. 1 and 2 that he was epileptic and feeling dizzy. Officer No. 1 requested a rescue ambulance who transported the male to a hospital, where he was treated for a laceration to the head and pain to the torso. The male was booked for resisting arrest and for an outstanding warrant.

The COP found that the tactics of Officers Nos. 1-3 were deficient and required administrative disapproval, and directed them to training. The COP had the following specific concerns:

- Officers Nos. 1 and 2 did not pre-plan for this type of encounter.
- Officer No. 1 did not advise CD of the encounter or Officer No. 1's status at the location.
- Officer No. 1 approached the male alone.
- Officer No. 1 pursued the male on foot while Officer No. 2 drove, resulting in the officers being separated, losing sight of each other and being unaware of each other's locations.
- Officer No. 1 drew his/her handgun twice while holding his/her hand-held radio which limited tactical and force options.
- On two occasions, Officer No. 2 pulled the police vehicle in front of the male to block his path, creating a crossfire situation with Officer No. 1 who was pursuing the suspect on foot.
- Officer No. 3, upon hearing the broadcast of an officer in foot pursuit and being unable to contact the officers on the radio, did not advise CD to attempt to locate Officers Nos. 1 and 2. Officer No. 3 elected instead to respond to the location where Officer No. 1 and Officer No. 2 were believed to be, which was inaccurate.
- Officer No. 3 failed to assume a leadership role and coordinate an appropriate response.

- After the use of force, Officers Nos. 1 and 2 transported the male back to the motel to continue the narcotics investigation. The COP would have preferred that Officers Nos. 1 and 2 had remained at the use of force location and requested a supervisor to respond.
- Officers No. 1 and 2 failed to request a rescue ambulance for the male's head injury.
- Officers Nos. 1 and 2 were not easily identifiable as police officers as they pursued the male.
- Officer No. 1 and Officer No. 2 did not clearly articulate the justification for detaining a number of people upon returning to the location of the initial contact with the male.
- Officer No. 1 did not utilize cover or maintain sufficient distance while pursuing the male.
- Officer No. 1 had limited use of force options when holding both a firearm and a radio.

The Commission adopted the COP's recommendations.

#### Related Investigations

As a result of this incident, three complaints were initiated. CF No. 04-4833 alleged neglect of duty against Officer No. 3 for failing to make a timely notification of a CUOF. The allegations were sustained and an admonishment was given. CF No. 05-1079 was initiated against Officer No. 2 by the male alleging unauthorized force. CF No. 05-1079 was tolled and was not closed out by the time of this writing. CF No. 05-4392 was based on the administrative disapproval finding regarding the tactics of Officers Nos. 1 -3, the failure to immediately notify a supervisor after a use of force by Officers Nos. 1 and No. 2, and the failure to immediately request medical treatment for an injured suspect. The allegations were sustained, and all three received an OR.

The OIG was unable to determine if the penalty assessed in CF No. 05-4392 was appropriate as there was no indication as to the specific basis for the decision to impose an OR on any of the three accused. However, as it relates to the issue of failing to request medical treatment for an injured suspect, according to the FID statements of two witnesses at the scene, the suspect was bleeding from the head, but medical treatment was not provided until after he complained of being dizzy. Indeed, Officer No. 1, in his/her *Skelly* response, while not denying that the suspect was injured, indicated that he/she thought he/she had to secure the other suspects at the scene first (even though an RA unit could have easily been requested over the radio as they were transporting the suspect back to the motel). Curiously, Officer No. 2, in his/her *Skelly* response, claimed not to have known the suspect had been injured, despite admitting in his/her interview with FID (only selected portions of which were included in CF No. 05-4392) to personally placing the suspect into the police car and driving him back to the motel, and despite the statement of the witnesses that the suspect was seen bleeding from the head. We believe, at a minimum, the failure by these two tenured officers to obtain immediate medical treatment for the male's obvious head wound should have merited a stronger penalty than an OR.

In CF No. 04-4833, Officer No. 3 received an admonishment for failing to immediately recognize that CUOF had occurred. The adjudicator based this penalty on the claim that Officer

No. 3 admitted to this failure during the FID interview and that because Officer No. 3 made an honest mistake in the decision to classify a CUOF as a non-CUOF, those actions were not a deliberate act to conceal the same. In light of this, we cannot say that an admonishment was an unreasonable penalty, especially as Officer No. 3 had no prior sustained complaints for either unauthorized tactics or neglect of duty.

