

REVIEW OF QUARTERLY DISCIPLINE REPORT SECOND QUARTER 2006, OCTOBER 19, 2006

I. Introduction

The Consent Decree requires that the Department prepare a quarterly report regarding discipline imposed, including Categorical Uses of Force (CUOFs) found to be out of policy, within 45 days after the end of each quarter. The Department has completed its report for the Second Quarter of 2006. The Police Commission (Commission) received its copy of the Department's Quarterly Discipline Report (Report) on August 14, 2006, within 45 days of the end of the quarter, as required by Consent Decree Paragraph 88. As required under Paragraph 89, the Office of the Inspector General (OIG) has reviewed that report and submits its own report to the Commission.

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

In Section III, we reviewed cases closed during the Second Quarter which contained at least one allegation of Unlawful Search. We looked at this issue one year ago in connection with our review of the Department's Discipline Report for the Second Quarter of 2005, and are revisiting the topic to determine whether the issues we identified in our earlier report, including interpretations of the law dealing with search and seizure, and in particular pat down searches, on the part of both rank-and-file officers as well as supervisors and complaint investigators, had been addressed. In addition, we decided to look at cases where the Department had classified the complaint as involving "Unknown" officers to evaluate whether the Department was making sufficient efforts to identify officers accused of conducting an unlawful search, as we had excluded these types of cases in our prior review.

Section IV contains our review of the CUOFs deemed Out of Policy by the Commission, which were closed during the Second Quarter.

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

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

Executive Summary

Using the information contained in the Executive Summary, we determined that the percentage of Sustained complaints (complaints in which at least one allegation is sustained) was 19%, whereas the percentage of total Sustained allegations was 9.4% (total of Sustained allegations/ total allegations = $274/2924 = 9.4\%$). Moreover, using the information in the Executive Summary, we determined that the percentage of Sustained allegations for each of the "Top Allegation" classifications were as follows:

Allegation	Sustained Rate	No. of Sustained Allegations/ Total Number of Allegations
Neglect of Duty	15.8%	119/752
Discourtesy	2.2%	13/587
Unbecoming Conduct	11.4%	61/536
Unauthorized Force	0.7%	2/280
False Imprisonment	0.7%	1/142
Unauthorized Tactics	2.4%	2/83
Preventable Traffic Collision	95.7%	67/70
Unlawful Search	2.0%	2/100
False Statements	12.3%	7/57
Racial Profiling	0%	0/51

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

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

Classification	Sustained Allegations/ Total Allegations	Sustained Rate	Percentage of Total Allegations	Number of Accused Employees	Number of Employees w/ Sustained Allegations
Neglect of Duty	119/752	15.8%	25.7%	552	85
Discourtesy	13/587	2.2%	20.1%	462	9
Unbecoming Conduct	6/536	11.4%	18.3%	392	36
Unauth. Force	2/280	0.7%	9.6%	220	2
False Impris.	1/142	0.7%	4.9%	139	1
Unauth. Tactics	2/83	2.8%	2.8%	76	2
Preventable Traffic Collision	67/70	95.7%	2.4%	70	67
Unlawful Search	2/100	2.0%	3.4%	90	2
False Statements	7/57	12.3%	1.9%	48	5
Racial Profiling	0/51	0%	1.7%	47	0
Theft	1/31	3.2%	1.1%	25	1
Failure to Qualify	20/26	76.9%	0.9%	26	20
Dom. Violence	1/22	4.5%	0.8%	11	1
Other Policy/Rule	6/39	15.4%	1.3%	33	2
Failure to Appear	11/14	78.6%	0.5%	13	11
Ethnic Remark	3/31	9.7%	1.1%	31	3
Discrimination	0/21	0%	0.7%	19	0
Improper Remark	6/20	30.0%	0.7%	19	6
Retaliation	1/20	5.0%	0.7%	20	1
Narcotics	1/7	14.3%	0.2%	6	1
Sexual Miscond.	2/10	20.0%	0.3%	8	1
Alcohol	8/10	80.0%	0.3%	8	6
Insubordination	4/6	66.7%	0.2%	5	3
Misleading Stmts.	1/2	50.0%	0.1%	2	1
Neg. Discharge	1/1	100%	<1%	1	1
Dishonesty	0/4	0%	0.1%	4	0
Shooting Violation	0/0	0%	0%	0	0
Gender Bias	0/0	0%	0%	0	0
Off-Duty Altercation	0/0	0%	0%	0	0

