

LOS ANGELES POLICE COMMISSION

**REVIEW OF THE DEPARTMENT'S  
QUARTERLY DISCIPLINE REPORT,  
FIRST QUARTER 2010**



Conducted by the

**OFFICE OF THE INSPECTOR GENERAL**

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Inspector General

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**OFFICE OF THE INSPECTOR GENERAL  
REVIEW OF THE DEPARTMENT'S QUARTERLY DISCIPLINE REPORT  
FIRST QUARTER 2010**

**I. INTRODUCTION**

Each quarter, the Los Angeles Police Department (LAPD or Department) publishes a report regarding discipline imposed in connection with cases closed during that quarter. The report includes any discipline imposed for Categorical Uses of Force (CUOFs) found to be out of policy as well as investigations that were found to be Out of Statute (OOS). These quarterly reports are submitted to the Board of Police Commissioners (BOPC or Commission) for their review and approval. Historically, as part of its responsibilities under the former Federal Consent Decree between the Department of Justice and the Department, the Office of the Inspector General (OIG) reviewed, analyzed, and reported to the Commission on each of the Department's Quarterly Discipline Reports (Report or Reports) to assist the BOPC in its oversight responsibilities, including assessing the appropriateness of any discipline imposed by the Chief of Police (COP) during each quarter. In conducting each review, the OIG evaluated completed investigations, assessing the quality of the investigation, and determining if the discipline imposed, if any, was appropriate given the nature of the incident, what the investigation revealed, and the officer's prior relevant disciplinary history. The OIG has continued to prepare these reviews even after the Consent Decree was lifted. In this report, we reviewed the Department's discipline report for the First Quarter (Quarter) of 2010 (January 1, 2010 to March 31, 2010).

In Section II of this report, the OIG has interpreted some of the statistical data contained within the Department's Report to provide figures for Sustained rates by allegation type and Sustained rates by employee rank.

Section III contains the OIG's review of investigations of cases that were closed during the Quarter. Throughout the year, the OIG assists the Commission in monitoring the Department's disciplinary system in several ways, including attending the Chief's weekly case signings during which the Chief determines what discipline shall be imposed for Sustained complaints, as well as reviewing numerous individual investigations at the complainant's or the Commission's request or at an OIG supervisor's direction. Historically, the OIG has used its review of the Department's Quarterly Discipline Reports as an opportunity to evaluate how the Department is addressing a particular allegation of misconduct (e.g., Biased Policing, Unauthorized Force, Unlawful Search, etc.), both as to the quality of the underlying investigations as well as the appropriateness of the adjudications by individual Commanding Officers (COs) and any subsequent discipline imposed.

During this Quarter, the OIG began what it anticipates being a recurring practice in the future – using our quarterly review of the Department's Report as an opportunity to focus on discipline within a specific division or Area. Further, we believed that looking at a concentrated group of complaints from a particular division or Area could help us identify any obvious risk management, training, or other related issues in a particular unit or division and how the command was addressing any such issues.

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This Quarter, the OIG elected to focus on complaints against employees assigned to Valley Traffic Division (VTD) because historically we have not focused on traffic divisions as a whole, other than incidentally in the course of our review of Biased Policing complaints. Moreover, given resource and timing constraints for this report, it would have been difficult for the OIG to review a statistically valid sample of complaints from all traffic divisions to accomplish our multiple goals of assessing the quality of the underlying investigations as well as the appropriateness of the adjudications and any discipline imposed, and identifying possible larger issues within any particular division. Accordingly, we chose to focus our review on one traffic division. We selected Valley Traffic Division because we have historically not focused on particular divisions within the Valley.

In addition, we evaluated the one case closed during the Quarter which contained both an allegation of Biased Policing as well as an allegation of Ethnic Remark. The OIG and the Commission have devoted considerable time and resources to evaluating the Department's handling of Biased Policing allegations; but because the Department rarely receives complaints of Biased Policing that are also accompanied by allegations of Ethnic Remark, the OIG believed it was important to evaluate this particular investigation as part of our review.

Finally, the OIG identified one other case listed in the Department's Report which we believed merited further review based on a cursory assessment of what we initially believed to be a surface disproportionality between the nature of the allegations as described in the Report and the ultimate penalty imposed. Our review of this case is also contained in Section III.