We were concerned that though the COP indicated that Officers 1-3 should be scheduled for training at TD in response to their deficient tactics, only the TEAMS reports for Officers Nos. 1 and 2 show any directed training subsequent to this incident, and in both incidents it is listed as "Div/Area Directed Training – Other," with no further information. As it relates to Officer No. 3's TEAMS, there is no indication that he/she received the training directed by the COP.

#### OIS No. 05F002

Uniformed Officers Nos. 1 and 2, driving an unmarked police vehicle, entered into an alley where they observed a stopped vehicle facing their direction with its headlights illuminated and a male seated in the driver's seat slumped over the steering wheel. Believing the male was incapacitated, Officer No. 1 exited the vehicle, directed Officer No. 2 to conduct a radio inquiry of the vehicle's license plate, and walked to the rear of their vehicle to retrieve a flashlight from the trunk. Officer No. 2 did not advise CD that they were "code-six" (out for investigation) nor did Officer No. 2 request a patrol unit to assist with the investigation. CD advised Officer No. 2 that the plate returned to a reported stolen vehicle and requested their location. Officer No. 2 broadcast a location one block south of the true location.

Suddenly, the male inside the vehicle sat up and appeared startled at the presence of the officers' unmarked police vehicle. Officer No. 1 then moved back to the rear of the police vehicle for cover and drew his/her handgun. Officer No. 2 remained behind the police vehicle's passenger door. The male then drove his vehicle first backwards toward the end of the alley, then out of sight. Officers No. 1 and No. 2 re-entered their vehicle to follow the male. Officer No. 1 broadcast a description of the vehicle, its direction of travel and that they were driving an unmarked vehicle.

The stolen vehicle then stopped at the corner of an intersection. The male exited brandishing a handgun and yelling, "What's up?" Officer No. 1 exited the vehicle and took cover behind a nearby parked vehicle. Officer No. 2 took cover behind the police vehicle. Officer No. 1 drew his/her handgun, identified himself/herself as a police officer, and ordered the male to drop the firearm. The male then pointed the gun in the direction of Officers Nos. 1 and 2. Officer No. 1 fired two rounds from his/her firearm in the direction of the male. Apparently unaffected by the gunfire, the male re-entered his vehicle and drove away. Officers Nos. 1 and 2 then re-entered the police vehicle. Officer No. 2 broadcast that shots had been fired and requested help.

After the male's vehicle collided with another vehicle, he abandoned it and fled on foot. Officers Nos. 1 and 2 exited their police vehicle, which was parked away from the male's vehicle, drew their handguns and stood behind the vehicle's doors for cover. Officers Nos. 3 and 4 arrived on scene and met with Officers Nos. 1 and 2. Neither Officer No. 3 nor Officer No. 4 advised CD that they were "code-six" with Officers No. 1 and 2. Officers Nos. 3 and 4 approached the vehicle and cleared it. Officer No. 3 observed a handgun and a round of ammunition on the front floorboard. Officer No. 3 recovered the handgun and secured it in the trunk of the police car.

The male was eventually detained by additional arriving officers without further incident. Officer No. 2 was transported to the location where the male was detained and positively identified him as the individual who pointed a handgun at Officers Nos. 1 and 2. The male was arrested for assault with a deadly weapon on a police officer.

The COP determined that Officers Nos. 1 and 2's tactics were seriously deficient and required AD and directed their CO to schedule them for training at TD, based on the following:

- The COP noted that Officers Nos. 1 and 2 did not discuss tactics prior to going into the field or during their tour of duty. The COP also noted that Officers No. 1 and No. 2 did not advise CD of their location when they observed the vehicle in the alley and that Officer No. 2 did not broadcast the correct location once the officers became aware that the vehicle was reported stolen. The COP would have preferred that Officers No. 1 and No. 2 had requested back up, and advised responding units that they were in an unmarked car.
- The COP also noted that Officers No. 1 and No. 2 did not request a patrol unit to investigate the vehicle in the alley. Moreover, when Officer No. 2 exited the vehicle, Officer No. 2 did not deploy to proper cover and Officer No. 1's flashlight was not readily available. Officer No. 1 had to retrieve the flashlight from the rear of the vehicle and was unaware of Officer No. 2's location at the time.

The Commission adopted the COP's findings.