The Note underneath Table E in the Department's Report states that Office of Support Services (OSS) includes the Information and Communications Services Bureau (ICSB), Administrative and Technical Services Bureau (ATSB), and TEAMS II. However, without breaking down the bureaus further, the reader might be led to believe that employees working directly for the OSS had 21 Neglect of Duty allegations Sustained in the Second Quarter. Further review of the information contained in Appendices I and II at the back of the Report reveals that this relatively high number of Sustained Neglect of Duty allegations from a non-geographic bureau is partially explained by the fact that 16 of these 21 (76%) allegations involved Police Service Representatives (PSRs) assigned to Communications Division (CD), which falls under ICSB. PSRs assigned to CD have significant contact with the public, and these contacts are usually tape-recorded, which facilitates proving the allegations.

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

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

	Allegation Total	Staff Officer	Captain	Lieutenant	Sergeant	Detective	Police Officer III	Police Officer II	Police Officer I	Reserve Officer	Unknown Officer	Civilian Employee
Total Sustained Allegations / Total Allegations	340/ 2924	0/4	0/ 20	10/ 70	21/ 164	30/ 164	51/ 485	165/ 1411	6/ 44	2/ 9	12/ 458	50/ 122
Overall Sustained Rate	11.6	0.0	0.0	14.3	12.8	18.3	10.5	11.7	13.6	22.2	2.6	41.0
Total Sustained Allegs/ Total Allegs. (Minus PTCs FTAs, & FTQs)	230/ 2814	0/4	0/ 20	0/ 40	14/ 155	19/ 142	34/ 614	112/ 1363	1/ 39	1/ 7	12/ 458	49/ 121
Overall Sustained Rate (Minus PTCs, FTAs, & FTQs)	8.2	0.0	0.0	0.0	9.0	13.4	5.5	8.2	2.6	14.3	2.6	40.5

Whereas 11.6% of all misconduct allegations were Sustained during this quarter, 8.2% of all allegations were Sustained when PTCs, FTQs, and FTAs were removed.

III. Review of Cases

a. Methodology

Since the OIG's last report evaluating the Department's handling of Unlawful Search complaints was issued on October 7, 2005, the OIG wanted to give the Department some time to absorb and incorporate the findings and recommendations contained in our previous report. Accordingly,

we chose to look only at those Unlawful Search cases which were initiated after November 1, 2005. There were five¹ such cases. We also wanted to evaluate whether the Department was making sufficient efforts to identify officers who were accused of Unlawful Search allegations, since we had excluded such cases in our prior report. Therefore, we decided to look at all cases in which allegations were adjudicated against "Unknown" officers, regardless of when initiated. There were a total of eight² such cases, of which two were duplicative of the above-referenced sample. Finally, we wanted to evaluate whether the penalties imposed in the two Sustained Unlawful Search cases³ were appropriate, and whether the decision to adjudicate one such complaint as Non-Disciplinary/Employees Actions Could Have Different,⁴ was justified.

In reviewing these 14 cases, a matrix was utilized by the first and second level reviewers. This matrix contained 35 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 officer's disciplinary history, and the standards enunciated in the Department's "Management Guide to Discipline" (January 2002) for sworn employees (Penalty Guidelines). In addition, a Crib Sheet was also used to assist in answering the questions on the Matrix.

OIG staff also reviewed tape-recorded interviews in three cases. In reviewing the taped interviews, OIG staff utilized a matrix containing 17 questions designed to evaluate whether: (1) the interviews were properly paraphrased 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 (i.e., 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. No secondary level review was conducted for the tape reviews.

b. Analysis of Unlawful Search Complaints

The Department defines "Unlawful Search" as a search without cause, permission, or a search warrant (see IAG's "2004 Review and Evaluation Chronicles," at page 74). Of the 14 cases we reviewed, we believe the following two cases merit further discussion in this report. The first investigation, CF No. 05-3209, identified an accused officer. The second case, CF No. 04-3786, was adjudicated against "Unknown" employees.

CF No. 05-3209

According to the complainant, two officers looked at him as he stood on the sidewalk waiting for the light to change. Both officers claimed they observed him walking across a red "don't walk" sign and that fifteen feet from the curb, he turned and walked back to the curb when he saw the police. The complainant claimed in his paraphrased statement that he was asked if he was on parole, to which he responded he was on parole for cocaine. He indicated that, at that point, Officer #1 stated that the complainant was going to be searched. However, according to the

¹ CF Nos. 05-5602, 05-6173, 05-6254, 05-6462, and 06-0494.

