

**LOS ANGELES POLICE COMMISSION**

*REVIEW OF THE DEPARTMENT'S  
QUARTERLY DISCIPLINE REPORT*  
1<sup>st</sup> Quarter, 2008



Conducted by

**OFFICE OF THE INSPECTOR GENERAL**

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Inspector General

July 29, 2008

## **I. INTRODUCTION**

The Consent Decree requires that the Los Angeles Police Department (LAPD or 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 (See Consent Decree Paragraph 88). The Department has completed its report for the First Quarter of 2008 (Quarter). The Board of Police Commissioners (Commission or BOPC) received its copy of the Department's Quarterly Discipline Report on May 15, 2008. As required under Consent Decree Paragraph 89, the Office of the Inspector General (OIG) has reviewed the Department's Report and submits its own Report to the Commission.

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

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

In Section IV, the OIG discusses cases closed during the Quarter that were determined to be out of statute (OOS). This Report includes nine such cases that were closed during the Quarter. The OIG was provided with additional documentation to explain why these cases fell OOS and what remedial action, if any, was taken to avoid similar recurrences.

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

Section VI contains information about the need to update Training, Evaluation and Management System (TEAMS) Reports to reflect the Commission's findings regarding CUOF incidents.

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

On July 9, 2008, OIG staff discussed our preliminary findings in this report with the Commanding Officer (C/O) from Internal Affairs Group (IAG). On that same date, IAG submitted a written response to our preliminary findings. The information provided by IAG in our discussions and in their response was taken into consideration prior to finalizing this report.

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

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

### Sustained Information Summary

A classification of an allegation as "Sustained" means that the Department's investigation disclosed that the act complained of did occur and constituted misconduct. The standard of proof used by the Department in adjudicating administrative complaint investigations is a preponderance of the evidence, which means, "the greater weight of the evidence...that has the most convincing force."<sup>1</sup> Preponderance of the evidence is also "the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be."<sup>2</sup>

Using the information contained in the Department's Report, we determined that the percentage of sustained allegations was 12.3 percent (total of sustained allegations/total allegations = 489 / 3965 = 12.3 percent). Also using the information in the Department's Report, we determined that the percentages of sustained allegations for each of the ten most common allegations this Quarter were as follows, in descending order of sustained rate:

<b>Allegation</b>	<b>Sustained Rate</b>	<b>No. of Sustained Allegations/ Total Number of Allegations</b>
Preventable Traffic Collision	96.8%	91/94
False Statements	23.1%	21/91
Neglect of Duty	15.0%	126/842
Unbecoming Conduct	15.0%	102/682
Unauthorized Tactics	5.30%	7/132
Unauthorized Force	1.30%	5/395
Discourtesy	1.30%	10/744
Other Policy / Rule	1.00%	1/102
False Imprisonment	0.40%	1/261
Unlawful Search	0.00%	0/145

The OIG noted that the sustain rate for allegations of False Statements (23.1 percent) was significantly higher than it had been in previous quarters. In fact, in the last ten quarters, the sustain rate for allegations of False Statements this Quarter was the second highest, after 25.9 percent in the Fourth Quarter of 2006. Upon further review, the OIG found that the sustain rate was 22.8 percent (18/79) for sworn employees and 100 percent for non-sworn employees (3/3).<sup>3</sup>

<sup>1</sup> Black's Law Dictionary 1220 (8th ed. 2004).

<sup>2</sup> Id.

<sup>3</sup> Unknown/Invalid employees were not included in either calculation of sworn or civilian employees.

The OIG believes that the high overall percentage of sustained False Statements allegations demonstrates the Department's commitment to investigating and disciplining officers for conduct that is incompatible with the oath taken by police personnel. The OIG also believes that this topic warrants further examination and discussion by the OIG and the Department. As such, the OIG will examine cases involving at least one allegation of False Statements in more detail in the Second Quarter of 2008.

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Allegation Summary

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

<b>Classification</b>	<b>Sustained Allegations/ Total Allegations</b>	<b>Sustained Rate</b>	<b>Percentage of Total Allegations</b>	<b>Number of Accused Employees<sup>4</sup></b>	<b>Number of Employees w/ Sustained Allegations<sup>1</sup></b>
Accidental Discharge	1/2	50.0%	0.05%	2	1
Alcohol Related	6/11	54.5%	0.28%	7	4
Discourtesy	10/744	1.30%	18.8%	460	9
Discrimination	0/30	0.00%	0.76%	27	0
Dishonesty	10/16	62.5%	0.40%	12	8
Domestic Violence	4/37	10.8%	0.93%	13	2
Ethnic Remark	10/40	25.0%	1.01%	32	8
Failure To Appear	23/28	82.1%	0.71%	28	23
Failure To Qualify	45/65	66.2%	1.64%	67	45
Failure to Report Misc.	0/3	0.00%	0.08%	1	0
False Imprisonment	1/261	0.40%	6.58%	212	1
False Statements	21/91	23.1%	2.30%	69	14
Gender Bias	1/3	33.3%	0.08%	2	1
Improper Remark	5/29	17.2%	0.73%	19	5
Insubordination	1/2	50.0%	0.05%	2	1
Misleading Statements	4/7	57.1%	0.18%	5	3
Narcotics/Drugs	7/17	41.2%	0.43%	11	4
Neglect of Duty	126/842	15.0%	21.2%	528	88
Off-Duty Altercation	0/4	0.00%	0.10%	3	0
Other Policy/Rule	1/102	1.00%	2.57%	51	1
Preventable Traffic Coll.	91/94	96.8%	2.37%	93	90
Racial Profiling	0/69	0.00%	1.74%	54	0
Retaliation	0/24	0.00%	0.61%	20	0
Service	0/10	0.00%	0.25%	7	0
Sexual Misconduct	2/32	6.20%	0.81%	12	2
Shooting Violation	3/4	75.0%	0.10%	3	2
Theft	3/40	7.50%	1.01%	18	3
Unauthorized Force	5/395	1.30%	9.96%	242	4
Unauthorized Tactics	7/132	5.30%	3.33%	110	7
Unbecoming Conduct	102/682	15.0%	17.2%	374	61
Unlawful Search	0/145	0.00%	3.66%	116	0
Use of Force	0/1	0.00%	0.03%	0	0

<sup>4</sup> Data in this column were taken from Table II in the Department's Report. Employees are separately counted for each complaint and for each allegation type; thus a single employee may be counted repeatedly. Accordingly, the numbers in this column do not match the exact number of employees against whom the allegations were sustained.

Allegation Summary by Employee Rank – Listed by Allegation Type

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

	<b>Sustained Allegations/ Allegations</b>	<b>Overall Sustained Rate</b>	<b>Sustained Allegations/ Total Allegations (Minus PTCs, FTAs, &amp; FTQs)</b>	<b>Overall Sustained Rate (Minus PTCs, FTAs, &amp; FTQs)</b>
Allegation Total	489/3965	12.3%	330/3775	8.70%
Command Staff <sup>5</sup>	5/13	38.5%	2/10	20.0%
Lieutenant	4/34	11.8%	3/32	9.38%
Sergeant	42/224	18.8%	24/202	11.9%
Detective	41/230	17.8%	32/218	14.7%
Police Officer III	87/679	12.8%	52/640	8.13%
Police Officer II	185/1629	11.4%	105/1537	6.83%
Police Officer I	23/173	13.3%	15/160	9.38%
Reserve Officer <sup>6</sup>	11/16	68.8%	10/15	66.6%
Detention Officer	16/53	30.2%	16/53	30.2%
Civilian Personnel	55/119	46.2%	55/119	46.2%
Unknown/Invalid	20/795	2.25%	15/789	1.90%

Slightly more than twelve percent (12.3) of all misconduct allegations were sustained during this Quarter. Nearly nine percent (8.7) of all allegations were sustained when PTCs, FTQs, and FTAs were removed.

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<sup>5</sup> The OIG noted that three of the five total allegations sustained against Command Staff were for FTQ (1) and PTC (2). Two additional allegations for Neglect of Duty were also sustained against commanding officers.

<sup>6</sup> The OIG noted that the 69 percent sustain rate for Reserve Officers during the Quarter represents the highest rate of sustained allegations for this group in the last ten quarters. Further, six of the 16 total allegations were for Unbecoming Conduct, all of which were sustained. The OIG will monitor this issue closely to see whether the rate goes up or down in the upcoming quarters.

### III. REVIEW OF ALCOHOL RELATED MISCONDUCT CASES

#### A. Methodology

This Quarter the OIG conducted in-depth reviews of complaints that involved alcohol related misconduct allegations. During the Quarter, there were eight complaints with at least one allegation of alcohol related misconduct.

