

**OFFICE OF THE INSPECTOR GENERAL  
REVIEW OF THE DEPARTMENT'S QUARTERLY DISCIPLINE REPORT  
SECOND 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 (CUOF) 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, which the Commission received on August 31, 2010, the OIG reviewed the Department's discipline report for the Second Quarter of 2010 (April 1, 2010 to June 30, 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. This Quarter the OIG reviewed cases that contained at least one allegation of Alcohol Related misconduct. 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 COP 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 Report 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.

In Section IV, the OIG examines the two cases that were closed during the Quarter and were determined to be 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 three complaints closed during the Quarter which were related to a CUOF incident, which the Commission found to be Out of Policy. These incidents were 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, the OIG determined that the percentage of Sustained allegations was 10.4% of the total allegations.<sup>1</sup> The percentages for the ten highest Sustained rates by allegation type this Quarter in descending order was as follows:

**TABLE 1**

<b>Allegation</b>	<b>Sustained Rate</b>	<b>No. of Sustained Allegations/ Total Number of Allegations</b>
Accidental Discharge	100.0%	2/2
Alcohol Related	100.0%	17/17
Preventable Traffic Collision	100.0%	3/3
Misleading Statements	88.9%	8/9
Insubordination	80.0%	4/5
Failure to Qualify	42.1%	8/19
Domestic Violence	41.7%	5/12
Failure to Appear	39.5%	17/43
Improper Remark	34.6%	9/26
False Statements	32.1%	25/78

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

<sup>1</sup> Total number of Sustained allegations/total number of allegations = 304/2931 = 10.4%. The allegation totals were based on the Department's Report, Table C.

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>2</sup>

**TABLE 2**

<b>Classification of Misconduct</b>	<b>Sustained Allegations/ Total Allegations</b>	<b>Sustained Rate</b>	<b>Misconduct Type as a Percentage of Allegations</b>	<b>Number of Accused Employees</b>	<b>Number of Employees w/ Sustained Allegations</b>
Accidental Discharge	2/2	100.0%	0.1%	2	2
Alcohol Related	17/17	100.0%	0.6%	12	12
Biased Policing	0/104	0.0%	3.5%	94	0
Discourtesy	19/541	3.5%	18.5%	367	15
Discrimination	0/5	0.0%	0.2%	2	0
Dishonesty	3/11	27.3%	0.4%	7	2
Domestic Violence	5/12	41.7%	0.4%	7	4
Ethnic Remark	0/20	0.0%	0.7%	9	0
Failure to Appear	17/43	39.5%	1.5%	41	16
Failure to Qualify	8/19	42.1%	0.6%	19	8
Failure To Rpt Misconduct	0/3	0.0%	0.1%	3	0
False Imprisonment	2/240	0.8%	8.2%	196	2
False Statements	25/78	32.1%	2.7%	53	9
Gender Bias	0/4	0%	0.1%	4	0
Improper Remark	9/26	34.6%	0.9%	14	4
Insubordination	4/5	80.0%	0.2%	5	4
Misleading Statements	8/9	88.9%	0.3%	6	6
Narcotics	1/12	8.3%	0.4%	6	1
Neglect of Duty	81/520	15.6%	17.7%	346	51
Off-Duty Altercation	1/4	25.0%	0.1%	4	1
Other Policy/Rule	1/79	1.3%	2.7%	48	1
Racial Profiling	0/3	0.0%	0.1%	2	0
Preventable Trfc Collision	3/3	100.0%	.01%	3	3
Retaliation	0/22	0.0%	0.8%	9	0
Service	0/10	0.0%	0.3%	5	0
Sexual Misconduct	2/10	20.0%	0.3%	6	2
Theft	4/32	12.5%	1.1%	19	4
Unauthorized Force	2/355	0.6%	12.1%	219	2
Unauthorized Tactics	1/65	1.5%	2.2%	54	1
Unbecoming Conduct	88/553	15.9%	18.9%	306	37
Unlawful Search	1/124	0.8%	4.2%	94	1

<sup>2</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."

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.