² CF Nos. 04-3786, 05-1319, 05-1975, 05-2076, 05-2146, 05-5104, 05-6173, and 06-0494.

³ CF Nos. 04-3235 and 05-3951.

⁴ CF No. 05-3209.

complainant, instead of performing a pat down search, Officer #1 went directly inside of the complainant's pants pocket and retrieved an item that resembled cocaine.

The complainant alleged that the officers had no legal reason to stop him and did so due to his ethnicity. The complainant further alleged that Officer #1 planted the cocaine in his pocket. During his interview, the complainant reasoned that if he did have cocaine on his person, he would have gotten rid of it prior to the stop.

In their tape-recorded interviews, the officers stated that they stopped the complainant because he committed a Vehicle Code violation by crossing against the "don't walk" sign, and that his actions were suspicious because once he saw them, he turned around and walked back to the curb. Officer #1 stated that Officer #1 asked the complainant if he had any identification on him, or narcotics or weapons. The complainant responded that he did not. According to Officer #1's interview statement, Officer #1 conducted a pat-down search of the complainant because "the area was high in crime, known for gang and narcotics activity, the hour of darkness, and the fact that the complainant was wearing a jacket despite that it was warm."⁵ According to Officer #1's statement, while conducting a "cursory" search of the complainant, Officer #1 felt a rock-like substance in the complainant's front pocket which Officer #1 believed to be rock cocaine. When Officer #1 asked what it was, the complainant responded, "Man, I'm on parole and you know what it is."⁶ Though Officer #1 could not recall specifically asking the complainant if he was on parole or probation, Officer #1 stated that it was his/her standard practice to ask people he/she stops if they were on parole or probation.

In Officer #2's interview statement, Officer #2 supported Officer #1's version of the events leading up to the pat down search, as well as the complainant's alleged statement, "Man, I'm on parole, and you know what it is." Officer #2 stated that prior to the search, Officer #2 did not know that the complainant was on parole. Officer #2 believed that the search of the complainant was "in accordance with Department training." Officer #2 stated that the complainant was belligerent, confrontational, verbally aggressive, and kept moving around, which caused the officers to be concerned for their safety.⁷

The Deputy District Attorney (DDA) reviewing the case declined to prosecute the complainant for a narcotics violation, reasoning that, based upon the police report, the officers lacked probable cause to search the complainant. The DDA based his filing decision on the police report written by Officer #2. The DDA explained that the Fourth Amendment requires that an officer must have reasonable suspicion to believe a suspect is armed and dangerous to conduct a pat down search. The DDA opined that the officers did not articulate such information in the report. (The report indicated that "[b]ased on the high gang and narcotic crime area we were in, [Officer #1] performed a pat down search for weapons"). The DDA also stated that the report indicated that the officers did not learn about the complainant's parole status until after he was searched, and that case law required that the officer have prior knowledge of a suspect's parole or probation status prior to conducting a search.

⁵ According to the underlying police report, the incident occurred on June 19th, at 12:40 in the morning.

⁶ The complainant denied making this statement.

⁷ This information was not included in the arrest report written by Officer #2.

Six allegations were framed against the officers. The allegations that Officer #1 and Officer #2 stopped the complainant due to his ethnicity were adjudicated as Unfounded. The allegations that Officers #1 and #2 arrested the complainant without cause were adjudicated as Exonerated. The allegation that Officer #1 planted rock cocaine on the complainant was adjudicated as Unfounded. The allegation that Officer #1 searched the complainant without cause was adjudicated as Non-Disciplinary - Employee's Actions Could Have Been Different. The adjudicator reasoned that given Officer #1's good faith belief that the search was conducted within the scope of the officer's authority, training would best address the issue of the Unlawful Search allegation. Specifically, Officer #1 was given training in the area of "pat down" searches.

Our review of the interview tapes in this case revealed a possible lack of appreciation by the officers of the significance of *when* they learned the complainant was on parole. A review of the tape of the complainant's interview revealed that the complainant clearly stated that Officer #1 *asked* him if he was on parole *prior* to searching him. Indeed, the complainant was adamant as to this point. However, the police report written by Officer #2 indicated that a pat down search of the complainant was conducted *before* he stated that he was on parole.⁸ Though the law at the time the complainant was stopped held that the officers would have needed reasonable suspicion to search him if they had been aware that he was on parole (*see United States v. Knights*⁹), the U.S. Supreme Court recently held in *Samson v. California*¹⁰ that parolees may be searched at any time by police as long as the officers know that the person is on parole, and the search is not performed as a mode of harassment. If Officer #1 had been aware that the complainant was on parole, the search under the current case law would have been valid.

