

**LOS ANGELES POLICE COMMISSION**

*OIG's Review of LAPD's Quarterly  
Discipline Report,  
Third Quarter 2006*



Conducted by the

**OFFICE OF THE INSPECTOR GENERAL**

ANDRÉ BIROTTE, JR.  
Inspector General

January 18, 2007

## OIG'S REVIEW OF DISCIPLINE REPORT, THIRD QUARTER 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 Third Quarter of 2006. The Police Commission (Commission) received its copy of the Department's Quarterly Discipline Report (Report) on November 15, 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 discuss our review of cases closed during the Third Quarter that contained at least one allegation of Domestic Violence. We previously reviewed domestic violence cases in our Discipline Report for the Third Quarter of 2004, and we decided to revisit the topic to determine whether the issues we identified in our earlier report had been addressed. These issues included improper paraphrasing of interviews, failing to interview essential witnesses, additional allegations not being framed or adjudicated, and not using domestic violence experts in Board of Rights (BOR) proceedings. Our review revealed that, overall, the Department is appropriately handling domestic violence cases, and in eight out of the nine cases the issues we raised in our previous Domestic Violence report were addressed.

In Section IV, we reviewed an Ethnic Remark case which, upon initial impression, had caused us some concern regarding the penalty imposed upon a supervisor accused of failing to take appropriate action when a subordinate made ethnic remarks. Further review of the case revealed what we believed to be an inadequate penalty.

Section V 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 was sustained) was 23%, whereas the percentage of total Sustained allegations was 12.7% (total of Sustained allegations/total allegations =  $537/4237 = 12.7\%$ ). 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, in descending order of sustained rate:

Allegation	Sustained Rate	No. of Sustained Allegations/ Total Number of Allegations
Preventable Traffic Collision	96.4%	134/139
Failure to Qualify	84.9%	93/79
Neglect of Duty	14.3%	139/974
Unbecoming Conduct	9.7%	75/771
Unauthorized Tactics	7.1%	8/113
Discourtesy	1.9%	15/809
Unauthorized Force	0.7%	3/436
False Imprisonment	0.7%	2/292
Unlawful Search	0%	0/119
Racial Profiling	0%	0/85

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
Neg. Discharge	1/1	100.0%	0% (0.02%)	1	1
Insubordination	4/4	100.0%	0.1%	4	4
PTC	134/139	96.4%	3.3%	139	134
FTA	37/39	94.9%	0.9%	38	36
FTQ	79/93	84.9%	2.2%	89	79
Alcohol	5/7	71.4%	0.2%	6	4
Dom. Violence	9/22	40.9%	0.5%	10	4
Sexual Miscond.	6/15	40.0%	0.4%	11	2
Dishonesty	2/6	33.3%	0.1%	6	2
Narcotics	3/12	25.0%	0.3%	11	3
Improper Remark	4/25	16.0%	0.6%	21	3
False Statements	8/52	15.4%	1.2%	49	7
Misleading Stmt.	1/9	11.1%	0.2%	5	1
Unbec. Conduct	75/771	9.7%	18.2%	551	41
Unauth. Tactics	8/113	7.1%	2.7%	102	8
Neglect of Duty	139/974	7.0%	23.0%	784	99
Theft	1/39	2.6%	0.9%	37	1
Ethnic Remark	1/51	2.0%	1.2%	47	1
Discourtesy	15/809	1.9%	19.1%	663	13
Unauth. Force	3/436	0.7%	10.3%	327	3
False Impris.	2/292	0.7%	6.9%	267	2
Unlawful Search	0/119	0%	2.8%	109	0
Racial Profiling	0/85	0%	2.0%	81	0
Other Pol'y/Rule	0/48	0%	1.1%	46	0
Discrimination	0/47	0%	1.1%	36	0
Retaliation	0/16	0%	0.4%	13	0
Gender Bias	0/7	0%	0.2%	6	0
Shooting Viol.	0/2	0%	0% (0.05%)	2	0
Off-Duty Alt.	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, one might be led to believe that employees working directly for the OSS had 27 Neglect of Duty allegations Sustained in the Third Quarter. Further review of 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 9 of these 27 (33.3%) 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, often 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	537/4237	0/6	5/18	6/48	53/267	34/238	102/708	237/1925	13/107	5/8	17/770	65/139
Overall Sustained Rate	12.7	0	27.8	12.5	19.6	14.3	14.4	12.3	12.1	62.5	2.2	46.8
Total Sustained Allegs/ Total Allegs. (Minus PTCs FTAs, & FTQs)	287/3966	0/6	3/16	0/42	28/241	9/213	46/647	110/1786	8/99	3/6	7/757	63/137
Overall Sustained Rate (Minus PTCs, FTAs, & FTQs)	7.2	0	18	0	11.6	4.2	7.1	6.2	8.1	50	0.9	50