In Section IV, the OIG examines the two cases that were closed during the Quarter and were determined to be Out of Statute (OOS) by the Department, including the Department's explanation as to why these cases fell out of statute and what remedial action, if any, was taken to avoid similar recurrences.

Section V contains the OIG's review of the one complaint closed during the Quarter which was related to a CUOF incident which the Commission found to be Out of Policy. This incident was enumerated in Table L of the Department's Report.

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

The OIG utilized the information included within the Department's Report and conducted some additional analysis to aid the Commission in its own review and evaluation of the discipline imposed during this Quarter.

Sustained Allegation Information Summary

The classification of an allegation as Sustained means that the Department's investigation revealed, based upon a preponderance of the evidence, that the act complained of occurred and constituted misconduct.

Using the information contained in the Department's Report, we determined that the percentage of Sustained allegations was 8.3% of the total allegations (total number of Sustained allegations/total number of allegations = 267/3224 = 8.3%). The percentages for the nine highest Sustained rates by allegation type this Quarter in descending order were as follows:

<b>Allegation</b>	<b>Sustained Rate</b>	<b>No. of Sustained Allegations/ Total Number of Allegations</b>
Accidental Discharge	100.0%	1/1
Alcohol Related	93.8%	15/16
Narcotics/Drugs	71.4%	5/7
Insubordination	66.7%	6/9
Misleading Statements	62.5%	5/8
Failure to Qualify	40.0%	12/30
Preventable Traffic Collision	40.0%	2/5
Sexual Misconduct	40.0%	6/15
Failure to Appear	30.4%	14/46

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Allegation Summary

The table depicted below utilizes data from the Department's Tables C and I1 to provide a summary of the Sustained rate by misconduct type, the misconduct type as a percentage of total allegations, and the number of accused employees with Sustained allegations for each classification of misconduct.<sup>1</sup>

<b>Classification of Misconduct</b>	<b>Sustained Allegations/ Total Allegations</b>	<b>Sustained Rate</b>	<b>Misconduct Type as a Percentage of Total Allegations</b>	<b>Number of Accused Employees</b>	<b>Number of Employees w/ Sustained Allegations</b>
Accidental Discharge	1/1	100.0%	0.0%	1	1
Alcohol Related	15/16	93.8%	0.5%	13	13
Biased Policing	0/85	0.0%	2.6%	73	0
Discourtesy	18/589	3.1%	18.3%	400	12
Discrimination	0/23	0.0%	0.7%	16	0
Dishonesty	1/7	14.3%	0.2%	4	1
Domestic Violence	4/27	14.8%	0.8%	13	3
Ethnic Remark	3/23	13.0%	0.7%	12	2
Failure to Appear	14/46	30.4%	1.4%	43	14
Failure to Qualify	12/30	40.0%	0.9%	28	10
Failure To Report Misconduct	0/14	0.0%	0.4%	14	0
False Imprisonment	1/303	0.3%	9.4%	250	1
False Statements	6/62	9.7%	1.9%	52	5
Improper Remark	5/20	25.0%	0.6%	16	4
Insubordination	6/9	66.7%	0.3%	8	6
Misleading Statements	5/8	62.5%	0.2%	7	4
Narcotics	5/7	71.4%	0.2%	3	3
Neglect of Duty	67/631	10.6%	19.6%	438	47
Off-Duty Altercation	¼	25.0%	0.1%	4	1
Other Policy/Rule	8/94	8.5%	2.9%	54	6
Preventable Traffic Collision	2/5	40.0%	0.2%	5	2

<sup>1</sup> A note accompanying Table I1 of the Department's Report indicates the following: "The allegation total is the number of instances of an allegation for the year. One employee may have multiple instances of the same allegation. One employee may also have multiple allegation types made against him/her."

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Retaliation	0/17	0.0%	0.5%	11	0
Service	0/7	0.0%	0.2%	5	0
Sexual Misconduct	6/15	40.0%	0.5%	5	3
Theft	4/45	8.9%	1.4%	24	4
Unauthorized Force	0/364	0.0%	11.3%	211	0
Unauthorized Tactics	8/75	10.7%	2.3%	59	6
Unbecoming Conduct	75/575	13.0%	17.8%	329	44
Unlawful Search	0/122	0.0%	3.8%	87	0

Allegation Summary by Employee Rank and Listed by Allegation Type

Using the information in Table F, the OIG calculated Sustained rates by rank of the employee. These Sustained rates are calculated below in two ways: when Preventable Traffic Collision (PTCs), Failure to Appear (FTAs), and Failure to Qualify allegations (FTQs) are included and when these three types of allegations are excluded. The results are depicted in the table below.