We also noted that the investigation did not address the fact that Officer #2's report did not articulate reasonable suspicion to believe the complainant was armed and dangerous so as to justify the pat down search, as noted by the DDA.¹¹ Indeed, a review of the tape-recorded interview of Officer #2 revealed that Officer #2, a tenured officer assigned to a specialized unit, did not appear, at least to us, to understand the legal parameters governing pat down searches, so much so that the investigator resorted to leading questions in an effort to try to assess the legal justification for the search of the complainant.¹²

At a minimum, we believe that this case reveals training issues regarding *both* officers' understanding of proper cause for conducting searches, including parole searches, as well as how to properly document this information, especially since both officers were long-tenured

⁸ According to his/her interview, Officer #1 did not appear to recall whether the complainant was specifically asked if he was on parole prior to conducting the search, though Officer #1 claimed it was Officer #1's practice to ask people if they were on parole or probation. Officer #2 claimed to have not been aware that the complainant was on parole prior to the search.

⁹ 534 U.S. 112 (2001).

¹⁰ 126 S. Ct. 2193 (2006).

¹¹ We were also concerned that Officer #2 indicated in his/her interview statement that he/she was unaware that the D.A.'s Office had rejected the case based upon the report written by Officer #2.

¹² Among other things, the investigator (I/O) asked if the darkness at the time of the incident was a factor in searching the complainant, whether the complainant was making furtive movements, as well as explaining the parameters of *Terry v. Ohio*. (*Terry v. Ohio*, 392 U.S. 1 (1968), established the legal parameters for conducting a pat down search). We have discussed our concerns with Professional Standards Bureau (PSB) regarding the use of leading questions by the I/O in this case, and PSB has informed us that they will be reviewing the tape-recorded interviews in this case to determine if further action is warranted.

Department employees assigned to a specialized unit. Although we commend the Department for recognizing the need for training, the training provided consisted of giving Officer #1 a written LAPD Training Bulletin on the subject of pat down searches that did not address parole searches. We believe more in-depth and, perhaps, interactive training, which covered both pat down and parole searches, was warranted for both officers.

Finally, we noted that the investigation did not reveal there to be any evaluation of the actions of the watch commander who reviewed the underlying arrest report, as Consent Decree paragraph 70 specifically requires the watch commander and/or his/her designee to "personally review and approve supporting arrest reports as to appropriateness, legality, and conformance with Department policies" We believe this supervisor should have also been provided training as to the proper articulation of reasonable suspicion.

CF No. 04-3786

The complainant stated that several officers detained and searched him, three of his siblings, and one of his friends. The complainant indicated that an additional person in plainclothes was there, who he thought might be a probation officer because the person was wearing a badge that looked like a probation officer's badge. The complainant alleged that one of the officers from that incident (Initial Encounter) returned two hours later (Subsequent Encounter), and pushed the complainant into a fence, searched him, and made discourteous comments. The complainant alleged that he suffered a separation of the sternum from the rib cage, fractured and dislocated ribs, air in the chest cavity, and an infection due to being pushed into the fence.

The I/O showed the complainant photographic line-ups, and he picked out an officer who he stated "might" have been the perpetrator, or the partner of the perpetrator. However, the investigation failed to provide the exact names of all officers who were included in these photographic line-ups. Rather, according to the I/O Notes, photographs of officers "who generally met the description given by [the complainant], and additional possible officers based on physical description" were shown to the complainant. Moreover, in an I/O note, it is indicated that Witness #1, the Complainant's friend who was present at the Initial Encounter, was shown "line up cards A-M" and that he failed to identify anyone. Again, there is no indication of the names of the specific officers who were included in those line-ups. In addition, it is unclear whether the friend was shown the line-ups during his formal interview with the I/O or during a subsequent contact with the I/O, which is described in an I/O note.

