

LOS ANGELES POLICE COMMISSION

*REVIEW OF THE DEPARTMENT'S
Quarterly Discipline Report
3rd Quarter, 2007*



Conducted by

OFFICE OF THE INSPECTOR GENERAL

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Inspector General

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I. Introduction

The Consent Decree requires that the Los Angeles Police Department (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 Third Quarter of 2007. The Police Commission (the Commission) received its hard copy of the Department's Quarterly Discipline Report (Report) on November 15, 2007. As required under Paragraph 89, the Office of the Inspector General (OIG) has reviewed the Department's Report and submits its own Report to the Commission.

In each quarterly review of the Department's Report, the OIG normally selects a specific allegation type upon which to focus our review. At the Commission's request, the OIG completed its Review of the Department's Use of the Professional Standards Bureau's Racial Profiling Investigative Protocols for cases that closed during the 3rd Quarter of 2007. The Commission has asked the OIG to review these cases to determine if the Racial Profiling Protocols adopted by the Commission are being utilized by the Department during its investigations and what impact they have had on the quality of the investigations. Of the six cases we reviewed, we took issue with five, either because all relevant witnesses were not interviewed, not all allegations were framed, or the proper protocols may not have been used during the investigation. That report was approved by the Commission on November 16, 2007. Hence, this report will not contain a section covering a specific allegation type.

Section II of this report contains the OIG's analysis of and an expansion upon some of the statistical data contained in the various tables within the Department's Report.

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

Finally, Section IV contains our review of the six CUOFs deemed Out of Policy by the Commission, which were closed during the Third Quarter, and which are enumerated on the Table L of the Department's Report.

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.

Sustained Information Summary

Using the information contained in the Department's Report, we determined that the percentage of Sustained allegations was 13% (total of Sustained allegations/total allegations = 563/4332 = 13%). Also using the information in the Department's Report, we determined that the percentage of Sustained allegations for each of the "Top Allegation" classifications was as follows, in descending order of sustained rate:

Allegation	Sustained Rate	No. of Sustained Allegations/ Total Number of Allegations
Preventable Traffic Collision	93.27%	97/104
Neglect of Duty	16.27%	163/1002
Unbecoming Conduct	13.64%	99/726
False Statements	13.48%	19/141
Unauthorized Tactics	11.61%	13/112
Discourtesy	1.54%	11/715
Unauthorized Force	0.21%	1/476
False Imprisonment	0.00%	0/320
Unlawful Search	0.00%	0/137
Racial Profiling	0.00%	0/90

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The Table below utilizes data from the Departments Table C&E.

Tables C and E – Allegation Summary / Bureau-Allegation Summary

Classification	Sustained Allegations/ Total Allegations	Sustained Rate	Percentage of Total Allegations	Number of Accused Employees ¹	Number of Employees w/ Sustained Allegations ¹
Accidental Discharge	1/1	100%	0.02%	1	1
PTC	97/104	93.3%	2.40%	104	97
FTA	20/29	69.0%	0.67%	27	20
FTQ	70/79	88.6%	1.82%	79	70
Insubordination	14/14	100.0%	0.32%	6	6
Alcohol Related	8/11	72.7%	0.25%	9	7
Sexual Misconduct	4/25	16.0%	0.58%	17	2
Improper Remark	11/37	29.7%	0.85%	30	11
Dishonesty	1/21	4.8%	0.48%	18	1
Misleading Statements	5/6	83.3%	0.14%	6	5
Neglect of Duty	163/1002	16.3%	23.13%	632	114
Unauthorized Tactics	13/112	11.6%	2.59%	94	11
Unbecoming Conduct	99/726	13.6%	16.76%	407	45
False Statements	19/141	13.5%	3.25%	105	15
Ethnic Remark	1/31	3.2%	0.72%	20	1
Domestic Violence	12/27	44.4%	0.62%	11	2
Theft	5/57	8.8%	1.32%	32	2
Unlawful Search	0/137	0.0%	3.16%	110	0
Discourtesy	11/715	1.5%	16.51%	467	10
Retaliation	0/28	0.0%	0.65%	20	0
Other Policy/Rule	3/64	4.7%	1.48%	35	2
Unauthorized Force	1/476	0.2%	10.99%	273	1
False Imprisonment	0/320	0.0%	7.39%	273	0
Racial Profiling	0/90	0.0%	2.08%	74	0
Discrimination	0/33	0.0%	0.76%	24	0
Narcotics	3/15	20.0%	0.35%	11	2
Failure to Report Miscon. Service	0/7	0.0%	0.16%	6	0
Service	0/9	0.0%	0.21%	4	0
Gender Bias	0/6	0.0%	0.14%	2	0
Off-Duty Altercation	2/6	33.3%	0.14%	4	2
False and Misleading Sts.	0/2	0.0%	0.05%	1	0
Use of force	0/1	0.0%	0.02%	0	0

¹ Data in this column was taken from Table I1 in the Report. Employees are separately counted for each complaint and for each allegation type; thus a single employee may be counted repeatedly. Accordingly, the numbers in this column do not match the exact number of employees against whom the allegations were sustained.

The OIG noted that Tables C and E no longer include allegation references, such as "Excessive Force," and "Miscellaneous Memo." However, there is an allegation of "Use of Force" in this report. All three of these allegations were discussed in the OIG's Quarterly Discipline Report, for the First Quarter 2007 and it was agreed between the Department and OIG that they would not appear in Table C in future Reports.²

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

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

	Sustained Allegations/ Allegations	Overall Sustained Rate	Sustained Allegations/ Total Allegations (Minus PTCs, FTAs, & FTQs)	Overall Sustained Rate (Minus PTCs, FTAs, & FTQs)
Allegation Total	563/4332	13.00%	376/4120	9.13%
Staff Officers	1/8	12.50%	0/7	0.00%
Captain	1/15	6.67%	0/14	0.00%
Lieutenant	17/52	32.69%	13/48	27.08%
Sergeant	28/232	12.07%	13/213	6.10%
Detective	43/242	17.77%	20/217	0.09%
Police Officer III	111/761	14.59%	70/712	0.10%
Police Officer II	194/1769	10.97%	110/1676	6.56%
Police Officer I	29/200	14.50%	17/187	9.09%
Reserve Officer	5/12	41.67%	5/12	41.67%
Detention Officer	21/52	40.38%	21/52	40.38%
Civilian Personnel	77/155	50%	74/151	49%
Unknown/Invalid	36/834	4.32%	33/831	3.97%

Whereas 13% of all misconduct allegations were Sustained during this quarter, 9.13% of all allegations were Sustained when PTCs, FTQs, and FTAs were removed.

² The Department used the classification "Excessive Force" prior to 1993, but now uses "Unauthorized Force." The Department last used "Miscellaneous Memo" during the 1960's. "Use of Force" is one of six initial allegation classifications recently implemented by IAG. Complaints initially categorized as "Use of Force" refer to those related to CUOF incidents administratively disapproved by the Commission. They are subsequently re-classified, either as Unauthorized Force, Unauthorized Tactics, or Shooting Violation after the complaint is adjudicated. Thus, a case will never be closed under a "Use of Force" allegation, and the sustained rate for such allegations will always be zero.

III. Discussion of Out of Statute Cases

During the Third Quarter of 2007, eight cases were closed which were determined to be Out of Statute (OOS).³ These investigations raised questions about the cause of cases falling OOS, whether appropriate remedial actions were taken to ensure that personnel did not commit the same errors, and whether procedures were implemented to prevent reoccurrence going forward. We reviewed eight Intradepartmental Correspondences (15.2s) related to these cases provided to us by the Department, as well as the full case files.

A review of 15.2s and related case files revealed that cases closed as OOS during the Third Quarter of 2007 exceeded the statute of limitations for one or more of the following reasons:

- The party or parties responsible for processing cases through the proper chain of review failed to do so in a timely manner, if at all.
- A failure to adjudicate the complaint once the investigation arrived at the Area.
- The statute date was simply identified incorrectly.

CF NO. 06-5923

This case originated from the administrative disapproval of the tactics of plainclothes officers in an unmarked minivan monitoring prostitution activity. The officers contacted a male spray painting graffiti on a wall. The suspect ran and the officers pursued him on foot. The officers ended up exchanging shots with the suspect. The Commission found that their tactics and one officer's use of force warranted an administrative disapproval finding. A complaint form was generated as a result of the Commissions' findings. A more detailed summary of the facts of this case will be included in Section IV, below regarding OIS No. 05-117.

The allegations against one officer were found to be OOS because the area administrative personnel incorrectly believed that all OIS complaints are tolled because the Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office reviews them for criminal prosecution.⁴ Therefore, the area believed that they had more time to adjudicate this officer's allegations. One officer did receive sustained allegations and a disciplinary penalty. This misinformation was not clarified until the IAG Commanding Officer reported to the Chief on April 3, 2007, well after the statute date of December 26, 2006.

In addition, there were continuous references to the incorrect incident and statute dates throughout the investigative and adjudicative documentation. Although this oversight did not have an apparent affect on the allegations falling out of statute, it should be noted that the Department continued to share misinformation. Incorrect statute dates have resulted in other cases falling OOS.

³ These OOS cases are listed in Table N of the department's report: Out of Statute Complaints, on page 17. All eight cases are discussed herein.