As a result of the AD for the tactics utilized by Officers Nos. 1 and 2, CF No. 05-6014 was initiated. The OIG believes the OR imposed on both officers was appropriate given the absence of prior sustained complaints for similar issues for either officer. However, the OIG was concerned that though the COP directed both officers to directed training at TD for tactics, the TEAMS of Officer No. 2 reflects one hour of "Div/Area Directed Training – Tactics," whereas the TEAMS of Officer No. 1 reflects 32 hours of Law Enforcement Training Application Course (LETAC).<sup>14</sup>

#### OIS No. 04F109

An off-duty Officer attended a large party at a residence outside the City where the off-duty Officer rented a room. The Host invited Guest A, who invited Guest B, to the party. Guest B invited four additional unidentified males. Officer 1, from the local law enforcement agency, responded twice to the party in connection with noise complaints.

As the party continued, Guest B and the four unidentified males, per the off-duty Officer, became disruptive. According to the off-duty Officer, one of the males was observed grabbing the buttocks of female guests. The off-duty Officer claimed that while he/she was dancing with a Companion, one of the four males approached the Companion from behind and, unbeknownst to the Companion, appeared to take a photograph of the Companion's undergarment.

---

<sup>14</sup> LETAC is a four-day course specifically designed to provide recurrent training for patrol officers in a variety of areas, including use of force situations.

The off-duty Officer confronted the male about the photograph who responded by raising the camera in his left-hand in an effort to strike the off-duty Officer. The off-duty Officer knocked the camera from the male's hand and pushed him backwards. Guest B stepped between the male and the off-duty Officer and challenged the off-duty Officer to fight. The off-duty Officer stated, "I am a police officer" and told Guest B to cease or be directed to leave the party. According to the off-duty Officer, Guest B responded by stating, "I don't give a f\*\*k who you are, I'll still fight you." Guest B and the unidentified male were asked to leave the party but they refused.

The off-duty Officer, believing the altercation in the backyard might escalate, entered the residence, unlocked the door to the rented room, and retrieved a canister of Oleoresin Capsicum (OC) spray from his/her duty belt. The off-duty Officer then placed the OC spray canister in his/her pocket and returned to the backyard.

The off-duty Officer, noting that efforts to get Guest B and the male to leave the residence were unsuccessful and believing a fight was about to occur, sprayed a burst of OC spray in Guest B's face, then a burst of OC spray in the other unidentified male's face. Guest B and the male were escorted from the residence without further incident. Officer No. 1 arrived a third time at the party in response to noise complaints and issued a citation for a loud disturbance.

Twenty minutes later, Guest B, along with five unidentified males dressed in dark clothing and with their faces covered in makeup, returned to the residence and re-entered the backyard. Guest B confronted Guest C and demanded the whereabouts of the off-duty Officer. Guest C attempted to persuade Guest B and the males to leave, but Guest B again asked for the off-duty Officer. Guest D interpreted the actions of Guest B and the males as being "aggressive," so he punched one of them in the face. Guest B then produced a handgun, and while pointing the weapon at Guest D stated, "I have a gun." Guest E entered the residence and notified the off-duty Officer that Guest B had returned and was in the backyard looking for the off-duty Officer.

Guest B then fired one round from the handgun into the ground. According to the off-duty Officer, a gunshot was heard coming from the patio area, and Guest B was seen standing facing the sliding glass door, holding a handgun in his right hand pointing it downward. Guest B was heard by the off-duty Officer asking, "Where is the person who pepper sprayed me?"

Guest B then turned and began walking east along the exterior of the house while continuing to brandish the handgun. The off-duty Officer then retrieved his/her duty weapon. The off-duty Officer observed Guest B standing east of the location, facing north toward the alcove that led to the side entrance of the house. The off-duty Officer observed Guest B raise the handgun, point it in a northerly direction, and believing that Guest B was about to shoot at someone inside the residence, the off-duty Officer fired one round at Guest B from a distance of approximately 25 feet. According to the off-duty Officer, Guest B was unaffected by the first round, and Guest B began to rotate left to point the handgun toward the off-duty Officer. The off-duty Officer then fired four additional rounds at Guest B from the same position. Guest B fell to the ground.

The off-duty Officer moved toward Guest B and kicked the handgun out of his hand. The off-duty Officer yelled for someone to bring his/her handcuffs. The off-duty Officer directed Guest

F to handcuff Guest B. Simultaneously, the off-duty Officer directed Guest E to call the local law enforcement agency, inform them of the shooting, and advise them that an off-duty LAPD officer was involved. The off-duty Officer also directed Guest E to retrieve the off-duty Officer's badge, which the off-duty Officer attached to his/her waistband area.