Allegations were framed against the officer whom the complainant described as possibly being the perpetrator, and this officer's partner. Allegations that either of these two officers unnecessarily illuminated the complainant with a flashlight; failed to provide the complainant with a business card; unnecessarily pushed the complainant into a fence, resulting in injury; made an insensitive remark by responding, "I don't care" when the complainant complained of pain; searched the complainant without cause; and was discourteous by stating to the complainant, "I'll catch you one day," were adjudicated as Unfounded against both accused officers based upon information revealed by the investigation that both of these two officers were inside the station during the time in question. This information was retrieved by reviewing their Daily Field Activity Report (DFAR) which indicated the officers were elsewhere for almost the entire time of the two encounters. Indeed, according to both officers' interviews, they made two

arrests around the time of the Initial Encounter, in an area five miles away, and the rest of the time was spent at the station booking and interviewing the suspects, including "making a deal" with one of them to become an informant for an FBI task force. These same allegations were adjudicated as "Not Resolved" against an Unknown Officer.

We believe that the investigation did identify another officer who should have been considered as a possible accused and whose actions on the evening in question should have been more thoroughly investigated. According to an I/O note, subsequent to the formal interview of Witness #1, Witness #1 contacted the I/O to state that he had been stopped again, on January 12th, by the same officer who was present at the time of the Initial Encounter, Officer A. Officer A told Witness #1 that he recognized him from that Initial Encounter. It is unclear whether Officer A was included in the photographic line-ups shown to either the complainant or Witness #1, as the investigation did not specify the names of all officers included in the line-ups, though the I/O note seems to imply that Officer A was not included in the line-ups shown to Witness #1.

Officer A, who was interviewed only two weeks after the January 12th encounter with Witness #1, claimed to not recall conducting an investigation in or being in the area of the Initial Encounter, which was inconsistent with what Witness #1 claimed Officer A had stated two weeks earlier. However, according to Officer A's log, Officer A was shown to have been patrolling in a reporting district at the time of the Subsequent Encounter that has a boundary only about five blocks from the location at issue. Moreover, Witness #1 indicated during his formal interview that there was a male White and a male Hispanic officer present during the Initial Encounter. Officer A's surname is Hispanic. During his formal interview, Witness #1 described the Hispanic officer as having "Chinese Eyes." Witness #1 also claimed that when he visited the complainant in the hospital, the complainant told him that the "officer with the 'Chinese eyes' 'slammed' [him] against the gate."¹³

At a minimum, the investigator should have either: a) made it clear that Officer A was included in the photo line-ups initially shown to the complainant and Witness #1; or b) if Officer A was not included, then the complainant and Witness #1 should have been subsequently shown a line-up which included Officer A. Moreover, the investigation included no discussion or description of Officer A's eyes. Finally, the investigator did not interview Officer A's partner to determine whether at any point during the time frame of the Subsequent Encounter, Officer A and his partner either split up or were separated from each other, or whether the partner could have shed light on Officer A's activities during the time in question.

The I/O appeared to have made an admirable effort in attempting, with the complainant's assistance, to identify the involved officer. However, it is unclear why the investigation did not name Officer A as an accused, or why a more thorough effort was not made to investigate his activities during the time of the Subsequent Encounter, especially since so much was done to identify and rule out other officers. We believe that such additional investigative steps were especially warranted in this case, given the severity of the alleged misconduct.

¹³ The complainant in his interview also described one of the male officers as being White, and one as Hispanic, though, according to his paraphrased interview, he did not mention either of the officers as having "Chinese" eyes.

We have discussed this case with PSB, and they have indicated that they will direct that a supplemental investigation be conducted.

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

During this Second Quarter, two CUOF incidents were closed in which the Commission adopted a finding of out-of-policy or administrative disapproval. There was one Officer Involved Shooting (OIS) case and Law Enforcement Related Injury (LERI) case. In both cases, the Commission adopted the findings of the Chief of Police (COP).

OIS 04-012

A vehicle was observed by two Department employees driving without lights, failing to stop at a stop sign, and performing an unsafe turn. These employees activated their red lights and siren to conduct a traffic stop, and the suspect accelerated away. The employees initiated a pursuit and requested back-up. Additional employees responded to the back-up request. Communications Division (CD) reported that the vehicle was not reported stolen. A supervisor broadcast that the vehicle matched the description of an earlier report of a suspect driving with a gun in his vehicle.

An employee broadcast that the pursued driver had communicated with people at a specific address, and requested that a unit respond to that location. There was also a broadcast that the pursuit might be related to a domestic violence call received from the above address that was placed approximately four minutes after the initial pursuit began.