	<b>Sustained Allegations/ Total Allegations</b>	<b>Overall Sustained Rate (Including PTCs, FTAs, &amp; FTQs)</b>	<b>Sustained Allegations/ Total Allegations (Minus PTCs, FTAs, &amp; FTQs)</b>	<b>Overall Sustained Rate (Minus PTCs, FTAs, &amp; FTQs)</b>
Command Staff	0/25	0.0%	0/25	0.0%
Lieutenant	1/29	3.4%	1/28	3.6%
Sergeant	12/162	7.4%	12/160	7.5%
Detective	10/168	6.0%	8/163	4.9%
Police Officer III	37/564	6.6%	31/552	5.6%
Police Officer II	144/1400	10.3%	125/1344	9.3%
Police Officer I	17/229	7.4%	16/228	7.0%
Reserve Officer	4/13	30.8%	4/10	40.0%
Detention Officer	7/18	38.89%	7/18	38.9%
Civilian Personnel	35/616	5.7%	35/616	5.7%
Allegation Totals	267/3224	8.3%	239/3143	7.6%

During this Quarter, 8.3% of all misconduct allegations against all Department employees were Sustained. When PTCs, FTQs, and FTAs are excluded, 7.6% of all allegations were Sustained.

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### **III. CASE REVIEWS**

As discussed above, during this Quarter, the OIG chose to focus on those cases closed during the Quarter in which the accused employee was assigned to VTD. Given the OIG's concern that the relatively small number of cases as well as the smaller number of officers assigned to any traffic division might increase the likelihood that the individual involved officers might be identified,<sup>2</sup> we elected not to include the case numbers of individual complaints in this Open Session report. We will provide those numbers under separate cover to the Commission in connection with their Closed Session consideration of this Report.

The cases are discussed below.

#### **A. Methodology for Case Reviews**

There were a total of 23 complaints in the original population involving VTD employees that were closed during the First Quarter of 2010. The OIG eliminated from the population four cases in which the only allegation of misconduct was Failure to Qualify<sup>3</sup> and four cases in which the only allegation of misconduct was Failure to Appear.<sup>4</sup> There were no complaint investigations closed during this Quarter involving a VTD employee who became involved in a Preventable Traffic Collision. Of the remaining 15 cases, 2 were determined to be unrelated to VTD and were removed from the population.<sup>5</sup> Thus, the OIG reviewed the remaining 13 complaint investigations involving VTD employees. Further, the OIG reviewed the one case closed during the First Quarter that contained allegations of both Biased Policing and an Ethnic Remark. Finally, the OIG identified one additional case (Case C) in connection with our review of the Department's Report that we believed merited further review in light of what we believed to be a surface disproportionality between the Sustained allegations and the ultimate penalty imposed.

In conducting its review of those 11 VTD cases which did not contain an allegation of Biased Policing, and Case C described below, a matrix was utilized by the first and second level reviewers. This matrix contained 37 questions designed to evaluate the quality, completeness, and findings of the completed investigation, including whether the discipline imposed was

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<sup>2</sup> California law considers information related to an individual peace officer's complaint history to be part of his or her confidential personnel file and not subject to public disclosure.

<sup>3</sup> This refers to firearms qualification.

<sup>4</sup> This refers to an officer's failure to appear for a scheduled court date.

<sup>5</sup> The first case involved an incident which occurred in the jurisdiction of Hollywood Division. The officers who responded to the incident were assigned to Hollywood Patrol at the time of the incident. The case was adjudicated by the CO of Hollywood Division and Operations-West Bureau. It was included in the original population because at the time of the adjudication, one of the officers had been working a new assignment at VTD. The second case involved an incident that occurred within the jurisdiction of Van Nuys Division, and the accused officers who responded to the incident were assigned to Van Nuys Patrol on the date of the incident. The case was adjudicated by the Van Nuys Division CO as well as Operations-Valley Bureau.

justified and appropriate in light of the surrounding circumstances, the employee's disciplinary history, and current Department disciplinary standards.