#### Alcohol Related Misconduct Sustain Rate by Year and Quarter

<b>Year / Quarter</b>	<b>Sustained Allegations/ Allegations</b>	<b>Overall Sustained Rate</b>
2008/1	6/11	54.5%
2007/4	7/15	46.7
2007/3	8/11	72.7
2007/2	7/12	58.3
2007/1	18/22	81.8
2006/4	5/7	71.4
2006/3	5/7	71.4
2006/2	8/10	80.0
2006/1	10/14	71.4
2005/4	7/7	100

The OIG noted that this Quarter allegations of alcohol related misconduct had a fairly high sustain rate (54.5 percent). This rate, however, was significantly lower than it had been in previous quarters. In fact, the sustain rate for this Quarter is the second lowest in the last ten quarters, after 46.7 percent in the Fourth Quarter of 2006. The average sustain rate over this same period was 70.8 percent, reaching 100 percent in the Fourth Quarter of 2005 (7 out of 7 alcohol related misconduct allegations were sustained). The reasons for the lower percentage of sustained alcohol related misconduct allegations over the past two quarters could be many including lack of evidence in the underlying criminal investigations. The OIG will monitor this issue closely to see whether the rate goes up or down in the upcoming quarters.

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

OIG staff also reviewed all available recorded interviews. In reviewing the recorded interviews in these cases, the OIG utilized a separate matrix containing 17 questions designed to evaluate

whether: (1) the interviews were properly paraphrased<sup>7</sup> to include all relevant testimony; (2) all allegations raised by the complainant were properly formed; (3) any additional allegations raised during the interviews were addressed in the completed investigation; (4) the interviews themselves were conducted properly (e.g., whether the interviewer used inappropriate or leading questions, or adopted a hostile or inappropriate tone with the witness); and (5) logical follow-up questions were asked by the interviewer. Second-level reviewers also listened to recordings that were recommended by the first-level reviewers to be essential to the review.

Although we reviewed eight cases that were closed during the Quarter, there were a total of 11 alcohol related misconduct allegations, because some of these cases involved multiple allegations. In the cases we reviewed, a total of six allegations of alcohol related misconduct were sustained.

## B. Findings

In summary, our review of alcohol related misconduct cases revealed that overall we believe IAG conducted investigations that contained enough information for the adjudicators to utilize in making a final adjudication in all eight cases. Although there were some additional steps we would have preferred to have been taken by IAG, the OIG found that there was enough information gathered during the investigations to allow the adjudicators to make informed decisions and concurred with the resulting adjudications.<sup>8</sup> We found in these cases that the Investigating Officer (I/O) made efforts to either canvass the area and/or interview possible witnesses, including police officers from outside law enforcement agencies. We also found that I/O's gathered relevant evidence related to the investigations.

## C. Case Summaries and Analysis

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

### 1. CF No. 05-3753

#### a. Summary

This complaint was filed by the Department against an officer that was arrested by an outside law enforcement agency for Driving while Under the Influence (DUI). An officer from an outside agency observed the accused officer, while off-duty, driving his/her personal vehicle with an expired registration. There was a passenger in the vehicle as well, who was the accused officer's significant other. The officer from the outside agency conducted a traffic stop on the accused officer's vehicle. As the officer from the outside agency approached the vehicle, he/she heard what was later determined to be an argument between the accused and the significant other. During the contact, the officer smelled a strong odor of alcohol emitting from the accused officer's breath. The significant other was then asked to exit the vehicle so that the officer could

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<sup>7</sup> On March 7, 2008, the OIG was informed by the Department that IAG was changing from the use of the term "paraphrasing" to "summarizing" for recorded statements in complaint investigations. However, given that IAG used the term "paraphrasing" for the majority of this Quarter, the OIG will continue to use the term for this Report.

<sup>8</sup> We transmitted additional concerns to the C/O of IAG by separate correspondence. None of these issues impacted the adjudications or compromised the overall quality of the investigations.

further investigate the argument. During the interview of the significant other, the accused officer exited the vehicle and became verbally belligerent and uncooperative. The officer from the outside agency conducted a field sobriety test (FST), which the accused did not pass, as well as two Breathalyzer tests, which resulted in blood alcohol content readings for the accused of 0.09 percent and 0.08 percent.<sup>9</sup> The accused was arrested for DUI and booked at a local detention facility.

The investigation revealed that the accused consumed a beer and several mixed alcoholic beverages prior to operating his/her vehicle on the highway. Further, the investigation showed that the accused unnecessarily pushed his/her significant other while arguing in the vehicle and that the accused had a prior pattern of conduct that would support that the accused is prone to behave in such a manner. Finally, the investigation also revealed that the accused may have attempted to intimidate a witness (the significant other) during the outside agency's official investigation.

The investigation resulted in six allegations of misconduct against the accused employee, which were then consolidated into five allegations through a Settlement Agreement between the accused and the Department. Per the Settlement Agreement, the first three allegations, that the accused was involved in a domestic violence incident, failed to cooperate with an outside law enforcement agency and inappropriately used his/her status as an officer to gain preferential treatment, were classified as "Sustained – No Penalty." The fourth allegation that the accused attempted to intimidate a witness was classified as "Not Resolved," and the fifth allegation, that the accused operated his/her private vehicle while under the influence of alcohol, was classified as "Unfounded."<sup>10</sup> Further, the Settlement Agreement allowed the accused to retire from the Department and keep his/her Carry Concealed Weapon (CCW) permit after retiring. Ordinarily, findings of "Sustained – No Penalty" for three allegations of misconduct of the type engaged in by the accused, would not be within the Department's Guidelines. However, the OIG understands that in this case the Chief of Police (COP) directed that no penalty be imposed pursuant to the Settlement Agreement in which the accused voluntarily agreed to retire from the Department, which he/she did.

#### b. Analysis of Investigation

Our review revealed no investigative deficiencies. The Department made every effort to obtain evidence regarding the alleged misconduct, which included reviewing a recording of the incident made by the officers at the scene.

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<sup>9</sup> According to Section 23152 of the California Vehicle Code it is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

<sup>10</sup> The I/O contacted the Deputy District Attorney (DDA) that handled this case. The DDA advised that because the accused was not originally stopped for his/her driving ability, the Preliminary Breath Test had a margin of error of +/- .03 percent BAC and the test at the booking facility was under 0.08 percent, the DUI charge was not filed. And although the C/O initially recommended that this allegation be classified as "Sustained," through the Settlement Agreement process the Department determined this allegation to be "Unfounded."

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision. However, the OIG had concerns about the Department's decision to find the DUI allegation to be "Unfounded" given that the evidence (two Breathalyzer tests administered at the scene and failure of the FST) would suggest that the accused was under the influence of alcohol. Further, due to the seriousness of the allegations in this case as well as a prior pattern of conduct, the OIG was concerned about whether the accused should have been allowed to keep his/her CCW permit. The Department has the authority to grant or deny a CCW endorsed retired police identification card.<sup>11</sup> Additionally, the accused had two serious and somewhat similar sustained personnel complaints that involved domestic violence and alcohol consumption, including one instance in which the accused confronted an ex-spouse with a loaded handgun during a domestic violence incident.

The C/O of IAG reviewed this matter in detail and advised the OIG that the Department could not substantiate DUI charges or witness intimidation due to a lack of credible evidence. More specifically, the breathalyzer tests had too high of a margin of error to be relied upon and the alleged intimidation did not rise to the level necessary to sustain. In addition, this case was settled with the intention of separating the accused from the Department without prolonged legal action or a Board of Rights hearing. Finally, the Department, through IAG and the Personnel Division, has developed a systematic procedure to review whether or not officers separating from the Department under similar circumstances should retain their CCW permits. This procedure is a welcome and well-thought development within the Department.

2. CF No. 07-001306

a. Summary

This complaint was filed by the Department against an officer that was detained by an outside law enforcement agency for DUI. The Department alleged that the accused officer, while off-duty, was DUI. The accused was driving at a speed of 85 miles per hour in a 45-mile per hour zone. The accused was stopped and detained by an outside law enforcement agency for the speeding violation when the arresting officer detected an odor of an alcoholic beverage emanating from the accused officer's breath. A supervisor from the outside agency responded to the location. The passengers in the vehicle, including another off-duty Department employee, were released. The accused officer was transported to the outside law enforcement agency station. The on-call IAG supervisor was notified and responded to the station in addition to the Area Patrol supervisor, Area watch commander, and an employee representative. The outside agency opted not to arrest the accused officer or file a criminal case. The IAG supervisor ordered the accused officer to provide a breath sample for administrative purposes only and

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<sup>11</sup> Special Order No. 29 dated August 28, 2007 issued by the Office of the Chief of Police established a formal process for the documentation and review of the Department's granting or denial of a CCW endorsed retired police identification card. According to the Order, "A retiring officer may have the privilege of carrying a concealed weapon revoked or denied by violating any Departmental rule, or state or federal law that, if violated by an officer on active duty, would result in that officer's arrest, suspension, or removal from the agency." Los Angeles Municipal Code Sections 52.29 and 52.30 and California Penal Code Sections 12027 and 12027.1 further delineate the issuance of a CCW endorsed retired police identification card.

he/she complied. The results of the tests were 0.06 percent and 0.06 percent. The Department recalculated what the breath alcohol content would have been after taking into account the time lapse from the initial stop to the test, and found that the accused officer's breath alcohol content would have been 0.10 percent at the time of the stop. Therefore, the Department initiated a personnel complaint against the accused for DUI.