⁴ Typically JSID does not review "non-hit" OIS cases unless there is probable cause to believe that an officer committed a crime, which was not so in this case.

IA sent a copy of the 15.2 to the bureau explaining the reasons for this case falling OOS and recommending that the bureau review it and determine what action is appropriate.

CF NO. 06-1733

A complaint for Neglect of Duty was initiated alleging that an officer failed to properly Mirandize a suspect and did not prepare to testify at a preliminary hearing for a murder trial.

According to the area Commanding Officer (CO), the complaint investigation was found OOS for two reasons. First, the Department made a mistake by listing April 4, 2007 as the correct statute date, when it was actually February 6, 2007. Second, despite the fact that the Department's investigation was completed and given to the area approximately six months in advance of the actual statute date, the area did not adjudicate the complaint until seven months after receiving it. The delay was a result of a transition in command and the decision by the CO to prioritize other area activities, including several Categorical Use of Force Incidents, above the review and completion of the complaint.

The CO explanation for the complaint falling out of statute is reasonable. However, this particular misconduct should have been a high a priority. In this case, a defendant's murder case was dismissed because the officer did not follow department procedure and Mirandize the suspect. In addition, this same officer failed to adequately prepare for his testimony at the preliminary hearing.

The area CO submitted a 15.2 to the bureau and recommended that the bureau reviews it and determines what action is appropriate.

CF No. 05-5984

An off-duty police officer was involved in an altercation at a nightclub. The complainant (CP) filed a complaint against the off-duty officer with the LAPD and another individual lodged a complaint with the Pasadena Police Department (PPD) resulting in criminal charges being filed against the CP. The charges against the officer resulted in four separate allegations. Due to the criminal charges filed with the PPD, the statute date for the officer's complaint was tolled.

The complaint was found OOS because Investigating Officer (I/O) did not properly document the new statute date in the chronological log or in the ACTS file. As a result, the case was sent to the area for adjudication with the incorrect statute date. Further, the I/O had this case along with 13 other cases to work on, some of which were priorities and he had limited investigation experience. According to the area CO, the case arrived at the area one day before the statute date, but was incomplete and required further investigation.

This was a significant case in which the bureau recommended that the allegations be sustained with a substantial disciplinary penalty. Unfortunately, since the statute date was passed, no discipline could be imposed.

To avoid a reoccurrence, the area CO requested that IA provide a 6th month update on area investigations so they can keep track of statute dates.

CF No. 06-0998

This complaint originated from allegations of Neglect of Duty. The complainant was arrested for discharging a weapon. He alleged that LAPD officers conspired with his wife to lie on the arrest and booking reports to change the charge from Penal Code Section Section 246.3 (willfully discharging a firearm in a grossly negligent manner, a public offense) to Penal Code Section 246 (maliciously and willfully discharging a firearm at an inhabited dwelling house, a felony) which is punishable by a more severe sentence and which requires a higher bail amount. The department deemed this to be a clerical error against the arresting officers, but upon review, the Department included 3 additional officers in the complaint believing that if proper reviews were conducted through the chain of command, the error would have been caught. The supervisors were added as accused officers in this complaint investigation and the allegations were sustained, with a recommended penalty of admonishment.

The allegations were found to be OOS because it was discovered that an uninvolved supervisor reviewed the arrest report in question on January 3, 2006, but the complaint wasn't initiated until almost two months later on February 28, 2006. The Department opined that the uninvolved supervisor who reviewed the arrest report should have reasonably been able to discover the alleged misconduct at that time, therefore the statute date should have been January 3, 2007. As a result, by the time the complaint was adjudicated in February of 2007, the statute had already expired.

Our review of the file did not disclose any action taken as a result of this miscalculation.

CF No. 06-1929

This case involved Neglect of Duty allegations originating from a vehicle pursuit that was found to be in violation of the Department's policy. The allegations against two officers were sustained and the proposed penalties were an admonishment for one officer and a two-day suspension for the other officer.

This case was found to be OOS because of an error on the complaint form. The complaint form indicated the date the misconduct was reported to a supervisor was April 11, 2006. In actuality April 11th was the date the incident was classified as out of policy by the Patrol CO. The actual reporting date was February 20, 2006, which was the date of the vehicle pursuit. The assigned investigator and the supervisor responsible for completing the Letter of Transmittal⁵ (LOT) failed to notice that the statute date was incorrect. The adjudicator sustained the allegations on February 7, 2007 believing that the statute date was April 11, 2007.

IA forwarded its 15.2 explaining this incident to the bureau for review and to determine what action is appropriate. Additionally, the area CO fully accepted responsibility for the error and to avoid a reoccurrence, counseled the supervisor responsible for the delay and began periodically auditing his performance.

⁵ The LOT is the written adjudication by the accused officer's CO.

CF No. 06-3260

This complaint was initiated following an audit by the Force Investigation Division (FID). On June 25, 2006, an FID supervisor discovered that four allegations of Discourtesy and one allegation of Discrimination were made by individuals interviewed during a CUOF investigation that were not included in any complaint. As a result, the FID supervisor completed CF No. 06-3260, using June 25, 2006, as the date reported to uninvolved supervisor. However, the date of the incident July 28, 2005, should have been used to determine the appropriate statute date, which was July 28, 2006. Instead, once the case was assigned to IA for investigation, the Officer in Charge (OIC) did not discover that the listed reporting date was incorrect.

This case was found to be OOS because the OIC did not realize the report date was incorrect and assigned the complaint to an I/O after the statute date. The I/O discovered the error upon reviewing the Use of Force report.

The FID supervisor and the OIC acknowledged the error. IA sent a copy of the 15.2 explaining the reasons for this case falling OOS to FID and the Administrative Investigation Division for action that they deem appropriate.

CF NO. 06-006304

An officer was involved in a traffic collision that was determined to be preventable. A supervisor was notified and immediately responded to the scene. For an unknown reason, the supervisor at the scene did not initiate a complaint against the officer for the collision. Therefore, it was not investigated within the statute period. The Area Commanding Officer only discovered the collision during the course of an audit conducted by the Bureau. An investigation was then completed, but no penalty could have been recommended due to the fact that the complaint was already OOS.

According to the Assistant CO of the Bureau, the current CO in the area was unable to determine the cause for the case falling OOS, as he was not the CO at the time of the incident. To avoid a reoccurrence, the the current area CO did advise that they had "established administrative systems in place" to avoid any future similar problems.

CF No. 96-1132

This case is an 11 year old case involving a single allegation of Failure to appear. This case became out of statute due to an administrative oversight; the case literally "slipped through the cracks." In February 2007, the Advocate Section conducted an audit, during which it discovered an ACTS file, and related box file, which contained a charge sheet. The Chief of Police never signed the charge sheet. The officer would have received a 1-day suspension but this case went undetected for 10 years.

Conclusion

We determined that there was difficulty in correctly identifying the correct statute date in at least three of the eight cases. Additionally, a delay in processing at the area was noted in half of the

cases. In a couple of cases the cause could not be determined. We also noted that in a few cases, the responsible officers accepted the blame for any mistakes. And, while training or some remedial action was recommended in two cases, in the majority, the bureaus were left "to handle as they deem appropriate."

Although these cases represent a relatively small percentage⁶ of the overall number of cases for the 3rd quarter, it is important that the Department do everything it can to avoid cases falling out of statute to ensure that all employees are held accountable. In a large organization it is inevitable that mistakes will happen and to the Department's credit, efforts were made to identify the causes for cases falling out of statute. Nevertheless, although the number and percentage of cases were small, given the magnitude of some of the allegations it is important for the Department to be able to impose disciplinary penalties, if warranted, to maintain proper discipline and order throughout the organization.

The OIG will continue to monitor cases that fall out of statute and the actions taken by the Department in response.

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

During this Third Quarter, six CUOF incidents were closed in which the Commission adopted a finding of out-of-policy or Administrative Disapproval (AD). Five incidents were Officer Involved Shooting (OIS) cases, and one Accidental Discharge (ACC). In all six cases, the Commission adopted the findings of the Chief of Police (COP).

OIS No. 030-06

Detective A and Officer A were conducting a routine narcotics investigation in plainclothes and established surveillance on a target location. While at the location, they observed a hand-to-hand narcotics transaction occur at a parked motor home between Suspect 1 and another individual. Detective A and Officer A followed, contacted, and arrested the individual who had bought rock cocaine from Suspect 1. Detective A and Officer A then transported the buyer to jail for processing.

Subsequent to processing the buyer, Detective A and Officer A decided to return to the target location where the motor home was parked to continue their investigation. Officer A parked their unmarked vehicle directly in front of the motor home. Detective A and Officer A used their vehicle's mirrors to observe the motor home, which was parked directly behind them. Detective A noted that a pickup truck, which he/she had observed earlier in the investigation was no longer at the location and opined that Subject 1 left the area in the truck. Detective A and Officer A did not broadcast to Communications Division (CD) that they were at the location and decided to wait for Subject 1 to return.

Detective A and Officer A next observed Subject 1 return to the location in the truck, which he parked behind the motor home. Officer A exited the passenger side of their vehicle and exposed his/her police badge hanging from a chain around his/her neck, while Detective A exited the

⁶ Only 8 of 1813 (.004%) complaints that were closed during the 3rd quarter of 2007 were adjudicated as OOS.

driver side of the vehicle. Both officers walked towards the truck and were on opposite sides of the motor home.

