

LOS ANGELES POLICE COMMISSION

*Review of the
Department's Quarterly Discipline
Report
Third Quarter 2009*



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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I. INTRODUCTION

Each quarter, the Los Angeles Police Department (LAPD or Department) publishes a quarterly report regarding discipline imposed, including Categorical Uses of Force (CUOFs) found to be out of policy, approximately 45 days after the end of each quarter. On November 19, 2009, the Office of the Inspector General (OIG) received its copy of the Department's Quarterly Discipline Report (Department's Report) for the Third Quarter of 2009. The OIG has reviewed the Department's Report and submits its own Report to the Honorable Board of Police Commissioners (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 IV, the OIG reviewed cases closed during the Quarter that contained at least one allegation of Retaliation. Paragraph 92 of the former Federal Consent Decree between the Department of Justice and the City of Los Angeles required the Commission to regularly review the Department's anti-retaliation policy and its implementation. That responsibility was delegated to the OIG who began issuing a series of such reports in February 2004. The OIG's reports contained a number of recommendations which led, among other things, to the revision of the Department's anti-retaliation policy in 2005, the creation of a special unit of Internal Affairs Group – the Workplace Investigation Unit (WIU) – specifically designated to investigate retaliation and other workplace complaints, and the institution of new, mandatory anti-retaliation training, beginning in 2005.

During the course of 2008, two major developments occurred in connection with the Department's handling of retaliation concerns. First, a working group was created under the direction of then-Police Commissioner Andrea Sheridan Ordin to review and assess existing practices for the intake and investigation of retaliation complaints. Included in this working group were representatives from various entities that play a role in the intake, investigation, or review of retaliation complaints: Internal Affairs Group (IAG), the Workplace Environment Liaison Division (WELD), Training Division, the Consent Decree Bureau, Behavioral Science Services Section (BSS), and Employee Relations Group. The working group met periodically to explore ways to streamline and improve the process for addressing retaliation concerns.

In addition, WELD was formally established in August of 2008.¹ The new division was created to provide alternative means by which to resolve workplace issues and to minimize the need for formal complaint investigations or litigation. WELD replaced the Ombuds Office but retained its core mission: to address interpersonal conflicts between co-workers and/or supervisors/subordinates; and to conduct in-depth workplace assessments and evaluations of workplace environments within a particular den, division, or specialized unit, with the goal of addressing workplace issues² head-on before complaints, grievances or lawsuits are filed. Such assessments are a valuable tool in evaluating the performance of entire units and providing Department managers with feedback and recommendations on how to improve performance. WELD does

¹ See Special Order No. 26 (August 12, 2008).

² In its first two Retaliation reports, the OIG cited the need to conduct timely environmental workplace assessments as an integral component to addressing and/or forestalling retaliation complaints.

not replace IAG nor does it supplant the process for addressing allegations of serious misconduct.

The OIG believes that it is important to provide real-time assessments of the Department's handling of workplace concerns, and, along those lines, another development which occurred in 2008 was the extension of an invitation by WIU to the OIG to observe complainant interviews conducted in connection with their investigations. The OIG has already attended a number of such interviews, during which the OIG's input has been actively solicited. In addition, the OIG has also started to review retaliation investigations prior to adjudication to provide timely input, if appropriate, while the case is still open.

Accordingly, in light of the major developments which occurred during 2008, the OIG believed it would be more prudent to review cases initiated after 2008 to allow for these developments to have an impact on the Department's handling of internal retaliation concerns. There were five such complaint investigations alleging retaliation by a Department employee against another employee which were closed during the Third Quarter of 2009. The OIG conducted in-depth assessments of all five complaints, and the results of these case reviews are discussed in more detail below.

In Section V, the OIG discusses cases closed during the Quarter that were determined to be Out of Statute (OOS). This Report includes five 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. In Section VI, we discuss four other cases which we believed might be of interest to the Commission.

Section VII contains our review of the discipline imposed relative to the six CUOF incidents where the Commission adopted a finding of Out of Policy and/or Administrative Disapproval, which were closed during the Third Quarter, and which are enumerated on Table L of the Department's Report.

On January 19, 2010, OIG staff met with personnel from the Department's Internal Affairs Group (IAG) to discuss our preliminary findings regarding the cases we reviewed. Information provided by IAG during this meeting was taken into consideration prior to finalizing this Report. IAG indicated they would not be submitting a written response to the concerns discussed herein.

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 revealed, based upon a preponderance of the evidence standard, that the act complained of did occur and constituted misconduct.

Using the information contained in the Department's Report, we determined that the percentage of Sustained allegations was 11% (total number of sustained allegations/total number of allegations = 354/3124 = 11%). Also using the information in the Department's Report, we determined that the percentages of Sustained allegations for each of the 10 most common allegations this Quarter were as follows, in descending order of Sustained Rate:

Allegation	Sustained Rate	No. of Sustained Allegations/ Total Number of Allegations
Alcohol Related	100.0%	13/13
Shooting Violation	100.0%	1/1
Dishonesty	87.5%	7/8
Insubordination	85.7%	6/7
Preventable Traffic Collision	68.8%	55/80
Failure to qualify	53.8%	14/26
Failure to appear	53.8%	21/39
Misleading Statements	50.0%	1/2
Off Duty Altercation	50.0%	1/2
Narcotics/Drugs	38.5%	5/13

Allegation Summary

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

Classification	Sustained Allegations/ Total Allegations	Sustained Rate	Percentage of Total Allegations	Number of Accused Employees³	Number of Employees w/ Sustained Allegations
Alcohol Related	13/13	100%	0.4%	12	12
Biased Policing	0/2	0	0.1%	1	0
Discourtesy ⁴	24/547	4.4%	17.5%	382	16
Discrimination	0/23	0.0%	0.7%	14	0
Dishonesty	7/8	87.5%	0.3%	5	5
Domestic Violence	10/27	37.0%	0.9%	12	6
Ethnic Remark	2/13	15.4%	0.4%	10	2
Failure To Appear	21/39	53.8%	1.2%	38	20
Failure To Qualify	14/26	53.8%	0.8%	26	14
Failure To Report Miscon.	1/5	20.0%	0.2%	2	1
False Imprisonment	0/214	0.0%	6.9%	171	0
False Statements	15/84	17.9%	2.7%	63	9
Gender Bias	0/10	0.0%	0.3%	8	0
Improper Remark	3/31	9.7%	1.0%	23	3
Insubordination	6/7	85.7%	0.2%	6	5
Misleading Statements	1/2	50.0%	0.1%	2	1
Narcotics/Drugs	5/13	38.5%	0.4%	7	5
Neglect of Duty	98/602	16.3%	19.3%	415	74
Off-Duty Altercation	1/2	50.0%	0.1%	2	1
Other Policy/Rule	4/137	2.9%	4.4%	87	4
Preventable Traffic Coll.	55/80	68.8%	2.6%	76	51
Racial Profiling ⁵	0/71	0.0%	2.3%	66	0
Retaliation	0/18	0.0%	0.6%	13	0
Service	0/10	0.0%	0.3%	6	0

³ 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.

⁴ The total allegations for Discourtesy were erroneously listed on Schedule F of the Department's Report. The Department provided an explanation for the error as follows: "This is related to a bug in the data warehouse with the employee rank history data. This anomaly occurs when an employee has two ranks associated with the same time period. When this occurs, the case is stamped with both ranks. For the employee associated with this complaint, an incorrect entry for a promotion to PO [Police Officer] III was entered into the system and the complaint was stamped with both ranks thus creating two records."

⁵ The total allegations for Racial Profiling were erroneously listed on Schedule F of the Departments report. The Department provided the following explanation: "The discrepancy for Racial Profiling is attributed to a data entry issue in the Complaint Management System. The accused on this case was a Detective III at the time of the incident. His reserve serial number, however, instead of his active duty serial number, was entered into the system. When the system searched for the Detective's rank in generating Table F, there were no results since the Reserve Police Officer status was not active at the time of the incident. The Detective retired and became a Reserve Officer on October 1, 2008 while the incident . . . occurred on July 2, 2008."

Sexual Misconduct	1/10	10.0%	0.3%	6	1
Shooting Violation	1/1	100.0%	0.0%	1	1
Theft	1/26	3.8%	0.8%	9	1
Unauthorized Force	4/340	1.2%	10.9%	213	3
Unauthorized Tactics	1/54	1.9%	1.7%	42	1
Unbecoming Conduct	66/603	10.9%	19.3%	332	38
Unlawful Search	0/106	0.0%	3.4%	82	0

III. LAPD'S POLICIES AND PROCEDURES FOR INVESTIGATING RETALIATION COMPLAINTS

A. Anti-Retaliation Policy

Volume 1, Section 272, of the LAPD Manual (LAPD Manual or Manual) defines retaliation as “an adverse employment action taken against an employee for engaging in protected activity.” According to this Manual section, an adverse employment action includes the following:

“[A]n action that would cause a reasonable employee to be deterred from engaging in a protected activity or an action in direct response to an employee engaging in a protected activity. Adverse employment actions may include, but are not limited to, negative performance evaluations, negative Employee Comment Sheets, the imposition of discipline, denial of a paygrade advancement, coveted assignment or promotional opportunity, or change of assignment.”

Under the Department's policy (Policy),⁶ protected activities include:

- Opposing, reporting, or participating in any claim, lawsuit, or investigation concerning unlawful discrimination or sexual harassment;
- Filing a grievance or participating in any unfair labor complaint;
- Taking advantage of any labor right or benefit such as using sick or family leave, seeking compensation for overtime worked, or filing an objectively valid work-related claim for damages;
- Reporting misconduct of another Department or City employee to the OIG, or any Department or governmental entity; or
- Supporting, assisting or cooperating in a misconduct investigation.