The investigation resulted in one allegation of misconduct against the accused employee. The allegation that the accused was DUI was classified by the Department as "Sustained" based on the following rationale: The accused officer was DUI and admitted the allegation. The accused received a five-day suspension. The penalty was within the Department's Guidelines, in light of the fact that a review of the accused officer's complaint history revealed no prior sustained complaints for alcohol related misconduct within five years of CF No. 07-001306 being initiated.

b. Analysis of Investigation

Our review revealed no investigative deficiencies. The Department made every effort to obtain evidence regarding the alleged misconduct, which included an analysis of the breath test provided by the accused and detailed interviews of the outside agency's personnel.

c. Conclusion

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

3. **CF No. 07-001575**

a. Summary

This complaint was filed by the Department against an officer that was arrested by an outside law enforcement agency for DUI. The Department alleged that the accused officer, while off-duty, was DUI. The accused was driving his/her personal vehicle at speeds in excess of 115 miles per hour. The accused was stopped and detained by an outside law enforcement agency for the speeding violation when the arresting officer detected an odor of an alcoholic beverage emanating from the accused officer's breath. An additional unit from the outside agency responded to the location and conducted an investigation. The accused officer did not pass a series of standardized field sobriety tests. Further, a direct blood test revealed that the accused officer's blood alcohol level was 0.15 percent and that the accused was DUI. The accused was arrested and immediately booked and released to a Department supervisor on scene.

The investigation resulted in one allegation of misconduct against the accused employee. The allegation, that the accused engaged in alcohol related misconduct, was classified by the Department as "Sustained" based on the following rationale: The accused officer was arrested

for DUI and admitted the allegation. The accused received a penalty of ten suspension days. The penalty was within the Department's Guidelines, in light of the fact that a review of the accused officer's complaint history revealed no prior sustained complaints for alcohol related misconduct within five years of CF No. 07-001575 being initiated.

b. Analysis of Investigation

Our review revealed no investigative deficiencies. The Department made every effort to obtain evidence regarding the alleged misconduct.

c. Conclusion

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

4. CF No. 07-002456

a. Summary

This complaint was filed against a supervising officer (Supervisor A). Supervisor A attended a training course in perishable skills that included a behind-the-wheel driver-training component. Several officers from the training course attended lunch together, when Supervisor A ordered an alcoholic beverage. Another supervising officer (Supervisor B) informed Supervisor A that he/she could not consume alcohol while on-duty. Supervisor A stated that he/she was on Code-7 (lunch break) and according to the Fair Labor Standards Act, Code-7 was his/her own time. The accused officer then consumed approximately two-thirds of an alcoholic beverage.

Unsure if consuming an alcoholic beverage during Code-7 was just inappropriate or whether it amounted to misconduct, Supervisor B contacted the Los Angeles Police Protective League and a friend assigned to IAG. The friend at IAG advised Supervisor B that the consumption of alcoholic beverages during Code-7 was misconduct. Supervisor B then spoke to his/her immediate supervisor (Supervisor C) who advised that he/she would research the subject and get back to Supervisor B. Supervisor B subsequently advised the Area C/O of the incident who directed that a personnel complaint be initiated against Supervisor A.

The investigation resulted in two allegations of misconduct against the accused employee. The allegation that during an authorized lunch break the accused consumed an alcoholic beverage and then returned to work was classified by the Department as "Sustained" based on the following rationale: Supervisor A admitted he/she consumed alcoholic beverages during Code-7. The allegation that the accused engaged in behavior which compromised his/her position as a Department supervisor was also classified as "Sustained" because as a Department supervisor, the accused was entrusted to uphold the highest standards of integrity and behavior. In this case, the accused failed to do so. The accused received a penalty of five suspension days. The penalty was within the Department's Guidelines, in light of the fact that a review of the accused officer's complaint history revealed no prior sustained complaints for alcohol related misconduct or unbecoming conduct within five years of CF No. 07-002456 being initiated.

b. Analysis of Investigation

Our review revealed no investigative deficiencies. The Department made every effort to obtain evidence regarding the alleged misconduct.

c. Conclusion

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

5. **CF No. 07-002658**

a. Summary

This complaint was filed against an officer by an ex-boy/girlfriend. The complainant alleged that the accused officer mentally and physically abused him/her during their two year relationship and that the accused also engaged in misconduct while employed by the Department during that time. Specifically, the complainant alleged that the accused had consumed alcoholic beverages while on-duty, directed a narcotics suspect to eat Marijuana in lieu of an arrest, locked a DUI suspect in the truck of their own vehicle, sprayed the genitalia of male suspects with "mace" and failed to report misconduct on several occasions. The complainant did not witness the alleged misconduct directly.

The investigation revealed that the complainant and the accused were in a relationship for two years and lived together for the majority of that time. After the relationship ended, the accused obtained a Temporary Restraining Order (TRO) against the complainant based on the complainant's behavior after the relationship ended. The complainant then began to send letters and packages to the police station where the accused officer worked, which were opened by the C/O. The C/O consulted with the accused officer about the relationship and advised that the Threat Management Unit (TMU) be notified. The accused officer informed TMU that the complainant owned a firearm. The complainant and the accused officer had lived outside the City and therefore the Department requested an outside agency to address the TRO violation and confiscate the firearm as well.<sup>12</sup>

The investigation resulted in eight allegations of misconduct against the accused employee. The Department classified all of the allegations as "Unfounded" based on the following rationale: The complainant lacked credibility and although he/she did not recant the allegations, the complainant admitted that he/she contacted IAG because he/she was angry and wanted to hurt the accused.

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<sup>12</sup> During the TMU investigation the complainant began to exhibit obsessive behavior toward the TMU investigating officer. As a result, the TMU investigating officer also had to obtain a TRO against the complainant.

b. Analysis of Investigation

Our review revealed no investigative deficiencies. The Department made every effort to obtain evidence regarding the alleged misconduct from the limited information provided by the complainant.

c. Conclusion

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

6. CF No. 07-003822

a. Summary

This complaint was filed by the Department against a civilian employee. Police officers from an outside law enforcement agency responded to a radio call at a park. The accused employee and several friends, all under the age of 21, were gathered in the park after closing hours. When officers approached the group, they discovered an open alcoholic beverage container nearby. When officers inquired about whom the container belonged to, the accused stated that it belonged to him/her.

Officers at the scene stated the accused created a disturbance, was uncooperative, and disrespectful. Officers provided a warning to the other individuals for being at the park after hours but cited the accused for being at the park during closed hours and possessing an alcoholic beverage under the age of 21.

The investigation resulted in five allegations of misconduct against the accused employee. The allegations that the accused improperly purchased and possessed alcohol as a minor, inappropriately consumed alcoholic beverages in a public place as a minor, improperly entered a park during off hours and was discourteous when dealing with on-duty officers conducting an official investigation were classified as "Sustained" based on the following rationale: The accused employee admitted purchasing and possessing alcoholic beverages as a minor. Further, the accused admitted to being discourteous to the officers, which was corroborated by witness statements. The adjudicator also opined that the accused displayed a lack of maturity and failed to maintain a high standard of personal conduct. In addition, the accused should have refrained from conduct which, by its very nature, would reflect poorly on the Department. The accused received a penalty of five suspension days. The penalty was within the Department's Guidelines, in light of the fact that a review of the accused officer's complaint history revealed no prior sustained complaints for alcohol related misconduct or discourtesy within five years of CF No. 07-003822 being initiated.

b. Analysis of Investigation

Our review revealed no investigative deficiencies. The Department made every effort to interview all relevant witnesses.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and agrees with the resulting adjudication. In addition, the letter of transmittal was exceptionally well written in this case and demonstrated a thorough and complete analysis of the incident and investigation.

7. **CF No. 07-004965**

a. Summary

This complaint was filed by the complainant against an officer. The complainant and the accused officer, who had been in a relationship for ten years, were involved in a child custody dispute. The complainant alleged that the accused falsified a document that was submitted to the family court and that the accused is an alcoholic and reported for work while intoxicated. Several months after reporting the alleged misconduct to the Department, the complainant stated that he/she would not cooperate with the investigation and wanted to withdraw the complaint.

The investigation resulted in two allegations of misconduct against the accused employee. The allegation that the accused provided a falsified document to family court was classified by the Department as "Other Judicial Review" based on the following rationale: The matter would be best resolved in family court because it is not possible for the Department to determine the truth of this allegation.<sup>13</sup> Further, the complainant never provided specific information about the falsified document.

