

## **I. Introduction**

The Consent Decree requires that the Department prepare a quarterly summary report regarding discipline imposed, including Categorical Uses of Force (CUOFs) found to be out of policy, within 45 days after the end of each quarter.

The Department has completed its report for the Fourth Quarter of 2005. The Police Commission received its copy of the Department's Quarterly Discipline Report (Discipline Report or Department's Report) on February 15, 2006, within 45 days of the end of the quarter, as required by Consent Decree Paragraph 88. As required under Paragraph 89 of the Consent Decree, the Office of the Inspector General (OIG) has reviewed the Department's Report and submits this Report to the Board of Police Commissioners (Commission).

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

At a recent meeting, the Commission raised several substantive concerns relating to the structure and content of the Department's Report. Based on these concerns, the OIG decided to focus our review of the Department's Report in a way that would accomplish dual purposes. First, we conducted an in-depth assessment of the format of the Department's Report, and the information contained therein. We interpreted the raw data contained in the Department's Report and have created additional tables and charts for the Commission's review. Though we agree with the Commission that the data contained in the Department's Report, as currently formatted, could be presented in a more meaningful way, the Department has already drafted at least one subsequent Quarterly Discipline Report (for the First Quarter 2006) in the same format as this report.

Fortunately, we anticipate that in the near future, the Complaint Management System (CMS) will automatically generate the Department's Discipline Reports in an entirely new structure and format, hopefully in a manner which will obviate the need for us to perform additional data interpretation in future reports. Given that reports will soon be generated directly by CMS, the OIG plans to collaborate directly with personnel from the Professional Standards Bureau (PSB) and TEAMS II Development Bureau (TEAMS II) to ensure that future reports are presented in an effective way and that the reports provide as much information as possible to both the Commission and the public. The OIG has already participated in some preliminary discussions with PSB regarding the type of information that could be useful for the Commission's review and that the OIG hopes to see in future reports generated by CMS.

The OIG's second goal with respect to our report is to conduct, as we have done in the past, a further review of cases cited in the Department's Discipline Report which, either because of the discipline imposed as related to the nature of the allegations described, or the length of time it took to close the case, merited a further look.

Accordingly, the OIG's report is structured in three sections. Section II provides a table-by-table analysis of the Department's Report and expands upon the information contained therein. Section III contains a case-by-case analysis of investigations we identified that merited further discussion. Section IV contains a review of the Categorical Uses of Force determined to be Out of Policy by the Police Commission, which were closed during the Fourth Quarter.

## **II. Analysis of the Department's Fourth Quarter Discipline Report**

During our review of the Department's Report, the OIG studied and interpreted some of the data contained therein. As a result of our review, we found additional information that we felt would be useful to the Commission for its review and evaluation of the discipline imposed during the Fourth Quarter.

Additional data that the OIG gleaned from an in-depth analysis of the Department's Report is outlined below and organized by relevant table.

### Executive Summary

The Executive Summary at the beginning of the Report provides a useful snapshot for the reader. 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 22%, whereas the percentage of total sustained allegations was 15.2% (total of sustained allegations/total allegations = 443 / 2907 = 15.2%). 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>Allegation</u>	<u>Sustained Rate</u>	No. of Sustained Allegations/ Total Number of Allegations
Neglect of Duty	18.8%	125/666
Discourtesy	2.2%	12/551
Unbecoming Conduct	9.0%	48/531
Unauthorized Force	0.5%	1/221
False Imprisonment	0.0%	0/194
Unauthorized Tactics	10.7 %	12/112
Preventable Traffic Collision	97.8%	90/92
Unlawful Search	3.7%	3/87
False Statements	18.6%	11/59
Domestic Violence	66.7%	38/57

Table A – Source of Complaints Closed in 2005

The OIG decided to take a closer look at the two complaints closed during the Fourth Quarter where the source is identified as "Judicial/Prosecutor." The OIG ran a separate inquiry via the Department's disciplinary database to discover the case numbers for these two complaints. One of the two complaints involved allegations that a homicide detective neglected his/her duty by failing to properly prepare for court. This complaint was initiated by the prosecutor handling the

underlying murder case and is discussed further in Section III below. The other complaint involved a Failure to Appear and did not merit further review.

Because it is difficult to determine the CF numbers assigned to those cases identified as "Judicial/Prosecutor," and because we believe these types of complaints can be serious enough to warrant further review of the underlying facts, we suggest that the Department indicate the case numbers for complaints of this type in a footnote below the table.<sup>1</sup>

The OIG also noted from this Table that 280 complaints were closed in December 2005, while the heaviest months for closing complaints in 2005 were April and May, at 612 and 632 respectively.

Tables C and E – Allegation Summary / Bureau-Allegation Summary (Sustained Only), Fourth Quarter, 2005

The OIG's own examination of the data found in Tables C and E led to the conclusion that additional information may be uncovered from them when analyzed together. We created an additional table, depicted below, which utilizes data from Tables C and E.

**(This Section Intentionally Left Blank)**

---

<sup>1</sup> PSB indicated that it should be feasible to comply with this recommendation in future reports.

<b>Classification</b>	<b>Sustained Allegations/ Total Allegations</b>	<b>Percentage Sustained</b>	<b>Percentage of Total Allegations</b>	<b>Number of Accused Employees</b>	<b>Number of Employees with Sustained Allegations<sup>2</sup></b>
Neglect of Duty	125/666	18.8%	22.9%	568	97
Discourtesy	12/551	2.2%	19.0%	446	9
Unbec. Conduct	48/531	9.0%	18.3%	412	25
Unauth. Force	1/221	0.5%	7.6%	171	1
False Impris.	0/194	0.0%	6.7%	177	0
Unauth. Tactics	12/112	10.7%	37.7%	96	9
PTC	90/92	97.8%	3.2%	92	90
Unlawful Search	3/82	3.7%	3.0%	75	3
False Statements	11/59	18.6%	2.0%	47	7
Dom. Violence	38/57	66.7%	2.0%	25	11
Racial Profiling	0/50	0.0%	1.7%	49	0
Theft	0/50	0.0%	5.5%	47	0
FTQ	35/40	87.5%	1.4%	39	34
Dishonesty	24/39	61.5%	1.3%	14	4
Ethnic Remark	1/29	3.4%	1.0%	28	1
Improper Remark	6/24	25.0%	0.8%	15	5
FTA	18/23	7.8%	1.0%	23	18
Sexual Miscond.	4/16	25.0%	0.6%	10	3
Discrimination	0/13	0.0%	0.4%	13	0
Retaliation	0/13	0.0%	0.4%	11	0
Narcotics	1/8	12.5%	0.3%	8	1
Alcohol	7/7	100.0%	0.2%	5	5
Insubordination	3/5	60.0%	0.1%	4	2
Misleading Stmt.	1/3	33.3%	0.1%	3	1
Shooting Viol. <sup>3</sup>	2/3	66.7%	0.1%	3	2
Gender Bias	1/2	50.0%	0.006%	2	1

Using “Neglect of Duty,” as an example of how to interpret the above table, it is helpful to know that there were 666 allegations, but that 125 of these, or 18.8%, were sustained. In addition, “Neglect of Duty” allegations comprised 22.9% (666/2907) of the total number of allegations.