The Department prohibits all employees from engaging in any act or incident of retaliation in the workplace and also expressly prohibits employees from targeting other employees for engaging in protected activity.⁷ Prohibited behavior may include, but is not limited to:

- Refusing to provide or intentionally delaying response to a request for assistance or back-up;

⁶ The Policy is comprised of two parts: retaliation by fellow employees and managerial retaliation involving adverse employment actions against subordinate employees. The Policy was initially codified in Special Order nos. 15 and 16, both dated July of 2005. They were subsequently formally incorporated into the Manual.

⁷ LAPD Manual Volume 1, Section 272.10.

- Creating a dangerous working environment;
- Ostracizing employees for participating in an investigation; and/or,
- Spreading rumors impugning the character or reputation of a complainant or an accused [employee].

B. Internal Affairs Group's Workplace Investigations Unit (WIU)

In response to concerns identified by the OIG in its first two retaliation reports, the Department established WIU, a specialized unit within IAG that is responsible for investigating all retaliation, discrimination and other workplace complaints of misconduct. These types of cases are often some of the most challenging investigations at IAG, and can involve multiple issues, as well as large numbers of employees and multiple incidents spanning years.

WIU does not investigate non-misconduct⁸ (e.g., workplace conflict that does not rise to the level of misconduct) nor does it conduct formal environmental or workplace assessments. With the creation of the WIU, the Department centralized all workplace investigations. The OIG believes centralization provides a much-needed, single point of contact for all retaliation cases. It has also resulted in the development of investigators who are particularly knowledgeable about Department policy, procedures, rules and protocols relevant to workplace investigations.

Once a case is assigned to a WIU investigator, an interview with the employee making the allegations is promptly arranged. The purpose of the first interview is to determine whether the allegations, if true, constitute misconduct.

According to the Department, the Commanding Officer (CO) of Administrative Investigative Division (AID) has the final decision as to what does or does not constitute misconduct, and, if it does not, whether the CO may need to consider addressing the employee's issues through alternative means. However, it is the OIG's understanding that as of the time the cases discussed herein were adjudicated, the CO of AID had the final authority on the direction of the case. If the interview revealed that the allegations as outlined by the complainant rose to the level of misconduct, then the complaint would be investigated accordingly. If a determination was made that the allegations did not rise to the level of misconduct, the investigator would inform the employee about his/her other options to address his/her concerns, such as seeking the assistance of WELD.

It is the OIG's understanding from its conversations with WIU employees that WIU seeks to address the following issues to ensure that all investigations are both thorough and consistent:

- Identifying and describing the behavior at issue;
- Analyzing the behavior;
- Examining whether the behavior potentially violates federal, state or local laws related to retaliation and/or workplace discrimination;
- Determining whether the described behavior constitutes misconduct; and,

⁸ The Department Manual, Volume 3, Section 805.25, defines misconduct as: commission of a criminal offense; neglect of duty; violation of Department policies, rules or procedures; and conduct which may tend to reflect unfavorably upon the employee or the Department.

- Assessing whether or not the employee had the opportunity in other processes or venues to resolve the issue(s).

All five cases the OIG reviewed for our Report were investigated by WIU.

IV. REVIEW OF RETALIATION CASES

A. Methodology

The OIG conducted in-depth reviews of all five investigations. In conducting these reviews, a matrix specifically designed for evaluating retaliation complaints was used by first- and second-level reviewers. This matrix contained 53 questions designed to evaluate the quality, completeness, and findings of retaliation complaint investigations, including whether the evidence supported the rationale, whether necessary investigative steps were taken, and whether material inconsistencies, if any, were resolved. The matrix also included targeted questions assessing whether the investigation revealed the existence of workplace issues that could have led to the perception of retaliation and whether the adjudicator recognized such issues and recommended any remedial steps.

OIG staff also reviewed audio recordings of the interviews conducted in all five cases. In reviewing the tape-recorded interviews in these cases, the OIG utilized a separate tape matrix containing 18 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 (e.g., whether the interviewer used inappropriate or leading questions, or adopted a hostile or inappropriate tone with the witness); and (5) the interviewer asked logical follow-up questions.

B. Findings

All five cases reviewed by the OIG were investigated by WIU. Overall, we believed that WIU's interviews with the complainant in four of the five cases⁹ were comprehensive and conducted in a professional manner. We commend the WIU Investigators (I/O's) for endeavoring to elicit pertinent information from complainants who could be described as, at times, emotional, confrontational, or evasive. Moreover, we found the I/O's inclusion in several of the investigations of a timeline of relevant events to be extremely helpful and something we believe should be utilized wherever possible in these types of investigations.

As discussed above, we understand that one main goal of WIU during the initial interview with a retaliation/workplace complainant is to determine whether the complainant's claims, even if true, would constitute misconduct as defined by the Department. In four of the five cases we reviewed,¹⁰ no interviews were conducted with the employees accused by the complainant as being responsible for the activity which the complainant believed constituted misconduct based on the Department's determination that the behavior as described by the complainant did not

⁹ The complainants were interviewed in all but one complaint. In that case, CF No. 08-002885, the complainant refused to be interviewed.

¹⁰ 08-002885; 08-005647; 08-005721; and 09-002365.

actually constitute misconduct. Moreover, in three¹¹ of these four cases, the Department did not frame allegations against any of the employees identified by the complainant, but rather framed allegations against the Department, and adjudicated the allegations as either Non-Disciplinary -- Employee's Actions Do Not Constitute Misconduct¹² or Unfounded.¹³

As a general matter, we have concerns with the practice we have observed in these and other WIU investigations to frame allegations of retaliation against the Department and, in many cases, to adjudicate the allegations under one of the Non-Disciplinary classifications, either "Employee's Actions Do Not Constitute Misconduct" or "Policy/Procedure." We do not believe that the Non-Disciplinary system was designed for such potentially serious allegations as retaliation.

To begin with, included as first among the reasons behind the Commission's decision to adopt a Non-Disciplinary complaint classification, as outlined in Department Special Order No. 1 (January 1, 2003) (SO1), was the desire to "[h]asten resolution of *minor* complaints." (SO1, at page 1) (Emphasis added). Moreover, SO1 indicates that a supervisor may only classify a complaint as Non-Disciplinary when all of six factors are satisfied at the time the complaint is initiated. Included among these factors is when the complaint does not allege, among other unlawful acts, "retaliation/retribution against another employee." (*Id.* at p. 5). Though SO1 does allow for an exception "[w]hen a complaint is clearly exonerated or unfounded as the time it is initiated," (*id.*), we believe that that would be the rare exception.

Further, all five retaliation investigations we reviewed for this report involved supervisory employees, most of whom were COs. Framing retaliation allegations against the Department as opposed to specific supervisors identified by the complainant results in there being no record of any retaliation allegations on these supervisors' TEAMS reports, regardless of adjudication. Even though unsustainable complaints of retaliation cannot be used for evaluation or promotional purposes, we believe it is important to know when assessing the merits of a subsequent retaliation complaint whether a supervisor had previously been accused of retaliation, as multiple retaliation complaints against the same supervisor, regardless of outcome, may portend the possibility of poor supervisory and/or communication skills deserving of further attention.

Moreover, framing an allegation that the Department "retaliated" against someone is hard to reconcile with the reality that the Department either acts or fails to act through individual employees. Finally, the practice of naming the Department as the accused in these types of workplace cases can lead to seemingly illogical results, such as what occurred in case number CF No. 08-005721 discussed below in which an allegation was framed that "the Department made an ethnic remark."

We have discussed our concerns with the Department, and they have expressed a willingness to re-evaluate the practice of framing retaliation allegations against the Department and adjudicating them as Non-Disciplinary in light of our concerns.

Overall, we believe that in two of the five cases we reviewed, after WIU's extensive interview with the complainant, the complainant failed to provide enough specific information to satisfy all

¹¹ 08-005647; 08-005721; and 09-002365.

¹² 08-005721; and 09-002365.

¹³ 08-005647.

the requisite elements to establish the basis of a retaliation claim meriting further investigation. In the third case, we believe the Department's interviews with all essential parties revealed there to be no merit to the complainant's retaliation claim.

However, with respect to the two cases described below, after WIU's interview with the complainant, unresolved issues remained which we believe merited further investigation by, at a minimum, interviewing the accused employees. One of these two cases, CF No. 08-005721, was the only case of the five we reviewed in which we verified that the complainant has since initiated formal litigation against the Department based on the same general allegations contained in the personnel complaint.

CF No. 08-002885

UNDISPUTED FACTS

This complaint was not initiated by the aggrieved party, a department supervisor.¹⁴ Rather, it was initiated by IAG after receiving correspondence from the Department's Risk Management Group (RMG) as a result of testimony provided by the complainant in support of a lawsuit filed by his/her former subordinates. Moreover, it should be noted that when the complainant was contacted by the I/O to be interviewed in connection with CF No. 08-002885, the complainant indicated he/she "did not wish to make this complaint and did not want to be interviewed regarding [his/her] statements in court."

The subordinates' lawsuit alleged that they had been retaliated against for reporting misconduct by being transferred to separate assignments within the same division.¹⁵ When asked directly by the trial judge whether he/she had ever been retaliated against, the complainant indicated that he/she had written an article in a law enforcement publication critical of the Department's management of a CUOF incident that occurred in the division where the complainant worked. The complainant testified that as a result of this article, in which he/she claimed that the investigation was not handled consistently with the Department's rules concerning processing of evidence, he/she was transferred by the accused CO from working in patrol to the bureau's complaint unit, where his/her duties and hours were changed and which made it difficult to respond to childcare obligations.