The second allegation, that the accused was intoxicated while on-duty on an unknown date was classified by the Department as "Unfounded" based on the following rationale: The allegation was never substantiated by supervisory observations nor did the complainant provide enough specific information about the misconduct. In addition, during the complainant's interview, which was digitally recorded, he/she refuted his/her earlier allegation when he/she stated to the I/O that the accused never showed up to work intoxicated or drank alcohol while on-duty but that the accused drank alcohol while off-duty.

b. Analysis of Investigation

Our review revealed no investigative deficiencies. The complainant did not provide enough specific information for the Department to investigate.

c. Conclusion

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

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<sup>13</sup> This rationale is consistent with Special Order No. 34 dated November 1, 2007 issued by the Office of the Chief of Police, which states, "Other Judicial Review may be used to adjudicate personnel complaints only if the accused employee's position does not play a role in the alleged actions. Matters involving these issues include: Violations of restraining orders; child custody/support disputes; and, other non-duty related civil disputes."

8. **CF No. 07-005001**

a. Summary

This complaint was filed against an unknown officer for drinking an alcoholic beverage on-duty. An anonymous complainant alleged that the accused officer, while on-duty and working undercover, was drinking an alcoholic beverage. The complainant did not provide a description of the employee, the location of the occurrence, or why he believed the individual was a Los Angeles police officer.

The investigation resulted in one allegation of misconduct against an unknown accused employee. The allegation that the accused consumed an alcoholic beverage while on-duty was classified by the Department as "Insufficient Evidence to Adjudicate" based on the following rationale: The complainant did not provide enough information for the I/O to develop investigative leads to identify the officer or resolve the allegation.

b. Analysis of Investigation

Our review revealed no investigative deficiencies. The Department made every effort to obtain evidence regarding the alleged misconduct from the limited information provided by the complainant. In addition, the complainant did not provide any information on how he/she knew the officer was working undercover for the LAPD.

c. Conclusion

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

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#### **IV. DISCUSSION OF OUT OF STATUTE CASES**

During the Quarter, nine cases were closed that were determined to be Out of Statute (OOS).<sup>14</sup> We reviewed these investigations to determine the reasons that the cases fell OOS and whether remedial actions were taken to prevent reoccurrence. We reviewed nine Intradepartmental Correspondences (15.2s) related to these cases provided to us by the Department, as well as the full case files.

We noted in a previous Report that the Department's training for investigators now includes a specific section on the proper classification of statute dates, however, improper classification of statute dates resulted in several cases falling OOS during this Quarter.

Summaries of the OOS cases are as follows:

##### **CF No. 04-4082**

This complaint involved an officer that failed to respond to a call for service. The investigation revealed that the accused provided a disposition of "completed" for the call for service on an assignment log. However, the accused did not advise Communications Division (CD) that he/she had arrived at the location nor did he/she document the call in his/her Daily Field Activities Report (DFAR).

It appears that the statute lapsed because the Department inaccurately calculated the statute date. The accused was on military leave for a period of time that was less than the original expected deployment period. The case was tolled based on the initial deployment period;<sup>15</sup> however, the statute date was not recalculated based on the accused officer's earlier return date. Although no further action can be taken, the accused has been informed of all of the allegations.

##### **CF No. 06-0583**

This complaint involved an officer that failed to qualify with his Department issued firearm, as required. The Department became aware the following month that the accused officer did not qualify. A complaint was not initiated until six months later. The complaint was then assigned to an Area supervisor for investigation.

It appears that the statute lapsed because the supervisor never received the complaint or notification to complete the investigation. As a result, the complaint was not completed in a timely manner and fell OOS.

The Area has since set up a system to properly track complaint investigations. The Area C/O submitted a 15.2 to the Bureau informing them of this change. The Bureau suggested that in

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<sup>14</sup> These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. All nine cases are discussed herein.

<sup>15</sup> Government Code 3304(d) and the Los Angeles City Charter Section 1070(c) both state that the statute of limitations for an investigation may be tolled if the investigation involves an employee who is either incapacitated or otherwise unavailable. This applies to officers who are unavailable because of military leave.

addition to the change in tracking complaints, the Area should also initiate complaints in a more expeditious manner.

**CF No. 06-2148**

This complaint involved a third-party complainant who alleged that two officers were harassing two young males and failed to identify themselves upon request. The complaint was assigned to the Area for investigation. Approximately five months later, the Area requested that the case be reassigned to IAG.

It appears that the statute lapsed because neither of the sections that were supposed to have processed the Area's request had any record of receiving the case folder for reassignment approval; therefore, the complaint was never assigned to an investigator or investigated. The complaint was discovered during an internal audit of pending cases nearly 11 months after the Area's request for reassignment, at which time it was determined to be OOS.

Training was provided to personnel in both sections regarding the proper handling and forwarding of complaint investigations.

**CF Nos. 06-2562 and 06-2563**

These two complaints involved a random integrity mail audit to a Division. When conducting this integrity audit, two complaints were mailed to the Division to ensure that complaints were being filed by the Division in a timely manner. Approximately three months later, there had been no response to the audit and two personnel complaints were initiated against unknown officers for neglect of duty.

It appears that the statute lapsed because the two complaints were inadvertently sent back for investigation to the section responsible for the initial integrity audit. Instead, the cases should have remained at IAG for investigation. Because no one at that Section recalled receiving the complaints, it is unknown if they were ever received or if they were misplaced. One year and four months later it was discovered during an internal audit that the complaints had remained at the Section and were now OOS.

The Section has tightened its complaint tracking systems and the involved personnel received training. Further, the Section officer in charge (OIC) is now included as a recipient of a report detailing specific statute dates.

**CF No. 06-3348**

This complaint involved a complainant and officer, who had previously been in a long-term relationship, and were going through a divorce at the time the complaint was initiated. The complainant alleged that the accused officer made statements that caused the complainant to feel

that his/her life was in danger. Although the allegations were reported to the Department approximately two years ago, the related incidents occurred over ten years ago and were determined to be OOS.

It appears that the statute lapsed because according to the City Attorney's Office, the statute of limitation guidelines must coincide with the time period in which the misconduct allegedly occurred. At the time of the alleged misconduct, the statute date was governed by Section 202 of the previous City Charter, which provided for a one-year statute of limitation from the date of occurrence for non-criminal misconduct and between three to five years for criminal misconduct.

**CF No. 06-006143**

This complaint involved an officer who was involved in a traffic collision. The Fleet Safety Review determined that the traffic collision was preventable. The recommendation from the Area was that the allegation be sustained with a penalty of an Admonishment.

It appears that the statute lapsed because the officer that initiated the personnel complaint listed the date of the Fleet Safety Review as the date reported to the Department instead of the correct date, which was the date of the incident. The investigation was completed and forwarded to the Area past the statute date.

Administrative personnel also did not note the incorrect reporting date, nor did the I/O or the supervisor that ultimately approved the investigation. Therefore, believing that the statute date was many months away, the Division C/O reviewed other complaint investigations ahead of this investigation.

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

**CF No. 07-003076**

This complaint involved an officer who was involved in a traffic collision while assigned to Area A. The collision occurred in Area B. Due to the location of occurrence, the Fleet Safety Report was erroneously sent to Area B for adjudication. For a year and a half, the Department Fleet Safety Coordinator sent nine separate Overdue Status Reports to Area A informing the administrative staff that the accused officer's Fleet Safety Report was past due. These reports were re-routed to Area B.

It appears that the statute lapsed due to the misdirection of the original Fleet Safety Report, which resulted in a lag time of two years. It was correctly determined that Area A was responsible for completing the review and adjudication of the Fleet Safety Report.

The IAG C/O submitted a 15.2 to the Bureau and recommended that the Bureau review the case to determine appropriate action.

**CF No. 07-003459**

This complaint involved a negligent discharge of a firearm. The BOPC recommended a finding of Administrative Disapproval (AD) for the discharge. Although the Use of Force Review Board (UOFRB) was aware that a complaint needed to be generated, a complaint was not initiated until over one year later, at which time it was determined to be OOS.

It appears that amount of time passed and the statute lapsed because the OIC of the UOFRB Categorical Section was off-duty for an extended period of time and no one else in the Section initiated the complaint. As a result, each UOFRB that issues an AD finding now has a task list attached to the report in an effort to avoid a recurrence. A more detailed summary of this case can be found in Section V below regarding OIS No. 037-06.

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## **V. CUOFS ADOPTED AS OUT OF POLICY OR ADMINISTRATIVE DISAPPROVAL BY THE COMMISSION**

During this Quarter, nine CUOF incidents were closed in which the Commission adopted a finding of Out of Policy or Administrative Disapproval (AD). Four of the incidents were officer involved shooting (OIS) cases, three involved head strikes, two were law enforcement related injury (LERI) cases, one involved the use of a carotid restraint control hold (CRCH) and two were Negligent Discharge (ND) cases.<sup>16</sup> Table L in the Department's Report contains additional summary information on each of the nine cases, including corresponding complaint information, the Commission's findings and the discipline imposed, if any. One of the cases fell OOS and was also discussed in Section IV of this Report. In previous reports, the OIG has noted higher numbers of CUOF cases that fell OOS. Only one case falling OOS during this Quarter is a positive step and the OIG recognizes the Department's vigilance in addressing cases in a timely manner. In six of the cases, which are summarized below, the Commission adopted the findings of the COP.<sup>17</sup>

### **LERI No. 017-05**

This case involved a head strike with an impact weapon. Officers A and B were driving in a marked police vehicle when they were flagged down by a group of citizens. The citizens directed the officers to follow a vehicle whose occupant, Subject 1, had a gun and had just been involved in a robbery. It was later determined that the group of citizens were also the victims of the robbery and carjacking. Officers A and B pursued the vehicle.