Whereas 12.7% of all misconduct allegations were Sustained during this quarter, 7.2% of all allegations were Sustained when PTCs, FTQs, and FTAs were removed.

**III. Review of Cases**

a. Methodology

During the Third Quarter of 2006, nine complaints with at least one allegation of domestic violence against Department employees were closed.<sup>1</sup> In reviewing these nine cases, a matrix

<sup>1</sup> Given the additional confidentiality afforded domestic violence complaints, the OIG is omitting the complaint numbers of the domestic violence cases referenced in this report. Instead, we are assigning a letter to identify the

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 employee's disciplinary history, and the standards enunciated in the Department's "Management Guide to Discipline" (July 2004) for sworn employees and the Civilian Guide to Discipline Standards (August 2005) (Guidelines).<sup>2</sup> 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 two 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 Domestic Violence Complaints

Overall, we were pleased with the Department's handling of the domestic cases we reviewed.<sup>3</sup> Of the nine cases, three had Domestic Violence allegations that were adjudicated as Unfounded, two were Not Resolved, three were Sustained, and one went to a BOR which resulted in a Guilty finding. The OIG was pleased that during the BOR, a domestic violence expert was used to explain the cycle of violence involved in abusive relationships. In our Discipline Report for the Third Quarter of 2004, we had recommended that such experts be used in domestic violence cases, and we were encouraged to see that our recommendation had been implemented.

#### **IV. Ethnic Remark Case**

In light of our prior Report for the First Quarter of 2006 on the issue of Ethnic Remarks, we were concerned that the penalty seemed low in the following case regarding an allegation that a supervisor failed to properly handle a matter involving the use of ethnic remarks in the workplace. Therefore, we decided to conduct an in-depth review of this case.

##### C.F. No. 05-2233

This Department-initiated complaint involved a civilian employee's (A1) claim that another civilian employee (A2) had said, upon their first meeting, "Isn't it wonderful that, during the war with Germany, the German people could just kill their Jewish neighbors? Isn't that great?" According to A1, A2 followed this statement by saying, "Isn't it great that African-Americans

---

one case detailed in this report. Should the Commission so desire, the case numbers will be provided to them upon their request in Executive Session.

<sup>2</sup> The civilian Guidelines were modified in August 2005.

<sup>3</sup> We identified some investigatory deficiencies in "Case A," primarily involving the failure to paraphrase an interview of the complainant and to frame additional allegations raised in that interview. However, this matter was properly referred to a BOR in connection with which the employee was found Guilty of one count of domestic violence and given a 12-day suspension. The deficiencies in the investigation were addressed separately in the Complaint Investigations Audit for Fiscal Year 2006/2007, conducted by the OIG's Audit Section.

are hated everywhere?" A1 is African-American. A1 stated that he/she informed their supervisor (A3), a civilian, following these statements. A3 spoke to A1 about his/her behavior, but did not initiate a complaint against A1. A complaint with Ethnic Remark allegations was later filed against A2 for these earlier statements when, during an interview for an unrelated Ethnic Remark complaint against A2, C.F. No. 04-3998, A1 mentioned the statements made previously by A2. The allegations in C.F. No. 05-2233 were Sustained, and A2 was ultimately terminated from the Department based upon several Sustained Ethnic Remarks complaints.