According to the complainant's court testimony, after there was a change of COs at the division, the complainant was allowed to return to patrol.

Though not offered in response to the judge's question about retaliation, the complainant also mentioned another incident earlier in his/her testimony with the OIG believes could have constituted a protected activity according to the Department's retaliation policy. This testimony revolved around the same incident underlying the officers' lawsuit: the discovery of a criminal history printout on a suspect whom the officers had arrested. When the officers confronted the suspect about having the printout, to which he was not entitled, the suspect reported that someone in the Department had given it to him. After being shown the printout by the officers, the complainant contacted the accused CO because he/she believed this was a breach of protocol and a violation of the law for a Department employee to have provided the complainant with the

¹⁴ For ease of reference, we will refer to the employee as the "complainant."

¹⁵ This lawsuit resulted in a defense verdict for the City defendants after trial.

printout. The complainant testified that he/she offered to complete a complaint face sheet as a result but was informed by the accused CO not to do so. More specifically, the complainant testified that “[i]t was clear I was not to make a complaint face sheet.” The complainant testified that the CO then asked to speak to a more junior supervisor, who, though of the same rank as the complainant, was less tenured. Accordingly, the complainant testified that he/she felt “minimized” by this request.

During his/her interview in connection with CF No. 08-002885, the junior supervisor, who was the only person interviewed, indicated that he/she believed the CO asked to speak to him/her directly instead of the complainant because he/she was present when the printout was located. The junior supervisor indicated that the CO directed him/her to contact IAG immediately and report the incident and that IAG investigators responded and conducted an investigation. The junior supervisor claimed not to have heard or witnessed the accused order the complainant not to initiate a complaint regarding the computer printout. However, the testimony revealed that the junior supervisor was in the room when the complainant was speaking to the accused CO, and the complainant then handed the phone to the junior supervisor. Accordingly, it is possible that the junior supervisor did not hear what the accused initially said over the phone to the complainant about initiating a complaint for the computer printout.

A “Note” contained in the Summary portion of the investigation provides that the complaint’s “actions did not meet the criteria of a protected activity as defined in Special Order No. 16.” However, no further specifics as to this conclusion were provided.

The Department framed one allegation that the accused CO retaliated against the complainant by assigning him/her to work in the complaint unit.

The adjudicator Unfounded the retaliation allegation based on three main proffered reasons.

First, the adjudicator reasoned that the junior supervisor provided a credible explanation as to why the accused CO chose to speak to him/her as opposed to the complainant. Second, the complainant retained the same rank and pay while on “loan” to the new unit. Moreover, since this unit handled more complex investigations and would have allowed the complainant to either contribute his/her “investigative expertise or enhance [his/her] complaint investigative skills,” the “loan” was not imposed for punitive purposes.

Finally, “a further review of the complainant’s transcript determined no misconduct and that [the complainant’s] testimony did not meet the threshold of retaliation as defined in Special Order No. 16.” Though acknowledging that the complainant did not participate in a complaint interview, the adjudicator concluded that his/her “input would not have any significant impact to the investigation because . . . the preponderance of the evidence suggest [sic] that [the accused CO’s] actions did not rise to the level of misconduct when assigning [the complainant] to [the new unit].” This conclusion was supported by the claim that, “[g]enerally, it is within the commanding officer’s discretion and authority . . . to reassign [his/her] subordinate employees to positions where [he/she] reasonably saw fit.”

DISPUTED FACTS

The main issue which was not resolved by the investigation was the justification behind the CO’s decision to transfer the complainant out of patrol, especially in light of the complainant’s

testimony that a new CO subsequently allowed the complainant to return to patrol. The question of whether either the complainant's article and/or his/her reporting misconduct to the accused CO regarding the discovery of the computer printout played any role in the accused CO's decision to transfer the complainant out of patrol was not resolved by the investigation.

Moreover, the complainant's testimony did not include any specific dates as to when he/she was transferred out of patrol and when he/she published the article in the newsletter (other than the year). We believe such details were important in that retaliation requires a causal connection between protected activity and a negative employment consequence.

Furthermore, though an argument could be made that reassigning someone within a bureau without any loss in pay or rank does not constitute a negative employment consequence, the Department's Policy specifically recognizes a change in assignment as a possible negative employment consequence. Moreover, the complainant testified that this transfer affected his/her work hours and impacted his/her ability to meet his/her childcare obligations. Accordingly, another disputed fact was whether this transfer could be considered a negative employment consequence.

Finally, though the complainant testified that he/she was "reassigned" to the new unit, the Letter of Transmittal (LOT) refers to it as a "loan." Resolving this disputed fact may have assisted in the evaluation of whether the reassignment to the new unit was truly an adverse employment consequence.

We believe an effort should have been made to resolve all of these disputed facts by, at a minimum, interviewing the accused supervisor, especially in light of the complainant's unwillingness to provide any additional information on these various issues.

INVESTIGATIVE DEFICIENCIES

We believe the main investigative deficiency was the fact that the accused CO was not interviewed. The proffered reasoning for this decision was contained in an I/O Note which indicated that the OIC of WIU opined that since the complaint was initiated by RMG based on the complainant's testimony and since the complainant's testimony did not meet the threshold of retaliation, "there was no misconduct and [the accused] did not need to be interviewed."

Though not articulated in the I/O Note, it appears that this conclusion refers to the Note in the Summary section of the investigation indicating that the complainant's actions "did not meet the criteria of a protected activity."

However, as mentioned above, the investigation contained no additional detail as to why the complainant's action did not constitute a protected activity under the Policy. Indeed, the Policy specifically recognizes as a protected activity "[r]eporting misconduct of another Department or City Employee to . . . any Department . . . entity." There is no evidence to contradict the complainant's claim that the complainant reported what he/she believed to be misconduct regarding the computer printout to the accused CO. Moreover, at least according to the complainant's testimony, the accused ordered the complainant not to take a complaint.

The investigation revealed that the junior supervisor may not have heard what the accused said to the complainant before the complainant handed the phone over to him. Accordingly, we believe

this conclusion regarding the absence of protected activity does not take into account the possibility that the accused, despite ordering the junior supervisor to contact IAG, could have nonetheless retaliated against the complainant for initially reporting the discovery of the computer printout and/or that the CO's instructions to the junior supervisor to contact IAG was only acquiescence to the complainant's adamancy that a complaint be taken. The fact that a complaint was ultimately taken regarding the computer printout does not completely eliminate the possibility that the accused might have later retaliated against the complainant for originally reporting the misconduct involving the computer printout. Again, we believe this issue could have been resolved by an interview with the accused CO.

Moreover, we believe an argument could have been made that by publicly criticizing the Department's handling of a use of force incident, the complainant was engaging in first amendment speech to which he/she could be subject to legal protection as a whistleblower against retaliation. Though the Department's Policy does not speak specifically to those who exercise their first amendment rights, separate and apart from the other protected activities delineated in the Policy, we believe that this issue should have been explored in the investigation by, at a minimum, interviewing the accused.

ADJUDICATIVE CONCERNS

Given our belief that several questions related to the issue of retaliation were not resolved by the investigation, we have concerns regarding two of the rationales used to Unfound the retaliation allegation.

First, the adjudicator's conclusion that, since the complainant retained the same rank and pay in the new assignment and given the presumption that the new assignment would afford to the complainant the opportunity to handle complex investigations, the "loan" was not imposed for a punitive purpose" did not address the complainant's claim that the "loan" changed the complainant's hours and impacted his/her ability to handle his/her childcare obligations. This claim was never addressed in the investigation. Indeed, the issue of whether the reassignment was even a "loan" or a "transfer" was similarly not addressed by the investigation.

Second, the adjudicator's conclusion that the complainant's testimony did not meet the threshold of retaliation according to the Policy was not supported with any further detail. To the extent this position was based on a conclusion that the complainant's testimony revealed that no protected activity occurred per the Policy, we are concerned that the possibility that the accused retaliated against the complainant because of his/her reporting of misconduct involving the computer printout and/or for exercising his/her First Amendment rights was not adequately considered and/or explored in the investigation. Accordingly, we do not believe that the adjudicator's reliance on the claim that it was within the CO's discretion to reassign subordinates to positions where "[he/she] reasonably saw fit" took into account that such is not the case if the reassignment is done for a retaliatory purpose. By not interviewing the accused CO and allowing him/her the opportunity to provide the precise reasoning for the reassignment, we do not believe this claim is fully supported by the investigation.

Accordingly, we do not believe there was sufficient information contained in the investigation to Unfound the retaliation allegation. Though we recognize that the complainant's refusal to participate in the investigation could and should have been considered in evaluating the complainant's credibility, we believe that, even in the absence of his/her interview, his/her court

testimony raised sufficient questions which were not addressed by the investigation to conclude by a preponderance of the evidence that retaliation did not occur.

DEPARTMENT'S POSITION

After meeting with the Department and explaining our concerns to them, they indicated their agreement that it would have been more prudent to interview the accused in this case.

CF No. 08-005721

UNDISPUTED FACTS

The OIG acknowledges that the myriad issues raised by this complaint are complex and interwoven. Moreover, we recognize that, during his/her interview, the complainant failed to provide sufficient detail to support and/or to allow for a proper investigation of a number of his/her allegations. Further, the complainant indicated that he/she was not voluntarily submitting to an interview, but had been ordered to do so as a result of his/her filing of a Claim for Damages (CFD) against the City of Los Angeles, which resulted in the initiation of this complaint.¹⁶

However, after taking these factors into account, the OIG believes that after the complainant's interview, he/she provided sufficient information regarding one major issue which we believe was not adequately addressed by the investigation: the claim that he/she was subjected to a series of ethnic remarks by his/her immediate supervisor.