At the address of the domestic violence call, the suspect's wife reported that the suspect had threatened her and attempted to fight with her father, but denied that a physical assault had taken place. Information was obtained that the suspect had mental problems from sustaining an earlier head injury and had recently attempted suicide. Family members told the responding employees that the suspect did not have a gun. None of the employees who responded to the wife's location relayed to the other units, supervisors, or CD the information concerning the suspect's mental state, the claim that the suspect did not have a gun, or the nature of the domestic incident.

During the pursuit, the suspect drove past his wife's address several times, slowing or stopping and exchanging words with family members in the front yard. At one point the suspect drove alongside Employee #1 and another employee and told them to kill him. On subsequent occasions he made statements indicative of a "suicide by cop" scenario to Employee #1, who was attempting to negotiate with the suspect. Multiple employees gave the suspect commands to stop his vehicle and surrender.

A spike strip was requested from the Los Angeles County Sheriff's Department (LASD). Several minutes after a request was made, an employee broadcast, "Do you want us to take care of the tires?"¹⁴ Employee #2, a supervisor, replied, "Negative. Do not approach that car."

Subsequently, Employee #3, approached the vehicle on two separate occasions when it stopped on the street in front of the residence, and used a knife to puncture each of the rear tires.

¹⁴ The investigation did not establish which officer made this broadcast. Employee #3, who subsequently punctured the tires with a knife, denied any recollection of having made the broadcast.

A minute after the first tire was punctured, CD broadcast that LASD was responding with a spike strip. Employee #2 then broadcast that a spike strip was not to be used, and that the request to LASD was to be cancelled. The decision to cancel the request for the spike strip had been made by a different supervisor, Employee #4, who was monitoring the pursuit from the station.

Five vehicles were positioned across the junction of the intersection nearby the residence, blocking the roadway and north sidewalk of the street of the residence. One of these vehicles was driven by Employee #5, who was not wearing a ballistic vest.

At one point, the suspect drove eastwards along the street of the residence and once again stopped outside the residence. There, he told Employee #1, "I'm going to die now." The suspect then placed his vehicle in reverse and began accelerating backward, westbound, towards the police vehicle blocking the intersection nearby the residence. As the vehicle reversed, several of the employees positioned at the residence began running for cover.

Employee #5 moved to the northern edge of the roadway and faced the vehicle as it drove backward past Employee #5 and collided with Employee #5's police vehicle at a speed of 36-42 miles per hour. The collision caused major rear-end damage to the suspect's vehicle.

The impact of the collision pushed Employee #5's vehicle back one car length. The suspect's vehicle then came to a halt. Employee #5 drew Employee #5's gun and moved in a southwesterly direction towards the driver's side window of the suspect's vehicle. As Employee #5 approached, Employee #5 gave verbal commands for the suspect to turn off the vehicle.

From a position on the southeast corner, Employee #6 drew his/her firearm and began to move towards the suspect's vehicle. Employee #6 then saw Employee #5 on the north side of the vehicle with Employee #5's gun drawn. Employee #6 shouted, "Cross-fire, cross-fire, watch the cross-fire," and moved to cover.

Seconds after coming to a stop, the suspect began to move his vehicle forward in an easterly direction. As he did so, Employee #5 was approximately three feet north of the driver's side window of the vehicle.

As the vehicle began to move forward, Employee #5 fired a round toward the driver's window. Video evidence indicated that Employee #5 was perpendicular to the vehicle when this first round was discharged. As the vehicle continued to move forwards, Employee #5 continued to fire four more rounds. These rounds were directed towards the suspect as the vehicle continued to move eastwards. Employee #5 sidestepped to the east as Employee #5 fired, following slightly behind the driver's side window as the vehicle moved away.

Employee #5 stopped firing as the suspect's vehicle came to a halt. The vehicle had moved slightly less than one car length forward.

Employee #5 reported that Employee #5 fired because Employee #5 perceived that the vehicle was moving in Employee #5's direction and that Employee #5 was in imminent danger of being

struck. Employee #5 also reported that Employee #5 was concerned that, if allowed to continue, the vehicle could again accelerate to a high rate of speed and endanger officers or citizens.

Employee #5 then used the left hand to break out the glass that remained in the vehicle's shattered driver's side window. Employee #5 reached into the vehicle and removed the keys from the ignition, then threw them away from the vehicle.