Three local agency officers responded to the location. The off-duty Officer displayed his/her police badge and provided verbal identification as an LAPD officer. The off-duty Officer was handcuffed and taken to the front yard where the handcuffs were removed. The off-duty Officer directed the Companion to notify the off-duty Officer's training officer of the incident. The off-duty Officer believed that an officer from the local agency was also asked to contact LAPD. Guest C was treated at the hospital for a gunshot wound to the mouth.<sup>15</sup> Guest B was pronounced dead later that evening.

The COP found the off-duty Officer's tactics to warrant an AD finding based on the following:

- Once the off-duty Officer verbally identified himself/herself as a police officer, the off-duty Officer was committed to taking police action. As a result, the situation escalated to the point that the off-duty Officer resorted to deploying OC spray. Though local law enforcement responded to the location on several occasions, the off-duty Officer never notified them of the problems with the uninvited guests or the OC incident.
- The COP also noted that when Guest B returned to the party armed with a handgun and subsequently fired the weapon, the off-duty Officer went to the rented room and retrieved a handgun without additional tools or a holster. The COP would have preferred that the off-duty Officer had been equipped with an approved off-duty holster or duty belt in the event of the need to secure the weapon and/or take the suspect into custody.
- The off-duty Officer failed to properly notify the Department or the local agency of the OC spray incident. Moreover, as it related to the shooting, the off-duty Officer directed the Companion to contact the local agency as well as his/her training officer.

The COP directed the off-duty Officer to be scheduled for formal training at TD. The COP also directed the CO to review his/her failure to notify the Department, and to take the appropriate action. The COP also would have preferred that the off-duty Officer had been equipped with an approved off-duty holster or duty belt in the event the need to secure the weapon and or take the suspect into custody arose. The COP directed the CO to discuss this issue with the officer and provide the appropriate training. The COP also noted that the OC spray is a defensive weapon, not always effective, and should not be used in a punitive manner. Additionally, the off-duty Officer should have considered other options prior to the deployment of the OC spray. The COP directed the CO to discuss these issues with the officer and provide the appropriate training.

The Commission adopted the findings and recommendations of the COP.

---

<sup>15</sup> The COP Report never made a final determination as to who was responsible for Guest C's gunshot wound.

### Related Investigation

CF No. 05-5022 was initiated against the off-duty Officer for unauthorized tactics and neglect of duty. The allegations were sustained, and a two-day penalty imposed. There is no indication in the file as to the rationale for giving the off-duty Officer two days for this incident.

Among other things, the off-duty Officer failed to notify the local agency upon confronting and deploying OC spray on two suspects, though the off-duty Officer was provided with ample opportunity to do so. Instead, the off-duty Officer chose to console the Companion rather than ensure that local law enforcement was notified.

The delay or failure to notify the local agency also limited their ability to identify Guest B and the males, ensure they were not injured, or document the incident. Indeed, as the COP noted, because the off-duty Officer failed to summon the local agency prior to the deployment of the OC spray, the incident escalated to a point where deadly force was required. Had the proper notification been made, it is possible that the deadly force incident could have been avoided altogether. While on its face, two days may not seem to be an unreasonable penalty, we were concerned that it was much more lenient than the ten days imposed on both officers in OIS No. 04F118, described below, where the tactics were equally deficient, but where there was no loss of human life.

### OIS No. 04F118

Officer No. 1 and Officer No. 2 were assigned to a specialized unit, wearing plainclothes and driving an unmarked police vehicle. Officer No. 1 wore a Department badge attached to the left hip area and Officer No. 2 secured a badge on a string around the neck. They observed a known prostitute standing on the corner at an intersection and a vehicle stopped in the middle of the street nearby. Believing that an act of prostitution was about to occur, Officers Nos. 1 and 2 pulled over to observe the prostitute. While parked, Officers Nos. 1 and 2 observed the prostitute approach the passenger side of the stopped vehicle and converse with its driver. After several minutes, the prostitute entered the vehicle, which drove away.