Officer A approached and told Subject 1 that he/she was as an LAPD officer and requested Subject 1 to show his hands. Subject 1 then began to put his hands out to the side. Officer A attempted to grab Subject 1's hand to effect an arrest and Subject 1 attempted to punch Officer A in the head. Officer A ducked his/her head, but Subject 1 was able to punch Officer A on the back of his/her head. Subject 1 then turned and ran from Officer A.

Meanwhile, Detective A observed a second occupant in the truck. Detective A ordered the individual out of the truck, but then joined Officer A in a foot pursuit of Subject 1, and the individual left the area. Officer A requested that Detective A utilize his/her radio to broadcast that the officers were in foot pursuit.

Officer A continually yelled commands at Subject 1 to stop. Subject 1 failed to adhere to these commands. At one point, Officer A could not see Subject 1's hands. Officer A drew his/her service pistol and commanded Subject 1 to lay on the ground. Subject 1 continued to run, so Officer A proceeded to re-holster his/her pistol and run after Suspect 1.

Detective A caught up to Subject 1, with his/her police radio still in hand, and attempted to grab Subject 1 from behind. However, Detective A's attempt failed and Detective A, Officer A, and Subject 1 became involved in a struggle. During the struggle, Subject 1 bit Officer A and hit Officer A in the head an additional two times. In response, Officer A delivered a punch to Subject 1's head.

Officer A next removed the radio from Detective A's hand and retreated a short distance away from the struggle. Officer A realized the radio was programmed to the wrong frequency and re-programmed the radio to the correct frequency to broadcast a help call.

Following the broadcast, Officer A again engaged in the struggle. As they struggled, Officer A again attempted to broadcast two additional help calls. Subject 1 punched Officer A again in the back of the head.

Subject 1 backed along the sidewalk with Officer A behind him, causing Officer A to collide with a gate. Subject 1 stepped back and forth several times thereby ramming Officer A into the gate. Detective A next grabbed Subject 1's legs to pull Subject 1 to the ground.

The officers and Subject 1 went down to the pavement. Officer A fell on top of Subject 1 and Detective A fell slightly offset from Officer A. Officer A next heard Detective A state, "He has my gun, he has my gun."

Subject 1 next pointed the gun at Officer A's neck. Officer A grabbed the top frame of the pistol in Subject 1's hand with his/her right hand. Detective A also grabbed the slide/barrel area of the pistol. Officer A and Detective A were able to move the barrel of the gun away from Officer A's head. However, during the continued struggle, Officer A indicated that Subject 1 kept trying to point the gun in his/her direction.

Officers B and C heard the help radio call. Upon arrival at the location, Officers B and C observed the struggle on the sidewalk and recognized the two narcotics officers struggling with Subject 1 on the ground. Officer B observed a pistol in Subject 1's right hand and ran towards the struggle.

Officer B noticed that the pistol being held by Subject 1 was pointed in his/her direction and Subject 1 had his finger on the trigger. Officer B drew his/her pistol because he/she felt that Subject 1 was going to fire the pistol pointed at him/her. Officer B ordered Subject 1 to drop the gun, but Subject 1 did not comply.

Officer B fired one round at Subject 1's face because he/she feared that Subject 1 would fire a shot in his/her direction or at the other officers, and/or members of the public, who had gathered to watch the struggle between the officers and Subject 1. Officer B fired in the direction of Subject 1's face to avoid hitting Detective A and Officer A, who were on top of Subject 1, thereby covering most of Subject 1's body.

Meanwhile, Officer C ran towards the struggle. Officer C noticed that Officer A appeared to be dazed. As Officer C was about to join the struggle, he/she heard someone yell, "gun, gun, gun." Officer C began to look for a gun and observed a gun in one of Subject 1's hands, with other hands trying to point the gun towards the ground. At the time, the gun was parallel to the ground with the muzzle pointed towards Officer C and Officer B.

Officer C drew his/her pistol and noted that Subject 1's head was the only target available without risking injury to Detective A and Officer A, who were struggling with Subject 1. Accordingly, Officer C fired one shot at Subject 1's head. Officer C noticed that Subject 1 stopped moving and re-holstered his/her pistol. At this point, Detective A and Officer A were able to take control and remove the pistol from Subject 1's hand.

Meanwhile, Officers D and E arrived at the location, heard the gunshots, but did not see who had fired a weapon. Officer D drew his service pistol and held it at a low ready towards the crowd that had formed in the area, believing that there may be additional suspects outstanding and ordered the crowd back.

Subsequently, Officer D with assistance from Detective A and Officer C handcuffed Subject 1. Officer A next realized that he/she was missing his/her pistol and subsequently observed the pistol on the ground.

The COP found Officers A, B, C, and D's drawing of their weapons to be in policy and the non-lethal force employed by Detective A and Officer A to be in policy. The COP further found Officers B and C's tactics to be appropriate and their use of lethal force to be in policy.

The COP found Detective A and Officer A's tactics to warrant "Administrative Disapproval (AD)" and recommended formal training based upon the fact that they opted to conduct a narcotics investigation without the assistance of additional officers, while not knowing if there were additional suspects inside of the motor home. The COP further noted that Detective A and Officer A were able to safely accomplish the initial arrest of the buyer, but their subsequent contact with Subject 1 presented a situation that could not be safely carried out with only two

officers and it would have been tactically advantageous for Detective A and Officer A to request additional assistance to conduct the follow-up investigation.

The COP also noted that Detective A and Officer A did not advise CD of their location and status, or advise CD of their surveillance activities while conducting their investigation. The COP determined that it would have been tactically safer for Detective A and Officer A to advise CD of their status and to initiate a formal narcotics complaint investigation prior to conducting their investigation. The COP was also concerned that Detective A and Officer A's initial broadcasts did not indicate that they were in plainclothes.

The COP noted that the OIS investigation revealed that Detective A and Officer A parked their unmarked vehicle directly in front of the motor home to observe activity directly behind them. While this rear observing tactic was commonly utilized during surveillance operations, maintaining distance between the observation post and the motor home would have been tactically safer.

The COP also noted that Officer A did not carry a radio with him as he/she exited from the police vehicle to confront Subject 1 and it would have been tactically safer for both Detective A and Officer A to have possessed radios, allowing more immediate and effective communication. In addition, the COP was concerned that Detective A's radio may have been programmed to a tactical frequency that was not monitored by CD at the time of the incident.

The COP was further concerned that Detective A and Officer A approached Subject 1 from opposite sides of the parked motor home, which created a potential crossfire situation had the officers been compelled to use their weapons. The manner in which the officers approached Suspect 1 also resulted in Detective A not being able to see Subject 1 as he physically assaulted Officer A and proceeded to run away. The COP determined that it would have been tactically safer for the officers to maintain better tactical positioning with one another and primarily focus their attention on Subject 1. The COP would have also preferred that Detective A and Officer A wear raid jackets in order to ensure their identification as police officers.

The COP was also concerned that Officer A decided to draw his/her weapon and run after Suspect 1 for some period of time. Furthermore, the COP noted that Detective A, with his radio in hand, tried to grab Suspect 1's upper torso from behind, while running after Suspect 1. This tactic allowed Suspect 1 to turn and attempt to hit Detective A. The COP would have preferred that Detective A have attempted to push Subject 1 to the ground from the rear, which would not have placed Detective A in the position of being off balance and falling to the ground during a tackling motion, where Detective A could have been injured. The COP also believed that it would have been preferable for Detective A to have had both hands free when he engaged Subject 1.

The COP also noted that Detective A and Officer A both lost their weapons during the altercation with Suspect 1 and that weapon awareness and retention was a critical officer safety concern.

The Commission adopted the recommendations of the COP.

As a result of the AD finding, a related complaint investigation, CF No. 06-2446, was initiated. The Department framed one allegation each against Detective A and Officer A for "Unauthorized Tactics," which were Sustained. Detective A and Officer A each received a penalty of Official Reprimand. The penalty of Official Reprimand appears to be within the Department's guidelines, as a review of each officer's Teams Record revealed no prior sustained complaints for "Unauthorized Tactics" within five years of CF No. 06-2446 being initiated.

OIS No. 032-06

Officers A and B responded to a call reporting the presence of armed gang members at a location. Upon arrival at the location, Officers A and B did not find any evidence of the gang members and departed the area. In the interim, Police Officer C and D also decided to respond to the area reported in the broadcast.

Upon arrival at the location, Officer C and D observed approximately eight to ten individuals standing, drinking, and listening to music in front of a residence. The officers communicated their observations to one another and decided to contact the group.

Officer D angled the police vehicle toward the group and began to come to a stop. Just before Officer D stopped the vehicle, Officer C slightly opened the passenger's side door in preparation to quickly exit the vehicle. Officer C next observed Subject 1 and Subject 2 start to back away from the group.

Holding his/her flashlight in his left hand, Officer C exited the vehicle as Officer D brought the vehicle to a stop. Meanwhile, Subject 1 and Subject 2 both backed up away from the street, and moved along a driveway next to the residence. The subjects faced Officer C as they moved away from him.