<sup>2</sup> Data in the “Number of Employees with Sustained Allegations” column in the suggested table were taken from Table I in the Department’s Report. It should be noted that “(e) employees are separately counted for each complaint and for each allegation type; thus a single employee may be counted repeatedly.” As a result, the numbers in this column do not account for the exact number of employees against whom the allegations were sustained.

<sup>3</sup> As a side note, the two sustained “Shooting Violation” allegations listed on Table E actually relate to bad tactics utilized during the underlying shooting incidents, rather than the shootings themselves.

These 666 allegations were alleged against 568 employees but sustained against 97 employees (or 17%).<sup>4</sup>

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 12 "Dishonesty" allegations sustained in the Fourth Quarter. Further review of the information contained in Appendix II at the back of the Report reveals that these 12 counts involved two complaints out of PSB. (Indeed, further review of the complaint face sheets indicate the same employee was involved in both cases.)

Table E currently lists 38 sustained "Neglect of Duty" allegations under the Office of Support Services (OSS). The Department's "Note" again explains that OSS includes the Information and Communications Services Bureau (ICSB), Administrative and Technical Services Bureau (ATSB), and TEAMS II. However, when closely examined, one finds from Appendix I that 25 of these 38 Sustained "Neglect of Duty" allegations, or 65.8%, can be attributed to civilian employees working in Communications Division (CD), which falls under ICSB. These 25 sustained allegations attributable to CD were all asserted against Police Service Representatives (PSRs). Such a relatively high number of sustained "Neglect of Duty" allegations against PSRs might be partially explained by the fact that PSRs assigned to CD have significant contact with the public, and these contacts are almost always tape-recorded, which facilitates proving the allegations.

Moreover, in the current quarter, though there were 18 sustained "Domestic Violence" allegations out of Operations Central Bureau (OCB), these allegations involved only three employees, the same number of employees involved with the eight sustained allegations out of Operations West Bureau (OWB).<sup>5</sup>

#### Table D – Disposition Summary, Fourth Quarter, 2005

According to Table D, two cases received an out-of-statute disposition in the Fourth Quarter. Given the Department's previous efforts to close-out older out-of-statute cases and its commitment to ensuring that future cases would not fall out of statute, we decided to review these two cases (CF Nos. 02-4612 and 03-4893) in further detail. Our findings are reflected in Section III below. However, we believe that in future reports the Department should list the actual complaint numbers for out-of-statute cases during the relevant time period and an explanation as to why they fell out-of-statute.<sup>6</sup>

---

<sup>4</sup> Again, due to possible double-counting, 97 employees having sustained "Neglect of Duty" allegations is only a rough estimate.

<sup>5</sup> The OIG obtained the number of employees with sustained domestic violence allegations out of OCB and OWB by conducting a manual search of Appendix II.

<sup>6</sup> Again, PSB has indicated that providing brief explanations as to why a case fell out-of-statute should be feasible for future reports.

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 PTCs, FTAs, and 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>443/2907</b>	1/14	3/10	2/22	45/199	39/178	81/549	180/1201	12/47	4/10	6/500	70/177
<b>Overall Sustained Rate</b>	<b>15.2</b>	7.1	30.0	9.1	22.6	21.9	14.8	15.0	25.5	40.0	1.2	39.5
<b>Total Sustained Allegations / Total Allegations (Minus PTCs FTAs, and FTQs)</b>	<b>300/2752</b>	0/13	0/7	1/21	34/187	12/151	53/517	114/1130	9/43	3/9	6/499	68/175
<b>Overall Sustained Rate (Minus PTCs, FTAs, and FTQs)</b>	<b>10.9</b>	0.0	0.0	4.8	18.2	7.9	10.3	10.1	20.9	33.3	1.2	38.9

Notably, given that PTC, FTQ, and FTA complaints tend to be sustained in the majority of cases,<sup>7</sup> the OIG subtracted these three classifications before calculating the overall sustained rate for all other allegations to avoid possible anomalous results. In so doing, one would observe that, whereas 15.2% of all misconduct allegations were sustained during this quarter, 10.9% of all allegations were sustained when PTCs, FTQs, and FTAs were removed from the equation. The chart displayed above takes this into consideration, as the bottom two rows calculate total sustained allegations and sustained rates without regard to PTCs, FTAs, and FTQs.

For example, using Table F in the Department's Report, the reader can discern that 43 out of 70 civilian employee "Neglect of Duty" *allegations* were sustained, but cannot determine the

<sup>7</sup> For example, during the Fourth Quarter, 90 out of the 92 allegations of PTC were sustained (97.8%), 35 out of 40 allegations of FTQ were sustained (87.5%), and 18 out of 23 allegations of FTA were sustained (78.3%).

*number of employees* represented by these 43 sustained allegations.<sup>8</sup> In addition, the sustained rate for civilian employee "Neglect of Duty" allegations was 61.4%, compared to the next highest Neglect of Duty sustained rate of 22.7%, for sergeants.

#### Table H – Penalty Summary, Fourth Quarter 2005

Table H indicates that during the Fourth Quarter, 26 employees had a complaint sustained against them for which they received no penalty. We decided to take a look at the circumstances under which such a situation might occur. Accordingly, using the Department's disciplinary database, we obtained a list of complaint numbers and allegation types for the 26 cases in which "No Penalty" was imposed. Of the 26, 17 involved Preventable Traffic Collisions (PTCs), Failures to Appear (FTAs) (only one complaint), and Failures to Qualify (FTQs) – in most cases, misconduct of a minor nature in which it would not be unusual for the Department to impose "No Penalty." The OIG noted that these "Sustained – No Penalty" cases presently do not require written sign-off by the COP and, accordingly, are not officially authorized by the COP.