Among the complainant's multiple claims was an allegation that during a four-year period, his/her immediate supervisor made ethnic remarks to him/her on several occasions, and these comments were heard by several other employees. Specifically, the complainant alleged that his/her supervisor referred to the complainant as a "stupid lazy Mexican" and a "dumb, f**king lazy Mexican" on at least twelve occasions. The complainant indicated that though he/she was aware of Department policy which required an employee to immediately report misconduct, the complainant did not immediately report these remarks because he/she feared retaliation.

These allegations were not investigated based on a Note in the investigation which referenced the requirement pursuant to the City of Los Angeles's Discrimination Complaint Procedure, a copy of which was included in the investigation, that a City employee must file a discrimination complaint within one year of the alleged act. As discussed in more detail below, we believe the issue of whether the complainant's supervisor made these comments remained unresolved by the investigation.

INVESTIGATIVE DEFICIENCIES

No Department employees were interviewed in connection with this investigation other than the complainant.

The OIG is concerned about the proffered justification for not investigating the complainant's claim that his/her supervisor made a number of ethnic remarks over a period of three years. Specifically, the OIG believes that the sole reliance on the City's procedure for filing a complaint of discrimination is misplaced. The document which is attached to the investigation in support

¹⁶ Pursuant to the former Consent Decree, Department policy at the relevant time mandated that a complaint be initiated upon the filing of a CFD or a lawsuit alleging misconduct by a Department employee.

of this position is one which outlines an employee's ability to file a complaint through the City procedure, under the auspices of the City Personnel Department. This document also makes specific reference to the fact that "[e]ach department shall make every effort to acquaint department employees with its own procedure for reviewing and responding to complaints by its employees in which there are allegations of discrimination." Moreover, the document indicates that "employees who contact the Personnel Department regarding alleged discrimination shall be encouraged to first request a review of their complaints under their department's complaint procedure." A full reading of this document reveals that the one-year limitation on the filing of discrimination complaints applies to those attempting to file such complaints pursuant to the City Personnel Department's procedures.

Accordingly, since LAPD has no similar absolute time bar on the filing of discrimination complaints by its own employees, the OIG believes that the complainant's allegations of discrimination and ethnic remarks should have been investigated by interviewing the accused supervisor as well as any potential witnesses who could confirm or dispute these claims. We believe the fact that the complainant delayed in making these allegations could and should have been considered when evaluating the complainant's credibility after interviewing the accused and any potential witnesses but not as an absolute bar to investigating the allegations.

ADJUDICATIVE CONCERNS

All allegations in the complaint were adjudicated against the Department and classified as Non-Disciplinary-Employee's Action Did Not Rise to the Level of Misconduct. The CO of IAG/AID determined that the allegations did not meet the legal and Department criteria for Violation of Rights, Hostile Work Environment, Retaliation, and Discrimination, and did not rise to the level of misconduct. The OIG believes that the rationale did not provide sufficient detail as to why the complainant's allegations did not rise to the level of misconduct as it related to the complainant's claims that his/her supervisor made a number of ethnic remarks over a three-year period.

Moreover, the OIG believes that, as it relates to this specific allegation, the decision of the Department to frame an allegation that provides that the "Department made an ethnic remark" is illogical and not supported by the investigation.

DEPARTMENT'S RESPONSE

During our meeting with IAG personnel, they indicated their belief that it was not an effective use of the Department's limited investigative resources to investigate allegations from a Department employee made several years after the alleged misconduct occurred in cases which do not involve criminal misconduct and in which there is little chance of resolution.

First, a Department employee is required to immediately report misconduct (which obligation the complainant in this case acknowledged). Moreover, the Department cited the one-year time bar imposed by California's Department of Fair Employment and Housing's (FEHA's)¹⁷ complaint procedures which prohibit the filing of a FEHA complaint after the expiration of one year from the date upon which the alleged unlawful employment practice occurred.

¹⁷ FEHA—California Government Code §§ 12900 et seq.-- is the principal California statute prohibiting employment discrimination on the basis of a variety of factors, including but not limited to race, religion, national origin, or medical condition.

The OIG and IAG indicated they would seek further clarification as to the Commission's expectations regarding the Department's obligation to investigate employee allegations such as these lodged several years after the underlying incident(s) occurred.

V. Discussion of Out Of Statute Cases

During this Quarter, five cases were closed that were determined to be Out of Statute (OOS).¹⁸ We reviewed these investigations to determine the reasons that the cases were not completed prior to the statute date and whether remedial actions were taken to similar recurrences by the same involved personnel or unit. We also reviewed the Intradepartmental Correspondence (15.2s) related to these cases provided to us by the Department, as well as the underlying case files. All five cases contained a 15.2 that detailed the remedial actions taken by the department.

Summaries of the OOS cases are as follows:

CF No. 07-003862

In this complaint, the complainant alleged that the accused employee stated, "I would've shot you in the head and wouldn't even think about it, because you did not put your hands up high enough." The investigation revealed that the complaint was initially adjudicated as Not Resolved until it was determined that this preliminary adjudication occurred after the case had fallen OOS. The face sheet of the complaint indicated that it was reported on July 26, 2007, which would have created a statute date of July 26, 2008.

A 15.2 from the CO of IAG indicates that the complaint was initially adjudicated by Area A's Patrol CO as Not Resolved sometime in October of 2008. Moreover, the 15.2 indicates that the lieutenant responsible for preparing the LOT for the CO's signature provided it to the CO on or about October 3, 2008. According to the 15.2, on March 18, 2008, this lieutenant was assigned the task of completing the LOT after receiving the completed investigation from IAG. The 15.2 also indicates that the Area CO attributed the complaint going out of statute due to a "lack of lieutenants caused by illness, retirements, and loans. Furthermore, [the] complaint was assigned a lower priority because it was Not Resolved."

In addition, the 15.2 referenced how, in response to two additional complaints falling OOS in October and November of 2008, a clerk typist had updated the tracking on all investigations assigned to the Area, and had been added to the weekly electronic email list from IAG informing command staff of pending statute cases. However, by the time this remedy was in place, 07-003862 had already become OOS.

Finally, the CO of IAG and of Professional Standards Bureau (PSB) recommended that the following action be taken by the involved Area: 1) all LOT assignments include a written acknowledgement of the statute date and an administrative due date significantly pre-dating the statute date; and 2) the COs of the involved Area hold subordinates strictly accountable for overdue LOTs. Moreover, the 15.2 indicated that IAG, in cooperation with the TEAMS II Development Task Force, had developed a series of reports within CMS to advise COs of all complaints within their command, including statute dates.

¹⁸ These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. All five cases are discussed herein. Only five out of 1355 total complaints (.0037%) closed during the Third Quarter were closed as OOS.

We commend the COs of IAG and PSB for including these recommendations, and hope that they are currently being followed, as well as the Area for implementing additional administrative tracking of all complaints.

However, we are concerned that the involved lieutenant, a tenured employee of the Department, did not appear to recognize that he/she submitted an LOT two and one-half months after the case had fallen OOS. Moreover, we are concerned that based upon our review of the completed investigation, it appears that the complainant also complained that the accused officer falsely citing him for littering, for allegedly discarding a plastic tequila bottle, which the complainant denied ever possessing or discarding. No allegations were initially framed for this claim, though admittedly they similarly would have fallen OOS.

CF No. 07-005496

This complaint was related to an underlying Non-Categorical Use of Force (NCUOF) investigation involving the use of firm grips, body weight and a punch to subdue two suspects who engaged officers on an hour-plus pursuit, which ended when the officers utilized the PIT maneuver. This incident occurred on April 2, 2006. During the tape-recorded interview conducted in conjunction with the NCUOF investigation that same day, one suspect (complainant) alleged that he had been the victim of excessive force during his arrest, which would have made the statute date for any excessive force complaint April 2, 2007. The "Incident Overview" section in the NCUOF report indicated the conclusion that "firm grips, body weight and a punch was [sic] used. [The complainant] claimed he was punched and kicked in the head; marks not consistent with UOF" ¹⁹ However, the "Incident Overview" section of the NCUOF report did not specifically mention the complainant's belief that "the force was excessive."

A 15.2 from IAG contained within the complaint file indicated that when NCUOFs are sent over to the involved bureau for adjudication, this is done electronically, without any of the related addenda attached (such as photographs, tape-recorded interviews, etc.).

When the NCUOF was forwarded to Use of Force Review Division (UOFRD) a year later, the CO of UOFRD reviewed the addenda items, including the tape-recorded interview of the complainant, and determined that a complaint investigation (already OOS) should be initiated. As a side note, after a review of the entire incident, it was determined by UOFRD that the Non-Categorical Use of Force was In Policy.

A 15.2 from IAG contained within the file indicated that the following actions were taken to ensure that similar investigations do not go OOS in the future. NCUOFs now indicate in the witness statement section whether a witness statement is consistent with the NCUOF report. In prior years, there had been a tremendous backlog of Use of Force cases as TEAMS II was being developed and initiated Department-wide which, in this case, caused the NCUOF and all related addenda not to be reviewed by UOFRD until over a year after the complainant first complained of excessive force on the day of the incident. Most cases are now completed within six months. Additionally, there was a reference to the fact that Special Order No. 27 would be amended ²⁰ to

¹⁹ Among the numerous photographs taken of the complainant as part of the NCUOF investigation were those taken of his head.