**TABLE 3**

	<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	0/23	0.0%	0/23	0.0%
Lieutenant	3/31	9.7%	3/31	9.7%
Sergeant	52/188	27.7%	50/185	27.0%
Detective	10/126	7.9%	10/122	8.2%
Police Officer III	53/551	9.6%	49/540	9.1%
Police Officer II	132/1360	9.7%	114/1324	8.6%
Police Officer I	13/185	7.0%	10/177	5.6%
Reserve Officer	2/6	33.3%	1/4	25.0%
Detention Officer	4/21	19.0%	4/21	19.0%
Civilian Personnel	35/438	8.0%	35/437	8.0%
Allegation Totals	304/2929 <sup>3</sup>	10.4%	276/2864	9.6%

During this Quarter, 10.4% of all misconduct allegations against Department employees were Sustained. When PTCs, FTQs, and FTAs were excluded, 9.6% of all allegations were Sustained.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

<sup>3</sup> The allegation totals were based on the Department's Report, Table F.

### **III. CASE REVIEWS**

In preparation for the Second Quarter 2010 QDR report, the OIG judgmentally selected those cases that closed during the Quarter and contained at least one sustained allegation of Alcohol Related misconduct. Given the OIG's concern that the relatively small number of cases might increase the likelihood that the individually involved officers might be identified,<sup>4</sup> the OIG elected to exclude case numbers of individual complaints in this Open Session report. The OIG will provide those case numbers under separate cover to the Commission in connection with their Closed Session consideration of this Report.

#### Methodology for Case Reviews:

There were a total of 13 complaints involving Sustained allegations of Alcohol Related misconduct that were closed during the Second Quarter of 2010. The OIG reviewed all 13 complaints.

In conducting its review, the OIG utilized a matrix for 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 justified and appropriate in light of the surrounding circumstances, the employee's disciplinary history, and current Department disciplinary standards.

Staff of the OIG also reviewed all available recorded interviews conducted in connection with the investigations. In reviewing the recorded interviews, the OIG utilized a separate matrix containing 18 questions designed to determine if: (1) the interviews were properly summarized to include all relevant information; (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.

Because state law prohibits divulging the identity of police officers in public reports, for the ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The OIG compiled information in table form to help analyze each of the Alcohol Related misconduct complaints. The 13 cases reviewed involved 12 employees, as one employee was named in two of the misconduct cases. Using the information in the below table, the OIG determined that 42% of the involved employees were female compared to 58% male. Civilians represented 33% of the employees while 66% were sworn. Two employees were sergeants. Further, one employee was subject to long-term military deployment.

---

<sup>4</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.

**TABLE 4**

<b>Case</b>	<b>Age</b>	<b>Tenure</b>	<b>Rank</b>	<b>Long-term Military Deployment Dates</b>
A	22	4 years	Civilian	None
B	46	20 years	SGT 1	None
C	40	5 months	Civilian	None
D	30	6 years	PO2	None
E	38	13 years	SGT II	None
F	30	1 year	PO2 Terminated	None
G	27	2 years	PO2	None
H	34	8 years	PO2	1/30/2003 <sup>5</sup> - 1/29/2004 1/30/2004 - 1/29/2005 6/18/2007 - 7/8/2008 <sup>6</sup>
I	37	3 years	Civilian	None
J	32	5 years	PO3	None
K	30	5 years	PO2 Terminated	None
L	30	5 years	PO2 Terminated	None
M	38	4 years	Civilian	None

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

<sup>5</sup> The Department Personnel Group, Military Liaison Unit does not have records of this type of information prior to 2003.

<sup>6</sup> The employee also had several other military deployment periods for durations of less than two months.

Review of the Department's Quarterly Discipline Report

Second Quarter 2010

Page 7

1.0

The table below displays a summary of the penalties recommended in each case by the Area, the Bureau, and the Chief of Police. A Conditional Official Reprimand (OR) was the discipline imposed in 62% of the cases as shown below.

**TABLE 5**

<b>Case</b>	<b>Area Discipline</b>	<b>Bureau Discipline</b>	<b>COP Discipline</b>	<b>OR Condition</b>
A	5 days	5 days	Conditional OR	2 <sup>nd</sup> complaint Termination <sup>7</sup>
B	Conditional OR	Conditional OR	Conditional OR	2 <sup>nd</sup> Complaint to Board of Rights (BOR) for Termination
C	Conditional OR	Conditional OR	Conditional OR	2 <sup>nd</sup> Complaint 10 days
D	10 days	10 days	5 days	N/A
E	10 days	10 days	10 days & Settlement Agreement	N/A
F	BOR	BOR	BOR	N/A
G	10 days	10 days	Conditional OR	2 <sup>nd</sup> Complaint to BOR for Termination
H	5 days	Conditional OR	Conditional OR	2 <sup>nd</sup> Complaint to BOR for Termination
I	4 days	4 days	Conditional OR	2 <sup>nd</sup> Complaint 15 days
J	Conditional OR	Conditional OR	Conditional OR	2 <sup>nd</sup> Complaint to BOR for Termination
K	BOR	BOR	BOR <sup>8</sup>	N/A
L	BOR	BOR	BOR	N/A
M	2 days	2 days	Conditional OR	2 <sup>nd</sup> Complaint 15 days

<sup>7</sup> The employee was laid off after this complaint due to budget issues.