We reviewed the face sheets on the remaining nine complaints to determine if the facts of the cases, as alleged by the complainants, might compel a stiffer penalty and, thus, warrant further review. Of the remaining nine cases, we believed that a total of five<sup>9</sup> merited further review, one of which (CF No. 05-1039) we felt deserved more extensive evaluation and is discussed in Section III below. We took no issue with the imposition of "No Penalty" in the remaining four cases which are briefly summarized below.

One case (CF No. 05-1777) involved allegations that a supervisor failed to ensure a unit was dispatched for a call for service. The investigation revealed that the supervisor was dealing with a difficult caller who wanted officers to respond to his house because he thought workers were intentionally climbing his fence to hurt themselves so they could sue him. The investigation revealed that though the supervisor yelled out to a uniformed officer to respond to the call, the supervisor failed to ensure that a unit actually had been dispatched. In such a scenario, the imposition of "No Penalty" appears appropriate.

Another case (CF No. 05-2354) involved allegations that an employee removed property as part of the execution of a search warrant, failed to document the items removed, and failed to list property on the receipt. The investigation revealed that the accused employee recovered personal checks as part of the execution of the search warrant. The accused determined the checks did not have any evidentiary value and arranged to return the checks directly to the property owner. The investigation revealed the accused should have listed them on a Property Report and given the owner a Property Receipt. We do not believe the decision to impose "No Penalty" was outside the bounds of reason.

---

<sup>8</sup> The OIG conducted a search of the Department's complaint database system. This search revealed that 34 total civilians were represented by the 43 sustained civilian "Neglect of Duty" allegations. Broken down further, of the 34 total civilian employees, four were unknown employees. Thus, there were a total of 30 identified civilian employees with sustained "Neglect of Duty" allegations.

<sup>9</sup> CF Nos. 05-1039, 05-1777, 05-1930, 05-2354, and CF No. 05-3838.

A third case (CF No. 05-1930) involved allegations that a civilian supervisor made an improper remark ("stop staring at his crotch") to another employee of the same rank about a third employee who was making a presentation to a number of employees. All employees in the class, except their supervisor, were the same rank. The supervisor informed her own supervisor of the incident, which led to the complaint. The accused employee apologized to the group, received informal training regarding inappropriate comments in the workplace, and the targeted employee did not wish to pursue any punitive action. In such a scenario, the decision to impose "No Penalty" does not seem inappropriate.

A fourth case (CF No. 05-3838) involved an allegation that a Department employee was working an overtime shift while on restricted duty. Once it had been discovered that the accused employee had not received authorization to return to work, the accused was sent home. The accused employee had a doctor's appointment the next day and anticipated being released from his restricted duty at that time. Although the allegation was sustained with no penalty, it is not clear what the investigating officer relied upon when stating that the accused officer's intent was to fulfill his/her obligation and report for duty. (It is also unclear whether the accused signed up for this shift prior to being injured.) However, the OIG cannot say that the adjudicator's decision to handle this complaint through informal counseling and a comment card was wholly unreasonable.

#### Table K – Reduction in Penalty from Board of Rights by Chief of Police

In this chart, the Department provides a brief explanation for why a penalty was reduced for each closed case during the quarter in which the COP did reduce discipline. The OIG conducted an in-depth review of CF No. 04-4589, the only complaint in the Fourth Quarter where the penalty was reduced. The allegations involved the accused employee engaging in two counts of sexual misconduct in public (though in a remote location) while on-duty. The Board of Rights recommended termination; subsequent to that decision, the COP imposed a 65-day penalty. The OIG reviewed the file in this case, in which, in addition to the penalty, the accused was bound by a number of other conditions, such as counseling, ethics training, and an agreement to resign if he engaged in similar conduct again. The OIG was satisfied with the penalty reduction in this instance.

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

#### **a. Penalties Imposed**

In two complaint investigations, the OIG determined that the facts and circumstances articulated in the investigations were disproportionate to the penalties that were ultimately administered to the involved officers. In both cases, described below, the OIG concluded that the penalties should have been greater.

CF Nos. 04-4649/05-0556

This complaint, which consolidated two separate incidents of misconduct against the same officer, involved one sustained "Ethnic Remark" allegation and four sustained "Discourtesy" allegations, for which the accused received a four-day suspension. We believe the penalty was low given the conduct involved.

In CF No. 04-4649, the complainant momentarily hopped out of her car while looking for a passenger. She was issued a citation by the accused employee. When the complainant inquired about the reason for the citation and subsequently asked how to pick someone up at the curb legally, the accused employee told her she was "too stupid to [ ]." Complainant reported that the accused told her she did not know how to drive. The accused also allegedly told her to, "shut your Pie-face, and get moving."

In CF No. 05-0556, the same accused employee stopped a motorist for a vehicle registration violation. While writing a citation, the accused was alleged to have said, "You need to go back to Mexico" and then, "we are sick of you guys being here." The complainant felt the accused insinuated by this comment that Americans are tired of Mexicans being in California.

The Department consolidated these cases because the accused seemed to display a "pattern of conduct" in dealing with the public. Though we commend the Department for relying upon the accused's prior pattern of similar complaints which were previously adjudicated as "Not Resolved" or "Insufficient Evidence to Adjudicate" due to the lack of independent witnesses or a tape recording,<sup>10</sup> to sustain the allegations in the consolidated complaint, we are concerned that such a prior pattern did not at least merit the imposition of the maximum recommended penalty for a first-time sustained complaint for Ethnic Remarks (nine days). Indeed, the four days actually imposed is below the five-day minimum recommended penalty for a first-time sustained "Ethnic Remark" allegation. Considering that this complaint gave rise to the accused employee's 18<sup>th</sup> "discourtesy" allegation over the course of the accused's 23-year career, and that the accused has received a total of more than 50 suspension days over the course of that career, the four-day penalty seems even more disproportionate.<sup>11</sup>

Furthermore, there exists some debate over the appropriate classification of the allegation that the accused stated, "we are sick of you guys being here." When considered along with the accused's earlier statement (that complainant needs to "go back to Mexico"), the later statement appears to involve an "Ethnic Remark," instead of "Discourtesy," as it was classified.