Officer C pursued Subjects 1 and 2 on foot and observed Subject 1 remove a handgun from his waistband. Officer C also noticed Subject 2 reaching toward his waistband. Officer C drew his/her weapon in response to the actions of Subject 1 and 2, and continued the pursuit. Officer C then yelled to Officer D, "Partner, gun." and he/she yelled to Subjects 1 and 2, "Stop. Put your hands up." Subjects 1 and 2 then both turned around away from Officer C and ran further along the driveway. Officer D turned off the engine of the police vehicle and exited the vehicle and began to run after the subjects and Officer C.

As Officer C continued his/her pursuit, he/she noticed that Subject 2 was still moving his right arm as if he was attempting to retrieve an object from his waistband. Subject 1 then began to turn towards Officer C. While aiming his/her pistol at Subject 1, Officer C observed Subject 2 also turn towards his/her direction and noted that Subject 2 had drawn a handgun, which was pointing in his/her direction. Officer C fired one round at Subject 2, who screamed and threw the handgun away. Subject 1 and 2 then fell to the ground and Officer C commanded Subject 2 to stop moving and to show his hands, at which point Subject 1 rose to his feet and proceeded to run from the location.

Meanwhile, Officer D caught up to Officer C's location and was told that Subject 1 had fled the area. Officer C then holstered his/her weapon and placed handcuffs on Subject 2. Officer D

next broadcast a help call using his/her radio. Prior to doing so, Officer D ran to the front of the residence in order to verify the address where he/she and Officer C were located.

In response to the help call a perimeter was established and officers from the Department's K-9 unit arrived at the scene to search for Subject 1. Specialized Unit Officers E and F also arrived at the scene around this time. Officer C directed Officers E and F to follow him/her back into the rear yard in order to locate the weapon that Subject 2 had thrown away. Upon seeing a handgun in the alley behind the residence, Officer C asked Officers E and F to stand guard over it. Additional officers responded to the scene and Subject 1 was located and taken into custody without further incident.

The COP found that the drawing and exhibition of their weapons by Officer C and D to be in policy and Officer C's lethal use of force to be in policy. The COP did note though that the tactics of Officer C and D were severely deficient during the incident and warranted "Administrative Disapproval (AD)." Specifically, the COP noted that the officers had not sufficiently discussed or prepared for potential tactical eventualities associated with their specific assignment, which was especially troubling as Officer C and D were not regularly assigned partners and had responded to a radio call involving gang members with guns.

The COP also noted that the type of call to which Officer C and D responded warranted a request for a air unit to respond to the location to assist in locating the gang members and to provide a situation report to the officers. This information would have assisted Officers C and D in formulating an appropriate tactical plan. Additionally, Officer C and D should have considered advising Communications Division of their presence in the area, which would have also made any units nearby aware of their location, thereby shortening the response time, if any assistance was required.

When driving to the scene, Officers C and D observed a group in front of a residence. Officer D positioned the police vehicle directly in front of the potentially armed group. The COP noted it would have been tactically safer for the officers to stop prior to the group and deploy on foot after broadcasting their location and requesting an additional unit to respond.

The COP noted that it appeared that Officer C acted independently when he/she immediately exited the police vehicle at the location and pursued Subjects 1 and 2, without communicating his intentions to Officer D. Additionally, Officers C and D ran past the remaining members of the group, who were also potentially armed and posed a viable threat to the officer's safety. Furthermore, there was no tactical communication between Officers C and D to coordinate their actions to address the fleeing suspects and those that remained in the group.

After Officer C saw that the two suspects were armed with handguns, he/she continued to engage in the foot pursuit. It was noted that officers were not to engage in a foot pursuit of an armed suspect and Officer C should have moved with adequate cover to establish a perimeter by directing responding units to specific perimeter positions. Additionally, Officer C ran with his/her service pistol in hand, increasing the likelihood of a negligent discharge.

The COP observed that after the shooting occurred, Officer C approached Subject 2, de-cocked and holstered his/her service pistol and handcuffed Subject 2. The COP noted that it would have

been tactically safer for Officer C to maintain the role of cover officer while Officer D approached and handcuffed Subject 2. The COP also noted that Officer D was not sure if he/she had his/her service pistol drawn at the time Officer C approached Subject 2, essentially creating a circumstance in which no weapon was drawn to provide Officer C cover.

The COP noted that Officer D ran to the front of the residence, behind which Subject 2 was detained, to confirm its location in order to broadcast the "help" call. The COP was concerned that the officers were unaware of their specific location and unable to provide responding units with an accurate location, potentially delaying a response in the event the circumstances did not provide the opportunity to confirm their location.

Upon arrival of Officers E and F to the location in response to the "help" call, Officer C led them to the alley behind the garage, where Officer C saw Subject 2 throw his gun. Once the pistol was located in the alley, Officers E and F stood guard by the gun and remained there until Sergeant A provided direction to photograph the firearm and properly secure it in a police vehicle. A tactically safer action would have been for Officer C to continue perimeter integrity, keeping personnel out of the area that had not yet been cleared until arrival of the K-9 officers, who could more effectively conduct a search of the perimeter with a properly configured and equipped search team.

Finally, the COP noted that Officers C and D did not carry their batons on their equipment belt during the incident and the officers are reminded that batons were a significant equipment item to be carried at all times when conducting police activities.

The COP also found that the tactics of Officers E and F's warranted divisional training.

As a result of the AD finding, a related complaint investigation, CF No. 07-00290, was initiated. The Department framed one allegation each against Officer C and D for "Unauthorized Tactics," which were sustained. Officer C received a penalty of Admonishment, which appears to be within the Department's Guidelines, as a review of Officer C's Complaint history revealed no prior sustained complaints for "Unauthorized Tactics" within five years of CF No. 07-00290 being initiated. Furthermore, Officer D received a penalty of Official Reprimand, which appears to be within the Department's Guidelines, as a review of Officer D's Complaint history revealed one prior sustained complaint for "Unauthorized Tactics", with a penalty of Admonishment within the previous five years.

ACC No. 061-06

Officers A, B, and C were assigned to monitor gang-related activities at a location and drove into an alley that was frequented by gang members. Officer A noticed a vehicle parked in the alley and Subject 1 wearing what appeared to be gang attire standing near the vehicle. Officer A believed that Subject 1 was trying to break into the vehicle to steal it or items from inside of the vehicle. Officers A and B next noticed Subject 1 ducked down near the vehicle as if to hide from them, while Officer C proceeded to stop the police vehicle near the vehicle.

As Officers A, B, and C exited the police vehicle, Subject 1 began to walk past the parked police vehicle. Officer A told Subject 1 to stop but he continued to walk and reached towards his

waistband, which led Officer A to believe that Subject 1 was arming himself. Officer A drew his/her pistol to a low ready position and notified his/her partners of his/her observations. Meanwhile, Officer B broadcast the officers' location to Communications Division.

Subject 1 ignored Officer A's commands and left the officers' sight. Officers A and B proceeded to follow Subject 1, while Officer C remained with the police vehicle. Officers A and B proceeded down a walkway after Subject 1 and systematically cleared the area as they proceeded.

Officers A and B then observed Subject 1 ahead of their location. Officer A sought cover behind a wall and a pillar at the base of a flight of steps leading up to some homes situated on a hillside. As Officer A proceeded to do so, he/she removed his/her radio with his/her left hand from its holder with the intent to broadcast Subject 1's location to responding units. Officer A also held his/her pistol in his/her right hand. Officer A next began to climb the stairs, lost his/her footing, and fell backward. Upon falling backwards Officer A extended both arms to break his/her fall and lost his/her grasp on his/her service pistol and in an attempt to reacquire his/her grip unintentionally pressed the trigger, discharging one round. Officer A quickly stood up and holstered his/her pistol. Officer B confirmed that Officer A was uninjured and realized that Officer A had unintentionally discharged his/her weapon upon falling to the ground.

The officers then observed Subject 1 and broadcast to Officer C to drive to the area where Subject 1 was running. Officer C responded to the location where he/she detained Subject 1 without incident.

The COP was critical of the tactical actions of Officers A, B, and C during their attempt to detain Subject 1 and determined that the officers' tactics warranted divisional training. The COP also found Officers A drawing of his/her weapon to be in policy but was critical that Officer A had failed to adhere to basic firearm safety rules while handling his/her service pistol. Therefore, the COP found Officer A's use of force to be negligent, warranting AD of the incident.

The Commission adopted the recommendations of the COP.

As a result of the AD finding, a related complaint investigation, CF No. 07-003146, was initiated. The Department framed one allegation against Officer A for an Accidental Discharge of his weapon. The allegation was sustained and Officer A's Commanding Officer recommended that he/she receive a one-day suspension. Pursuant to a Military Endorsement, the penalty was reduced to an Official Reprimand by the Bureau Commanding Officer. The penalty of Official Reprimand appears to be within the Department's Guidelines, as a review of Officer A's Teams Record revealed no prior instances where Officer A accidentally discharged his weapon, within the previous five years of CF No. 07-003146 being initiated.

OIS No. 05-117

Officers A and B, both supervising officers, and Officer C were riding in an unmarked minivan monitoring prostitution activity. All three officers were wearing plainclothes. The officers noticed a male (Subject 1) spray painting graffiti on a wall near an intersection and decided to contact him.