<sup>8</sup> The employee incurred two Alcohol Related complaints, in July 2008 and October 2008 respectively, and he was sent to a BOR for both complaints in connection with which he was terminated.

The following are brief summaries of each case listed in the prior tables.

### **CASE A**

At approximately 0210 hours, Civilian A was driving his personal vehicle on a public highway. An officer from an outside area law enforcement agency observed Civilian A weaving while his vehicle's speed fluctuated from 58 to 72 miles per hour. Based on his driving pattern, the officer stopped and detained Civilian A. During the course of his investigation, the officer observed that Civilian A displayed the objective symptoms of intoxication. Following field sobriety tests, Civilian A was placed under arrest for driving while under the influence of alcohol. Civilian A's blood alcohol level was determined to be .09. The discipline imposed for this case was a Conditional OR. Civilian A had no prior Alcohol Related complaints.

### **CASE B**

At approximately 0345 hours, Sergeant A was off-duty and driving his personal vehicle on a public highway when he was involved in a non-injury, rear-end traffic collision. Sergeant A called an outside area law enforcement agency to report the collision. During the course of the collision investigation, the investigating officer observed that Sergeant A displayed the objective symptoms of intoxication. Following field sobriety tests, Sergeant A was placed under arrest for driving while under the influence of alcohol. Sergeant A's blood alcohol level was determined to be .15. The discipline imposed for this case was a Conditional OR. Sergeant A had no prior Alcohol Related complaints.

### **CASE C**

At approximately 0315 hours, Civilian A was off-duty and driving his personal vehicle on a public highway. An officer from an outside area law enforcement agency observed Civilian A weaving across traffic lanes. Based on his driving pattern, the officer stopped and detained Civilian A. During the course of his investigation, the officer observed that Civilian A displayed the objective symptoms of intoxication. Following field sobriety tests, Civilian A was placed under arrest for driving while under the influence of alcohol. Civilian A was determined to have a blood alcohol level of .10. The discipline imposed for this case was a Conditional OR. Civilian A had no prior Alcohol Related complaints.

### **CASE D**

At approximately 2240 hours, Officer A was off-duty and driving his personal vehicle on a public highway when he was involved in a non-injury traffic collision. Outside area law enforcement personnel responded to the scene and conducted a traffic collision investigation. During the course of the investigation, the officers observed that Officer A displayed the objective symptoms of intoxication. Following field sobriety tests, Officer A was placed under arrest for driving while under the influence of alcohol. Officer A was determined to have a blood alcohol level of .19. The discipline imposed for this case was a five-day suspension. Officer A had no prior Alcohol Related complaints.



### **CASE E**

At approximately 1745 hours, on-duty Sergeant A, with the permission of his supervisor, left work with the intent to telecommute the remaining four hours of the shift from his residence. However, instead of returning directly to his residence, Sergeant A went to a café and consumed a glass of wine. After Sergeant A left the café, he drove his personal vehicle to his residence and completed his work assignment.

At approximately 2300 hours, Sergeant A, while off-duty, went to a bar where he consumed several alcoholic beverages. Sergeant A became involved in an argument at the bar with two patrons, one of whom struck Sergeant A in the face several times, causing Sergeant A to fall to the floor. Sergeant A's fall caused his holstered pistol to become exposed. A different patron, not knowing that Sergeant A was a police officer, grabbed Sergeant A's pistol and held onto the weapon for safekeeping. Sergeant A was then helped out of the bar and into the parking lot. Once outside, Sergeant A discovered that his pistol was gone and called an outside area law enforcement agency to report the loss of his pistol and the assault. Officers responded and conducted an investigation. Meanwhile, the patron who had taken Sergeant A's pistol for safekeeping, drove to a nearby police station and gave the pistol to law enforcement officers. The discipline imposed for this case was a ten-day suspension and a Settlement Agreement.<sup>9</sup> Sergeant A had no prior Alcohol Related complaints.