The consolidation of the two complaints in this investigation became problematic when the case was referred to the wrong entity for investigative purposes. Originally, CF No. 04-4649 involved only "Discourtesy" allegations and was therefore appropriately assigned to the involved area. CF No. 05-0556, however, involved an "Ethnic Remark" allegation, one of the mandated allegations that must be investigated by Internal Affairs Group (IAG) under the Consent Decree.

---

<sup>10</sup> Indeed, as a result of previous discourtesy complaints involving the accused, the accused had been advised to wear a tape-recorder when dealing with the public. However, in this case, like in similar complaints involving allegations of discourtesy, the accused was not using a tape recorder when the incidents involved in the consolidated complaint occurred.

<sup>11</sup> The accused has had 39 complaints over the course of his/her career.

According to Paragraph 93 of the Consent Decree, the fact that this investigation remained assigned to the involved area once the "Ethnic Remark" allegation came to light was improper, and (IAG) should have conducted the investigation.

Finally, the Department did not direct the accused employee to any kind of ethnic sensitivity training or counseling which we believe was clearly warranted here.

#### CF No. 05-1045

This case involved two allegations of "Neglect of Duty" for failing to document a homicide investigation report and failing to thoroughly prepare for trial, which were adjudicated as "Non-Disciplinary – Actions Could Have Been Different," and no penalty was imposed. Although a "Notice to Correct Deficiencies" was issued to the involved officer, the OIG believes that a penalty was warranted. It should be noted that this case was not presented to the COP for his consideration since, per Department Special Order No. 1 (2003), a complaint can be classified and adjudicated as Non-Disciplinary at the Area level if certain criteria are met. Special Order No. 1 Section V. (D) mandates that IAG has no review responsibility for Non-Disciplinary complaints and immediately closes them out upon receipt.

This complaint originated from a referral by a Deputy District Attorney (DDA) who was dissatisfied with the accused employee's preparation for a homicide trial. The criminal suspects in the case had fled the United States and were captured by the Tijuana Police Department. The accused made several trips to Mexico over the course of the investigation, where the accused conferred with a Tijuana Police captain, who told the accused that both suspects had confessed to the murders and had offered a large amount of money to the Mexican police in an attempt to be released. Both defendants were convicted of first-degree murder.

The DDA initiated a complaint against the accused because the DDA was displeased by the accused's lack of preparation and performance at trial. The accused prepared documentation on a Follow-up Report indicating that only one of the suspects offered the bribe to the captain. At trial, the captain testified that he told the accused that both suspects had offered the bribe.

On the accused's second trip to Mexico, the accused and the captain had another conversation about the bribe. The accused tape-recorded the conversation, but when the captain testified at trial, his testimony differed from what was on the tape. The accused employee explained the discrepancies by saying that the entire conversation with the captain was not reflected on the tape. The DDA believed the issues relating to the captain's testimony were resolved, but the DDA also thought the accused employee's investigative tactics and testimony were not credible in the eyes of the jury.<sup>12</sup> The DDA also relayed having had heard that another DDA had experienced similar problems with the accused's performance in a previous murder trial. (However, this DDA was not interviewed by the I/O).

---

<sup>12</sup> According to the complainant, even though the jury found the defendants guilty, the jurors had not believed the accused employee's testimony. Moreover, the DDA claimed that the presiding judge intended to write a letter, documenting his own concerns about the accused employee's deficiencies at trial.

In the course of the investigation, it came to light that the accused employee had had a past sustained complaint for "Unbecoming Conduct" for making an off-the-record comment within earshot of a juror. That case resulted in a mistrial. The comment overheard by a juror was that if the bailiff went back into the judge's chamber, "there was a 415<sup>13</sup> conversation that went on [sic] back there." The accused employee received an Admonishment for this comment.

Further, the investigation revealed that a third DDA with whom the accused employee was working at the time of the investigation relayed that she had also had problems with the accused at trial, specifically relating to a gang interview card on which the accused could not explain several dates and "white-outs." In addition, the accused had insisted on using the term "CRASH"<sup>14</sup> in testimony, despite her repeated requests to refrain from doing so, due to potential negative connotations associated with the Rampart scandal. (The interview with this DDA was not tape-recorded, however.)

The OIG found several deficiencies in the investigation and adjudication of this complaint.

First, we believe that the complaint was improperly adjudicated as "Non-Disciplinary – Actions Could Have Been Different." The accused was merely given a Notice to Correct Deficiencies regarding the accused's trial preparation efforts. No penalty was imposed. Given the potential impact of the accused's conduct, we believe this should have been adjudicated as a disciplinary matter.

The adjudicating officer acknowledged that the accused employee's documentation of facts gathered during the investigation were "sloppy," prosecutors were concerned during trial, and the poor preparation could have a negative effect on future cases. However, given the potential impact of the accused's actions, we do not believe that the Notice to Correct issued to the accused pursuant to the "Non-Disciplinary" adjudication properly addressed the severity of the accused's conduct. In deciding to handle this matter as Non-Disciplinary, we believe the adjudicator did not seem to give enough consideration to the accused's prior statement within earshot of a juror.

In addition, not all relevant witnesses were interviewed as part of this investigation. At a minimum, the I/O should have considered attempting to interview the captain. A third DDA who also allegedly had had problems with the accused's performance at a trial was similarly not interviewed.

Finally, the Department indicated that training and counseling was provided to the accused by the Area regarding the necessity to properly prepare a case for presentation in a criminal court. However, this training appears to have been informal at most. We believe that the Department should have considered formal training for this accused employee.

---

<sup>13</sup> A "415" conversation refers to a "disturbance."

<sup>14</sup> "CRASH" refers to Community Resources Against Street Hoodlums, which was what LAPD's gang units were called during the events giving rise to the Rampart scandal.

b. Out-of-Statute Cases

We noted that there were two out-of-statute complaints closed out during the Fourth Quarter. Both cases were several years old and although they were “inherited”<sup>15</sup> by PSB after the Department had placed a new emphasis on closing out-of-statute complaints, we decided to review them to determine why they fell out-of-statute.