For the three cases in the sample that contained allegations of Biased Policing, a separate matrix was used which contained 60 questions. In addition to addressing the issues included in the OIG's matrix for the non-Biased Policing cases, this matrix was designed to evaluate whether the investigators utilized the appropriate Biased Policing Protocols and whether the investigation and adjudication properly addressed the complainant's allegation of Biased Policing.

Staff of OIG also reviewed available recorded interviews conducted in connection with the 13 complaint investigations from VTD. In reviewing the recorded interviews in these cases, the OIG utilized a separate matrix containing 18 questions designed to evaluate whether: (1) the interviews were properly summarized to include all relevant testimony; (2) all allegations raised by the complainant were properly formed; (3) any additional allegations raised during the interviews were addressed in the completed investigation; (4) the interviews themselves were conducted properly (e.g., whether the interviewer used inappropriate or leading questions, or adopted a hostile or inappropriate tone with the witness); and (5) logical follow up questions were asked by the interviewer. Second-level reviewers also listened to recorded interviews as recommended by first-level reviewers.

Overall, the OIG found the 15 complaint investigations we reviewed to be thorough, complete, and of good quality, and the penalties assessed, if any, to be appropriate. We identified concerns with three cases described below. We did not note any larger risk management issues, other than with respect to one officer whose prior pattern of Sustained Discourtesy complaints, coupled with the allegations at issue in the complaint we reviewed, as well as subsequent complaints this officer has received, caused us to request that the officer's chain of command review this officer's performance to assess whether further action is warranted (Case B -- described below).

Accordingly, we believed that Case A, in which our inability to locate and listen to a crucial interview impacted our ability to assess whether the investigation and adjudication were appropriate, as well as Cases B and C, merited further discussion as described below.

## **CASE A**<sup>6</sup>

### **UNDISPUTED FACTS**

The complainant was stopped by two officers for a traffic violation, but he did not stop immediately when the police car was flashing blue and red lights. Once he stopped, he gave the contact officer a false name because he claimed he was scared.

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<sup>6</sup> For ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.



### DISPUTED FACTS

Once the complainant stopped, he alleged that the contact officer yelled at him. The complainant stated that the same officer then grabbed him, removed his cell phone from its holster on the complainant's belt, and threw it on the hood of the police car, causing the phone to be scratched. The complainant alleged that the officer then shoved him into the police car face first and hit him twice in the back. The complainant's brother indicated he observed the activities that occurred after the traffic stop and realized it was his brother who was being detained by the police. According to the paraphrased statement of the complainant's brother, he did not see the officer hit the complainant or throw his cell phone.

The accused officer indicated that in the midst of the traffic stop, he and his partner switched places. The accused officer was initially the contact officer and his partner the cover officer. However, the complainant spoke Spanish, as did the cover officer, so the contact officer asked the cover officer to switch places with him. It was the second officer who supposedly put the complainant in the car. However, the complainant's allegations were directed only at the first officer. Therefore, the second officer was never listed as an accused in this case.

Three allegations of Unauthorized Force and one allegation of Unbecoming Conduct were adjudicated as Unfounded based on the rationale that the complainant's brother "refuted" his allegations.

### INVESTIGATIVE ANALYSIS

In his investigation, the Investigating Officer (I/O) noted that the complainant's brother "refuted" the claims of the complainant regarding the officer hitting him and throwing his cell phone. The I/O discussed this case with his/her supervisor, and it was determined that because the complainant's brother refuted the allegations of the complainant, it could be adjudicated without any additional interviews.

Additionally, the complainant, his wife, and his brother were interviewed by a sergeant who was a Department Certified Spanish Speaker. These three interviews were referenced with a tape number identical to the Complaint Form number in this case.

While attempting to locate the tape-recordings of the interviews of the complainant, his wife, and his brother, the OIG received two different tapes but neither contained the correct recordings. Consequently, the OIG was unable to listen to these recordings.

### ADJUDICATIVE ISSUES

The OIG had difficulty assessing the propriety of the ultimate adjudication of this complaint in light of our inability to verify the Department's representation that the brother "refuted" the complainant's allegations.