Officer C drove toward Subject 1. Officer C angled the minivan, aiming its headlights directly at Subject 1, and pulled to a stop near the curb. Officer B then exited the minivan through the passenger's side front door. Within seconds, Subject 1 stopped spray painting the wall, turned toward the minivan, and reached toward his waistband with both hands. Officer B immediately moved toward a nearby light post for cover and drew his/her service pistol.

Officer A exited the minivan. At that time, Officer C saw Subject 1 remove an object from his pocket and point it in the direction of the officers. Officer A and Officer C then both saw a muzzle flash coming from Subject 1 and heard gunfire. Officer B, who had almost arrived at the light post, also heard the gunfire.

Officer C assumed a position at the driver's side front door and drew his/her service pistol and Officer A went back into the minivan. Officer C then heard Subject 1 fire another round at the officers and saw a muzzle flash coming from Subject 1's position. Officer C fired two rounds at Subject 1 in response.

Officer A indicated that he/she continued hearing gunfire coming from the area of Subject 1. Officer A then exited the minivan and fired two rounds at Subject 1 from his/her position at the rear of the minivan.

Subject 1 then ran to a truck parked along the curb. Subject 1 moved to the passenger's side of the truck, opened the passenger's side front door, and crouched down behind it. Meanwhile, Officer C had moved behind the open driver's side front door of the minivan for cover.

Subject 1 then fired approximately two more rounds from his position on the passenger's side of the truck. In response, Officer C fired approximately four more rounds at Subject 1. Subject 1 then got into the truck. As the truck passed Officer B's position, Officer B was not able to see either a driver or a passenger inside the truck. The truck then turned directly toward Officer C's position at the driver's side front door of the minivan. Officer C then moved out from behind the open door and repositioned himself/herself in front of the door.

As the truck passed Officer C's position, Officer C observed two muzzle flashes and heard two loud pops coming from the passenger compartment. In response, Officer C fired three to four additional rounds directly at the area where the muzzle flashes were seen. Officer C saw two occupants in the truck, the driver and the passenger, and both were crouched down. Officer C did not get a look at the person who was driving the vehicle (Subject 2).

As the truck went past Officer A's position, Officer A heard approximately four shots. In response, Officer A fired three rounds at Subject 1. Officers A, B, and C got back into the minivan attempted to pursue the truck. The officers lost the truck and the subjects were not apprehended.

The COP was critical of the officers' decision to take enforcement action. Upon making the decision to contact Subject 1, the officers did not discuss a tactical plan for approaching the subject. In addition, the officers were driving in an unmarked minivan, attired in plainclothes and not wearing Department raid jackets, and did not have their badges visible. Upon stopping the subject, none of the officers verbally identified themselves as police officers. Additionally, due to their plainclothes assignment, the officers were not wearing body armor and their vehicle was not equipped with ballistic door panels. Due to these concerns, the officers placed themselves in a tactically disadvantaged situation. The COP determined that, due to the officers' plainclothes assignment, it would have been tactically safer for them to monitor the subject's actions and request uniformed officers to respond to contact the subject.

The COP also noted that after the initial confrontation with the officers, Subject 1 ran to an awaiting pickup truck and entered it. Officer C, who was positioned behind the driver's side front door of the minivan, observed the pickup truck drive in his/her direction. Officer C then moved from his/her position behind the front door to the front of the minivan. This movement eliminated Officer C's cover and also resulted in Officer C being illuminated by the minivan's headlights. The COP determined that it would have been tactically safer for Officer C to deploy to the rear of the minivan, which would have afforded him/her cover.

The COP further noted that as the ranking officers present, both Officers A and B were ultimately responsible for any decisions made. Both supervisors were aware that they were in an area frequented by gangs and that graffiti subjects are known to carry weapons. Additionally, they were in plainclothes, not wearing body armor, and not clearly identifiable as police officers, which placed them at a tactical disadvantage and could have resulted in them being misidentified by the subject.

The COP determined that Officer A's and B's tactics were deficient as to require administrative disapproval and directed the CO to schedule training for both Officers A and B at Training Division (TD). The COP also determined that Officer C would benefit from additional tactical training and directed the CO to provide and document the appropriate training for Officer C.

The COP also noted that subsequent to Officer C firing his/her weapon at the occupants of the pickup truck, Officer A observed the vehicle pass by his/her location. Believing the subjects were firing from the vehicle and fearing for his/her safety, Officer A fired his/her service pistol at the vehicle. The COP was critical of Officer A's decision to discharge his/her firearm. As the subjects' vehicle passed Officer A's location, there was no immediate threat of serious bodily injury or death. Additionally, the subjects' escape did not present a substantial risk of death or serious bodily injury to others if the apprehension was not immediate. Finally, Officer A's background consisted of two-story, multi-family apartments, adding to the potential risk of injury to a resident.

The COP found Officer A's use of force to be out of policy for rounds three, four, and five, warranting administrative disapproval and additional training.⁷ The COP directed the CO to schedule Officer A for training at TD.

⁷ Officer A's use of force for rounds one and two were found to be in policy, no action.

The Commission adopted all of the COP's recommendations. As a result of the AD findings for Officer A's and B's tactics and Officer A's use of force for rounds three, four, and five, CF No. 06-5923 was initiated. Officer A had allegations framed against him/her for Unauthorized Force and Unauthorized Tactics, which were not adjudicated because the statute lapsed. Officer B had an allegation framed against him/her for Unauthorized Tactics, which was classified as Sustained. Officer B received an Official Reprimand. The penalty of Official Reprimand appears to be within the Department's Guidelines, as a review of each officer's Complaint histories revealed no prior sustained complaints for "Unauthorized Tactics" within five years of CF No. 06-5923 being initiated.

The failure to adjudicate the allegations framed against Officer A was an important oversight in CF No. 06-5923. Not only were both allegations sustained but also there was a specific recommendation that he/she receive a penalty of a three-day suspension. However, as a result of the allegations falling Out of Statute, no penalty was administered. Therefore, OIG finds that Officer A received no discipline and this is not commensurate with Officer A's misconduct.

OIS No. 034-06

Witness A called Communications Division (CD) to report a group of seven males loitering and selling narcotics in an alley. Witness A further indicated that Subject 1 had a gun in his waistband. Officer A and B responded to the call.

Officer A, who was driving the police vehicle, then turned off the vehicle's headlights before turning southbound into the alley. Officer A stopped the police vehicle in the alleyway where the group was reportedly located. Officer B informed CD they were on scene. Officer A used the police vehicle's spot lamp to illuminate the alley. When Officer A did so, the officers saw a group of three to five people in the alley, approximately 178 feet from their location. A member of the group, whom the officers observed to match the description of the armed suspect provided by the caller, ran and jumped over a wall into a residential yard.

Officer A told Officer B that they needed to get to the front of the residence. Leaving the spot lamp shining in the area, Officer A and Officer B left their vehicle and ran northbound, then eastbound. Officer A ran approximately twenty feet ahead of Officer B.

As Officer A approached, Officer A encountered Subject 1 at the front of a residence. Subject 1 matched the description of the person the officers had seen flee from the alley.

When Officer A encountered Subject 1, Subject 1 was sitting in a chair. Officer A described Subject 1 as breathing heavily. Officer A further stated that, as he/she approached Subject 1, Officer A could see a blue steel 9mm Beretta pistol protruding from Subject 1's waistband. According to Officer A, he/she drew his/her service pistol and instructed Subject 1 to stand up, put his hands on his head and get down on his knees. Subject 1 stood up and raised his hands, but then ran southbound. Officer A then broadcast a request for additional units.

Officer A told Officer B that Subject 1 was running towards the alley, and to contain the other side of the alley. As Officer B went back toward the entrance to the alley, Officer A began to

move through the driveway and yard. Officer A, with his/her weapon still drawn, kept quite a distance as he/she went, listening for Subject 1's movements and maneuvering carefully around blind corners.

Subject 1 scaled a wall and ran eastbound. Officer A, who could hear Subject 1 running, looked over the wall and saw Subject 1 fleeing. According to Officer A, he/she heard Officer B coming around the corner, had Officer B in his/her line of sight, and yelled to Officer B that Subject 1 was heading eastbound and had a gun.

Officer A holstered his/her service pistol and scaled the wall. Once in the alley, Officer A re-drew his/her service pistol and began to chase Subject 1, whom he/she estimated was 15 to 20 yards ahead of him/her. Officer A then reached for his/her radio, intending to broadcast Subject 1's direction of travel, but found that it was no longer in its holster. Officer A then drew his/her flashlight.

As Officer A continued to follow Subject 1, Officer A saw Subject 1 grasping the pistol in his waistband with his right hand, turn and look in Officer A's direction several times, then drew the pistol from his waistband. As Officer A ran, Officer A saw Subject 1 point the weapon towards him/her. Officer A responded by firing two rounds in rapid succession at Subject 1. Officer A observed no effect from these rounds, and, seeing that Subject 1 was still pointing his pistol in Officer A's direction, came to a halt, and fired a third round. When the third round was fired, Officer A saw Subject 1 throw his pistol over a gate, into a residential yard.

Having thrown the gun, Subject 1 continued to flee, turning at an L intersection in the alley. Officer A lost sight of Subject 1 for a couple of seconds, but could still hear Subject 1 running. Officer A carefully maneuvered around the corner and saw Subject 1 running. Officer A gave verbal commands to Subject 1 to stop and raise his hands. Officer A followed Subject 1 and Subject 1 began to slow and raise his hands. However, Officer A saw that Subject 1 appeared to be looking for an escape route as he did so.