²⁰ It is the OIG's understanding that this Special Order has not yet been formally amended.

clarify which entity has the administrative responsibility for determining whether a complaint investigation is warranted.²¹

CF No. 08-003144

CF No. 08-005413

CF No. 09-000061

These three complaints were related to CUOF incidents. In each case, the Commission determined that the tactics employed by some of the involved officers were seriously deficient, warranting a finding of Administrative Disapproval (AD). As a result, the Chief of Police directed that personnel complaints be initiated for each of the three cases. However, per a 15.2 contained within each file from the CO of PSB, all three complaints fell OOS because a supervisor responsible for generating the necessary complaint face mistakenly calculated the statute date for each complaint as commencing from the date of the Commission's findings of Administrative Disapproval, when the statute should have been calculated from the date of the underlying incident.

According to the 15.2, the involved supervisor was given training regarding the proper calculation of the statute date. Moreover, the Department's Case Management System is now on-line which requires the Personnel Complaint Form to be routed through the chain of command to include approval by the CO of the involved division where statute miscalculation by new personnel had been a recurring event.

VI. OTHER CASES OF INTEREST TO THE COMMISSION

CF No. 06-3511

In prior discussions of the Department's Quarterly Discipline Reports, the Commission had expressed interest in having the OIG evaluate Sustained complaints involving Reserve Police Officers. Accordingly, the OIG reviewed the one complaint closed during the Third Quarter of 2009 which accounted for all of the Sustained allegations against anyone within the rank of Reserve Officer – CF No. 06-3511.

In this complaint, the accused was celebrating his/her wedding anniversary with/her spouse, while off-duty in an outside jurisdiction. The accused was intoxicated at a bar when he/she became engaged in an altercation with a female bartender regarding a song to be played on a karaoke machine.

When the security staff at the bar saw the accused acting aggressively toward the bartender, they approached the accused and quickly escorted him/her and the spouse, who was also being uncooperative and confrontational, out of the bar. In the process, however, the accused struck and shattered a glass-paneled door while the spouse assaulted a member of the security staff. When officers from the outside jurisdiction responded to the location, the accused's spouse was arrested for being intoxicated in public. In addition, as the officers began their preliminary

²¹ In this case, there was a reference in the "Fly Sheet" (which tracks the progress of the case) of the NCUOF investigation from the area supervisor who conducted the NCUOF investigation to his/her understanding that the bureau would determine whether a complaint should be initiated.

investigation, they determined that the accused was armed and had failed to disclose that he/she was a Reserve Police Officer with the Los Angeles Police Department.

Four allegations were Sustained: 1) while off-duty, the accused caused damage to private property (Unbecoming Conduct); 2) unnecessarily became involved in a dispute which resulted in the response of officers from an outside jurisdiction (Off-Duty Altercation); 3) was intoxicated in a public place (Alcohol-Related misconduct); and 4) failed to identify him/herself as a reserve officer to outside law enforcement conducting an official investigation (Neglect of Duty).

The adjudicator recommended Discharge/Removal based on the following rationale:

The allegations . . . negatively reflect on the character and integrity of the accused officer. [The accused's] conduct violated the principles of public service and the objectives of the Department. [He/she] failed to recognize that the badge [he/she] wears is a symbol of public faith and trust and that [his/her] actions, on or off duty, can diminish the positive public image all of law enforcement has worked hard to attain.

We agree that this was an appropriate recommendation, based on the evidence contained in the investigation. We believe that the accused officer's uncooperative and belligerent demeanor throughout the incident did not reflect well on his/her personal judgment, and that his/her ability to function effectively as a Reserve Officer was compromised as a result of this incident.

CF Nos. 08-001602 and 08--001796

These two cases were consolidated by the Department for disciplinary settlement purposes. The first case involved four allegations stemming from an off-duty incident: 1) that while off-duty, the accused inappropriately attempted to dissuade an officer from the California Highway Patrol (CHP) from conducting a driving under the influence investigation involving the accused's girl/boyfriend; 2) that while off-duty the accused interfered with CHP officers conducting an official investigation that caused the response of law enforcement officers from another agency; 3) that the accused, while off duty, directed several improper remarks at on-duty police officers from outside agencies; and that 4) while off duty, the accused directed an ethnic remark toward a member of another law enforcement agency.

The second complaint involved an allegation that the accused, while off duty, operated his/her private vehicle while under the influence of an alcoholic beverage, which resulted in a traffic collision and the accused's subsequent arrest by an outside law enforcement agency. Originally, it was recommended that the accused be directed to a BOR for termination. However, the Bureau Deputy Chief became involved and helped facilitate a settlement agreement.

According to the disciplinary settlement agreement, the allegations in the two complaints were Sustained, and the accused received a 44-day penalty. He/she also was downgraded from a Police Officer III to a Police Officer II. The settlement also required the accused to submit a signed letter of resignation, which would be held in abeyance and not executed unless he/she violated the terms and conditions of agreement. Such terms included that if the accused were to receive any future complaints involving the same or similar conduct and the complaint was Sustained , the accused would immediately resign from the Department.

Moreover, for the remainder of time that the accused is employed by the Department, the accused agreed to abstain from the use of all alcoholic beverages and to refrain from frequenting any establishment off-duty whose primary business was selling alcoholic beverages.

In addition, the accused agreed to submit to alcohol testing up to five times a month, including at his/her residence. If the results indicated the presence of alcohol, or if the accused otherwise displayed the objective symptoms of being under the influence of a controlled substance, the accused agreed to immediately provide a blood sample to confirm the results of the test.

Further, for a period of five years after signing the agreement, the accused agreed to enter an alcoholic rehabilitation program as advised by the Chemical Dependency Officer, Employee Assistance Unit (EAU); attend Alcoholics Anonymous, and/or Police Officer Fellowship Program meetings on an off-duty basis as directed by EAU; and seek professional counseling through Behavioral Science Services (BSS), and participate in any additional counseling or rehabilitation group directed by BSS.

The accused also agreed to obtain approval for any special days off, sick days, or IOD days through his/her immediate supervisor and to provide physician's documentation of any sick days used if requested.

Finally, as part of the settlement agreement, the accused was prohibited from taking a City vehicle home if assigned to an on-call position requiring off-hours response. We also understand that the accused submitted a letter to the outside agency apologizing for his/her behavior.

Though the nature of the allegations Sustained against the accused in these two cases were serious and reflected very poorly on the Department, it is clear that the accused's problems with alcohol played a major role in both incidents. Moreover, other than a prior alcohol-related incident in which the accused received a 22-day suspension for boating under the influence, the accused did not have any other prior Sustained complaints of note.

Accordingly, given the accused's acceptance of responsibility for these incidents, the severity of the 44-day suspension coupled with the downgrade from a Police Officer III to a Police Officer II (and accompanying reduction in salary), and the stringent conditions designed to remedy the accused's problems with alcohol, we cannot say the settlement was unreasonable.

CF No. 08-003433

This complaint involved a Sustained allegation against a civilian employee for being late to work on twelve separate occasions during a six-month period. Moreover, the accused had four prior Sustained complaints for similar misconduct in connection with which he/she received penalties of an Admonishment, a two-day suspension, a three day suspension, and, ultimately, a ten-day suspension.

Originally, it was recommended that the accused be discharged as a result of this complaint. However, the accused subsequently entered into a settlement agreement pursuant to which he/she received a 78-day penalty. In reality, the 78-day penalty represented the time the accused had initially been off-work as a result of the original discharge recommendation. As a result of the settlement, the accused was immediately reinstated, but without any compensation for back pay.

In addition, the terms of the settlement agreement provided that the accused would sign a resignation letter which would be held in abeyance unless he/she received a Sustained complaint alleging the same or similar misconduct. If that were to happen, the accused agreed to immediately resign from the Department.

A further condition of the settlement agreement provided that the accused's watch and/or duty assignment would be "as directed by" his/her CO and that the accused would not initiate or pursue any legal or administrative remedy to contest his/her watch or duty assignment.

In light of the nature of the allegations of the accused, which did not raise integrity issues, and of the severe financial ramifications of the 78-day suspension imposed upon the accused, as well as his/her agreement to resign upon the Sustaining of a future complaint for similar misconduct, the OIG does not believe the settlement was unreasonable.

CF No. 07-003732

This complaint arose several years after the accused supervisor was deeded a house from the brother (complainant) of a woman whose death investigation the accused handled in 2003. The complaint came to the Department's attention after the complainant complained to the Department in 2007 that two weeks prior, the accused had gone to the complainant's apartment and initiated a physical altercation with him. While making the complaint to a Department supervisor, the complainant also stated that he had given the accused a "1.5 million dollar" home in return for the accused's kindness during the death investigation in 2003.

As a result of the complainant's claims, a complaint investigation was initiated. The investigation revealed that there was no merit to the allegations regarding the physical altercation with the accused. The complainant subsequently recanted these allegations to the I/O, claiming he was angry at the accused's spouse for calling him and telling him not to contact them anymore. However, the investigation substantiated the fact that the complainant had made several gifts to the accused, including transferring title to the complainant's deceased sister's home to the accused and the accused's spouse. As a result of Sustaining five allegations of inappropriately using his/her position as a police officer to receive various gifts, including the house, from the complainant, the accused was directed to a BOR.

A review of the BOR's "Rationale on Findings" and "Penalty Rationale"²² reveals that after the initial contact between the complainant and the accused at the scene of the sister's death in 2003, there was no further contact between the two until the one-year anniversary of the sister's death. On that occasion, the complainant took out newspaper ads praising the accused. After the ads ran, there was a period of approximately one year during which the accused and the complainant exchanged occasional telephone calls. Approximately one year after the ads ran, the complainant contacted the accused by leaving a message at the accused's division indicating the complainant's request that the accused help him find a buyer for his deceased sister's residence.