CF No. 02-4612

This case involved a Department employee who was accused of inappropriately lifting a 17-year-old's shirt when responding to a domestic violence dispute between the minor-complainant and the complainant's 15-year-old brother in 1997. When the complainant later reported the misconduct to an uninvolved Department supervisor, the complainant alleged that her brother had hit her in the face and did not understand why the accused needed to lift her shirt and see her upper body.<sup>16</sup> Subsequent to the incident, the accused employee attempted to initiate a sexual relationship with the complainant while she was still a minor. The accused contacted the complainant on multiple occasions by phone and asked her to go out. The accused engaged in sexually explicit conversations with the complainant. According to the complainant, the accused described in great detail the sexual positions and activities the accused would like to engage in with her.

Information relating to the alleged sexual misconduct did not come to the Department's attention until November 2002, when the complainant reported it to a Department employee who responded to the complainant's residence to conduct an unrelated burglary investigation.

After reviewing the Department's analysis for why this case fell out-of-statute, the OIG is satisfied that the Department explored every available avenue to impose discipline on the involved officer. Unfortunately, none of the possibilities allowed discipline to be imposed under any analysis, given the expiration of the statute.

There were two major reasons why this investigation fell out of statute. First, the chronological record indicates that the complainant had significant reservations about following through with actually filing a formal complaint. The I/O experienced great difficulty making contact with the complainant and obtaining her story. Second, a misunderstanding developed between different sections of what is now PSB as to which entity was ultimately responsible for completing this investigation.

This issue has now been resolved, and an investigative protocol has been established between the entities to prevent similar miscommunications in the future. By the time the Department investigated the incident and determined there was a possibility the allegations may have been sustained, efforts to toll the complaint would have been fruitless, even under the best-case scenario. The window of time in which discipline could have been imposed had passed, even

---

<sup>15</sup> When PSB was created, they assumed responsibility for a number of cases that had not yet been closed but were already out of statute. PSB subsequently made a commendable effort to close out these older cases.

<sup>16</sup> Complainant was wearing a bra.

with appropriate tolling. Accordingly, the Department correctly closed this case as out-of-statute.

Given the severe nature of the allegations, the fact that the complaint involved a minor, and that the same employee was the subject of a similar, earlier complaint where an allegation of sexual misconduct was not sustained, the OIG strongly concurs with the recommendation in the investigation file that this Department employee should be closely monitored.

#### CF No. 03-4893

Though the Department appeared to have conducted an extensive investigation in this case, prior to the completion of this complaint, the accused employee was terminated by the Department in connection with another case. As a result, we determined that further review of CF No. 03-4893 complaint was unnecessary.

#### c. "No Penalty" Cases

As discussed in Section II above, we conducted a review of five of the 26 cases in which "No Penalty" was imposed. We took issue with the investigation and adjudication of only one of these 26 cases, CF No. 05-1039, which is described in detail in below.

#### CF No. 05-1039

This case involved one allegation of "Unbecoming Conduct" by a supervisor for tapping the complainant, one of the accused's subordinates, on the head repeatedly during a five-month period. The allegation was sustained, and the accused received "No Penalty."

We believe that the imposition of "No Penalty" was insufficient in light of what the investigation revealed – that the supervisor tapped the complainant on the head multiple times over an approximately five-month period, even after the complainant requested that the accused stop, and that the accused employee referred to the complainant as "my little Puerto Rican princess."<sup>17</sup> The complainant claimed to have told the accused to stop, but the accused merely laughed and walked away. The accused, in turn, claimed that the complainant only protested about the tapping in a joking manner. Although some debate exists over how "playful" the accused's conduct toward the complainant was, it was nonetheless inappropriate for the workplace, especially given the fact that the complainant was a subordinate of the accused.

We also believe the penalty was too lenient in light of the fact that the accused employee did not accept responsibility for any of his/her actions. In the accused's *Skelly* response, the accused protested by claiming innocence and deflecting blame onto the complainant, even though, despite these denials, the accused did admit to tapping the complainant's head in a "joking" fashion and calling the complainant a "Puerto Rican princess."

---

<sup>17</sup> An additional allegation of Ethnic Remark was not framed by the Investigating Officer (I/O).

Indeed, during the I/O's interview with the complainant, the complainant indicated that the accused responded to the complainant's request to stop touching complainant's head (during which incident complainant used profanity) by saying, "I'll write you up. Do you know who I am? I'm a supervisor." It was not clear whether the complainant believed the accused made this statement in response to the complainant's use of profanity, as opposed to the complainant's protestation of the accused's conduct, but, at a minimum, this claim by the complainant required further follow up by the I/O, which was not done.

Within a month of the filing of CF No. 05-1039, the accused filed a complaint against the complainant, CF No. 05-1204, in which the accused claimed that CF No. 05-1039 was filed in retaliation for the accused's having reported an inappropriate comment made by the complainant to the accused regarding the complainant's apparent unwillingness to do an assignment as requested by the accused. CF No. 05-1204 was unfounded when the investigation revealed that the complainant in CF No. 05-1039 only reported the accused's conduct in tapping the complainant on the head after a higher ranking supervisor, investigating the complainant's alleged refusal to perform the assignment from the accused, inquired of the complainant whether there was any history between the accused and the complainant. At that point, the complainant in CF No. 05-1039 indicated that the he/she was "tired of dealing with [the accused]." The complainant then described the head-tapping incident, at which point the higher ranking supervisor initiated CF No. 05-1039.

The potential for supervisory liability associated with the possible creation of a hostile work environment should have compelled a greater penalty. The Letter of Transmittal (LOT) indicates that the accused was to receive a four-hour block of training from the Department's Women's Coordinator, and that the accused's attendance at this training would be documented on the accused's TEAMS report. However, as of the time of the writing of this report, we found no indication on the accused's TEAMS report that the accused attended this specific four-hour training block.<sup>18</sup>

#### **IV. Categorical Uses of Force Adopted Out-of-Policy or Administrative Disapproval by the Police Commission**

During this Fourth Quarter, three Categorical Use of Force (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 – each of which involved a head strike (HS) -- and one (1) Officer-Involved Shooting (OIS). In all three cases, the Commission concurred with and adopted the findings of the COP. These three cases are described below.

---

<sup>18</sup> OIG staff spoke to the Women's Coordinator who indicated the accused officer had not received any such training. Moreover, the accused's area training coordinator's office confirmed that none of the four-hour blocks of training listed on the accused's TEAMS subsequent to the "Final Department Action" date on the complaint of September 27, 2005, involved any training of the nature specified in the LOT.