In C.F. No. 05-2233, a separate allegation was framed against A3 for failing to take appropriate action (filing a complaint) after misconduct was reported. The allegation was Sustained. A3 submitted a *Skelly* response. A3 stated that the second statement regarding African-Americans was never reported to him/her and argued that he/she therefore committed no misconduct in reference to taking action on that alleged statement. In reference to the first statement, A3 argued the following in claiming that his/her actions did not amount to misconduct:

The fact that I was informed of only the first remark is of extreme significance due to the fact that, at the time of the incident, I knew that [A2] was Jewish, and that [A1] was not Jewish. Furthermore, by evaluating the language [A2] used in the remark, it was obvious to me that [his/her] remark was not an expression of religious bigotry, hatred or intolerance. [A2]'s remark did not attempt to assign blame to [A1] for the persecution of the Jews, nor did [his/her] remark in any way attempt to denigrate [A1]'s religious beliefs, of which [A2] knew nothing. While [his/her] unsolicited remark demonstrated poor judgement regarding interpersonal communication, and was inappropriate within the work environment, it was not of a type that would constitute religious intolerance, was not alleged to have been made in a threatening manner, and therefore, did not rise to the level of misconduct. (Emphasis in original.)

A3 went on to state that:

[a] casual reading of the language used in [A2]'s first remark should make it clear that this was not an expression of religious intolerance, hatred or bigotry. [A2]'s expression appears to be an unsolicited expression of personal disgust, in the form of gallows humor, over the persecution and murder of Jewish people by the Nazis and, specifically, of the complicity of their former neighbors in their persecution and murder. (Emphasis in original.)

A3's *Skelly* response did not change the adjudication. A3 received a penalty of Admonishment.

Based upon the severity of the incident, the OIG does not believe that the penalty A3 received was sufficient. For the offense of "failure to carry out supervisory responsibilities accurately," the penalty range under the new set of Civilian Guidelines<sup>4</sup> for a first offense is a one-day suspension to discharge. It is possible that the adjudicator relied upon the old Guidelines, issued in July 2004, for which the penalty range was an oral warning to discharge. However, we believe that the appropriate category for the offense in this case was "failure to foster a

---

<sup>4</sup> The new set of Guidelines for civilian employees was released in August 2005.

discrimination free workplace by failure to act," for which the suggested penalty for a first offense (using the new Guidelines) is a five-day suspension to discharge. Under the old Guidelines, the penalty was a one-day suspension to discharge. We believe the penalty was on the light side regardless of which version of the Civilian Guidelines was applied.

We believe A3's statements made it clear that he/she did not understand the severity of the incident, or the definition of an Ethnic Remark, and failed to appropriately act. The OIG is also concerned that although A3 received "training," the training provided did not address the real problem here. The adjudicator stated in the LOT that "[A3] has been counseled regarding the importance and need for quick action and proper documentation of reported misconduct by subordinate Department employees. [A3] was provided given [sic] additional Department information regarding the effective response and responsibilities of a supervisor." Nothing is mentioned regarding specific training related to recognizing what constitutes an Ethnic Remark or cultural sensitivity issues. Given the fact that A3's *Skelly* response appears to indicate that A3 did not understand the severity of the situation, or how A2's actions constituted misconduct, the OIG believes that A3 should have received directed training regarding Ethnic Remarks and cultural sensitivity issues.

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

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

##### OIS 04-F021

Officer #1 and Officer #2 received a domestic violence radio call. The person reporting was Witness 1, a female who had been threatened the previous day by her boyfriend, the Suspect. Witness 1 wanted the Suspect removed from her apartment.

The officers met Witness 1 at the intersection in front of her building. Witness 1 stated that the Suspect was violent, that she was afraid of him, and that she wanted him out of her apartment. According to Officer #2, Officer #1 asked Witness 1 what her boyfriend's name was and whether he had any weapons. Witness 1 reportedly replied that she did not know of the Suspect having any weapons. Witness 1's account of the officers' questions differs from Officer #2's. According to Witness 1, the officers only asked whether her boyfriend lived at the location. She said they did not ask what his name was or whether he had any weapons. Although Witness 1 subsequently told investigators that she had not known that the Suspect had a gun in the apartment, she did tell them that she had previously seen him with a handgun.