The officers followed the vehicle and observed it stop on a residential street. Officers Nos. 1 and 2 exited the unmarked police vehicle and initiated an investigation on foot without advising CD of their status or location. Officer No. 1 was equipped with a hand-held Department radio but did not have a flashlight in his/her possession, and Officer No. 2 was equipped with a flashlight but did not possess a hand-held police radio or a set of handcuffs.

The officers were unable to see inside of the vehicle because of its tinted windows. Officer No. 2 illuminated the passenger compartment using the flashlight. In doing so, Officer No. 2 observed the prostitute and the driver in a lewd act. Officers Nos. 1 and 2 identified themselves as police officers and ordered the occupants to step out of the vehicle with their hands raised.

Officer No. 2 walked around the front of the vehicle to get to the driver's side while continuing to illuminate the inside with his/her flashlight. Officer No. 2 continued to identify him/herself as a police officer and ordered the occupants to step out. While doing so, the driver of the vehicle started the engine, put the car in reverse, and slowly backed up the vehicle. The driver then put the car in drive, turned the wheels to the left (east), and then drove forward in the direction of

Officer No. 2. According to Officer No. 2, the driver maneuvered the vehicle back and forth in a manner that caused Officer No. 2 to believe that being run over was imminent. Believing this would occur, Officer No. 2 attempted to un-holster his/her weapon from a concealed area in the middle of the back, but was unable to do so because it was caught in his/her shirt.

Officer No. 1 observed the vehicle lurch forward and back on three occasions and believed that it made contact with Officer No. 2 on the third occasion. Officer No. 1 yelled "LAPD stop! We're the police, stop!" Officer No. 2 also indicated that the vehicle turned in a southeast direction and that Officer No. 2 was positioned in front of it each time the vehicle lurched forward. On the fourth occasion, the vehicle failed to brake and proceeded toward Officer No. 2. Believing that the driver intended to use the vehicle as a weapon, Officer No. 1 fired a single round in the direction of the driver from approximately ten feet. Officer No. 2 indicated that, "just before jumping out of the path [of the vehicle], a gunshot was heard as the vehicle drove away."

After confirming that it was Officer No. 1 who discharged a firearm, Officer No. 2 used his/her personal cellular telephone to notify Officer No. 3, a supervisory employee, that an OIS had just occurred. Officer No. 3 directed Officer No. 2 to make a crime broadcast on the area police frequency using the hand-held police radio, which Officer No. 2 subsequently did. Officer No. 3 then indicated that he/she was en-route to the location of the incident.

The COP recommended an AD finding for the tactics of Officers Nos. 1 and 2 due to:

- Officers Nos. 1 and 2 failed to advise CD or other area personnel of their location and failed to utilize available equipment. Officer No. 2 was not equipped with a hand-held radio or handcuffs. Officer No. 1 had no flashlight and displayed a Department badge on the hip area where it was not readily visible. The COP also noted that Officers Nos. 1 and 2 did not attire themselves with Department raid jackets and failed to obtain the license plate number of the vehicle prior to their investigation. In addition, Officer No. 2 had his/her duty weapon in an unfamiliar location and was unable to draw the weapon due to it getting caught in clothing.
- Officers Nos. 1 and 2 approached on the same side of the suspect's vehicle and gave conflicting commands, possibly causing confusion. Officer No. 2 was subsequently caught in a tactically disadvantaged position when the driver started the vehicle.
- After the OIS occurred, there was no immediate crime broadcast by Officers Nos. 1 and 2. Rather, Officer No. 2 utilized a personal cellular telephone to communicate with Officer No. 3 who gave direction to initiate a crime broadcast. Officer No. 2 was not equipped with a hand-held police radio and had to utilize the hand-held police radio of Officer No. 1.

The COP directed the CO of the area to schedule Officers Nos. 1 and 2 for training at TD.

Based on the totality of the circumstances, the COP also determined that the threat from the driver of the vehicle had not risen to the level of lethal force and found Officer No. 1's use of force to be out of policy, requiring administrative disapproval.

The Board of Police Commissioners adopted the findings of the COP Report.

### Related Investigation

CF No. 05-5297 was initiated against Officer No. 1 for unauthorized force and unauthorized tactics, and for unauthorized tactics against Officer No. 2. The allegations were sustained and a penalty of ten suspension days was assessed against Officer No. 1. Five suspension days were assessed against Officer No. 2. The Acting COP described the penalty for Officer No. 2 as "too lenient" and changed the penalty to a ten-day suspension for Officer No. 2.