### DEPARTMENT'S RESPONSE

According to the Department, the sergeant who interviewed the witnesses should have booked the tapes into Scientific Investigation Division (SID) but he did not. As a result, even though IAG undertook an extensive search for the tapes, they were unable to locate them. Further, according to IAG, since the Department has begun using digital recorders on a more widespread basis in conducting their interviews, the number of tapes that could be lost or misplaced has been significantly reduced.

### CASE B

#### UNDISPUTED FACTS

The accused officer stopped the complainant and indicated he was going to cite him for not wearing his seatbelt. The officer approached the complainant and came within approximately 10 inches of the complainant's face. During the incident, the officer stated that he had 20/50<sup>7</sup> vision and told the complainant not to tell him what he could see with his own eyes.

#### DISPUTED FACTS

The complainant claimed that he tried to explain that his seatbelt had been on the entire time. He claimed his work identification was clipped to his collar and was possibly obscuring that portion of the belt which went over his shoulder. The complainant also alleged that the officer was yelling at him. The officer then allegedly told the complainant that if the complainant continued to tell the officer what he saw, there would be a problem. The complainant thought the officer would hurt him or physically take him out of the car. This caused the complainant to become fearful for his personal safety and/or that he may be arrested for questioning the officer's observations.

The Department framed one allegation of Unbecoming Conduct which was adjudicated as Non-Disciplinary, No Misconduct.

#### INVESTIGATIVE ANALYSIS

The OIG did not identify issues or concerns related to the quality of the investigation.

#### ADJUDICATIVE ISSUES

The accused officer did not tape-record the incident. The complaint was adjudicated as Non-Disciplinary, Employee's Actions Did Not Rise to the Level of Misconduct based on the following rationale:

“Complainant ... is 6’-2”, 220 lbs., and was driving a GMC truck at the time of this incident. [The complainant] alleged that [the officer] stood very close to him and [the officer] raised [the officer's] voice, causing him to fear for his safety. [The complainant's]

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<sup>7</sup> In some parts of the investigation this is written as 20/50 and in other parts it is written as 20/15.

allegations, if true, do not necessarily amount to misconduct. [The officer's] explanations of his actions are very plausible."

Our review of the officer's disciplinary history revealed that he has a pattern of Discourtesy complaints, including Sustained complaints. Accordingly, we do not believe this case should have been adjudicated using the Non-Disciplinary system. Department policy<sup>8</sup> states that for "NON-DISCIPLINARY COMPLAINTS, a watch commander, section OIC, or civilian equivalent, may only classify a complaint as Non-Disciplinary when all of the following criteria are met at the time the complaint is initiated . . . that the accused employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he/she is accused." However, the policy also states that a CO "may reclassify a complaint at any time after initial classification . . . ."

We believe this complaint was initially appropriately classified as Disciplinary. However, we are concerned that the CO then changed the classification to Non-Disciplinary during the adjudication process.

In this case, the OIG believes that the officer's apparent pattern of similar behavior was not appropriately taken into consideration when this case was finally adjudicated, and that, given his prior history, we believe this case should have been adjudicated using one of the Disciplinary adjudications. More specifically, we believe that too much credibility was given to the accused and that the complainant's size, weight, and vehicle type should not have been used to discredit the complainant's allegations, especially in light of the officer's prior pattern of allegations similar to those at issue in this complainant. Accordingly, we believe this case should have been adjudicated as Not Resolved.

In the alternative, if the Department believed that because of the relatively minor nature of the allegation the complaint should have been adjudicated as Non-Disciplinary, we believe it should have been adjudicated as Non-Disciplinary, Employee's Actions Could Have Been Different. The accused officer admitted that he stated that he had 20/50 vision and that he told the complainant not to tell him what he could see with his own eyes. We do not believe that this equates to a finding of Employee's Actions Did Not Rise to the Level of Misconduct as it does not demonstrate the level of professionalism we believe the Department expects of its police officers.

#### CONCLUSION

The OIG believes that this case should have been adjudicated as either Disciplinary, Not Resolved or Non-Disciplinary, Employee's Actions Could Have Been Different because of the officer's prior disciplinary history, his acknowledged statements, and the additional weight we believe should have been afforded to the testimony of the complainant.

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<sup>8</sup> Special Order No. 1, January 1, 2003.