Officers C and D, who were in the area and heard the radio broadcast of the pursuit, joined the pursuit as the secondary unit. The driver of the stolen vehicle (Subject 1) lost control of the vehicle, which resulted in a five-car collision. As Officers A and B approached on foot, they observed Subject 1 crawl from the vehicle.

Officer A caught up to Subject 1 and pinned Subject 1 face down against the hood of a parked vehicle. Officers B, C and D then arrived at the location. Subject 1 refused to comply with the officers' commands. Officer A then stated, "I'm going to shoot you [expletive omitted]," and struck Subject 1 in the back of the head with the butt of his/her service pistol. Officer B struck Subject 1 once in the right shoulder blade with the palm of his/her right hand. Subject 1 continued to resist. Officer D then approached and attempted to assist Officer B get control of Subject 1's right arm. Officer D struck Subject 1 in the right shoulder blade four times with his/her right fist. Subject 1 still continued to resist. Officer A struck Subject 1 in the back of the head with the butt of his/her service pistol a second time. Subject 1 was handcuffed and searched and no weapons or contraband were found. Subject 1 was treated for injuries at the scene by a Rescue Ambulance (RA) and transported to a local hospital.

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<sup>16</sup> It should be noted that the Department now uses the term Negligent Discharge in these types of cases, however in the Department's Report these incidents are referred to as Accidental Discharges, which are denoted with the initials ACC.

<sup>17</sup> In 091-06, 022-05 and 081-06 the Commission partially adopted the recommendations of the COP. The cases, along with the Commission's findings and rationale, are discussed in more detail below.

A subsequent search of the route of the vehicle driven by Subject 1 resulted in the discovery of a .40 caliber semiautomatic pistol. The pistol was found to have been stolen.

The Watch Commander, Officer E, was notified and responded to the scene. However, the Department Command Post (DCP) was not notified of this incident by the Assistant Watch Commander, Officer F, until 45 minutes after the incident had occurred.<sup>18</sup>

The BOPC determined that Officer A's tactics were seriously deficient, warranting AD; Officers B, C and D's tactics to warrant formal training; and Officers E and F's tactics to warrant divisional training.

The BOPC noted that officers are authorized to strike a suspect on the head with an impact device only when lethal force is justified. Because Officer A did not observe Subject 1 with an object that could have been used as a weapon against the officers, the BOPC determined that Subject 1 did not reasonably present an immediate threat of serious bodily injury or death at the time Officer A struck Subject 1 on the head with the butt of his/her service pistol. The BOPC would have preferred that Officer A had holstered his/her service pistol prior to making contact with Subject 1 and utilized both hands to detain Subject 1. The BOPC found Officer A's lethal use of force to be out of policy, warranting AD.

As a result of the AD finding, personnel complaint CF No. 06-0427 was initiated. The complaint investigation resulted in three allegations of Unauthorized Tactics, Unauthorized Force and Discourtesy being sustained against Officer A, resulting in a 10-day suspension. Officer A appealed the suspension and requested a Board of Rights (BOR or Board) hearing. The Board found Officer A Guilty of Unauthorized Tactics and Unauthorized Force and Not Guilty of Discourtesy and reduced Officer A's suspension to four days. The penalty was within the Department's Guidelines, in light of the fact that a review of Officer A's complaint history revealed no prior sustained complaints for Unauthorized Tactics, Unauthorized Force or Discourtesy within five years of CF No. 06-0427 being initiated.

### **OIS No. 022-05**

This case involved multiple OIS's that occurred both during and after a lengthy vehicle pursuit in which officers were being fired upon by two subjects. One early morning, officers from several divisions became involved in the pursuit of a vehicle being driven in a manner consistent with someone DUI. All of the involved officers were in full uniform and driving black and white police vehicles. The vehicle being pursued was occupied by two people (Subjects 1 and 2). During the vehicle pursuit, which lasted approximately 33 minutes, the officers realized that they were being shot at and broadcast that shots were being fired at police vehicles.

A decision was made to have a police vehicle advance on the subjects' vehicle and for the officers to engage the subjects in an attempt to terminate the pursuit and stop the subjects' vehicle. As the pursuit progressed, both subjects fired rounds at the officers. The officers

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<sup>18</sup> Department Manual Section 3/794.35 states "[t]he watch commander or officer in charge who receives initial notification of an incident for which Force Investigation Division (FID) has investigative responsibility shall immediately notify the Department Command Post (DCP), Communications Division."

returned fire and shortly thereafter, the subjects lost control of their vehicle and collided with a wrought iron fence, coming to rest in a parking lot. After the subjects' vehicle came to rest, the subjects continued to fire rounds from a rifle at the officers, who were deploying to the rear of the subjects' vehicle. In response, 16 officers fired rounds at the suspects at the pursuit termination location.

After the gunfire had ceased, the officers maintained their positions until the arrival of personnel from a highly specialized division. The Specialized Division personnel ultimately were able to extract the driver, Subject 1, from the vehicle. Subject 1 received medical treatment on scene and was then transported to a hospital where he/she underwent surgery for multiple gunshot wounds. Subject 2 was pronounced dead at the scene.

The following officers' actions were evaluated and received findings as a result of this incident: Officer A, a high-ranking supervisor, Officer C, a supervisor, and Officers G, H, I, J, K, L, M, N, O, Q, R, S, T, W and X.

The BOPC found Officers K and W's tactics to warrant AD. The BOPC determined that Officer K's actions, while well intentioned, placed himself/herself and fellow Officer M at a significant tactical disadvantage which could have resulted in serious injury or death to either officer. Officer W's decision to fire from his/her two firing positions endangered fellow officers who were effectively downrange from him/her during a dynamic and fluid incident. Officer W's actions placed fellow officers at risk of death or serious injury.

The BOPC found Officers A, C, I, J, M, N, O, Q, R, S and X's tactics to warrant formal training.

As a result of the AD findings, personnel complaint CF No. 06-4991 was initiated. The Department framed one allegation against Officer K for Unauthorized Tactics, which was sustained. Officer K received a penalty of 5 suspension days. The Department framed one allegation against Officer W for Unauthorized Tactics, which was sustained. Officer W received a penalty of 5 suspension days, but the COP downgraded the penalty to an Official Reprimand (OR) based on the military endorsement provided by the Bureau C/O. These penalties were within the Department's Guidelines, in light of the fact that a review of the officers' complaint histories revealed no prior sustained complaints for Unauthorized Tactics within five years of CF No. 06-4991 being initiated.

### **OIS No. 088-05**

This case involved an OIS that occurred after one officer mistook another officer for a suspect and fired at that officer. Officers A, B, C and D were conducting a follow-up investigation at a duplex apartment building for robbery suspects. Officer A was wearing casual clothing with a baseball cap and Officer B was wearing business attire. The officers were driving a dual-purpose police vehicle. Officers C and D were in full uniform and driving a black and white police vehicle.

Officers A and B checked the apartment building parking lot and did not locate the possible suspects' vehicle or suspects from the crime. They decided to check the surrounding area for the

suspects' vehicle and closed the gate leading to the rear parking lot prior to departing. Upon returning a short time later, they observed that the gate was open and believed the suspects may have returned. The officers parked in a business parking lot north of the apartment building to again check for the vehicle or suspects. As Officer B spoke with a canine officer, who happened to be in the area, Officer A walked southbound and then westbound on the driveway to the rear of the apartment building to look for the vehicle. Officer A observed the suspects' vehicle parked to the rear of the building and requested additional units to assist with the robbery suspects. However, Officer A broadcast the incorrect address of the apartment building.

Officers C and D were at the location earlier and responded to the additional unit request. The officers responded to the incorrect address and unsuccessfully attempted to confirm the address. Upon their arrival, Officers C and D walked between the two apartment buildings and approached the rear parking lot. Officer C carried a Department-issued shotgun as he/she stepped out to locate the other officers, while at the same time clearing the parking lot of possible suspects. Officer A was deployed behind a parked vehicle just north of Officers C and D, which created a crossfire situation. Officers C and D were unaware of Officer A's location.