LERI / Head Strike (HS) No. 074-04

Employees Nos. 1 and 2, in plain clothes and driving an unmarked vehicle, observed Subject Nos. 1-3, all juveniles, matching the description in a broadcast the Employees received regarding a "415 man with a gun." Employee No. 1 observed that Subject No. 1's left hand was in his pants pocket, and that he appeared to be holding a heavy object inside that pocket. Employee No. 1 believed that the object could be a handgun.

The Employees stopped their vehicle at the curb just behind the subjects, deployed behind their doors with drawn weapons, verbally identified themselves as police, and told the subjects to "Get up on the wall." The Employees did not inform Communications Division (CD) of their location, or of the fact that they were conducting a stop of potential suspects.

The three Subjects initially complied with the Employees' directions, but Subject Nos. 1 and 2 began to challenge the officers, calling them racists and saying that they knew their rights. Employee No. 2 handcuffed Subject No. 1 and conducted a pat-down search of all three subjects but no weapons were found.

According to Subject No. 2, as one of the officers was attempting to explain the reason for the stop, the officer stated, "Well, if you guys shut your big fat mouth, maybe you'd understand." Subject No. 1 shouted profanities at the officers. As Employee No. 2 was entering the vehicle, Employee No. 2 heard Subject No. 1 shout, "I'm going to kick your f\*\*\*ing ass."

The Employees drove away from the scene, then stopped at a red light. Subject No. 1 continued to shout profanities. Employee No. 2 then told Employee No. 1 that Subject No. 1 had stated Subject No. 1 would "kick [the Employees'] ass." Employee No. 1 then exited the vehicle and told Subject No. 1 that he was under arrest for challenging Employee No. 1 to fight. Employee No. 1 was carrying a 13-inch-long metal flashlight in Employee No. 1's right hand as Employee No. 1 exited the vehicle.

An altercation ensued between Subject No. 1 and Employee No. 1. Employee No. 1 took hold of Subject No. 1's right arm. As Subject No. 1 continued to resist, he bent forward at the waist. This caused Employee No. 1's right hand to slip off Subject No. 1's left shoulder. Subject No. 1 then brought his upper body back up, which caused Employee No. 1 to move backwards. As Employee No. 1 did so, Employee No. 1's flashlight, still in Employee No. 1's right hand, unintentionally struck Subject No. 1 in the mouth.

The contact between the flashlight and Subject No. 1 caused Employee No. 1 to drop the flashlight. Employee No. 1 warned Employee No. 2 about the flashlight, and told Subject No. 3 to stand back. According to Subject No. 3, Employee No. 1 told him, "Get your ass back, before I shoot your ass."

Subject No. 1 continued to struggle. Employee Nos. 1 and 2 then took him down to the ground, where they were able to forcibly handcuff him. Once handcuffed, Subject No. 1 calmed down and apologized.

Employee No. 1 saw blood on Subject No. 1's mouth. Subject No. 1 informed Employee No. 1 that he had been struck in the mouth with the flashlight, and that his ankle hurt. Employee No. 1 asked Subject No. 1 if he wanted an ambulance, but Subject No. 1 declined. Employee No. 2 did not hear Subject No. 1 state that he had been struck with a flashlight. Employee No. 2 assumed that Subject No. 1 had sustained the injury to his mouth when he was taken to the ground.

Employee No. 1 called his supervisor, Employee No. 3, to report that Employee No. 1 had been involved in a use of force. Employee No. 2 overheard Subject No. 3 tell his father, who had responded to the scene, that Subject No. 1 had been hit with a flashlight. When interviewed, Subject No. 1 indicated that he believed the contact between his mouth and the flashlight was unintentional.

Employee No. 3 arrived on the scene and was briefed by Employee No. 1. Employee No. 3 did not recognize that the flashlight strike was a CUOF. Employee No. 3 began conducting a Non-Categorical Use of Force (NCUOF) investigation, and directed Employee Nos. 1 and 2 to transport Subject No. 1 to Southeast Area Station.

Upon arrival at the station, Employee Nos. 1 and 2 separated. Employee No. 2 presented Subject No. 1 to a higher-ranking supervisor, Employee No. 4. Employee No. 2 did not inform Employee No. 4 that a flashlight strike had occurred.

Employee No. 4 asked Subject No. 1 standard pre-screening questions and determined that he had been struck in the mouth with a flashlight. Employee No. 4 did not ask Employee No. 1 to confirm the flashlight strike and did not recognize that it was a CUOF.

Employee No. 3 informed a higher-ranking supervisor, Employee No. 5, about the use of force. Employee No. 5 was not certain whether the flashlight strike was a CUOF, and directed Employee No. 3 to contact Critical Incident Investigation Division (CIID) for advice. Employee No. 3 spoke with a CIID supervisor, Employee No. 6, who confirmed that the incident did meet the criteria for a CUOF. Employee No. 6 told Employee No. 3 that CIID would respond, and that the Department Command Post (DCP) should be notified. However, the DCP notification was not conducted.

The COP report conveyed several significant concerns. First, Employee No. 2 broadcast that officers were on-scene when they were actually three blocks away from the call location. Second, Employee Nos. 1 and 2 did not advise CD when they confronted the suspects on two separate occasions. Had Employee Nos. 1 and 2 required immediate assistance, their fellow officers would not have known their location. Third, given that Employee Nos. 1 and 2 were in plain clothes and not wearing body armor, the COP would have preferred that they had monitored the suspects and requested uniformed officers to respond and detain them. Fourth, Employee Nos. 1 and 2 directed the Subjects to put their hands on the wall. The COP would have preferred that they had directed the subjects to place their hands behind their heads or behind their lower backs, in accordance with Department training. Fifth, Employee No. 1 held Employee No. 1's flashlight in Employee No. 1's right/strong hand when Employee No. 1 confronted Subject No. 1. The COP would have preferred that Employee No. 1 had secured the flashlight and kept Employee No.1's right hand clear. Finally, the COP would have preferred

that Employee No. 1 had broadcast a request for a field supervisor to respond rather than communicating via cell phone.

The COP was also critical of the Employees' decision to return to the scene to effectuate an arrest. The COP found it was not necessary to re-contact the subject, and that the Employees should have ignored his taunting remarks.

The COP found that Administrative Disapproval was required. Additionally, the COP directed the Employees' Commanding Officer (CO) to schedule them for formal tactical training.