The officers did not conduct a want and warrant check on the Suspect or check his criminal history. They told Witness 1 that they could not force the Suspect to leave the apartment, but said that they would suggest that he leave and would stand by to keep the peace. The officers then used their Mobile Digital Terminal (MDT) to show themselves on a follow-up to the call and followed Witness 1 to her apartment. However, the MDT transmission was not successfully

transmitted. Consequently, CD was not aware of the officers' location once they went to the apartment.

The officers approached the apartment, accompanied by Witness 1, by climbing an exterior staircase that led to a landing area. Witness 1 used her keys to open the door to the apartment, and the three entered the living room of the apartment. Witness 1 called out for the Suspect.

The Suspect emerged from a bedroom located off a hallway adjacent to the living room. Upon seeing the officers, the Suspect scowled. The Suspect walked into the living room and was directed by Officer #1 to place his hands against the wall. Officer #1 told the Suspect that they just needed to speak with him. Witness 1 and Officer #2's statements differ regarding the placement of the Suspect's hands. According to Witness 1, the Suspect put both his hands on the wall. Officer #2 recalled seeing the Suspect's right hand over his head but did not recall if the hand was actually touching the wall or if the Suspect was bringing it back to be placed on his head as if to submit to a search.

As Officer #1 positioned himself/herself to conduct a pat-down search of the Suspect, Witness 1 moved towards Officer #1, yelling that she did not want the Suspect arrested. Officer #2 turned his/her attention to Witness 1, instructed her to get back and told her that the Suspect was not going to be arrested. Officer #2 heard Officer #1 talking to the Suspect, and was about to direct his/her attention back towards the Suspect when Witness 1 again moved towards Officer #1 and the Suspect. Officer #2 responded to Witness 1's action by turning to Witness 1 in order to physically prevent her from reaching Officer #1, then moved her back towards the front door of the apartment.

Simultaneously, the Suspect looked over his right shoulder towards Witness 1, moved his hands towards his waistband and then turned to his left. Officer #2 turned back towards Officer #1 and saw Officer #1 try to either grab or push away from the Suspect as the Suspect broke away.

Officer #2 pushed Witness 1 towards the front door of the apartment as the Suspect moved rapidly back towards the bedroom from which he had previously emerged. Officer #1 then said, "Back out! Back out! He's got a gun!" Officer #2 saw the Suspect motion with his hands at his waistband as if he was attempting to draw a gun.

Witness 1 fled from the apartment and down the stairs. According to her statement, she had reached the top of the stairs when she heard an officer say, "He's got a gun." After running down the stairs, she hid behind a trashcan, then fled from the scene.

Officer #2 began moving out of the apartment, drawing his/her gun as he/she did so. Officer #2 saw Officer #1 in the middle of the living room, drawing his/her weapon and moving towards the door of the apartment.

Officer #2 exited the apartment and ran to the stairs. Although Officer #2 initially believed that Officer #1 was directly behind him/her, as Officer #2 reached the top of the staircase, Officer #2 saw that Officer #1 was backing towards the door but had not yet exited the apartment. Officer #2 continued down the staircase.

Officer #2 heard two gunshots from inside the apartment while going down the staircase. Officer #2 continued down the stairs and broadcast, "Officer needs help. Shots fired." Officer #2 then heard Officer #1 behind on the stairs, saying, "Go, go, go!"

CD broadcast the help call and requested a location.

As Officer #2 reached the bottom of the stairs, he/she looked to the left and saw Officer #1 coming down the stairs behind him/her. Officer #2 looked back up at the landing and did not see the Suspect.

Officer #1 then made a noise, described by Officer #2 as a grunting or moaning sound. Upon reaching the bottom of the staircase, Officer #1 went down on one knee. Officer #2 did not see any blood and thought that Officer #1 might have been struck in the vest.

Officer #2 redeployed to a position to the southeast of the foot of the staircase, intending to get a better position relative to the landing. Officer #2 then saw the Suspect come out onto the landing and fire one or two rounds towards Officer #1.