### DEPARTMENT'S RESPONSE

IAG did an extensive analysis of the accused officer's complaint history and indicated its agreement with the OIG regarding the adjudication of this complaint. However, they acknowledged that Special Order 1 precludes the involvement of IAG in the complaint resolution when it is determined by the Area to be a Non-Disciplinary matter. The OIG also met separately with the officer's Bureau CO who indicated his agreement with the OIG's analysis and that the Bureau would be working directly with the accused officer to address his behavior. Finally, the OIG has learned that this officer is currently being evaluated by a sub-committee of the Department's Risk Management Executive Committee (RMEC).

### CASE C

#### UNDISPUTED FACTS

The complainant called 911 to report that the complainant's spouse, an off-duty officer, had choked the complainant and also kicked the complainant's leg. This incident resulted in a law enforcement agency response to their residence, whereupon the officer was arrested for domestic violence. In addition, the complainant requested an Emergency Protective Order (EPO) to prevent the officer from having contact with the complainant or their children. The incident resulted in four allegations of misconduct being framed against the officer: 1) that the officer choked the complainant's neck and kicked the complainant's right leg; 2) that the officer disconnected the telephone while the complainant called 911 to report the domestic dispute; 3) that the officer became involved in an act of domestic violence, which resulted in the officer's arrest by on-duty law enforcement officers; and 4) that the officer was named on a "Domestic Violence" EPO.

#### DISPUTED FACTS

The complainant said that the officer had choked the complainant, kicked the complainant's right leg several times, and disconnected the telephone as the complainant spoke to the 911 operator. The officer denied kicking the complainant; and according to the officer, the accused officer "nudged" the complainant's feet. The officer also denied choking the complainant. Rather, the officer indicated his intent was to "caress" the complainant's face. There were no marks on the complainant's right leg; however, two small red dots were visible on the complainant's neck. During the officer's interview, the officer claimed that the marks on the complainant's neck were the result of a skin condition.

Two days after the incident, the complainant contacted the involved law enforcement agency and said that the incident did not occur as previously stated and that the complainant did not want to prosecute the officer. Further, when the complainant was interviewed by the I/O as part of this complaint investigation, in contrast to what the complainant had earlier told the outside responding agency and/or 911, the complainant denied that there had been any prior history of physical abuse by the accused. Moreover, the complainant told the I/O that the accused had tapped the complainant's feet (as opposed to kicking the complainant) and that the accused had turned the complainant's face toward the accused, as opposed to holding the complainant down

by the throat, and that it did not hurt. Finally, the complainant told the I/O that the accused had hung up the phone when the complainant was on with 911, as opposed to the complainant's earlier claim that the accused had pulled the phone cord out of the wall.

The District Attorney's office declined to prosecute the officer, citing lack of evidence and the complainant's refusal to cooperate.

### INVESTIGATIVE ANALYSIS

The OIG did not note any substantive concerns with the underlying investigation.

### ADJUDICATIVE ISSUES

Originally, the Bureau CO recommended that all four of the allegations be Sustained and that the officer be referred to a Board of Rights (BOR). As a result of a Disciplinary Settlement Agreement approved by the COP, Allegation Nos. 1 and 4 were adjudicated as Not Resolved and Allegation Nos. 2 and 3 as Sustained. The accused officer received a Conditional Official Reprimand (COR) and was re-assigned away from a specialized unit to an Area. The COR included the conditions that if the accused acquired any future Sustained complaints of the same or similar nature to Allegation No. 2, the officer would be directed to a BOR with a recommendation that the accused be removed from the Department. The COR also provided that if the accused acquired any future Sustained complaints that were of the same or similar nature to Allegation No. 3, the accused would be subject to a penalty of not less than 22 suspension days.

The OIG had concerns about the lack of imposition of any penalty days in this case, in favor of a COR, in light of the underlying nature of the allegations which involve possible domestic violence. The OIG understands the challenges facing the Department in administratively prosecuting a domestic violence case before a BOR when there is no related criminal prosecution, minimal if any visible injury to the alleged victim, and the alleged victim refuses to cooperate with the Department. Accordingly, we recognize the potential advantage of imposing a COR in a case such as this which would allow for significant penalties if there were to be a recurrence of similar behavior in the future.