In response to the phone message, the accused contacted the complainant and informed him that the accused's spouse was a realtor. Shortly thereafter, the accused and his/her spouse met with the complainant at the residence in preparation for having the spouse take the listing on the

²² The OIG did not review the voluminous transcripts for the underlying proceedings. We based our analysis on the rationale provided by the BOR in adjudicating the case and imposing a 65-day penalty and a demotion in rank on the accused.

property. This was the first face-to-face meeting between the accused and the complainant since his sister's death. Within days of this meeting, the complainant conveyed to the accused and the spouse his intentions to gift the property to them.

Over the next week or so, the accused contacted attorneys to discuss the potential transfer of the property. During one of these meetings, both the accused and the complainant were present and the complainant indicated, in response to questioning by an attorney, that he was close to suicide on the day of his sister's death, and he was grateful to the accused for his/her actions that day.

When the accused took possession of the home several months later, he/she was surprised to find the residence fully furnished. Moreover, at that time, the complainant provided the accused and his/her spouse with two checks – one for \$5,000 and the other for \$10,000 – for cleaning and repairs and for maintenance of the property. The accused refused to deposit the larger check.

The investigation revealed that, approximately two years after the death investigation, the spouse became friends with the complainant and began speaking to him often on the phone about personal matters. Moreover, the investigation revealed that at some subsequent point, a year or so later, the complainant provided the accused and the spouse with family vacations and expensive clothing.

The following five counts were initially Sustained against the accused in connection with which he/she was directed to a BOR: 1) while off-duty, he/she inappropriately used his/her position as a police officer to acquire a house; 2) while off-duty, he/she inappropriately used his/her position as a police officer to receive a gift of hotel accommodations and services; 3) while off-duty, he/she inappropriately used his/her position as a police officer to receive a gift of property worth several hundred dollars; 4) while off-duty, he/she inappropriately used his/her position as a police officer to receive a gift of hotel accommodations; and 5) while off-duty, he/she inappropriately used his/her position as a police officer to receive several gifts of currency in excess of \$5,000.

After hearing testimony, the BOR Sustained the first and fifth counts based on the BOR's belief that the acceptance of these two items within two years of the accused meeting the Brother on-duty, in the accused's capacity as a Department supervisor responding to a death investigation, was tantamount to the accused accepting a tip from a still grieving and grateful relative pressing a tip into the hand of a police officer who helped him.

As it related to the other three counts, the BOR accepted the spouse's claim that he/she had subsequently developed a friendship with the complainant and spoke with him frequently by telephone. Accordingly, the BOR saw the acceptance of any additional gifts by the accused and his/her spouse as being the result of a subsequently developed friendship and that the Department had not met the preponderance of the evidence standard to establish that the accused used his/her position as a police officer to receive those gifts referenced in counts two through four.

After Sustaining the two allegations against the accused, the BOR imposed a 65-day penalty and demoted the accused to a lower rank. The BOR's penalty rationale was based on testimony provided during the BOR regarding the accused's ability to deal with the public and to help others solve their problems, leaving a positive impression on the community. Accordingly, the BOR believed that accused's career was salvageable.

The Department elected not to call the complainant as a witness based on his mental state. Our review of the underlying complaint investigation revealed multiple references to the complainant's long history of mental illness, which was described by both his daughter and his ex-wife as involving, among other things, Bipolar Disorder, as well as him being paranoid and delusional. Multiple witnesses interviewed in the underlying investigation indicated that he refused to take his medication. Indeed, the I/O observed upon entering the complainant's apartment that there were multiple pictures of military and religious figures taped to every wall in his apartment, and that he had written numerous notes directly on the walls of the apartment in large print. In addition, there was a knife stuck directly into a wall holding a stack of currency. The I/O described the complainant as being "erratic" and "disjointed," and, during the course of the investigation, the complainant sent the I/O gifts and notes despite her requests to the contrary. Indeed, several independent witnesses who were interviewed in connection with the investigation referenced their observations regarding the complainant's strange behavior upon their initial contact with him.

In addition, the investigation revealed that the attorney who handled the probate for the complainant's sister's estate indicated that he was aware that during the probate process the complainant was seeing a psychiatrist for mental health problems. In addition, after the attorney learned of the complainant's decision to transfer the property to the accused, the attorney conferred with the complainant's mother in order to set limitations on his ability to access large sums of money from his sister's and his family's trusts.

The BOR, in its rationale for Sustaining two of the counts against the accused, made reference to the fact that they had heard testimony from "several witnesses who offered their observations and opinions about [the complainant's] mental state." However, the BOR "determined it could not and would not make a judgment about [the complainant's] mental state," because, in their opinion, "the appropriateness of [the accused's] actions are not determined . . . by [the complainant's] mental state." We disagree, though we recognize that this was not a decision made by the COP, whose actions are the primary focus of this Report.

If the complainant's decision to give the accused a gift of a house and \$5,000 was made voluntarily by someone of sound mind, then we agree that the accused's actions, though troubling, would be tantamount to the accused accepting a tip from a still grieving and grateful relative pressing a tip into the hand of a police officer. If that were the case, we agree that the accused should have been harshly punished, but also that it was appropriate for the BOR to consider the testimony of other Department employees in concluding that the accused's career was salvageable. However, in light of the evidence that was contained within the underlying investigation from a variety of sources, including the complainant's family members, a probate attorney, and several of the complainant's treating doctors, of his long history of mental illness which appeared obvious to most who encountered him, we disagree with the BOR's conclusion that the "appropriateness [of the accused's] actions are not determined . . . by [the complainant's] mental state." For, if the gifts were from someone of significantly diminished mental state who did not fully understand the nature of his actions, then we believe the accused's actions were beyond egregious, and should have resulted in the accused's termination from the Department.

We believe this to be especially the case in light of the accused's prior complaint history,²³ which included a Sustained complaint for Neglect of Duty for becoming involved in an improper business relationship with a subordinate which occurred within five years of the accused accepting the gift of the house.

VII. CUOFS Adopted As Out of Policy or Administrative Disapproval By the Commission

During this Quarter, six CUOF incidents were closed in which the Commission adopted a finding of Out of Policy or AD. Table L in the Department's Report contains additional summary information on each of the six cases, including corresponding complaint information, the Commission's findings and any discipline imposed. Of the six CUOF incidents, four were officer-involved shootings; one was a negligent discharge; and one was a law enforcement related injury. Abridged descriptions of each incident, as well as the Commission's findings, are discussed below.

OIS No. F033-06

This incident involved an off duty officer, who was wearing plainclothes, sitting inside his/her personal vehicle parked in front of his/her residence, and engaged in a cell phone conversation. The officer noticed a Lexus with its headlights off pass by twice, and then saw the Lexus park at the corner close to his/her residence.

The officer then noticed Subject 1 on the passenger side of his/her (officer's) vehicle, shaking the handle of the right front passenger door. The officer also heard metal clicking sounds against the window. Subject 1 appeared to be wearing gloves and a metal object in his hand. The officer believed that Subject 1 was attempting to burglarize his/her vehicle.

The officer drew his/her service pistol and exited his vehicle. The officer identified himself/herself as a police officer and told Subject 1 to get down on the ground. Subject 1 did not comply, so the officer walked to the front of his/her vehicle, which left no cover between the officer and Subject 1. As Subject 1 moved toward the officer with a metal object in his hand, the officer fired one warning shot into a dirt embankment behind Subject 1 in order to stop him from advancing. After the shot, Subject 1 complied and went down to the ground. The officer instructed his/her son, who came out onto the balcony of their home, to call the police and to come down and assist. The officer's son did as he was instructed.

Meanwhile, the Lexus passed by the officer once again. This time, the Lexus stopped in the middle of the roadway, close to the officer's position. Subject 2 exited the Lexus and approached Subject 1 and attempted to convince Subject 1 to get up and leave. Subject 2 also argued with the officer, questioning his/her status as a police officer. The officer believed that both subjects were trying to distract him/her by being verbally aggressive. The officer instructed his/her son to retrieve his/her LAPD identification from inside the vehicle. The officer handed the identification card to Subject 2, but she still did not believe that the officer was a police officer. At about this time, three additional subjects walked toward the officer's position and formed a

²³ The BOR did acknowledge in its Rationale on Penalty that "there has been a recurring pattern of minor to moderate level neglect of duty complaints that have been sustained against the accused. . . . Also troubling is the fact that most of these, and certainly the most serious complaints, have occurred while [the accused] was a supervisor."

semi-circle around the officer and Subject 1. The officer attempted to engage the subjects in casual conversation; however, they were verbally aggressive with the officer and demanded that the officer allow Subject 1 to leave. At one point, Subject 2 approached Subject 1, took the screwdriver from his hands, and walked back toward the Lexus.

While waiting for the police to arrive, the officer instructed his/her son to retrieve a set of handcuffs and a tape recorder from his/her vehicle. The officer's son did so and handed the items to the officer. Subject 1 was moving around on the ground, and the officer used his/her body weight to hold him down while his/her weapon was still drawn.

Police officers from the local law enforcement agency arrived a short time later the subjects were arrested for attempted burglary.

The Commission found that the officer's tactics warranted AD for the following reasons. The officer's original observations substantiated reasonable suspicion and warranted the response of local law enforcement to conduct an investigation; however, the officer delayed informing the involved agency. Additionally, it was noted that the officer was seated inside of a vehicle with a pistol on his/her lap. Off-duty weapons should be concealed out of public view and carried in a secured manner. Also, during the incident the officer left a position of advantage behind his/her vehicle leaving him/her vulnerable to an attack.