Officer #2 fired four rounds at the Suspect. The rounds missed the Suspect, who retreated back to the apartment. Officer #2 believed that the Suspect's weapon had gone to slide-lock, indicating that the Suspect had fired all his rounds, and had gone to retrieve another weapon or to reload. Investigators determined that the Suspect fired a total of eight rounds. Six of these rounds were fired inside the apartment, and two outside the front door of the apartment. The two rounds that struck Officer #1 were fired from outside the front door. Evidence at the scene indicates that Officer #1 fired two rounds from the foot of the staircase.

Officer #2 returned to Officer #1, who was now on his/her knees. Officer #2 tried to lift Officer #1. However, the pair only moved a few steps before Officer #1 fell to the ground. Officer #2 then redeployed to the prior position to await assistance and cover Officer #1.

The first responder to the help call was Officer #3. As Officer #3 reached the location, Officer #3 saw that Officer #2 was positioned 10 to 15 feet east of Officer #1, who was six feet from the base of the stairs. Officer #2 shouted, "Get my partner out of here!" Officer #3 attempted to drag Officer #1 while Officer #2 continued to cover. Officer #3 had difficulty moving Officer #1 and was assisted by an additional officer who had arrived on-scene.

Before the ambulance arrived, believing that she may be a suspect, Witness 1 was taken into custody by a group of officers that included Officer #2.<sup>5</sup>

---

<sup>5</sup> A witness to the incident indicated to investigators that profane language was used when Witness 1 was taken into custody, and that a knee was placed on her neck when she was detained. A Command Officer determined that a personnel complaint should not be initiated regarding this information. The Use of Force Review Board directed Department employees to investigate this matter and take appropriate action. The OIG believes that a complaint should have been filed at the time the information was received.

Officer #1 received two gunshot wounds: one to the lower back and one to the armpit, both of which were fatal.

The Suspect was arrested later that day, after being located hidden in a vehicle during a search of the area by SWAT and Canine Unit officers. The Suspect sustained dog bite injuries during the arrest. The weapon the Suspect used to kill Officer #1 was never recovered. Four days later, the Suspect attempted suicide and was found hanging in his cell. The Suspect subsequently died.

The COP noted a series of tactical issues with the performance of Officers #1 and #2.

The COP felt that the officers should have requested approval from a supervisor prior to proceeding to the follow-up location. After being advised of the Suspect's violent nature, the COP would have preferred that the officers had discussed a tactical plan and requested an additional unit to accompany them to the Suspect's location. The COP noted that the officers did not conduct a want and warrant check or obtain a general description of the Suspect prior to conducting the follow-up. Once the officers arrived at the follow-up location, the COP noted that they did not verify their follow-up status and location with CD, which caused confusion and delayed the response of additional units once a help call was requested.

The COP also noted that the officers allowed Witness 1 to accompany them into the apartment as they made contact with the Suspect. The COP would have preferred that the officers had advised Witness 1 to remain outside the apartment, which would have then allowed them to focus their attention solely on the Suspect. The COP would also have preferred that when Officer #1 lost control of the Suspect, the officers had held their ground, requested help, deployed to a position of cover and engaged the suspect if necessary. The COP felt that the officers' decision to exit the apartment placed them at a tactical disadvantage, leaving them vulnerable and unaware of the suspect's actions and location.

The COP further noted that the officers did not communicate with each other as the tactical incident unfolded, and would have preferred that Officer #2 had been aware of Officer #1's location prior to exiting the apartment and proceeding down the staircase, especially after hearing shots fired. Once Officer #2 observed Officer #1 reach the base of the staircase and eventually fall to one knee, the COP would have preferred that Officer #2 had ascertained if Officer #1 was injured, provided cover and requested help.

The COP also noted that after Officer #1 was removed from the scene, additional units were not immediately assigned to establish a perimeter to control the ongoing tactical situation. This enabled the Suspect to escape the scene.

The COP determined that Officer #2's tactics were seriously deficient and required an AD finding. The COP directed Officer #2 to formal tactical training. Due to the fact that Officer #1 was fatally wounded as a result of the incident, the Use of Force Review Board elected not to return findings in relation to Officer #1.

The COP found Officer #2's use of force and drawing/exhibition/holstering of a firearm to be in policy, no action.