The COP determined that Employee Nos. 1 and 2 had sufficient information to believe the situation might escalate to the point where deadly force may become necessary when they drew their weapons to confront the subjects. The COP found Employee Nos. 1 and 2's drawing of a firearm to be in policy, requiring no action.

The COP noted that, when confronted, Subject No. 1 refused to stop and struggled against Employee Nos. 1 and 2. They used firm grips, physical force and a team take-down to take the subject into custody. The COP determined that their use of non-lethal force was reasonable to overcome the subject's resistance and take him into custody and found the force to be in policy, requiring no action.

The COP noted that contact between Employee No. 1's flashlight and Subject No. 1's face occurred when the subject bent forwards then recoiled. The COP determined that the contact was "accidental and non-intentional." The COP found Employee No. 1's use of lethal force in policy, requiring formal training regarding alternative methods of approaching a suspect and the appropriate use of flashlights and other equipment.

The Commission adopted the COP's recommendations in this case.

Since this incident occurred, the issue of the use of flashlights as impact weapons has been addressed by both the COP as well as the Commission. The COP has proposed regulations on the types of flashlight that officers are authorized to carry in the field. The model of flashlight used by Employee No. 1 in this incident will not be authorized once the regulations are fully implemented.

Following approval by the Commission on January 11, 2004, Department policy now discourages the use of a flashlight as an impact device. Such use is authorized only "under exigent circumstances, when the use of an officer's baton is not feasible."

Neither employee involved in this incident was carrying a baton. Employee No. 1 claimed that Employee No. 1 did not "have a baton holder to carry a baton." The Commission may wish to consider directing the Department to review current policy regarding the carrying of batons in the field by non-uniformed personnel.

In connection with this case, both Employee Nos. 1 and 2 were given Official Reprimands.<sup>19</sup> Although neither officer had any prior sustained complaints for unauthorized force or tactics, the OIG believes the penalty was incommensurate with the sustained counts.

The fact that the officers returned to the scene after the subjects had been released is particularly troublesome. The complaint investigation related to this incident, CF No. 05-2801, does take this issue into account in the rationale section of the Letter of Transmittal (LOT). The issue was relied upon, along with numerous additional justifications, in sustaining the complaint against both officers. The rationale states, “[B]oth detectives elected to confront and arrest a subject after he had already been released. They should have ignored the subject’s taunting remarks.” (LOT at p. 4.) This statement appropriately reflects the COP’s concern as stated in his report: “[T]here was no necessity in furtherance of their investigation to re-contact the subject. The [employees] could reasonably have ignored the subjects’ taunting remarks and should have.” (Addenda p. 1D)

In light of the fact that the Department recognized this “contempt of cop” issue, the OIG believes it should have led to stronger penalties for both Employees. This incident could have been avoided altogether had the Employees not responded to the CUOF Subjects’ “taunts.” The Employees unnecessarily placed themselves in a situation where there was a possibility that the tension between the parties would escalate and employment of force might be necessary. The involved Employees were lucky that the incident did not lead to an even more serious use of force. Accordingly, we believe a more significant penalty than an Official Reprimand for each Employee should have been considered.

#### LERI / HS No. 079-04

Employee No. 1 responded to “a group fight” call and made contact with Suspect No. 1 in front of the apartment. Suspect No. 1 relayed to Employee No. 1 that Suspect No. 2 had attacked him earlier the previous night. Suspect No. 1 also informed Employee No. 1 of a prior incident in which Suspect No. 2 had knocked Suspect No. 1’s teeth out. Employee No. 1 broadcast that no further assistance was needed at the location.

Employee No. 1 and Suspect No. 1 entered the apartment. Suspect No. 3 told them that Suspect No. 2 was in the bathroom. Suspect No. 3 then exited the apartment. Employee No. 1 instructed Suspect No. 2 to exit the bathroom. Suspect No. 2 initially yelled obscenities at Employee No. 1. Employee No. 1 continued unsuccessfully to order Suspect No. 2 out of the bathroom. Employee No. 1 returned to the living room, where Suspect No. 1 requested that Suspect No. 2 be arrested. Employee No. 1 broadcast a request for an additional unit to transport Suspect No. 2.

While Employee No. 1 was still in the living room, Suspect No. 2 came out of the bathroom and sat down on the bed in the bedroom. Employee No. 1 proceeded to the bedroom and ordered Suspect No. 2 to stand up and put his hands behind back. Suspect No. 2 told Employee No. 1

---

<sup>19</sup> The Department did not initiate a personnel complaint regarding the Employees’ potentially improper remarks. One of them told Subject No. 2, “Well, if you guys shut your big fat mouth, maybe you’d understand,” and Employee No. 1 commented to Subject No. 3, “Get your ass back, before I shoot your ass.”

that he was going to have a cigarette and refused the orders. Employee No. 1 then drew Employee No. 1's Oleoresin Capsicum (OC) spray. Employee No. 1 broadcast a request for a supervisor. At this time, Suspect No. 2 still refused to comply with Employee No. 1's orders. Employee No. 1 then sprayed Suspect No. 2 in the face with an approximately two second burst of OC.

Employee No. 1 grabbed Suspect No. 2 by the shoulders as he stood, but Suspect No. 2's shirt began to rip. Suspect No. 2 turned toward Employee No. 1 and punched Employee No. 1 in the face with a closed fist. Based on the belief that Suspect No. 2 was going to attack, Employee No. 1 drew Employee No. 1's flashlight with Employee No. 1's left hand and struck Suspect No. 2 once in the upper torso. Suspect No. 2 still did not comply and began to crouch down. Employee No. 1 then struck Suspect No. 2 again, aiming at his shoulder. Employee No. 1 stated that when Employee No. 1 struck Suspect No. 2 with the flashlight, Employee No. 1 was aiming at his upper body/shoulder area. Employee No. 1 stated Employee No. 1 did not know which part of Suspect No. 2's body was impacted by the flashlight strikes.

After the second flashlight strike, Employee No. 1 noticed that Suspect No. 2 was bleeding from the face/head. Suspect No. 2 ran back into the bedroom; Employee No. 1 and Suspect No. 1 followed. Suspect No. 2 turned toward Employee No. 1, and Employee No. 1 struck Suspect No. 2 a third time with his flashlight. Suspect No. 2 fell against the bed causing the mattress to fall off of the box spring. Employee No. 1 then grabbed Suspect No. 2 by the arms and Suspect No. 2 fell to the floor with Employee No. 1 standing over him.