Officer A, believing that Officer C was a suspect with a shotgun or rifle, fired one round in a southerly direction from approximately 25 feet at the silhouette and barrel of the gun. The round traveled through the rear window of the parked vehicle that Officer A stood behind for cover and embedded into the steering wheel. With his/her service pistol still in single-action mode, Officer A dove from behind the parked vehicle to the corner of the apartment building, as Officer C stepped back between the two buildings. Simultaneously, Officer B identified Officer C and voiced that there were officers to the rear. Officer B advised Officer A that he/she had just fired upon Officer C. No officers were injured from the gunshot, although Officer A sustained injuries when he/she dove for cover. Officer B broadcast that shots were fired and additional officers and supervisors responded to assist.

Officer A was treated at the scene by paramedics for minor abrasions and then transported to the hospital for further treatment.

The BOPC found Officer A's tactics to warrant AD; Officer B's tactics to warrant formal training; and Officers C and D's tactics to warrant divisional training. The tactics were deemed to be deficient for Officer A for several reasons. While conducting a follow-up, Officer A separated from his/her partner, Officer B. Officer A left the cover of an apartment building in an attempt to read the license plate of the suspects' vehicle, which had not been cleared. Officer A observed what he/she thought was a suspect with a rifle or shotgun approaching his/her position. The persons approaching Officer A were Officers C and D. Officer A did not identify himself and verbalize with the "suspect." Officer A also had his/her radio in his/her left hand and his/her service pistol in the right hand. This hampered his/her efforts to use a flashlight to illuminate the dimly lit area and properly identify his/her target.

The BOPC found Officer A's use of force to be out of policy, warranting AD. The force used by Officer A was deemed to be deficient for several reasons. While conducting a follow-up for robbery suspects, Officer A broadcast an incorrect location causing officers to respond from an alternate direction and ultimately creating a crossfire situation. Officer A fired one round at a

perceived threat, which was actually responding officers. He/she failed to properly identify his/her target. Officer A's use of lethal force was neither reasonable nor justified.

As a result of the AD findings, personnel complaint CF No. 06-4144 was initiated. The Department framed two allegations against Officer A for Unauthorized Tactics and a Shooting Violation, which were sustained. The COP imposed a penalty of 22 suspension days and additional training. However, Officer A retired thereafter due to a service-related disability, and as a result, Officer A was never served the suspension. The recommended penalty in this case was within the Department's Guidelines, in light of the fact that a review of Officer A's complaint history revealed no prior sustained complaints for Unauthorized Tactics or a Shooting Violation within five years of CF No. 06-4144 being initiated.

### **OIS No. 037-06**

This case involved a ND. Officer A, while on-duty, went to a shooting range at a Department training facility for his/her required monthly firearms qualification. While in the corridor area of the range, Officer A stood over a loading barrel holding his/her pistol in a downward position and unloaded the pistol by removing the magazine and a live round from the chamber and locked its slide back. Instead of using the unloaded magazine which Officer A had placed between his/her duty belt and uniform shirt, Officer A removed a loaded magazine from a magazine pouch on his/her duty belt, inserted and seated it in the pistol. Officer A failed to conduct a chamber check and turned away from the barrel and began walking away. Believing the pistol was unloaded, Officer A released the locked slide, which resulted in a live round being chambered and Officer A placed his/her finger inside the trigger guard. Officer A pulled the trigger causing the pistol to discharge the live round.

Officer B, who was standing approximately 75 feet from Officer A, felt a sharp pain in his/her left forearm immediately after the gunshot. Officer C, a supervisor, and Officer D heard the single gunshot, went to investigate and observed Officer A standing near the loading barrel. Officer C and D contacted Officer A and determined that a ND had occurred.

At the same time, Officer C and D determined Officer B had been wounded by the gunfire. Officer B's injuries consisted of a superficial gunshot graze to the left forearm. Officer B received four stitches in his/her left forearm and was later released and cleared to return back to full-duty.

The BOPC was critical of Officer A's failure to adhere to basic firearms safety rules while handling his/her pistol and determined Officer A's use of force to be negligent, warranting AD.

After the incident, Officer A completed a firearms course. As part of the course curriculum, personnel from TD reviewed in detail with Officer A basic firearms safety rules and the proper techniques for loading and unloading a service pistol. The training provided was appropriate and subsequently documented. The BOPC felt that the aforementioned firearms training properly addressed the issues related to this incident and therefore determined that no additional training was warranted.

As a result of the AD finding, personnel complaint CF No. 07-003459 was initiated. The Department framed one allegation against Officer A for ND, which was sustained. As a result of the statute having expired, no penalty was administered.<sup>19</sup>

### **CRCH No. 081-06**

This case involved officers using a CRCH to subdue a person suspected of having a mental illness who had threatened a family member with a piece of wood.

Witness A was at home with Subject 1, who suffered from schizophrenia. Subject 1 threatened Witness A with a small wooden object. Witness A left, but when he/she returned, Subject 1 was standing outside holding a backpack. Witness B arrived home and Witness A told him/her what happened and Witness B called 911.

Communications Division (CD) broadcast that a "violent male/female with mental illness" was in front of the home address of Subject 1. CD also provided a description of Subject 1, and indicated that he/she was armed and had attempted to strike Witness B. The call was assigned to uniformed Officers A and B.

Upon arrival at the call location, Officers A and B observed Subject 1 standing on the landing in front of the stairs to his/her residence. The officers approached Subject 1. Subject 1 looked in the officers' direction, but did not appear to be focusing on them. Officers A and B observed that Subject 1 had a backpack slung over his/her left shoulder. The officers did not see the small object protruding from the backpack, nor did they see anything in Subject 1's hands; however, they were concerned that a weapon could be inside the backpack.

Several attempts to verbalize with Subject 1 and get him/her to drop the backpack were unsuccessful. After trying to talk to Subject 1, Officers A and B discussed a plan of action to remove the backpack from Subject 1, and to take Subject 1 into custody. The officers decided that Officer A would approach Subject 1 from the front, and Officer B would approach from the rear.

Officers A and B initiated their plan, and Officer A was able to knock the backpack off of Subject 1's shoulder and kick it away. Officer A then placed Subject 1's left hand in a wrist lock.

As Officer A retrieved his/her handcuffs, Officer A lost control of Subject 1's hand. Subject 1 then became agitated and grabbed the handcuffs. Officer A told Officer B that Subject 1 had grabbed the handcuffs, and held on to the handcuffs to prevent Subject 1 from taking full control of them. As Officer A and Subject 1 struggled for control of the handcuffs, Officer B struggled to control Subject 1's hand. Subject 1 and the officers then fell onto a stairwell. Subject 1 landed face-down, with Officers A and B on both sides.

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<sup>19</sup> A discussion regarding why this case fell OOS is contained in Section IV, "Discussion of Out of Statute Cases."

The officers continued to struggle for control of Subject 1's arms. Officer A repeatedly told Subject 1 to "Stop resisting." Officer A retrieved his/her handcuffs from Subject 1's grasp. Witnesses A and B heard Subject 1 shout to Witness B, who exited the residence and stood on the stairway. From that position, the two witnesses observed Subject 1 on his/her stomach on the stairs, struggling with the officers.

Officer A decided to spray Subject 1 with oleoresin capsicum (OC) spray, and drew his/her canister. However, Officer A decided that there was not enough space to use OC without spraying Officer B. Officer A then reholstered his/her OC canister and the struggle continued. Meanwhile, Subject 1 was calling to Witnesses A and B, asking them for help. Witnesses A and B told Subject 1 to comply with the officers' orders.

As the struggle continued, Officer A, who was becoming fatigued, again drew his/her OC canister. Officer A advised Officer B that he/she was going to use the spray. Officer B turned away to avoid being affected by the spray; however, Subject 1 turned his head away as well. Officer A then reholstered the OC canister, losing control of Subject 1's left hand. Subject 1 then reached out for Witness A, who was on the stairs, grabbed his/her hand and asked for help.

As Officer A attempted to get Subject 1's hand away from Witness A, Subject 1's left hand landed on Officer A's TASER electronic control device.<sup>20</sup>

According to Officer B, Subject 1's hand became entangled in the webbing of the TASER holster. Officer B then grabbed Subject 1's right wrist and applied a wrist lock.

Officer B then shot a one-second burst of OC spray into Subject 1's left eye. Officer B was unsure whether the OC spray affected Subject 1.

At this point Officer B attempted to offer some "comfort" to Subject 1. According to Officer B, Subject 1 "grabbed onto [Officer B's] hand like he/she wanted [Officer B] to help...but [Subject 1's] actions were saying something different."

Officer B then let go of Subject 1's right hand and struck [Subject 1] twice in the head with a fist. When the punches proved ineffective, Officer A told Officer B, "I'm putting out a help call," and activated the emergency button on his/her radio.

Concerned that the punches had not worked, no assistance had arrived and nothing that the officers had done was working, Officer B told Officer A to "choke [Subject 1] out."

Officer A heard Officer B's direction to "choke [Subject 1] out" and applied a CRCH to Subject 1. Officer A was unable to apply fully the CRCH. As Officer A was applying the CRCH, the officers and Subject 1 fell down onto the landing at the foot of a stairwell, with Officer A landing on his/her back and Subject 1 lying on top of Officer A. Officer A continued to apply the CRCH and Officer B observed Subject 1's feet "kind of twitch a little." Further, Officer A heard Subject 1 gasping for air and noticed that Subject 1's level of resistance was declining.