A complaint investigation was initiated as a result of the AD finding. In CF No. 05-0663, one allegation was framed against Employee #2 for Unauthorized Tactics. The allegation was Sustained. Officer #2 received 32 hours of Law Enforcement Tactical Application Course (LETAC) training as a result of this incident. Officer #2 initially was given a 10-day suspension. However, the COP elected to reduce the penalty to an Official Reprimand based on his belief that the original penalty was too severe. If one of the goals of discipline is to deter future similar behavior, we believe that the loss of Officer #2's partner and the significant training that Officer #2 received, in the absence of any additional discipline, are likely to deter future similar behavior by Officer #2, and, accordingly, we do not believe that the decision to impose an Official Reprimand on Officer #2 was unreasonable.

#### OIS 04-F099

During a firearms inspection, Officer #1 approached the gun barrel used as a safety device when unloading one's weapon during such inspections, and prepared to unload his/her Beretta nine-millimeter handgun. Many officers who had already unloaded their weapons had walked into the adjacent parking lot located on the east side of the gun barrel. They were in the southeast portion of the parking lot at the time.

Officer #1 utilized his/her right hand to remove his/her service pistol from the holster and pointed the muzzle of the weapon in a downward direction into the gun barrel. Officer #1 then utilized the left hand to pull the weapon's slide to the rear and "caught" the bullet that was ejected from the weapon's chamber. Officer #1 stepped to the right several steps to allow the next officer in line access to the barrel.

As Officer #1 was standing on the sidewalk just east of the gun barrel, he/she held his/her weapon with the right hand and pointed it in a northeasterly direction towards the occupied parking lot. Officer #1 allowed the weapon's slide to return forward to its standard position. At that point, the weapon discharged one round. The round struck the left side of a police motorcycle that was parked in the adjacent parking lot. Officer #1 immediately examined the weapon and noticed he/she failed to remove the magazine. Officer #1 de-cocked the weapon and placed it in its holster.

During his/her interview, Officer #1 did not recall placing his/her finger on the weapon's trigger. Officer #1 said his/her finger was along the weapon's frame when the discharge took place. Additionally, Officer #1 indicated that after the discharge of the weapon he/she examined it and noticed that he/she had failed to remove the magazine.

The COP was critical that Officer #1 did not properly ensure that the handgun was unloaded and the magazine removed prior to allowing the slide to return forward to its standard position. The COP recognized that a negligent discharge is a serious incident that cannot be mitigated.

The COP determined that Officer #1's use of force was accidental, but negligent. The COP rendered an AD finding regarding the use of force, and directed Officer #1 to additional firearms training.

The Police Commission concurred with the COP's recommendations.

A complaint investigation was initiated as a result of the AD finding. In CF No. 05-3545, an Accidental Discharge allegation was Sustained, a penalty of 10 days was imposed, and Officer #1 received directed firearm and tactical training. Given Officer #1's history of complaints related to neglect of duty, the OIG believes that the penalty was appropriate.

#### OIS 04-F119

In the early morning hours, Officer #1 picked up Officer #2 to carpool to work. At that time, Officer #1 was Officer #2's Field Training Officer (FTO). Officer #1 was driving Officer #1's off-duty vehicle (Vehicle 1). Officer #2 was in the front passenger seat.

As Officer #1 approached an intersection, another vehicle (Vehicle 2) entered the curb lane of southbound traffic from a side street, directly in front of Officer #1. Suspect #1 drove Vehicle 2. His brother, Suspect #2, occupied the front passenger seat of Vehicle 2.

As the brothers drove down the street, Officer #1 moved to the left into the inside lane of and pulled alongside Vehicle 2.

There is significant divergence in the versions of the events that followed Vehicle 2 pulling onto the street. Suspect #1 related that Officer #1's vehicle pulled up close behind them with the horn honking and then pulled up alongside Vehicle 2. According to Suspect #1, the passenger of the vehicle (Officer #2) then shouted profanities at them and gave them the "bird" with the middle finger. Suspect #2 related that he could hear shouting from Officer #1's vehicle, along with his brother's yelling, even though both vehicles had their windows rolled up. The officers denied that these events occurred and indicated that they were traveling down the street with their windows up.