However, we believe that the decision to impose a COR in connection with such potentially serious allegations as domestic violence is appropriate only if accompanied by built-in guarantees that the existence of the COR and its related conditions will be adequately documented and tracked by the Department. Adequate documentation and tracking assists the accused employee's subsequent supervisors who may not have been familiar with the original investigation and/or the specific conditions which were attached to the COR in ensuring compliance with the terms of the COR.

In this case, reference to the accused employee's Training Evaluation and Management System II (TEAMS II) report indicated only that the officer had received an Official Reprimand (OR) in connection with the complaint without indicating the existence of any associated conditions.

### DEPARTMENT'S RESPONSE

Subsequent discussions with IAG as well as our review of the TEAMS reports of several other employees who received CORs revealed that there is currently no system in place within TEAMS or elsewhere in the Department to easily identify and track those officers who have been given a COR and the specific conditions imposed on each employee.

However, the OIG has learned that the CO of IAG currently has a meeting scheduled to follow up with the CO of TEAMS II regarding his request that such a tracking mechanism be established within the TEAMS II system.

### CONCLUSION

The OIG commends the COs of IAG and TEAMS II for working to ensure that CORs are accurately reflected on and tracked within the TEAMS II system, and we recommend that such mechanism be implemented as soon as possible.

As a side note, the OIG followed up with the accused employee's Area supervisor who assured the OIG that the accused employee's cases were heavily supervised by his immediate supervisor and that the accused would not be working on domestic violence-related investigations in the accused employee's new assignment.

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

During this Quarter, two cases were closed that were determined to be Out of Statute (OOS).<sup>9</sup> Summaries of the OOS cases are as follows:

### **CASE D**

This complaint involved an accused employee who failed to take a complaint of misconduct which was discovered during a complaint intake audit.

A phone-in audit involves an undercover officer (UC) telephoning a police station in an attempt to lodge a personnel complaint alleging misconduct. The UC would outline to the employee answering the phone a complaint scenario involving police misconduct. The UC would either specifically indicate that they wanted to make a complaint or the scenario would clearly identify that police misconduct had occurred. The employee who received the call would then be expected to transfer the UC to a station supervisor who is required to take the complaint.

The Department conducted a random phone-in complaint intake audit on September 22, 2008, which created an administrative statute date of September 22, 2009. As of October 28, 2008, a Complaint Form documenting the misconduct reported by the UC had not been completed. As a result, at that time, the Department filed allegations against the accused employee for failing to

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<sup>9</sup> These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. Both cases went out of statute during the tenure of former Chief William Bratton.

take a complaint. Because the Complaint Form was completed on October 28, 2008, it created an erroneous administrative statute date of October 28, 2009, instead of the correct date of September 22, 2009. The accused officer was not served with a proposed penalty until October 4, 2009, rendering the case OOS.

The CO of Professional Standards Bureau (PSB) wrote an Intradepartmental Correspondence (15.2) to the Chief of Police (COP) indicating that the investigation went OOS because "It has been the practice of [the involved unit] to wait at least a month after an audit failure to provide the accused officer an opportunity to initiate a complaint face sheet and have it processed. [The unit] established an incorrect statute date of October 28, 2009. [The accused employee] was not served with a penalty until October 4, 2009."

Further, according to the 15.2, to ensure that similar investigations do not go OOS in the future, [the unit] adopted "the Internal Affairs Group's position that the administrative statute commences on the day of the complaint intake audit failure."

### **CASE E**

This complaint involved two accused employees in a vehicle pursuit that ended up going the wrong way on the freeway. The watch commander who responded to the scene became aware that the officers had violated Department policy on the day of the pursuit, April 30, 2008, which created an administrative statute date of April 30, 2009. The accused officers were not served until July and August of 2009; thus both allegations were OOS.

The vehicle pursuit was deemed Out of Policy by the Area on August 25, 2008, and December 26, 2008, by the Bureau. However, the Area did not initiate a personnel complaint until January 12, 2009, which resulted in an incorrect administrative statute date of January 12, 2010.

The CO of PSB submitted a 15.2 to the COP indicating that to ensure that similar investigations do not go OOS in the future the following actions were taken:

"The [Area Complaint Unit] currently 'red flags' violations of pursuit policy for short turnaround investigations. These cases are tracked separately from the standard complaint investigations."

"The [Commanding Officer of the Area Complaint Unit] conducted training for [the Area's] Patrol supervisors in the correct procedure for establishing accurate statute dates in Pursuit and Preventable Traffic Collision investigations."