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<sup>20</sup> The TASER® electronic control device is a registered trademark of TASER International, Inc. TASER is an acronym, the letters of which stand for "Thomas A. Swift's Electric Rifle."

Shortly after the help call was broadcast, Officers C and D arrived at the location. Upon their arrival, Officers C and D observed Subject 1 resisting and Officers A and B on top of Subject 1. Officers C and D told Subject 1 to stop resisting. Subject 1 stated that he/she needed medication. Officer C told Subject 1 to put his/her arms behind his/her back and they would get the medication. Subject 1 complied and was handcuffed. Having handcuffed Subject 1, Officers C and D broadcast that the subject was in custody, and that they needed a supervisor and RA for Officers A and B.

Subject 1, whose nose was bleeding slightly, was examined at the scene by paramedics. Officers A and B were transported to a local hospital, where Officer A was treated for a wrist injury and Officer B was treated for arm and leg contusions.

The BOPC found Officers A and B's tactics to warrant formal training and Officer B's use of force to be out of policy, requiring AD.

The BOPC based their finding on the Department's policy regarding the use of the CRCH, which is to be used at essentially the same threshold that lethal/deadly force is authorized.<sup>21</sup> Specifically, the BOPC noted that, although the evidence in this case established that Officer B had engaged in a prolonged struggle, was fatigued and had exhausted or deemed impractical certain force options, it did not establish that Officer B's direction to apply a CRCH conformed with the policy regulating the use of deadly force. As a result of the AD finding, personnel complaint CF No. 07-004294 was initiated. The Department framed one allegation against Officer B for Unauthorized Force, which was sustained. Officer B originally received an OR as a penalty; however, the COP reduced the penalty to "Sustained – No Penalty." The penalty was within the Department's Guidelines, in light of the fact that a review of Officer B's complaint history revealed no prior sustained complaints for Unauthorized Force within five years of CF No. 07-004294 being initiated.

### **LERI No. 091-06**

This case involved the intentional striking of a subject with the front portion of a police vehicle. While on patrol, Officers A and B observed a truck stopped in the roadway. Officer A formed the opinion that an individual (Subject 1) was attempting to rob the driver of the truck. Officer A advised Officer B of his/her observations and told him/her to turn their police vehicle around. Officer B negotiated a U-turn. The officers then observed Subject 1 riding a bicycle on the sidewalk.

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<sup>21</sup> Department Manual Section 1/556.40, which outlines the Department's use of deadly force policy, provides that, "[a]n officer is authorized to use deadly force when it reasonably appears necessary to protect himself or others from an immediate threat of death or serious bodily injury, or ... To apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed ... Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable."

The officers used their vehicle spotlights to illuminate Subject 1. Officer A commanded Subject 1 to stop. Officer A observed Subject 1 look in the officers' direction several times and attempt to conceal an object with a rag. Officer A further indicated that Subject 1 looked back in their direction while grabbing his/her waist as if attempting to retrieve a handgun. Officer B also observed Subject 1 look in the officers' direction several times and drop a clothing item nearby. Officer B also noted that Subject 1 was in possession of a utility tool belt.

Subject 1 did not comply with commands to stop and turned. When Subject 1 turned, Officer A observed what appeared to be the handle of a handgun.

As the officers continued to follow, Subject 1 slowed down and grabbed his/her waistband, causing Officer A to open his/her door, exit the vehicle with his/her gun drawn, and tell Subject 1 to get off of the bike and to place his/her hands up. When Subject 1 sped away on the bicycle, Officer A holstered his/her service pistol and closed the vehicle door.

Subject 1 turned his/her body and Officer A saw an object he/she believed to be a handgun. Officer A informed Officer B that Subject 1 had a gun. Officer B then turned the patrol car toward Subject 1 and intentionally struck Subject 1 with the front portion of the vehicle, pinning Subject 1 between the vehicle and a fence.

Following the collision and believing that Subject 1 was armed, Officer A immediately exited the patrol car, and, with his/her service pistol drawn, ordered Subject 1 to raise his/her hands.

Subject 1 struggled to free himself/herself and motioned toward his/her waist several times. Neither officer observed a weapon in Subject 1's possession. Moments later, Subject 1 freed himself/herself and ran, prompting Officer B to follow on foot. Officer B then tackled Subject 1 around his/her upper torso and a struggle ensued. At one point during the struggle, Subject 1 lifted Officer B off of the ground and carried him/her a distance of three to four feet before Officer A arrived to provide assistance.

During the course of the struggle, Officer B placed his/her bodyweight on Subject 1's back and torso and applied firm grips to both of Subject 1's arms. Officer B also delivered six to ten elbow strikes to Subject 1's torso, neck and head area. Officer A placed bodyweight upon Subject 1's upper body and neck using his/her knee. Officer A also used firm grips on Subject 1's hands, wrists and right arm. Officer A delivered two to three knee strikes to Subject 1's head and upper torso, and a punch to Subject 1's face. In addition, Officer A delivered approximately two elbow strikes to Subject 1's upper body and approximately two kicks to his/her groin area; however, the strikes to the groin area did not connect. As the struggle ensued, Officer A felt something hard on Subject 1's person.

Both officers indicated that Subject 1 actively resisted, swung his/her arms wildly and did not comply with their verbal commands to stop resisting.

The officers' combined use of their bodyweight enabled them to overcome Subject 1's resistance and placed him/her under arrest without further incident. A search of Subject 1's person revealed that Subject 1 was not armed. Officer B subsequently requested a RA.

A supervisor and RA responded to the location. The RA treated Subject 1 for abrasions to the face, knees and ankles. Subject 1 was then transported to a hospital for further treatment. After being released from the hospital, Subject 1 was taken to the police station for booking.

The BOPC found that Officers A and B's tactics were severely deficient, warranting AD. The BOPC also found Officers A and B's non-lethal force to be in policy, warranting divisional training and Officer B's use of force to be out of policy, warranting AD.

The AD recommendation for Officer B's use of force was based on the fact that neither officer observed Subject 1 draw a weapon. While Officer B's belief that Subject 1 was armed was reasonable, the manner in which Officer B responded to that potential threat was not. Deadly force is an option of last resort that can only be used when an officer reasonably believes that they face an immediate threat of death or serious bodily injury. An officer cannot preemptively use deadly force in anticipation of a threat that is not immediately apparent. In this case, Subject 1's actions did not support a reasonable belief that he/she was about to launch a deadly attack on the officers. Further, other options were available to the officers.

As a result of the AD findings, personnel complaint CF No. 07-003939 was initiated. The Department framed one allegation against Officer A for Unauthorized Tactics, which was sustained. The Department also framed two allegations against Officer B for Unauthorized Force and Unauthorized Tactics, which were sustained. It was initially recommended that Officers A and B receive no penalty; however, the COP upgraded the penalty to an OR based on the military endorsement provided by the Bureau C/O. The penalty was within the Department's Guidelines, in light of the fact that a review of the officers' complaint histories revealed no prior sustained complaints for Unauthorized Tactics or Unauthorized Force within five years of CF No. 07-003939 being initiated.

### **Head Strike No. 104-06**

This case involved an officer striking an armed subject in the head with an impact weapon. Officers A and B were patrolling a location known to the officers for gang and narcotics-related activity. The officers were aware that a gang-related homicide involving a handgun had occurred at this location approximately two weeks earlier. The unknown perpetrator and the weapon were still outstanding.

Officers A and B observed Subject 1 standing on the sidewalk and decided to stop and contact him/her. As the officers approached, Subject 1 looked in their direction and began running. As Subject 1 ran, he/she made movements toward his/her waistband that appeared to Officer B to be consistent with someone trying to conceal either a weapon or contraband. Officer B chased Subject 1 on foot while Officer A followed in a police vehicle. Officer B caught up to and made contact with Subject 1 but was unable to secure one of Subject 1's free arms. Subject 1 then began to turn toward Officer B, at which time Officer B saw a handgun in Subject 1's hand.

When Officer B saw the handgun, he/she pushed Subject 1 and simultaneously reached down and drew his/her own holstered service pistol. As Subject 1 continued to turn toward Officer B, Officer B used his/her service pistol to deliver a downward strike at Subject 1.

The force of the strike caused Officer B and Subject 1 to fall. Subject 1 began to crawl away from Officer B and, as Subject 1 did this, Officer B saw a handgun on the ground. Subject 1 began to run again and Officer B followed. Just before reaching a breezeway, Subject 1 abruptly stopped, causing Officer B to collide with Subject 1. Officer B was knocked to the ground causing his/her eyeglasses to fall off. As a result, Officer B momentarily lost sight of Subject 1. Officer B promptly picked up his/her glasses, put them back on, and observed a figure going over a fence.