Following the officer involved shooting, the officer asked his/her son to assist him with the detention of Subject 1. The Commission was concerned with the decision to involve his/her son, which caused the officer to split his/her attention between Subject 1 and the safety of his/her son. It was also noted that when the subjects formed a semi-circle around the officer and became verbally aggressive, the officer attempted to engage them in casual conversation. The officer should have reverted to his/her training and displayed a command presence to control the group. Additionally, the officer approached Subject 1 and used his/her bodyweight to control him while his/her weapon was drawn. The Commission was concerned about this decision, as it potentially created a situation where Subject 1 could have engaged the officer in a struggle over his/her weapon. Lastly, the commission noted that during the officer's attempt to identify himself/herself, the officer allowed subject 2 to come within arm's reach, placing him/her at a tactical disadvantage.

The Commission found that the act of the officer Drawing/Exhibiting/holstering his/her weapon, the non-lethal use of force, and the lethal use of force all to be in policy.

As a result of the incident, the area command initiated personnel complaint CF No. 07-001107, prior to the Commission's AD finding. The Department framed one allegation against the officer for a Shooting Violation. The complaint was Sustained and the accused was given No Penalty. However, the officer received Directed Training in Tactics, which he/she has since attended. This appeared to be reasonable, as the officer had no prior Sustained complaints of a similar nature within the prior five years.

OIS No. F051-07

This incident involved uniformed officers who responded to a radio call of an Assault with a Deadly Weapon (ADW). Officers A and B arrived at the location, and they were assisted by Sergeant A and Officer C. As the officers conducted their ADW investigation, Communications

Division (CD) broadcast an additional radio call of a nearby shooting involving a vehicle. The preliminary ADW investigation was completed, and Officers A and B decided to drive to the other shooting location to assist the officers there.

In the meantime, Officers D and E noticed two males riding a scooter on a public roadway in violation of the California Vehicle Code. Officers D and E decided to stop the scooter and conduct an investigation. Officers illuminated the scooter, and as the scooter stopped, the passenger (Subject 1) jumped off of the back. Subject 1 grabbed his front waistband area and ran away from the officers. The driver of the scooter then fled the location.

Officers A and B arrived in the area and saw Subject 1 running, and Officers D and E's police vehicle make a U-turn and pursue Subject 1 a high rate of speed. Both Officers A and B formed the opinion that the police vehicle was chasing Subject 1 and decided to assist. Officer D drove past Subject 1, to cut off Subject 1's route of escape with his/her vehicle. The subject immediately stopped and tried to jump over a fence. Officers D and E exited their vehicle.

Officers A and B stopped their vehicle and joined Officers D and E in an effort to contain Subject 1, who was unsuccessful in his attempt to scale the fence. As they did so, Officer A saw that Subject 1 had a pistol in his waistband. Meanwhile, Officer B saw Subject 1 remove the pistol from his waistband and point it at them. Subject 1 then turned and ran away, with Officers A, B and E in pursuit of him on foot.

As the officers pursued Subject 1, Officer E observed Subject 1 look back over his shoulder and point a pistol at the pursuing officers. Officer E unholstered his/her pistol. When the subject turned towards him, Officer A believed Subject 1 was holding a gun and feared for his/her life. Officer A then fired four rounds at Subject 1, striking him.

Sergeant A and Officer C arrived at the scene to assist after the shots were fired. Sergeant A requested a Rescue Ambulance (RA), which arrived, treated, and transported Subject 1 to a hospital, where he was pronounced dead.

The Commission found that Officer D's Tactics warranted AD, and that the tactics of Officers A, B, and E warranted formal training for the following reasons. Officers D and E did not advise CD of their status or location when they had the intent to stop Subject 1. Officers A and B did not advise CD of their status or location when they responded to assist Officers D and E. Officer D placed the police vehicle in front of the subject. This act of cutting off the path of a subject believed to be possibly armed with a firearm placed him and his/her partner at a tactical disadvantage and created a crossfire situation. Additionally, recognizing that the subject was armed with a handgun, Officers A, B, and E should have kept their distance instead of giving chase, given the possibility of a potential ambush.

The Commission noted that Officer D did not pay attention to the tactical situation at hand. Officer D was watching to the rear of their location for a potential ambush, when the officers were engaged in a foot pursuit with an armed subject. Based on the circumstances, Officer D should have assisted the other officers with apprehending the subject. It was also noted that Officer D did not have his/her baton or Hobble Restraint Device during the incident, which is required when working a uniform assignment.

The Commission found that the act of Officers A, B, D, and E's Drawing/Exhibiting/Holstering his/her weapon to be in policy.

The Commission found that Officer A reasonably believed that the subject presented an immediate threat of serious bodily injury or death, and that his/her lethal use of force to be in policy.

As a result of the AD finding, personnel complaint CF No. 08-001954 was initiated. The Department framed one allegation of Unauthorized Tactics against Officer D. The allegation was Sustained and the Chief of Police imposed a penalty of an Official Reprimand. The penalty appears to be within the Department's guidelines, as a review of the officer's complaint history revealed no prior Sustained complaints for Unauthorized Tactics. Officers A, B, D, and E received Directed Training in Tactics.

OIS No. F080-07

This incident involved narcotics officers who received a telephone call from a person who told them that narcotics were being sold out of an apartment building by Subject 1. The person also told the officers that Subject 1 was in possession of guns and possibly two grenades. The person described Subject 1 to the officers and told them he would be driving a jeep.

Officers A and B, both in plain clothes and in an unmarked vehicle, drove to the apartment building and watched a jeep that they believed to belong to Subject 1. Later, Subjects 1 and 2 exited the apartment building and entered the Jeep, with Subject 1 driving. Officers A and B followed the Jeep, and requested a uniformed unit in anticipation of conducting a traffic stop to identify the subjects.

Uniformed Officers C and D responded to the area to conduct the traffic stop. The officers followed the Jeep until they observed a Vehicle Code violation, and then conducted a traffic stop. During the stop, Subject 1 was found to be in possession of methamphetamine, and a handgun was recovered from Subject 2's waistband. Officers learned from the subjects that there were additional subjects in the apartment.

Sergeant A, and Officers J, I, and H responded to assist in uniform, and drove marked police vehicles. Detectives A and B, and Officers E, F, and G also assisted in the investigation and wore plain clothes and drove unmarked vehicles. Detective B contacted his/her Area CO and advised them of the situation. Detective B told them that his/her plan was to secure the apartment, and write a search warrant for the apartment. The CO advised Detective B that it would be best if he/she did more work on the location and that he/she should solicit assistance from other entities such as the Bomb Squad and ATF due to the possibility of grenades being in the apartment.

Officer A and Detective B used a cell phone to make contact with the subjects inside of the apartment and used a ruse, to convince the subjects to flee the apartment. Shortly thereafter, Officer B, who was observing the apartment, saw the four subjects exit the apartment, carrying bags and containers. The subjects stood by a trash can on the street in front of the apartment building. Advised of Officer B's observations, Detective B decided the officers should make contact with the subjects and detain them for a narcotics investigation.

Officers J and H approached the subjects and used their vehicle's spotlights to illuminate the area around the four subjects. As Officer H brought the vehicle to a stop, he/she yelled through his/her open window in both English and Spanish for the subjects to put their hands up. Officers J and H exited the police vehicle and drew their service pistols. Officer J observed one of the four subjects to turn around, and he/she thought that the subject was going to walk away. Officer J then yelled at the subject to stop and put his hands up. Officer H began to order all of the subjects to get down onto the ground.

As some of the subjects began to comply with the officers' directions, Officer J noticed a fifth subject in front of him (later identified as Officer B). The fifth subject was running in Officer J's direction while holding a shiny object, which Officer J thought was a handgun. Officer J also observed that the male had his hand outstretched and slightly bent, and that his hand was "aiming" toward the location of Officers J and H.

Believing that he/she had located a fifth subject, who had exited the apartment building, and believing that this individual was going to fire a gun at him/her and Officer H, Officer J fired one round at the subject (Officer B). As Officer J then began to align the sight of his/her service pistol, he/she heard Officer B indicate that he/she was a police officer. Officer J then recognized that the individual appeared to be a Narcotics Enforcement Detail police officer. There were no officers injured as a result of this incident. The four additional subjects were taken into custody without further incident.

The Commission found that during the course of the investigation Detective B's Tactics warranted AD. Detective B had been advised by the Area Commanding Officers to hold off on the search warrant and conduct further investigation involving other resources. Detective B did not adhere to the Commanding Officer's direction and employed a ruse in an attempt to provoke the subjects to flee the residence with narcotics or weapons, including hand grenades. The ruse was unsound and posed a great risk to the officers.

The Commission also found that Officer B, who was in his/her vehicle near the subjects, believed there were exigent circumstances to leave his/her observation post vehicle in order to prevent the subjects from obtaining an advantageous position to use a firearm or possible hand grenade against the officers. Although well intended, Officer B's decision was ill advised. Officer B's actions created a crossfire situation and precipitated the officer-involved shooting. The Commission found that Officer B would benefit from Formal Training.

In addition, the Commission noted that once the undercover phase was complete, the plain clothes officers should have donned their raid jackets and ballistic or tactical vests to readily identify the officers and afford them a higher level of safety. The Commission also noted that Communications Division should have been informed of this incident, so that nearby units could respond more rapidly if needed. The Commission was pleased with the tactics of the uniformed element of this incident.

The commission found that the act of Sergeant A, Detectives A and B, and Officers B, C, D, E, F, G, H, and I, Drawing/Exhibiting/Holstering his/her weapon was in policy. Although the Commission found that Officer J's lethal Use of Force was objectively reasonable under the circumstances and that he/she believed Officer B presented an immediate threat of serious bodily injury or death, Officer J should receive additional training in target recognition.