Officer A, heard and observed the lights from the responding black-and-white police vehicles, re-holstered his/her service pistol and tackled Subject 1 from behind, taking him to the ground. According to Officer A, when he/she initially took Subject 1 down, Subject 1 moved his arms back and forth, but then offered no further resistance. Officer A believed that Subject 1 knew that there were responding units right around the corner. Officer A then handcuffed Subject 1 without further incident.

Meanwhile, moments after Officer B heard Officer say, "He has a gun," Officer B heard two gunshots. Upon hearing the shots, Officer B turned back to see where Officer A was, but found that Officer A was no longer in sight. Realizing that Officer A needed help, Officer B ran to the last place he/she had seen Officer A. Officer B then went over the wall and into the alley.

Once Officer B made it into the alley, Officer B saw Officer A turning southbound at the L-intersection. Officer B followed Officer A. When Officer B emerged onto the street, Officer B saw that Officer A was about 100 feet away with Subject 1 already handcuffed.

Subject 1 was handed off to a responding unit by Officer A. Officer A ran back to Officer B and told Officer B that Subject 1 had thrown a gun and that they needed to contain the area

where the gun had been thrown. Officer A and Officer B then went back towards the location where Officer A had seen Subject 1 throw the pistol.

The COP noted that Officer A and Officer B deployed in the alley from a tactically advantageous position, illuminated the potential suspects with their vehicle's spotlight, and, anticipating that Subject 1 would emerge on the street, left the vehicle's spotlight on before running to the street. The COP noted that this tactic maximized the officers' ability to contain Subject 1 by creating the illusion that additional police personnel were present, reducing the likelihood that Subject 1 would double back. The COP further noted that, although the decision to effectively contain Subject 1 was appropriate, neither officer broadcast a request for an air unit or additional units to respond. The COP noted that it would have been tactically prudent to broadcast a request for a perimeter and to direct responding units to specific perimeter locations. The COP noted that the broadcast should also have included the officers' location, the suspect's description, and direction of travel, and the type of crime.

The COP noted that, when Officer A encountered Subject 1 and observed that Subject 1 had a gun, it would have been tactically advantageous for Officer A to advise Officer B that Subject 1 was in possession of a handgun and that it was concealed in his waistband.

The COP noted that Officer A broadcast a back up request. The COP noted that the broadcast should have included a request for an air unit; should have provided responding units with information regarding the suspect's description and direction of travel; and should have indicated the type of crime involved, that Subject 1 was armed with a handgun, and specific perimeter locations for units to respond to.

The COP noted that Officer A then instructed Officer B to return to the police vehicle and occupy that position on the perimeter. The COP further noted that, after having instructed Officer B to return to the police vehicle, Officer A should have returned to the mouth of the north/south alley and directed the first responding unit to the eastern side of the perimeter. The COP noted that, from these positions and behind sufficient cover, Officer A and Officer B would have been in line of sight and in a position to render immediate aid. The COP noted that this tactic would have provided the officers with coverage of three of the four sides of the perimeter and would have required Subject 1 to travel the distance of the long block before the arrival of the first unit to defeat the containment efforts.

The COP noted that Officer A is to be reminded to recognize the need for a balance between those tactics that provide a sufficient likelihood that a suspect will be apprehended and those that afford an officer an appropriate level of safety. The COP was critical of Officer A's decision to follow an armed suspect through unfamiliar territory. The COP noted that officers are not to engage in a foot pursuit of an armed suspect unless there is adequate cover to continue the pursuit with the intent of monitoring the suspect's progress to better establish a perimeter. The COP also noted that officers should not split-up during a foot pursuit and are strongly discouraged from doing so.

The COP noted that, as Officer A pursued Subject 1 in the alley, Officer A reached for his/her radio, only to discover his/her radio holder was empty. At this point, the COP was increasingly critical of Officer A's decision to remain in foot pursuit. The COP noted that Officer A was

unaware of Officer B's location and was knowingly without radio communication, which minimized the ability of Officer B and responding units to readily assist Officer A.

The COP noted that, at the time of the officer-involved shooting, Officer B was running back to the police vehicle and that, upon hearing shots fired, turned to visually locate Officer A, last observed standing on the sidewalk. The COP noted that, having observed that Officer A was no longer there, Officer B ran back to locate Officer A. The COP was critical of Officer B's decision to not immediately broadcast a "Help" call.

The COP noted that, after the officer-involved shooting, Officer A continued after the suspect with his/her service pistol in one hand and Officer A's flashlight in the other. The COP also noted that officers are reminded that running with a firearm in hand can increase the chance of having an unintentional discharge, and that officers should have their firearms holstered when involved in a foot pursuit.

The COP found Officer A and B's tactics to warrant administrative disapproval.

The Commission adopted all of the COP's recommendations. As a result of the Administrative Disapproval finding for Officer A and B's tactics, CF No. 07-001090 was initiated. Officer A and B's allegations were that, while on duty, Officers A and B were involved in an Officer-Involved Shooting incident which resulted in the use of unauthorized tactics. The allegation for both Officers was sustained and they both received a 1-day suspension. The penalty of a 1-day suspension appears to be within the Department's Guidelines, as a review of each officer's Complaint histories revealed no prior sustained complaints for "Unauthorized Tactics" within five years of CF No. 07-001090 being initiated.

OIS No. 057-05

Victim A made a 9-1-1 call from a lot outside the location of the scene where an incident took place. Victim A told the operator that Subject 1, was "threatening" her, but that he was leaving. Victim A said she still needed the police, because Subject 1 said he was going to take her far away with him.

The lot faced west, onto a Boulevard, and consisted of open areas where several vehicles were parked. There was a building at the south side of the lot, that had entrances on both east and west sides, which contained an office with a window. A high iron fence, with sliding gates front and back surrounded the lot. An alley was at the rear side of the location. The location was equipped with nine surveillance cameras, which were viewable via a computer located in the office.

A non-coded radio call was generated in response to Victim A's 9-1-1 call. The call was assigned to Officers A and B. Meanwhile, Subject 1 went to his home and took Victim B from Witness A. Subject 1 told Witness A that today he was going to die and took Victim B back to the lot with him.

Upon returning to the lot, Subject 1 told Witness B to close and lock the sliding gate on the Boulevard side of the lot. Witness B observed Subject 1 loading a pistol. Once the gate was closed, Subject 1 told Witness B that he would kill him if he re-opened the gate.

Victim A called 9-1-1 from the lot office. The call was cut short when Subject 1 pulled the telephone cord out of the wall. The radio call was upgraded to a Code-3 call. Subsequently, Victim A called 9-1-1 from a cellular telephone and was connected to a California Highway Patrol (CHP) operator. The call was transferred to CD. Victim A told the operator that a crazy man was harassing her, would not let her go, and had said he was going to kill her. Subject 1 then took the telephone from Victim A and broke it.

Victim A waited inside the fence on the Boulevard side of the lot for the police. Officers A and B broadcast that they were on the scene and were flagged down by Victim A. Victim A told the officers that Subject 1 had a 9mm handgun, had threatened to kill her if she called the police, that he was holding Victim B, and that there was one additional person on the premises. Both officers drew their pistols. Officer B broadcast a request for "an additional unit and a supervisor." Sergeant A indicated that he/she would respond.

While Officers A and B were waiting for the additional officers to arrive; They were approached by Witness A. Witness A showed the officers a copy of a Terrorist Threat report she had made earlier that day naming Subject 1 as the suspect. According to Witness A, she told Officers A and B not to shoot because Victim B was inside. Witness A then returned home.

Subject 1 came out of the office holding Victim B. Officers A and B asked him to come over towards them and questioned him regarding his gun. As Subject 1 moved, Officer A moved to a position behind a utility pole in front of the lot.

Officers C and D arrived in response to Officer B's upgraded request for "back-up." At this time, Subject 1 went back inside the office. These officers positioned themselves in the alley. Subsequently, Officers E and F arrived and requested two additional units. Officer F joined the officers in the alley while Officer E took a position on the Boulevard side of the lot. Meanwhile, Officer G and Detective A, who were transporting witnesses, arrived close to the scene. Detective A waited in the vehicle with the witnesses, out of sight of the incident location. Officer G joined the officers positioned in the alley. Meanwhile, an Air Unit crewed by Officers H and I arrived over the location.

Subject 1 appeared at the door of the office holding Victim B in his right arm. Subject 1 raised his handgun and fired in the direction of Victim A and Officer B. Both ducked down behind parked cars to take cover. In response, Officer A took a kneeling position behind the utility pole and, using his service pistol, fired one round at Subject 1. The round did not strike Subject 1 or Victim B. Officer B broadcast that shots were fired and the Air Unit made a "Shots fired, officer needs help" broadcast.

From their position in the alley, Officers C, D, F and G could not see Subject 1 when he fired at Victim A and Officer B. Upon hearing the gunfire, Officer G stepped northwards in the alley to see where the shots were coming from. According to Officer G, he/she saw Subject 1 pointing a handgun in a southwesterly direction and heard additional shots. Using his/her service pistol,

Officer G fired two rounds at Subject 1, then moved south and fired an additional four rounds. The rounds did not strike Subject 1. According to Officer G, he/she was unaware of the presence of Victim B when these six rounds were fired.