The adjudicator failed to offer any rationale as to why the 10-day penalty for Officer No. 1 and the original 5-day for Officer No. 2 were assessed. Nor was there any indication as to why the Acting COP believed the five-day penalty for Officer No. 2 was too lenient. Although we acknowledge that the tactics of the officers in this incident were seriously deficient, we are concerned that in the incident previously referred to in this report (04F109), the accused received two days for what we believe to be equally deficient tactics. Moreover, unlike this case, there was a loss of human life in 04F109.

### LERI 04F107

Officer No. 1 and Officer No. 2, assigned to a specialized unit, wearing plainclothes, and driving an unmarked police vehicle, observed a male exit a known narcotics location and walk east on an adjacent street towards a parked vehicle. Officer No. 1 donned a Department raid jacket. As the male was getting into the driver's side of the parked vehicle, Officer No. 2 asked the male in Spanish if they could speak with him. The male agreed. Officer No. 2 then asked the male to exit the vehicle. As the male exited the vehicle, Officer No. 2 saw that the male's fists were closed. Officer No. 2 then asked the male if Officer No. 2 could search him. According to the officers, the male consented. Officer No. 2 instructed the male to put his hands on his head. The male complied. Officer No. 1 then noted that they were visible to the occupants of the target location. Officers Nos. 1 and 2 then moved away from the location, using a van parked in front of the male's car as a visual barrier between themselves and the target location.

Officer No. 2 began a "pat down" search of the male for weapons and asked the male if he had any weapons or anything sharp in his possession. The male indicated that he did not. Officer No. 2 then began to search the male's waistband area. Officer No. 1 asked the male if he had any narcotics on him. The male twisted his body to the left and attempted to hit Officer No. 2 with a closed fist. Officer No. 2 leaned back and the male's left elbow struck Officer No. 2 in the left upper arm area. Officer No. 1 produced an OC canister and sprayed the male in the face. The male moved toward Officer No. 1 who attempted to gain control of the male by grabbing onto his shoulder area. The male escaped the grasps of the officers by slipping out of his jacket and t-shirt. The male then ran back towards the target location while yelling, "police."

Witnesses claimed that the male was yelling for someone to come help him and to call the police and that Officers Nos. 1 and 2 were not the police. Officers Nos. 1 and 2 responded by identifying themselves as police, and showing the male their badges. Officer No. 1 made a broadcast and requested that a supervisor and a patrol unit respond. The male walked to the yard of a nearby residence and used a hose to rinse the OC spray from his face/eyes.

Officer No. 1 formed the opinion that there was contraband in the male's vehicle and informed Officer No. 2 of this belief. Officers Nos. 1 and 2 looked inside. The male observed the officers

looking in the car and proceeded back toward them. The male demanded his car. Officer No. 1 advised the male that if he did not cooperate, they were going to tow the car. Officers Nos. 1 and 2 approached the male, who ran from them onto the porch of a nearby building. Officer No. 1 followed the male. Officer No. 2 remained on the sidewalk. The male charged at Officer No. 1, and Officer No. 1 sprayed the male with OC spray.

The male jumped off of the porch and then over a fence onto the sidewalk. Officer No. 2, now armed with a canister of OC spray, grabbed the male and attempted to control him. In the struggle, Officer No. 2 lost control of the canister of OC spray. Officer No. 1 joined Officer No. 2 in attempting to take the male into custody. The male sprayed Officer No. 1 in the face with the OC spray, causing momentary blindness. While blinded by the OC spray, Officer No. 1 retrieved his/her collapsible baton from his/her rear pocket. Officer No. 1 extended the baton, and, while grabbing the male's belt area, swung the baton, aiming at the male's chest/shoulder area. Officer No. 1 struck the male twice, attempting to administer two downward strikes to the male's left shoulder and chest area. However, still suffering from the effects of the OC spray, Officer No. 1 inadvertently struck the suspect on the left side of the forehead.

Officer No. 2, while continuing to struggle with the male, pushed him up against the trunk of the vehicle. At the same time, Officer No. 1, with his/her left hand tried to push the suspect up against the vehicle, while holding the collapsible baton with his/her right hand. The male grabbed Officer No. 1's hand and attempted to take the collapsible baton away. Officer No. 1 struck the male 2-3 times in the knee/thigh area in an attempt to get the male to stop resisting and comply with Officer No. 1 and Officer No. 2's commands.