As a result of the AD finding personnel complaint CF No. 08-003144 was initiated. The Department framed one allegation of Unauthorized Tactics against Detective B; however, prior to final adjudication of the case, it was determined to be Out of Statute, as a supervisor had incorrectly calculated the statute date from the date of the Commission's AD finding, rather than the date the incident was reported. Since this incident Detective B has received Directed Training in Tactics.

OIS No. F093-07

This case involved officers who were attired in plainclothes and were driving in an unmarked police vehicle. While sitting inside their vehicle at a stop sign, Officers A and B observed a possible narcotics transaction between Subjects 1 and 2, and the officers initiated an investigation.

The officers parked their vehicle, exited and approached the subjects. Subject 1 was handcuffed without incident. Subject 2 partially complied with Officer A's directions by facing the wall and raising his hands; however, he would not interlace his fingers or spread his legs. As Officer A moved forward to grab his wrists, Subject 2 spun to his left and punched Officer A in the face, and started running away with Officers A and B chasing him. Subject 2 tripped and fell in the middle of the street and a struggle between the officers and Subject 2 ensued. During the struggle, Subject 2 was able to grab the grip of Officer A's pistol and attempted to remove it. To prevent Subject 2 from removing the pistol, Officer A used both hands to hold his/her pistol, and at the same time advised Officer B of what was occurring. At one point, the three of them stood up, and Officer A advised Officer B that Subject 2 had his/her pistol.

Believing that Subject 2 had armed himself with Officer A's pistol, Officer B unholstered his/her pistol and placed the barrel of his/her pistol on Subject 2's chest. Officer B pulled the trigger intending to shoot Subject 2; however, his/her pistol malfunctioned and a round was not discharged.

Subject 2 released his grip on Officer A's pistol and started to run. Seeing that the threat had passed, Officer B holstered his/her pistol and ran after Subject 2. As he was running away, Subject 2 tripped and fell to the ground allowing the Officers to catch up with him. Responding to assist, Officers C, D, E, F, and G arrived, and with their combined efforts, were able to restrain Subject 2 with handcuffs and a Hobble Restraint Device.

The Commission found that that the Tactics of Officers A and B warranted AD for the following reasons. The officers failed to notify CD that they were conducting an investigation. While the officers devised a tactical plan, it was insufficient for the type of contact they were about to make. They did not don their tactical vests and raid jackets prior to an enforcement action as required by Department policy. Both officers pursued Subject 2, leaving Subject 1, who had not been searched, alone in a handcuffed position. In defense of Officer A, Officer B drew his/her pistol, and attempted to shoot Subject 2. However, by pressing the muzzle against Subject 2's chest, the pistol was placed in an inoperative state, which prevented it from firing.

The Commission found that the act of Officer B Drawing/Exhibiting/Holstering his/her pistol to be in policy. Additionally, the non-lethal use of force by Officers A, B, C, D, E, F, and G was also found to be in policy. The Commission also found that Officer B's decision to attempt to

shoot Subject 2 was reasonable as Subject 2 presented an immediate threat of serious bodily injury or death. The Commission found that Officer B would have been justified in shooting in this deadly force situation.

As a result of the AD finding, CF No. 08-005413 was initiated. The Department framed one allegation of Unauthorized Tactics against Officers A and B; however, prior to final adjudication of the case it was determined to be Out of Statute, as a supervisor had incorrectly calculated the statute date from the date of the Commission's AD finding, rather than the date the incident was reported. It should be noted that since this incident Officers A and B have received additional tactical training.

Law Enforcement Related Injury No. F005-08

This incident involved officers, who were assigned to a specialized enforcement unit. The officers were in uniform driving a marked police vehicle, when they observed two known gang members (Subjects 1 and 2) walking side by side, which was a violation of a gang injunction. Both subjects had been previously served with the court injunction. The officers decided to contact the subjects and ordered them to approach the police vehicle, and they both complied. Subjects 1 and 2 were taken into custody without incident for violating the gang injunction. Officer B handcuffed Subject 2 while Officer A handcuffed Subject 1.

Officer A opened the rear door of the police vehicle, took control of Subject 2, and assisted him into the back seat. Simultaneously, Officer B began to retrieve a field identification card from his/her shirt pocket. When Officer B looked up, he/she saw Subject 1 running, his hands still behind his back and handcuffed, and Officer B pursued Subject 1 on foot. When Officer A observed the foot pursuit, he/she broadcasted a request for any available unit to respond. Officer A's broadcast did not include a request for backup or help, or a report of the foot pursuit.

Officer A entered the police vehicle and, with Subject 2 in the back seat, drove around the block and followed Subject 1 and Officer B. Officer A positioned the police vehicle where it blocked Subject 1's path and exited his/her vehicle. Officer B caught Subject 1, grabbed him by his left arm and told him to get on the ground. Once Subject 1 was on the ground, both officers applied body weight by kneeling on Subject 1's back. Subject 1 said he had asthma and could not breathe. Both officers then got off of Subject 1 and placed him in a seated position.

Officer A broadcasted the officers' location and requested an additional unit and a supervisor. In the meantime, Subject 3 entered the alley from a nearby carport and approached the officers in a combative manner. Officer A left Subject 1's side and confronted Subject 3, and told him to back away. Subject 3 refused and then reached out his hand toward Officer A. Officer B was concerned that Subject 3 was about to start a fight with Officer A. Leaving Subject 1's side, Officer B walked toward Subject 3 and removed his/her Oleoresin Capsicum (OC) spray from his/her belt. Officer B told Subject 3 to back away or he would use the spray. Subject 3 finally complied with the commands and moved back. As Subject 3 retreated, the officers saw that Subject 1 had gotten to his feet and was running away. Officer A followed Subject 1 on foot, and Officer B entered the police vehicle and started following Officer A. Officer B drove in reverse, keeping his/her partner in view until they came to a turn in the alley. Officer B then lost sight of Officer A for 10 to 15 seconds, during which time Officer A caught Subject 1.

In an effort to stop Subject 1's flight, Officer A used his/her arm to strike Subject 1's left shoulder, causing him to lose his balance and stumble forward about 10 feet before falling head-first into a concrete pole. Officer A saw that Subject 1 was bleeding, and made a request for an RA.

Sergeant A arrived on scene and conducted a non-categorical use of force investigation. Subject 1 was transported to the local hospital, where Sergeant A was notified that due to a broken neck, Subject 1 would be admitted to the hospital. Sergeant A notified his/her watch commander and a categorical use of force investigation was initiated.

The Commission found that both officers' Tactics warranted AD for the following reasons. Officer B did not maintain control of Subject 1, resulting in him running away while handcuffed. Officer B did not communicate with his/her partner that Subject 1 was fleeing on foot. The officers did not broadcast that they were in foot pursuit, nor did they request backup or assistance. The only broadcast made by either officer during the foot pursuit was by Officer A requesting an available unit. On two separate occasions the officers became separated while pursuing Subject 1 on foot. Officer B left Subject 1 alone on the ground when he walked over to assist his/her partner with Subject 3. Additionally, Officer A was not wearing his/her body armor during the incident, which is a violation of Department policy.

The Commission found that both officers use of Non-Lethal Use of Force was within policy.

As a result of the AD finding, and due to the fact that Officer A was not wearing body armor in violation of Department policy, personnel complaint CF No. 09-000061 was initiated against Officer A. However, prior to final adjudication of the case it was determined to be Out of Statute, as a supervisor had incorrectly calculated the statute date from the date of the Commission's AD finding, rather than the date the incident was reported. As a result of this incident, both officers received a Tactical Debrief and also Directed Training in Tactics.

OIS No. F041-08

This incident involved an accidental discharge of a weapon, which occurred when an officer improperly handled his/her weapon. The officer intended on cleaning his/her pistol; however, he/she had inadvertently chambered a round. Believing the pistol was unloaded; the officer pointed the pistol in the direction of his/her open vehicle trunk and pulled the trigger, so that he/she could remove the slide. When he/she did so, a round discharged from the pistol and struck the officer's body armor, which was stowed in the trunk. There were no injuries as a result of this incident.

The Commission found that the incident warranted an AD finding because the officer was negligent in the handling of his/her weapon by failing to adhere to basic Department firearm safety rules.

As a result of the incident, the area command initiated personnel complaint CF No. 08-002018 prior to the Commission's AD finding. The Department framed one allegation against the officer for an Accidental Discharge. The complaint was withdrawn by the Chief of Police for the following reasons. The investigation of the complaint was completed prior to the Commission's finding of AD, and the Commission's recommendation was for Extensive Retraining. Based on a finding of retraining by the Commission, no personnel investigation was required, and

therefore the complaint was withdrawn. The officer completed a Tactical Debrief and Directed Training.

VIII. CONCLUSION

The OIG recognizes that retaliation and other workplace complaints are some of the most difficult investigations confronting the Department. Overall, the OIG commends the Department, and specifically WIU, for endeavoring to establish protocols and procedures to ensure that complaints of retaliation are handled timely and appropriately. Moreover, we commend WIU for their professionalism in conducting interviews with complainants who appeared to us to be at times emotional, evasive, and even confrontational.

As expressed above, the OIG is concerned about the Department's practice of adjudicating complaints that initially involve claims of retaliation as "Non-Disciplinary" against the Department, based on our belief that the Non-Disciplinary system was not envisioned as a mechanism for addressing more serious allegations such as retaliation and our belief that the Department either does or does not retaliate only through the acts or omissions of individual employees. We look forward to working with the Department as they re-evaluate this practice.