As the vehicles pulled alongside each other, Officer #1 related that he/she observed the driver of Vehicle 2 pull what he/she believed to be a handgun, which was followed by a flash and then heard an object impact Officer #1's vehicle.

Officer #2 indicated that he/she saw Suspect #1 raise his right hand across his chest toward his left shoulder, twist his upper torso to the left and look back. Officer #2 indicated that he/she then saw a flash and heard a loud bang resembling a gunshot.

In response, Officer #1 stepped on the brakes to get a better position of advantage tactically, pulled his/her service weapon from beneath the armrest between the driver's seat and passenger's and fired four rounds through the front windshield of Officer #1's vehicle at Vehicle 2. During this time, Officer #2 had ducked down in the passenger seat and was attempting to remove his/her weapon from a duffel bag on the passenger-side floorboard.

Suspect #1 indicated that he had removed a cologne bottle from the console of Vehicle 2 and as the vehicles drew parallel to each other, threw the cologne bottle toward Officer #1's vehicle.

Officer #3 witnessed the shooting while on the way to work. Officer #3 had been driving on the same street as Officers #1 and #2 and the suspects, and observed what appeared to be the

passenger car (Vehicle 2) trying to catch Vehicle 1. Officer #2 indicated that Vehicle 2 had passed Officer #3's vehicle and cut him/her off to get in behind Officer #1's vehicle. When Vehicle 2 passed, Officer #3 noted that the driver was bending over in the car appearing to be reaching for something on the floor. It appeared to Officer #3 that Officer #1's vehicle was slowing down to make a turn. However, at the time Officer #3 heard three "pops" and saw something spring off the top of Officer #1's vehicle described as "glass shattering or something splattering." Officer #3 proceeded to work, and upon learning of the incident, reported what he/she had seen.

After the shooting occurred, Officers #1 and #2 determined that they had not been hit, and began a vehicle pursuit of Vehicle 2. Vehicle 2 sped down the street with Officers #1 and #2 following. During this time, Officers #1 and #2 were attempting to maintain visual contact with Vehicle 2 to obtain a license plate number. Also during this time, Officer #1 retrieved his/her cellular telephone and made a call to the direct line of the Area Watch Commander to inform him/her of the situation and the officer involved shooting. Officer #1 handed the telephone over to Officer #2 who stayed in contact with the station. Officer #4 ultimately handled the telephone call from the officers.

By this time Vehicle 2 had entered the freeway with Vehicle 1 following, and later exited. During this time, the location of the vehicles and status of the pursuit was being broadcast over the divisional frequency. The officers lost sight of Vehicle 2.

When traveling on the freeway, traffic had slowed enough to allow the officers to get close enough to Vehicle 2 to obtain the license plate number. After notifying Officer #4 that they had lost Vehicle 2 in traffic, Officer #4 ordered the officers back to the station. Upon their return to the station, Officer #1 parked Vehicle 1 in the rear parking lot and the officers reported to Officer #4. When Officer #1 exited Vehicle 1, three .45 caliber casings rolled out and onto the ground. Once in the station, the officers were immediately separated.

The reported license number of Vehicle 2 came back registered to Suspect #2, the passenger in Vehicle 2. Follow-up investigation at the residence listed on the registration led to a contact with Witness 1, the suspects' mother. Witness 1 confirmed the time that her sons had left for work, driving Vehicle 2. Suspect #2 was contacted via his cellular telephone, and he confirmed that they were shot at and chased on the way to work that morning. An investigating officer spoke directly with Suspect #2 and notified him that the officer would be coming to Suspect #2's workplace to speak with him about the incident.

Both brothers were arrested for Penal Code Section 187, Attempted Murder. The investigating officers were directed to Vehicle 2 in the parking lot of the workplace. A search of the vehicle did not lead to the recovery of any evidence in the form of handguns, ammunition, holsters, or expended shell casings. There was, however, damage to the vehicle appearing to be the result of gunfire. A subsequent search of each of the brother's residences yielded no weapons. Further, neither brother had a firearm registered to him. Ultimately, Suspect #1 and Suspect #2 were released without booking.