The male again broke free and ran back towards the target location, yelling for help. Officer No. 2 broadcast a call for assistance. Officers Nos. 1 and 2 proceeded in the male's direction to monitor him until back-up arrived. The male threw the OC spray under a van, ran up onto the porch of a residence and began banging on the door and yelling for help. Plainclothes Officers Nos. 3 and 4 arrived on-scene and took the male into custody without incident. The male was subsequently transported to the hospital where he was given eleven sutures for a laceration to his forehead. He was arrested for assault with a deadly weapon on a police officer. A subsequent search of the area revealed two bindles containing a white powdery substance resembling cocaine located in the roadway near the male's vehicle.

The COP found Officers Nos. 1 and 2's tactics to be out of policy, based on the following:

- They did not advise CD of their status/location when they arrived at their initial location.
- Officer No. 1 had the male place his hands at his sides prior to searching the male's pockets.
- Officer No. 1 placed the canister of OC spray in a jacket pocket as opposed to properly securing it in a holster/holder.
- Officer No. 1 and Officer No. 2 did not broadcast an assistance request that included the male's location and description, after the initial use of force.

- Officer No. 1 and Officer No. 2 allowed the male to use the water hose to rinse the OC spray from his face, resulting in the male regaining his ability and will to fight.
- Officer No. 1 approached the male alone during part of the incident.
- Officer No. 1 was not carrying the collapsible baton in a scabbard.
- Officer No. 2 attempted to control the male while holding the canister of OC spray resulting in Officer No. 2 losing control of the OC canister.
- Officer No. 1 engaged the male prior to securing the collapsible baton, resulting in the male attempting to take it.
- There was an overall lack of communication between Officers No. 1 and 2.

The COP also noted that Officer No. 1 deployed his/her OC spray from a distance of less than the recommended minimum of three feet and that Officers Nos. 1 and 2 were inadequately prepared to use the force options available to them. The COP directed the officers' CO to schedule both of them for LETAC training and Arrest and Control School (ARCON) at TD.

The Commission concurred with the COP and adopted the COP's findings.

#### Related Investigation

As a result of the findings of the COP, CF No. 05-4679 was initiated against Officers Nos. 1 and 2 for unauthorized tactics. The allegations were sustained, and a penalty of OR was assessed for both. Neither had a history of complaints for unauthorized tactics during the past five years.

Ultimately, given the circumstances under which the incident occurred, specifically the limitations imposed by virtue of their plainclothes assignment, e.g., limited equipment options and other resources normally afforded to uniformed personnel, as well as the fluid nature of this incident, the OIG believes that, overall, the penalty of an OR was not unreasonable. We are concerned, however, that to date, the TEAMS reports for both officers do not reflect that either one has received LETAC or ARCON training as directed by the COP.<sup>16</sup>

#### **V. Conclusion and Summary of Recommendations**

Our review revealed that complaints which involve ethnic and/or gender biased remarks are not being consistently classified and/or investigated as such. We would ask the Department to reiterate to all supervisors responsible for processing, investigating, and/or reviewing complaints the need to ensure that allegations which may involve improper ethnic and/or gender biased remarks are being properly classified, assigned, investigated, and adjudicated, and that appropriate penalties are being imposed and necessary training is provided, especially when supervisors are involved.

---

<sup>16</sup> The CO indicated during a recent discussion with OIG staff that Officer No. 1 and Officer No. 2 had received the training directed by the COP. The CO was unsure as to why the TEAMS report did not reflect this.

We would also recommend that proper consideration be given to downgrade or demotion in cases where ethnic/gender biased remarks are made by supervisors, and that if a decision not to downgrade or demote is made, proper documentation justifying any such decision is provided.

We are pleased by IAG's response to the concerns we have raised, and we are confident that they will endeavor to incorporate our findings into their subsequent review of investigations which may involve similar issues, as well as into the ongoing training which they provide to supervisors and command staff who investigate and adjudicate personnel complaints.

Finally, as a side note, in the course of our review, we discovered that no distinct allegation of misconduct exists which specifically addresses inappropriate remarks involving sexual orientation. Rather, it is our impression that such allegations may be being lumped together under the general category of improper remarks, which makes it more likely that such allegations will be investigated by the area, and, if sustained, will receive lesser penalties than if they were treated like ethnic or gender biased remarks. Therefore, we recommend that the Department seriously consider creating a separate classification of misconduct for inappropriate remarks involving sexual orientation.