Officer B then met up with Officer A and briefed Officer A on what had took place. Officers A and B searched for, but did not locate, Subject 1 at that time. Subject 1 was eventually taken into custody at a later date.

Although Officer B was not sure where he/she struck Subject 1 with his/her service pistol, it was later determined that the incident would be handled as a CUOF incident.

The BOPC determined that Officer B reasonably believed that Subject 1 presented an immediate threat of serious bodily injury or death and therefore found his/her use of lethal force in policy, requiring no action. However, the BOPC was critical of Officer B's decision to pursue Subject 1 while Officer A remained inside of the police vehicle. Further, the BOPC noted that the officers did not adhere to their previously discussed tactical plans.

During the foot pursuit, Officer B took control of Subject 1's handgun. Officer A noticed the pistol had the hammer cocked as Officer B held the weapon. Officer A assumed control of the pistol and rendered it safe. The manner in which Officer A did this could have caused a ND. Additionally, the excessive handling of the firearm potentially removed or contaminated physical evidence that could have been used in the identification and prosecution of Subject 1.

The BOPC determined that Officers A and B's tactics warranted AD.

As a result of the AD findings, personnel complaint CF No. 07-004293 was initiated. The Department framed one allegation each against Officer A and Officer B for Unauthorized Tactics, which were sustained. The C/O recommended a penalty of Admonishment. However, the penalty was militarily endorsed and increased to an OR. The penalty was within the Department's Guidelines, in light of the fact that a review of the officers' complaint histories revealed no prior sustained complaints for Unauthorized Tactics within five years of CF No. 07-004293 being initiated.

### **ND No. 108-06**

This case involved a ND by an officer who discharged a pistol into a wall while executing a search warrant. Officer A was a member of the entry team during the service of a search warrant. During the final stages of clearing the residence, Officer A observed a cabinet door that

had not been cleared. Officer A noticed that there was no handle to open the cabinet so Officer A moved his/her service pistol from his/her primary hand to his/her support hand and retrieved and opened his/her knife. Using his/her knife, Officer A opened the cabinet door while stepping to the side and covered the door with his/her support hand. Officer A, who was wearing gloves due to cold weather, felt his/her pistol begin to slip. Officer A attempted to readjust his/her grip on the pistol and the pistol discharged into the wall. No injuries occurred.

The BOPC determined that Officer A should have holstered his/her pistol while manipulating the knife. Officers C and B were in a position to provide cover and would have prevented Officer A from having to alternate the service pistol between his/her primary and support hands.

The BOPC found Officer A's use of force negligent, warranting AD.

As a result of the AD finding, personnel complaint CF No. 07-005109 was initiated. The Department framed one allegation against Officer A for a Shooting Violation, which was sustained. Officer A received a penalty of two suspension days. The penalty was within the Department's Guidelines, in light of the fact that a review of Officer A's complaint history revealed no prior sustained complaints for a Shooting Violation within five years of CF No. 07-005109 being initiated.

### **OIS No. 111-06**

This case involved an OIS that occurred when an officer fired at another individual after becoming involved in a road rage incident. Officer A was driving home in his/her privately owned vehicle and not wearing or displaying any items that identified him/her as a police officer.

As Officer A attempted to negotiate a turn at an intersection, Officer A's vehicle was cut-off by another vehicle. Officer A had to abruptly apply the vehicle's brakes in order to avoid a collision. As he/she applied his/her brakes, Officer A also honked the vehicle's horn.

The vehicle in question had four to six occupants. Several of the occupants responded to the honk by yelling expletives and making obscene finger gestures and what Officer A believed to be gang signs. Officer A formed the opinion he/she was dealing with a group of gang members and responded by yelling an obscene remark through the open window of his/her vehicle.

Officer A sped up to get away from the vehicle and its occupants. He/she looked over his/her shoulder as he/she was pulling away and observed one of the occupants throw what appeared to be a full can of beer at his/her vehicle. The can did not strike the vehicle. At that point, Officer A reached down and started looking for his/her cellular telephone to call for assistance.

As Officer A prepared to use his/her telephone, the vehicle pulled up alongside his/her vehicle. In order to protect himself/herself, Officer A removed his/her service pistol from a holster that was under a bag on his/her front passenger seat. Because of a slow moving vehicle to the front of him/her, Officer A had no readily available avenue of escape. The occupants of the vehicle were still yelling expletives at Officer A. Officer A pointed his/her pistol toward the passenger

door just below the window jam. Apparently having observed the officer's pistol, the occupants of the vehicle ducked and the vehicle swerved and accelerated away.

Officer A notified the Department of his/her circumstances and requested assistance. This information was relayed to additional patrol personnel who began to respond to Officer A's location.

According to Officer A, his/her intention was to safely trail the vehicle and serve as a witness until patrol personnel arrived. Officer A attempted to maintain a distance between his/her vehicle and the vehicle he/she was following. Officer A lost sight of the vehicle several times. Officer A believed that the distance he/she had created would make the occupants of the vehicle feel less threatened and provide him/her with a margin of safety.

Officer A continued to follow the vehicle as it drove into a residential area and stopped in front of a residence. The stop caught Officer A by surprise, and he/she stopped his/her vehicle. Several of the occupants exited. One occupant (Subject 1) went to the front porch area of the residence, bent over and retrieved a holster that contained a revolver.

As this was unfolding, Officer A determined he/she was at a tactical disadvantage and needed to create space between himself/herself and the subject. Officer A then saw Subject 1 walking towards him/her with the handgun. With his/her own handgun still in hand, Officer A attempted to shift his/her vehicle into reverse. Officer A inadvertently placed the vehicle in neutral and was unsuccessful in attempting to back up.

Meanwhile, Subject 1 removed the handgun from its holster and fired one round at Officer A. The round penetrated the front of Officer A's vehicle and disabled it. Fragments resulting from the round's impact struck Officer A, causing a minor abrasion to his/her wrist.

Officer A exited his/her vehicle and, standing behind the open driver's door of his/her vehicle, fired six successive rounds at Subject 1 who, still holding the handgun and looking back over his/her shoulder at Officer A, was now running away. None of the rounds fired by Officer A struck Subject 1.

Department personnel arrived and a perimeter was established. Subject 1 was subsequently located and detained.

The BOPC found Officer A's tactics to warrant AD. Also, the BOPC found Officer A's drawing to be out of policy, warranting AD.

The BOPC found that Officer A became involved in a road rage incident with possible gang members; however, the BOPC did not concur with the officer's assessment that the items thrown at him/her constituted a deadly weapon. It would have been tactically prudent for Officer A to have stopped his/her vehicle, allowed the suspects to continue forward and waited for the arrival of responding personnel. The BOPC found the cumulative tactical errors and decisions made by Officer A compounded to make his/her performance seriously deficient, requiring AD.

As a result of the AD findings, personnel complaint CF No. 07-004504 was initiated. The Department framed two allegations against Officer A for Unauthorized Tactics and a Shooting Violation, which were sustained. Officer A received a penalty of five suspension days. The penalty was within the Department's Guidelines, in light of the fact that a review of Officer A's complaint history revealed no prior sustained complaints for Unauthorized Tactics or a Shooting Violation within five years of CF No. 07-004504 being initiated. However, the OIG questions whether a more severe penalty would have been appropriate given that Officer A demonstrated an inability to control his/her emotions after becoming involved in a minor traffic dispute with four possible gang members. Officer A failed to remain objective and tactically assess the situation. Officer A was not in uniform or in a marked police vehicle. Further, Officer A did not identify himself/herself as a police officer until after the shooting occurred, nor did he/she display a badge or identification at any time during the incident. Officer A's tactical errors, coupled with Officer A's flawed decision making and failure to identify himself/herself as a police officer, ultimately led to his/her involvement in an OIS.

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## **VI. TEAMS II REPORTS**

During our review of the CUOF cases included herein, we noted that in five of the cases the officers' TEAMS II reports were not accurately updated to include the correct status of the CUOF cases or the Commission's findings.<sup>22</sup> In addition, we noted that in one of the related personnel complaints, the accused officer's TEAMS II report did not accurately reflect the allegations as framed in the investigation.<sup>23</sup> We forwarded these issues to the Department and they were remedied within a few days of our correspondence.

## **VII. CONCLUSION**

Overall, the OIG noted that the alcohol related misconduct cases reviewed for this Report were properly investigated. The Department is fully aware of its duty to investigate and adjudicate these cases in a thorough manner. Last quarter, the OIG noted that the number of OOS cases decreased from eight to six whereas this Quarter, the number of OOS cases increased from six to nine. The OIG would like the Department to continue to identify and take action to prevent cases from falling OOS in the future. Finally, with the exception of the one CUOF case that fell OOS, we found that the Department issued appropriate penalties in nearly all of the other CUOF cases reviewed.

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<sup>22</sup> OIS No. 022-05, OIS No. 088-05, OIS No. 081-06, OIS No. 108-06 and OIS No. 111-06.

<sup>23</sup> CF No. 07-004504.