The Air Unit broadcast a warning to the officers on the ground to "watch the crossfire," advising that there were units at the front and the rear of the location.

Officers J and K responded, positioning their vehicle in the alley. Officer K armed with a shotgun took cover behind the vehicle. Officer G positioned himself behind the engine block of the vehicle.

The Air Unit broadcast a request for Urban Police Rifle (UPR) equipped officers to respond to the incident location.

Sergeant A broadcast a confirmation that Victim B was still inside the location. Meanwhile, Officer G moved north in the alley, leaving the cover of the vehicle. According to Officer G, he/she did so "hoping he could get a shot." Subject 1, holding Victim B, emerged from the door of the office and fired towards Officer G. Officer G then retreated back to the vehicle and Subject 1 went back inside the office.

The Air Unit notified a Specialized Division, that shots were fired, there was an active shooter, and a hostage. The Specialized Division confirmed that specially trained officers were being notified.

Officer L, who was armed with a UPR, responded to the location and went to the rear alley. Officer L deployed behind the vehicle, to the left of Officer G.

Officer M arrived on scene and took a position behind Officers C and D's vehicle. Officer M was joined by Officers N, O, P, R, S, T and U. Officers M, N, O and P were each equipped with UPRs. Officer M formulated a plan to initiate an Immediate Action Rapid Deployment (IARD),⁸ whereby he/she would move in "diamond formation," accompanied by Officers N, O, and P, to effect a rescue of Victim A. The plan called for Officers R and S to move behind the cover of the diamond formation and cut the lock on the gate. Officers T and U, indicated that their role in the rescue effort was to provide cover.

The designated officers began to move leaving the cover of Officers C and D's vehicle. As soon as the officers initiated their movement, Subject 1 began to fire at them from the window of the office. The group of officers immediately scattered to the cover of nearby vehicles.

Officers M, N, and O saw a muzzle flash from the office window. Each of these officers fired at the window as they moved to cover. Once in their positions of cover, Officers M, N, and O fired additional rounds in response to a further volley of gunfire. Meanwhile, from their positions in the rear alley, Officer G fired two additional rounds from his/her pistol and Officer L fired 11

⁸ IARD is defined by Department training as, "The swift and immediate deployment of law enforcement resources to ongoing, life threatening situations where delayed deployment could otherwise result in death or serious bodily injury to innocent persons."

rounds from his/her UPR. The officers' rounds struck the exterior walls of the office where Subject 1 and Victim B were located. Officer M instructed officers to "cease fire" and reminded officers to be sure of their target.

Both Officers L and G reported that they fired at Subject 1 when they saw him firing in their direction from the door of the office. Based on video and other evidence, investigators established that, at the time the officers fired, the door to the office remained closed and Subject 1 did not present himself to Officers L and G. Rather, Officers L and G were apparently firing in response to the "friendly fire" coming from Officers M, N and O. For their part, the evidence indicates that the volley of gunfire to which Officers M, N and O returned fire from their positions of cover was "friendly fire" from the officers in the alley.

Sergeant A erroneously believing that the rifle fire had come from Subject 1, broadcast a warning that the suspect had armed himself with a "high-powered weapon."

Officer S moved from his/her position towards Victim A's location. Officer S was shot at by Subject 1 from within the office, and abandoned his/her attempt. Officer S was not hit by Subject 1's gunfire.

Sergeant B, Officer V and Officers W, X and Y, arrived on the scene. Officers S, V, W and X responded to Victim A's location, pried the gate off its tracks, and pulled Victim A to safety.

Officers Z and A1 responded to Witness A's home to gather intelligence. The officers found Witness A speaking on the telephone with Subject 1. Witness A was begging Subject 1 not to do anything to Victim B. Officer A1 was passed the telephone and began to speak to Subject 1 in Spanish. Subject 1 who was rambling and delusional, told Officer A1 that he was armed and was going to kill officers, himself and Victim B; that he had been drinking and using drugs; and that he could see officers via the cameras in the building. Officer A1 tried to reassure Subject 1 that everything would be okay. Meanwhile Officer Z was listening and taking written notes, which he would periodically take to the Command Post (CP). Officer B1, a Crisis Negotiator, joined Officer A1. Officer B1 did not speak Spanish, therefore he advised Officer A1 to give Subject 1 reassurance.

Sergeant C (assigned as the Crisis Negotiations supervisor) and Officer C1, a Spanish-speaking Crisis Negotiator, arrived at Witness A's home. Officer B1 briefed Officer C1, and Officer C1 took over negotiations from Officer A1. Officer C1 attempted to resolve the situation peacefully with Subject 1 but after about ten minutes of conversation, the call was terminated. Officer C1 was unable to reestablish contact.

Officer W, whose responsibilities included tactical planning, responded to the rear alley with Officers X and Y. Officer W selected the alley as the position to establish an Emergency Assault Team (EAT).⁹

⁹ The term "EAT" has been discontinued since this incident occurred. The current term is "Emergency Rescue Team." This team is deployed to immediately respond and rescue innocent persons and stop the deadly actions of a suspect when it is deemed that the suspect's actions are immediately life-endangering, and a delay in response would result in death or serious bodily injury to innocent persons.

Officers D1 and E1 arrived and were directed by Officer W to participate in the EAT.

Sergeant D responded and observed Officer W deploying officers, and went to the CP. Sergeant E, the designated tactical supervisor, then arrived on scene. Officer W briefed Sergeant E on the incident thus far, advised him that an EAT had been established and that an attempt to establish containment was underway.

Additional officers from the Specialized Division arrived and were assigned to an arrest team at the southwest corner of the lot. The next two specially trained officers to arrive were Officers I1 and J1, and were placed on the Boulevard, across the street from the lot, in a sniper role, relieving a patrol officer with a UPR. Patrol officers on the Boulevard were relieved from those positions. A second sniper team, consisting of Officers K1 and L1, was placed on an apartment building to the north of the lot. Two containment teams were placed one on the Boulevard, south of the lot, and another at the northeast corner of the lot.

Officer D1 had assumed responsibility for the EAT from Officer W. Sergeant E was told by Officer D1 that a plan was in place, and that the EAT had run through a number of scenarios that might arise and how to deal with them.

Officers X, Y, D1, and E1 discussed potential scenarios, including, Subject 1 coming out shooting, holding a gun, or holding Victim B, and what their actions would be if any of those scenarios were to arise. It was determined that, if shots were heard from inside the location, the EAT would initiate entrance. The EAT members' responsibilities if an assault was launched were also discussed.

In response to a request by Officer D1, Officer H1 responded to the rear alley with a BearCat.¹⁰ The vehicle that had been providing cover for officers in the alley was removed and the BearCat was positioned at the southeast corner of the lot. Officer D1 assigned Officer V to a position in the hatch in the roof of the BearCat.

Officer M1 responded to the alley and was assigned to assist the EAT by carrying breaching tools.

When Officer F1 arrived at the scene, he/she was told to participate in a Deliberate Assault Team (DAT).¹¹ Officer F1 was later instructed to be in a sniper position but was redirected to the DAT.

Officer I1 briefly observed a male figure, apparently holding Victim B, at the office window from his/her sniper position. Officer I1 became confident that the person he/she had seen was Subject 1. Officer I1 broadcast, "I see a gentlemen at the window; appears to be holding Victim B . . ."

¹⁰ The BEAR and BearCat are two types of armored vehicles.

¹¹ The DAT term has been discontinued since this incident occurred. The current term is "Deliberate Rescue Team."

Officer G1 arrived and, along with Officer H1, spoke with Officer W. As Officer W was briefing these officers, he/she heard a request from Officer D1 for additional officers to supplement the EAT and all three officers responded to the request.

Subject 1 came out of the office holding Victim B and presented himself to the EAT officers in the rear alley. Officer V saw that Subject 1 had a pistol in his waistband and relayed this information to the EAT officers. Officer X began speaking to Subject 1 in Spanish, repeatedly telling him, "Release [Victim B]. We don't want any harm to come to [Victim B]. Just please release [Victim B]."

Meanwhile, Officer V was watching Subject 1 through the scope of his rifle and aimed at Subject 1's head and upper body, but initially assessed that it was unsafe to fire. Subject 1 yelled, waved and reached towards the gun in his waistband. Officer V saw that he/she had a clear shot, without Victim B being in the way then fired one round at Subject 1.

When Officer V's shot was fired, Subject 1 spun to his left, downwards and out of view of all the EAT officers. Officer D1 gave the instruction for the EAT to enter the lot. A broadcast was made to indicate that the EAT was initiating. Although the round that was fired by Officer V did not strike Subject 1, none of the EAT officers was aware of this fact as they initiated. According to Officer D1, he/she believed that Subject 1 had been shot but not incapacitated. The EAT officers made entry to the lot according to the pre-planned order, Officers W, F1, G1 and H1 followed them in. The EAT officers lined up behind Officer Y at the entrance to the office. Subject 1 fired several rounds from his pistol through the wall where the officers were standing. Officer X was struck by a round and sustained a gunshot wound to the area of his/her right arm and shoulder. Officer X deployed a noise flash device into the office. The device detonated, emitting smoke. Officer Y entered the office first, staying to the left (west) side of the room. As Officer Y entered, he/she could hear shots being fired and observed that there was a lot of smoke in the office. Officer Y tripped and fell to the ground. From his/her position on the ground, Officer Y looked up and saw Subject 1 holding Victim B in his right arm and firing his handgun in the direction of the other officers. Subject 1 moved, in an effort to avoid being shot. As he/she did so, Subject 1 was firing at the officers and "pointing his weapon in the area of the hostage."