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

During this Quarter, one complaint was closed that related to CUOF incidents in which the Commission adopted a finding of Out of Policy. Table L in the Department's Report contains additional summary information on this case, including corresponding complaint information, the Commission's findings, and any discipline imposed. An abridged description, as well as the Commission's findings, is discussed below.

**CASE F010-09 /CF No. 09-000910 – Unintentional Discharge**

Officer A was off-duty and at his residence. Officer A donned his duty belt with the holster attached, unloaded his Department issued pistol, and proceeded to practice un-holstering and re-holstering the pistol while standing in the hallway inside of his residence. Each time Officer A un-holstered the pistol, he dry-fired it. Officer A conducted approximately 12 sequences of this drill and at the conclusion loaded the pistol magazine to capacity and placed a live round in the chamber. Officer A then adjusted the holster to his preference.

After Officer A completed the holster adjustment and while wearing his duty belt, he holstered the pistol and decided to practice another set of drills. Officer A forgot that he had loaded the pistol. He then un-holstered the pistol and proceeded to press the trigger to dry-fire the pistol and, in the process, discharged one round which struck the front door of the residence. Officer A immediately unloaded the pistol and placed it on a nearby counter. Officer A then proceeded to ascertain if Witness A, his spouse, was injured. Finding his spouse was not injured, Officer A exited the residence to check for anyone in the courtyard who was injured. After Officer A determined there were no injuries, he called the watch commander of his duty station to inform the watch commander of the incident.

Witness A was inside a bedroom and did not observe the incident; however, Witness A did hear the gunshot.

The Commission found that Officer A's Unintentional Discharge (UD) was negligent. Such a finding involves a determination that the UD of a firearm resulted from operator error, such as the violation of a firearm safety rule. In this instance, Officer A violated basic firearm safety rules, resulting in a UD. Officer A neglected to perform a "chamber check" to ensure that his service pistol did not have a live round in the chamber prior to performing drawing, holstering, and dry fire exercises resulting in a UD when he pressed the trigger.

Therefore, Officer A's UD unjustifiably and substantially deviated from approved Department training and was negligent in nature.

After considering the scope and severity of the identified concerns and absent evidence of prior similar incidents, the COP determined that Officer A's future performance would most



appropriately be enhanced through extensive retraining rather than through the imposition of discipline, and he was directed to attend a tactical debrief.

However, on the date of the actual incident, one of the accused officer's supervisors initiated a personnel complaint against the accused officer related to the shooting. As a result, an investigation was conducted, the allegation was Sustained, and the accused officer was disciplined<sup>10</sup> before the Commission had made a determination whether the shooting was in or out of policy. Accordingly, initiating the complaint in this instance was inconsistent with existing Department policy<sup>11</sup> which provides that the Commission evaluate and make findings relative to an unintentional discharge. If it is determined to be negligent, the Department can at that point decide the appropriate action to take, including initiating a personnel complaint.

In this case, a review of the related file revealed that the COP had elected to impose Extensive Retraining in lieu of a personnel complaint as a result of the UD/Negligent finding. As a result, the OIG contacted the Department's Force Investigation Division and informed them of the error. It is our understanding that efforts are being made to remove the complaint from the officer's personnel file, consistent with the COP's wishes.

## **V. CONCLUSION**

Overall, the OIG noted relatively few investigative concerns in the cases we reviewed and noted no larger concerns, at least for this Quarter, regarding the involved division at issue -- VTD. As outlined above, we identified an investigative issue with one case in which we were unable to locate the tape-recorded interview of the complainant's brother which the Department alleged "refuted" the complainant's claim. In the second case, we were concerned with what we believed was the accused employee's relatively troubling pattern of Discourtesy complaints which we believed should have removed the subject complaint from Non-Disciplinary consideration. However, we were pleased by the Department's responsiveness in addressing this employee's troubling pattern of complaints.

We also identified a larger policy issue regarding the absence of a standardized system to identify and track employees who are subject to Conditional Official Reprimands. We are hopeful that the COs of IAG and TEAMS II, working together, will be able to implement such a system in the near future.

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<sup>10</sup> The accused initially received an Official Reprimand in connection with this case.

<sup>11</sup> Volume 3, Section 792.25 – Unintentional Discharges.