### **CASE F**

At approximately 2230 hours, Officer A was off-duty and driving his personal vehicle on the highway when he ran off the roadway and rolled his vehicle. Officer A sustained minor injuries as a result of the collision. His passenger was uninjured. An outside area law enforcement agency responded to the scene to investigate the collision.

During the investigation, Officer A denied that he had been the driver of his vehicle. However, based on physical evidence and the statement of Officer A's passenger, the investigating officer determined Officer A to be the driver. Officer A displayed the objective symptoms of intoxication and was placed under arrest for driving while under the influence of alcohol. During the course of the investigation, Officer A made several derogatory statements toward the law enforcement personnel present.

---

<sup>9</sup> The terms of the Settlement Agreement included: requiring Sergeant A to seek professional counseling through Behavior Sciences Section (BSS); that future Sustained complaints of a similar nature would result in a recommendation for removal at a BOR; Sergeant A agreed to abstain from the use of all alcoholic beverages for three years and to submit to unscheduled and unannounced alcohol testing and to attend Alcoholics Anonymous meetings; and, Sergeant A agreed that if he violates any of the terms and conditions of this agreement, he would be subject to a new charge of Insubordination.

Officer A was transported to a hospital by ambulance. However, before entering the hospital for treatment, he escaped and fled to his residence. Officer A later turned himself in at his assigned station and was taken into custody. Officer A's blood alcohol level was determined to be .20. Officer A was directed to a BOR where he was terminated. Officer A had no prior Alcohol Related complaints.

### **CASE G**

At approximately 0159 hours, Officer A was off-duty and driving his personal vehicle on a public highway. Officer A was traveling approximately 100 miles per hour in a 65 miles per hour zone. An outside area law enforcement agency stopped Officer A. Officer A displayed the objective symptoms of alcohol intoxication. Following field sobriety tests, Officer A was placed under arrest for driving while under the influence of alcohol. Officer A was determined to have a blood alcohol level of .09. The discipline imposed for this case was a Conditional OR. Officer A had no prior Alcohol Related complaints.

### **CASE H**

At approximately 0130 hours, Officer A was off-duty and driving his personal vehicle on the highway. Officer A was traveling 80 miles per hour in a 65 miles per hour zone and was observed straddling lane lines. An outside area law enforcement agency stopped Officer A. Officer A displayed the objective symptoms of alcohol intoxication. Following field sobriety tests, Officer A was placed under arrest for driving while under the influence of alcohol. Officer A's blood alcohol level was determined to be .13. The discipline imposed for this case was a Conditional OR. Officer A had no prior Alcohol Related complaints.

### **CASE I**

At approximately 0730 hours, while on-duty, Civilian A was walking in the hallway of his duty station when he bumped into a file cabinet. Supervisor A, who observed the action, approached Civilian A and asked if he was feeling okay. Civilian A replied that he would be okay in about an hour.

Lieutenant A then spoke to Civilian A. Civilian A admitted that he had been drinking alcohol the night before. Lieutenant A then noticed that in his desk drawer, Civilian A had four unopened cans of beer. Civilian A submitted to a breath test, which revealed a blood alcohol level of .22. The discipline imposed for this case was a Conditional OR. Civilian A had no prior Alcohol Related complaints.

### **CASE J**

At approximately 0244 hours, Officer A was off-duty and driving his personal vehicle on the highway. Officer A was traveling at approximately 70 miles per hour in a 40 miles per hour zone. An outside area law enforcement agency stopped Officer A. Officer A displayed the objective symptoms of alcohol intoxication. Following field sobriety tests, Officer A was placed under arrest for driving while under the influence of alcohol. Officer A's blood alcohol level was determined to be .15. The discipline imposed for this case was a Conditional OR. Officer A had no prior Alcohol Related complaints.