Officer Y fired 25 rounds from his/her M4 rifle at Subject 1. The shooting stopped and Officer Y saw Subject 1 lying on his back with Victim B by his knees. Subject 1 looked at Officer Y and started to move his left hand towards his pistol. Feeling that Subject 1 was attempting to reacquire his pistol, which was approximately one inch from his fingertips, to shoot at the officers or the hostage, Officer Y fired two contact shots at Subject 1's head.¹²

Officer X had followed Officer Y into the office and saw numerous rounds fired at the officers. Officer X saw Officer Y go down (presumably when Officer Y tripped) and thought that Officer Y had also been shot. Officer X attempted to shoulder his/her M4 rifle, but could not do so because of his injury. Officer X then held his weapon in an underarm position. Officer X fired a

¹² A "contact shot" is a gunshot fired when the muzzle of the weapon is in contact with the body of the person being shot.

total of ten rounds at the torso of the person behind the desk. During the exchange, it appeared that the person behind the desk fell, then fired over the desktop. When the gunfire stopped, Officer X said, "I'm hit," and went down on all fours.

Officer E1 followed Officers Y and X into the office, saw both officers go down, and believed that they had both been shot. Officer E1 saw Subject 1 pointing his gun at him/her and observed a muzzle flash from Subject 1's weapon. In response, Officer E1 fired nine rounds at Subject 1's torso. Officer E1 moved forward as he/she engaged Subject 1 and Subject 1 fell back. As Officer E1 moved up on Subject 1, he/she saw him holding his pistol in his left hand, attempting to point the gun at the officers. Officer E1 stepped up and delivered two-rounds towards the torso of Subject 1. Officer E1 then saw that he was not moving and was no longer a threat.

Officer F1 followed Officer E1 into the office. Upon entering the office, Officer F1 saw Officers X, Y, and E1 shooting at Subject 1, who was behind a desk, holding Victim B in his right arm and shooting a handgun in the direction of the officers with his left hand. Officer F1 saw that Subject 1 was using Victim B as a "shield," and was holding her by his torso with her head at the level of his right shoulder. Officer F1 raised his/her MP5 9mm sub-machine gun, illuminated Subject 1 with the weapon's light system, aimed at Subject 1's head and fired six rounds. As he/she fired, Officer F1 saw Subject 1 start to "slide down the wall." Officer F1 lost sight of Subject 1 as Subject 1 went behind the desk. Officers E1 and Y moved towards Subject 1, and Officer F1 did the same. Officer F1 saw Victim B lying on Subject 1's lap. He/she saw that Victim B had a major head injury and appeared to be dead. Officer F1 then saw Subject 1 reaching for a handgun that was one or two feet away from Subject 1. Officers E1 and Y then delivered contact shots to Subject 1. Officer F1 reached down and picked up Victim B by the arm and moved her towards the entrance of the office. Officers G1, D1, and M1 followed Officers X, Y and F1 into the office. These officers did not discharge their weapons.

None of the officers who made entry to the office saw Victim B get shot. Victim B sustained two gunshot wounds: a non-fatal injury to her leg and a fatal injury to her head.

Paramedics entered the office and determined that Subject 1 and Victim B were deceased. A subsequent autopsy determined that Subject 1 had consumed methamphetamine and cocaine.

The COP found Officers G and L's tactics to warrant administrative disapproval. Officers A, B, H, I, M, N, O, P, R, S, T and U's tactics to warrant formal training. The BOPC found Officer E1's tactics to warrant formal training.

The COP, because of the scope and outcome of this incident, directed that all significantly involved personnel participate in a formal debrief of the entire incident.

The COP indicated to the BOPC that he had directed the Commanding Officer, Air Support Division, to implement a series of scenario-based training exercises for all Air Support personnel.

The COP determined that Lieutenant A, Sergeants A, F and G, and Officers H and I would benefit from formal training in reference to command, control and supervision of incidents such

as this involving a barricaded suspect with hostage(s). This training would be considered a formal debrief as well as capturing any additional training concerns.

The COP noted that Officers A and B arrived at the radio call and parked the vehicle directly in front of the location, placing them in a position of tactical disadvantage. The COP determined that Officers A and B would benefit from additional training in regard to tactical deployment and operations in situations involving a hostage.

The COP noted that although the decision to rescue Victim A, which involved Officers M, N, O, P, R, S, T and U, was a brave one, a more appropriate tactic should have been used. The COP noted that the IARD tactic is more suitable for an indoors active shooter, such as in a school or church. The COP noted that the tactics used in the second (successful) rescue attempt, when officers approached from the south of the lot, was safer for everyone involved. The COP noted that this incident revealed a weakness in the Department's tactics should a similar situation occur. The COP indicated to the BOPC that additional training would be developed regarding this tactical issue.

The COP determined that Officers M, N, O, P, R, S, T, and U would benefit from additional tactical training regarding IARD and hostage rescue operations.

The COP noted that Officer G left cover on two occasions in order to see where gunfire was coming from or to get a clear shot at Subject 1. The COP also noted that, as he/she moved about, Officer G placed him/herself directly in the line of fire of another officer's shotgun. The COP additionally noted that Officer G was not wearing body armor as he/she moved away from cover, making him/her more vulnerable to injury from Subject 1's gunfire.

The COP determined that Officer G's tactics were severely deficient, warranting administrative disapproval.

The COP noted that, as Officer L deployed into the alley and took a position behind the vehicle, he/she was cognizant of rounds impacting in his/her immediate vicinity. The COP noted that Officer L's position behind the vehicle left him/her partially exposed, susceptible to Subject 1's gunfire, and ultimately resulted in him/her firing his/her UPR. The COP noted that, due to Subject 1 being contained inside of the building, as well as the presence of a hostage, it would have been more tactically sound for Officer L to assume a position of cover that would have reduced his/her risk from Subject 1's gunfire. The COP determined that Officer L's tactics were severely deficient, warranting administrative disapproval.

The COP found Officers G and L's use of force to warrant administrative disapproval.

The COP noted that, upon Officer G's arrival at the rear alley, he/she heard two to three rounds being fired from inside the building and left cover to obtain a better view. The COP further noted that, as Officer G moved northbound, he/she saw Subject 1 move in the direction of the doorway of the inner office, raise his left arm in a southwesterly direction and fire one to two rounds.

The COP noted that Officer G, fearing for the lives of the officers and the lives of the citizens in the area, fired six rounds at Subject 1.

The COP noted that, as Officer G re-assumed a position behind the vehicle, Officer L arrived with a UPR and took a position of cover behind the vehicle, to the left (south) of Officer G.

The COP noted that Officer G again heard gunshots and rounds impacting near to his location and fired an additional two rounds. Although Officer G subsequently reported that he/she had seen Subject 1 firing at him/her, the COP noted that evidence demonstrated that Officer G could not have seen Subject 1 at this time. The COP further noted that the investigation established that the rounds impacting near Officers G and L were those of the officers at the front of the lot firing at Subject 1 during their attempt to rescue Victim A.

The COP determined that it was not reasonable for Officer G to believe that Subject 1 was firing upon him/her, and that Officer G fired without a target. The COP found the final two rounds fired by Officer G to be out of policy, warranting administrative disapproval.

The COP noted that Officer L stated that he/she observed Subject 1 standing at the opening of the inner office doorway, firing a handgun in his/her direction, and that Officer L fired 11 rounds from his/her UPR. The COP noted that the projectile path and impact analysis identified the trajectory of five of Officer L's rounds. These rounds were determined to have traveled in a northwest direction, impacting the east office wall, three to four feet north of his/her purported target.

The COP noted that that Officer L arrived in the alley after Subject 1 had entered the interior office and closed the door and could not have seen Subject 1, thus firing without a target.

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

The commission adopted the recommendations of the COP.

As a result of the AD findings, two related complaint investigations were initiated, CF Nos. 06-006372 and 06-006036. The Department framed two allegations of misconduct in CF No. 06-006372 against Officer G for Use of Lethal Force (rounds 7-8), and Unauthorized Tactics. Both allegations were sustained. The penalty for Officer G was an official reprimand, which we question given the seriousness of the allegations. Officer G made several crucial and alarming errors during the incident and was administratively disapproved by the COP for both Tactics and Use of Force. The COP determined that Officer G's tactics were "severely deficient" and that it was "not reasonable" for Officer G to believe that he/she was being fired upon by Subject 1, when Officer G fired his/her final two rounds without a target. CF No. 06-006036 was not available for the OIG's review at the time this report was written.

V. Conclusion

Overall, we identified some common errors that we have seen before in our review of the Out of Statute Cases and believe that the Department can institute controls that prevent these errors from reoccurring. Discipline in most CUOF cases was consistent with the normal penalty ranges for such allegations. And, as always we look forward to working with the Department to address the issues mentioned in this report.