The suspect was treated for a through-and-through gunshot wound to his right chest/shoulder, and three gunshot wounds to his arms. He was subsequently charged with Assault with a Deadly Weapon on a Police Officer and Felony Evading.

The COP found that Employee #5's use of force was out of policy, and that Employee #5's tactics warranted administrative disapproval (AD).

The COP recommended that Employee #5's use of force be found out of policy because at the time Employee #5 opened fire, the movement of the suspect's vehicle, in addition to the fact that the vehicle was in bad condition with two flat tires and significant damage due to the collision, did not present an imminent threat to the employee, or other employees and residents positioned down the street. Nor was Employee #5's use of deadly force consistent with the policy requirement that such force be used as a "last resort."¹⁵

The COP further found that Employee #5's tactics warranted an AD finding. Rather than move to cover when the vehicle reversed, Employee #5 stood on the side of the street and watched as the vehicle reversed into the parked police vehicle. By failing to place distance and/or cover between Employee #5 and the moving vehicle, Employee #5 was unduly exposed to the risk posed by the vehicle. Moreover, Employee #5 remained in a position which presented a potential cross-fire situation with other employees.

The Police Commission concurred with the COP's recommendations.

The COP also found that Employee #3's tactics were out of policy, and warranted an AD finding.

The COP was critical of Employee #3 approaching the suspect's vehicle on two occasions to puncture the rear tires of the vehicle, in contravention of a direct order broadcast by a supervisor.

¹⁵ This case was adjudicated under the Department's old Shooting at Moving Vehicles policy contained within the Department's Use of Deadly Force policy (2002 Department Manual, Section 1/566.40), which provided as follows: "Firing at or from moving vehicles is generally prohibited. Experience shows such action is rarely effective and is extremely hazardous to innocent persons." Though the old policy did not specifically require an officer to move out of the path of an oncoming vehicle, Section 1/566.40 did provide that "Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable."

The new policy, which was adopted by the Commission in February of 2005, subsequent to this incident, provides in pertinent part that "the moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force." (2005 Department Manual, Section 1/566.40). Moreover, the new policy specifically and affirmatively requires an officer to move out of the path of an oncoming vehicle instead of discharging a weapon at the vehicle.

The COP was also critical of the fact that Employee #3 did not advise other employees of Employee #3's intentions. The COP referred Employee #3 to tactics training.

The Commission adopted the recommendations of the COP.

A complaint investigation regarding Employee #3's actions was initiated several days after the incident occurred – CF No. 04-0511. This investigation alleged that Employee #3 approached the suspect's vehicle on two occasions to puncture the tires, when a supervisor had made a broadcast prior to Employee #3's actions not to approach the vehicle. One allegation of Insubordination was framed against Employee #3, which was adjudicated as Non-Disciplinary - Employee's Actions Could Have Been Different. Employee #3 was ordered to receive training.

As a result of the Commission's AD findings, CF No. 05-0140 was initiated. Two allegations were framed against Employee #5 for Unauthorized Force and Unauthorized Tactics. The allegations were Sustained. Employee #5 received a 10-day suspension, as well as training in officer safety/field tactics. The OIG believes that the penalty and the referral to training were appropriate.

Employee #3 was originally named in CF No. 05-0140. Subsequently, Employee #3 was removed from that complaint investigation based on the rationale that a "duplicate" complaint, CF No. 04-0511, was already being investigated. However, the allegations were not in fact duplicate, as CF No. 05-0140 dealt specifically with Employee #3's tactics, while CF No. 04-0511 centered on the allegation that Employee #3 engaged in Insubordination. Moreover, CF No. 04-0511 did not address the AD finding by the Commission. Due to this oversight, Employee #3 did not receive a penalty for the AD finding by the Commission. Moreover, there is no record in Employee #3's TEAMS of the AD finding for tactics, either under the disciplinary section or the Categorical Use of Force Section.

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Uniformed officers, Employees #1 and 2, observed a stolen Honda Accord parked in front of a residence. Employee #1 noted that another vehicle parked in the driveway of the residence belonged to a gang member (Suspect) known for stripping vehicle parts from Honda Accords. Employee #1 had knowledge that the residence was a known narcotics location and that stolen vehicles were often stripped there. Additional officers were requested for a "stake out." Two additional employees, Employees #3 and 4, were assigned to an observation post. Employees #1 and #2 remained in the area to observe the stolen vehicle.