Employee Nos. 2 and 3 arrived at the location in response to Employee No. 1's earlier request for an additional unit for transport. Employee No. 2 entered the bedroom, stood Suspect No. 2 up, and handcuffed him. Suspect No. 2 was transported to a hospital where he received treatment for a laceration to his head.

The COP was concerned that Employee No. 1 entered the apartment alone with knowledge that it was a domestic violence incident and that the suspect could be violent. The COP would have preferred that Employee No. 1 had requested and waited for additional units prior to entering. The COP was also concerned that Employee No. 1 did not properly control Suspect No. 2. The COP was concerned that Employee No. 1 prematurely broadcast that additional assistance was not needed, and then requested a supervisor when Suspect No. 2 became combative. The COP would have preferred that Employee No. 1 had requested back up or a help call when Suspect No. 2 became combative and not put out a broadcast that no additional assistance was needed prior to having Suspect No. 2 in custody. The COP determined that Employee No. 1's tactics were seriously deficient and required Administrative Disapproval. The COP also recommended training.

The COP would have preferred that Employee Nos. 2 and 3 had not allowed Suspect No. 2 to stand prior to handcuffing him. The COP determined that Employee Nos. 2 and 3 would benefit from additional training.

The COP noted that Employee No. 1 utilized OC spray, flashlight strikes, body weight and physical force to control Suspect No. 2. The COP determined that Employee No. 1's non-lethal

uses of force were reasonable to overcome Suspect No. 2's resistance. The COP found Employee No. 1's non-lethal use of force in policy, no action.

The COP determined that Employee No. 1's flashlight strike to Suspect No. 2's head was inadvertent. However, the COP would have preferred that Employee No. 1 had deployed Employee No. 1's ASP baton instead of a flashlight as an impact device. The COP found Employee No. 1's use of force to be in policy and recommended training. The Commission concurred with the COP's recommendations.

In connection with this case, Employee No. 1 was given an Official Reprimand and directed to training. The OIG believes that this was an appropriate penalty, given that the accused did not have any prior sustained complaints for unauthorized force or tactics.

OIS No. 057-04

Employee Nos. 1 and 2 observed a white Toyota Camry with no front license plate. Employee No. 1 made a U-turn and followed the vehicle. As they followed the vehicle, both employees noted that the Camry's taillights were malfunctioning. Employee No. 1 also stated that the Camry was speeding.

Employee Nos. 1 and 2 then stopped the Camry. During the stop, Employee Nos. 1 and 2 learned that Suspect No. 1, the driver, had not been issued a California Driver's License and subsequently detained him. Suspect No. 1 was taken into custody and his Camry was impounded and searched. During an inventory search of the Camry, Employee No. 1 recovered an aluminum foil bindle containing an off-white solid substance resembling rock cocaine from the passenger compartment of the vehicle. Approximately \$700 and two cell phones were recovered from Suspect No. 1. Employee No. 2 answered the cell phone calls and heard several requests for narcotics. Suspect No. 1 was then arrested for Possession of Cocaine Base for Sale.

Employee Nos. 1 and 2 conducted a follow-up investigation to Suspect No. 1's residence to retrieve Suspect No. 1's identification and recover additional narcotics. Employee No. 1 advised CD that they were en route. As the officers walked down the driveway with Suspect No. 1, Employee No. 2 asked Suspect No. 1 if he had any dogs. Suspect No. 1 indicated that he did but that they were tied up. When the officers reached the backyard, Employee No. 1 noticed a Pit Bull tied to the rear wheel of a trailer and that two people, Suspect No. 2 and Suspect No. 3, stood just to the right of Employee No. 1.

Shortly thereafter, a different Pit Bull charged Employee No. 1 from the area where the two individuals stood. That dog bared its teeth and barked as it advanced toward Employee No. 1. In an attempt to ward off the dog's attack, Employee No. 1 kicked the dog, momentarily stopping its advance. Although Employee No. 2 fired a burst of Employee No. 2's OC spray toward the dog's face, it appeared to have no physical effect on the aggressive animal. Fearing that Employee No. 1 was going to be injured by the charging dog, Employee No. 1 drew Employee No. 1's firearm and fired one round at the dog from a distance of four feet. The dog was struck in the shoulder and immediately ran from the Employees. Nos. 1 and 2 then secured Suspect No. 1 in the rear passenger compartment of the police vehicle.

Employee No. 3, a supervisor, arrived on scene, separated the officers, and obtained a public safety statement.

The COP was critical of Employee Nos. 1 and 2's decision to initiate a follow-up investigation without notifying a supervisor and requesting an additional unit. The COP was also critical of the manner in which Employee Nos. 1 and 2 approached the location because they did not consider the possibility of additional suspects or the tactical disadvantages associated with a handcuffed prisoner. The COP was also critical of the fact that Employee No. 1's firearm was loaded with only 15 rounds of ammunition instead of the required 16 rounds. Consequently, the COP found that the tactics employed by Employee Nos. 1 and 2 warranted Administrative Disapproval. Furthermore, the COP directed that both Employees receive training on tactics.

The Commission adopted the COP's findings in this case. Allegations regarding the Employees' deficient tactics were sustained, and each received a one-day suspension. We believe this penalty was appropriate for each of the involved Employees, though we are concerned that Employee No. 1's TEAMS shows no indication that the tactical training directed by the COP was completed.

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

As mentioned in Section II, the OIG believes that two additional types of information should be implemented into future reports, even in contemplation of the fact that future reports will be generated from CMS:

1. Because it is difficult to determine the CF numbers assigned to cases where the source is identified as "Judicial/Prosecutor," and because we believe these types of complaints can be serious enough to warrant further review of the underlying facts, we suggest that the Department specifically list the case numbers for complaints of this type in future reports.
2. We believe that in future reports the Department should list the actual complaint numbers for out-of-statute cases during the relevant quarter at issue and an explanation as to why they fell out-of-statute in order to anticipate potential Commission concerns.

As discussed previously, there will be at least one additional Quarterly Discipline Report presented to the Commission before the Department begins generating these reports in a new format using CMS. In the interim, the OIG anticipates that we will continue to interpret the data as presented in the Department's report as currently formatted.