The COP noted the following concerns:

After the officers braked to avoid the suspects' vehicle, Officer #1 pulled alongside the suspects' vehicle and both officers looked into the vehicle. The COP would have preferred that Officers #1 and #2 had stayed behind the suspects and proceeded to the station. The COP also noted that after Officer #1 developed a belief that the suspect was armed and fired a shot at him, Officer #1 slowed his vehicle to gain a more tactically advantageous position on the suspects' vehicle. The COP would have preferred that Officer #1 had stopped the vehicle, allowed the suspects to continue, and called 911 or the station to report the incident.

The COP noted that after Officer #1 was involved in the OIS, Officer #1 elected to follow the suspects and utilized a cellular telephone to call the police station. The COP would have preferred that Officer #1 directed Officer #2 to call 911 immediately, which would have connected them to a dispatcher, thus preventing any delay in dispatching help to the officers. Additionally, the COP noted that Officers #1 and #2 followed the suspects, who attempted to evade them by speeding and violating several "rules of the road." The COP was concerned that the officers also violated the "rules of the road" in their efforts to stay with the suspects' vehicle.

The COP determined that the tactics of Officers #1 and #2 were seriously deficient and required a finding of AD. Further, the COP directed the officers to tactical training.

The COP determined Officer #1's use of force was out of policy and rendered an AD finding for the following reasons.

The COP was critical of Officer #1's decision to use deadly force. Officer #1 fired from a moving vehicle at a suspect also in a moving vehicle. The COP felt it would have been unlikely that Officer #1 would have been successful in hitting the intended target. Additionally, although the COP felt it was reasonable for Officer #1 to perceive the threat from Suspect #1, at the time Officer #1 fired, it was not a last resort. The COP felt that Officer #1 had other alternatives available that were more reasonable and prudent. After the initial perception that Suspect #1 had fired a round at them, Officer #1 slowed Vehicle 1 and positioned Vehicle 1 at the rear quarter panel of the suspect's vehicle. The COP would have preferred that Officer #1 would have brought the vehicle to a stop, allowing the suspects' vehicle to proceed. This action, the COP contended, would have eliminated the perceived threat from the suspect.

The COP determined that it was not reasonable for Officer #1 to believe the suspect presented an immediate threat of serious bodily injury or death, and at the time Officer #1 fired the rounds at the suspect, Officer #1 had not exhausted all reasonable alternatives. The COP referred Officer #1 to directed training.

The COP determined Officer #1 and Officer #2's drawing/exhibiting to be in policy, training. The issues the COP was concerned with in reference to the drawing/exhibiting were as follows:

The officers observed Suspect #1 holding an object in his hand that resembled a blue steel handgun, observed a flash and heard an object strike their vehicle. Believing that they were fired upon, Officers #1 and #2 drew their weapons. The COP determined that the officers had sufficient evidence that the situation could escalate to a point where deadly force may become

necessary. The COP noted however, that neither officer had their firearm stored in a holster as required. The COP was concerned that the officers be reminded that, unless a bag is specifically designed to carry a firearm, the firearm shall be in a holster.

The COP directed the officers to training on the proper securing of their weapons.

The Police Commission adopted the COP's recommendations.

As a result of the AD findings, complaint investigation CF No. 05-5295 was initiated. Two allegations were framed against Officer #1 for Unauthorized Force and Unauthorized Tactics. One allegation of Unauthorized Tactics was framed against Officer #2. The allegations against Officer #1 were Sustained, and Officer #1 received a 10-day penalty. The allegation against Officer #2 was Sustained as well, and Officer #2 received a five-day penalty. Both officers received training. We believe that the penalty assessed for each officer was appropriate in light of the serious tactical mistakes and errors in judgment committed by both.

## **VI. Conclusions and Recommendations**

We are pleased that, overall, the Department is appropriately handling Domestic Violence cases. As mentioned in our last report on domestic violence, it is important for the Department to prepare accurate paraphrases of interviews, refer the appropriate cases to Boards of Rights, and use domestic violence experts in Boards of Rights proceedings. We were encouraged to see that in eight out of the nine cases we reviewed, the Department achieved these goals.