After approximately 90 minutes, the employees at the observation post observed the Suspect remove parts from the stolen vehicle and place them in his vehicle. The Suspect was then observed walking down the street. Employee #2 had formed the opinion that the Suspect had removed auto parts from a stolen vehicle, and decided to detain the Suspect for further investigation.

Without advising the responding units of their intentions, Employees #1 and #2 drove alongside the Suspect as he walked down the street and made contact with him while seated in their police car. When Employee #1 asked the Suspect to speak with them, the Suspect looked in their direction, turned away, and ran down the driveway of the residence. Employee #1 and Employee #2 exited their vehicle and initiated a foot pursuit without advising CD or the responding units of

their actions. During the chase, Employee #1 indicated that Employee #1 noticed that the Suspect placed his hands inside of his waistband.

When the Suspect attempted to vault the chain link fence that separated the front and rear yards of the residence, Employee #1 grabbed the Suspect's shoulders and pulled him down. Employee #1 then grabbed the Suspect's right arm and attempted to handcuff him. Employee #1 used bodyweight to push the Suspect against an adjacent parked vehicle. As they struggled, Employee #1 and the Suspect fell onto a couch adjacent to the fence. By using bodyweight, Employee #1 held the Suspect down on the couch, grasped his right wrist, placed his right arm behind his back, and applied a wristlock. Employee #1 placed one handcuff to the Suspect's right wrist and ordered the Suspect to place his left hand behind his back. The Suspect refused to comply and placed his left hand inside of his waistband. When Employee #1 attempted to apply a "Lateral Head Displacement"¹⁶ to the Suspect's head, the Suspect pulled away, turned counterclockwise and stood-up with his left hand still concealed in his waistband.

Employees #3 and #4 arrived on scene, and upon hearing the sounds of a scuffle from the rear of a driveway, approached and observed Employee #1 struggling with the Suspect.

Employee #3 then moved to the Suspect's rear left side, grabbed his shoulders, and attempted to take him to the ground. Simultaneously, Employee #4 grabbed the Suspect's left hand that was concealed inside of his waistband and shouted, "Waistband, waistband, give me your hands." When the Suspect pulled away from Employee #4's grasp, Employee #4 applied a distraction strike to his face. At that moment, Employee #1 positioned behind the Suspect and gained control of his right arm.

Coupled with Employee #4's shouts of "waistband, waistband" and a belief that the Suspect was possibly armed, Employee #3 applied an Upper Body Control Hold for approximately 5-10 seconds and rendered the Suspect unconscious. Employee #3 then placed the Suspect in a prone position and observed Employee #1 handcuff him. The Suspect regained consciousness approximately 10 seconds later.¹⁷

The District Attorney charged the Suspect with one Count of Possession of a Controlled Substance, one count of Receiving Stolen Property, and one count of Spousal Abuse.

The COP deemed that Employee #3's use of force was out of policy and warranted an AD finding. The COP determined that Employee #3's decision to use an Upper Body Control Hold was not reasonable because the incident had not escalated to the point where deadly force was justified.

The Commission adopted the recommendations of the COP.

¹⁶ A Lateral Head Displacement is a handcuffing technique used to gain control of a suspect's wrist when a suspect refuses to pull his/her arm from under his/her body. To complete the technique, the officer must push his or her elbow against the side of the individual's head to create an opening and then reach under his armpit to grab his wrist.

¹⁷ When Employee #5 arrived on scene, this employee secured the Suspect's legs with a Hobble Restraint Device because Employee #5 knew that a Use of Force had just occurred and wanted to be cautious. When Employee #5 noted that the Suspect was no longer combative, the Hobble was removed without incident, and Employee #5 requested that a supervisor respond to the location.

A related complaint investigation, CF No. 05-1047, was initiated. The investigation resulted in one allegation that Employee #3's use of force was out of policy. The allegation was Sustained, and Employee #3 received a five-day suspension, and was ordered to receive training in the application of deadly force. The OIG believes that the penalty was appropriate for this employee.

V. Conclusion

Of the fourteen Unlawful Search cases closed during this quarter, we believe the majority were investigated and adjudicated appropriately. Indeed, we were encouraged to discover only two cases which we believed merited further discussion in this report. Moreover, as it relates to both cases, personnel from PSB have indicated that they will be conducting a subsequent review of each of these cases. The OIG thanks the Department for the open and frank dialogue on this important issue as well as their receptiveness to the concerns noted by the OIG.