### **CASE K**

At approximately 0237 hours, Officer A was off-duty and driving his personal vehicle on the highway. As Officer A drove past a flare pattern set around a prior traffic collision, he traversed the flares driving inside the protected perimeter. Based on his driving maneuver, Officer A was stopped by an officer from an outside area law enforcement agency. Officer A displayed the objective symptoms of alcohol intoxication. Following field sobriety tests, Officer A was placed under arrest for driving while under the influence of alcohol. Officer A's blood alcohol level was determined to be .12. Officer A was directed to a BOR where he was terminated.<sup>10</sup>

### **CASE L**

At approximately 0145 hours, Officer A was off-duty and driving his personal vehicle on the highway. Officer A, the sole occupant of his vehicle, blacked out, left the roadway, and collided with a tree. An officer from an outside area law enforcement agency responded to investigate the collision. Officer A displayed the objective symptoms of alcohol intoxication. Following field sobriety tests, Officer A was placed under arrest for driving while under the influence of alcohol. Officer A's blood alcohol level was determined to be .19. Officer A had been driving on a suspended license due to a previous DUI arrest. Officer A was directed to a BOR where he was terminated.<sup>10</sup>

### **CASE M**

At approximately 0250 hours, Civilian A was off-duty and driving his personal vehicle on a public highway when he was involved in a single vehicle non-injury traffic collision. Outside area law enforcement personnel responded to the scene and conducted an investigation. During the course of the investigation, an officer observed that Civilian A displayed the objective symptoms of intoxication. Following field sobriety tests, Civilian A was placed under arrest for driving while under the influence of alcohol. Civilian A was determined to have a blood alcohol level of .19. The discipline imposed for this case was a Conditional OR. Civilian A had no prior Alcohol Related complaints.

---

<sup>10</sup> The same officer was involved in Case K and Case L. He had no prior Alcohol Related complaints.

## **CONCLUSION**

Overall, the OIG found that all 13 complaint investigations were thorough, complete, and of good quality. The OIG noted one reportable issue described in the following case.

### **CASE F**

#### **UNDISPUTED FACTS**

The Department generated this complaint after off-duty Officer A was arrested for driving while under the influence of alcohol. Officer A had attended a sporting event with his domestic partner, his cousin, his cousin's wife, and a married couple. During the course of the event, Officer A consumed several alcoholic beverages. When the event was over, Officer A and his partner left in Officer A's personal vehicle. Soon after, Officer A's vehicle became involved in a single vehicle collision on a public highway, which resulted in Officer A being injured. An outside area law enforcement agency responded to the scene to conduct the collision investigation.

When questioned by the investigating officer as to who was driving the vehicle at the time of the accident, Officer A said that his partner had been the driver. When Officer A's partner was questioned, the partner said that Officer A was the driver. The investigating officer observed a burn/mark from a safety belt on Officer A's left shoulder. The investigating officer believed that the mark was substantial evidence indicating that Officer A had been driving at the time of the collision. Officer A displayed the objective symptoms of intoxication and was subsequently placed under arrest for driving while under the influence of alcohol. Officer A was transported to a hospital by ambulance for treatment of his injuries. Officer A's partner was allowed to accompany Officer A in the ambulance. During the trip to the hospital, Officer A or his partner contacted Officer A's cousin by cellular telephone and arranged for the cousin to meet them at the hospital. Officer A's cousin, his wife, and the married couple who had attended the sporting event with Officer A waited at the hospital for Officer A's arrival. Once Officer A arrived, instead of entering the hospital for treatment, Officer A and his partner got into his cousin's vehicle and together they drove to Officer A's home. Officer A later turned himself in at his duty station and was taken into custody. There were no independent witnesses to the traffic collision.

#### **DISPUTED FACTS**

In dispute was whether Officer A was the driver of his vehicle at the time of the accident. According to the cousin's wife, when Officer A and his partner left the sporting event, the partner was driving Officer A's vehicle. The partner later recanted the statement that Officer A was the driver and instead professed to be the driver at the time of the accident. According to the cousin's wife, after Officer A and his partner were picked up at the hospital, Officer A stated several times that he was the driver at the time of the accident.

### INVESTIGATIVE ANALYSIS

Once Officer A was picked up from the hospital, Officer A, his partner, his cousin, his cousin's wife, and the married couple were together when Officer A allegedly made statements regarding being the driver of his vehicle at the time of the accident. The investigation contained statements given by Officer A, his partner, his cousin, and his cousin's wife. The I/O documented in his chronological log that one member of the married couple had been interviewed and that the interview had been recorded. However, neither this witness's paraphrased interview nor a recording of the interview were included among the documentation provided to the OIG. Further, there was no documentation to indicate that the other member of the married couple had been interviewed or that an attempt was made to interview this witness.

The adjudication of this case resulted in Officer A being directed to a BOR where he was subsequently found guilty and terminated from the Department. Moreover, Officer A plead nolo contendere to violating Penal Code section 647(f), drunk in public. Ultimately, interviews of the married couple did not appear to have had an impact on the adjudication of this case; however, as a discrepancy existed as to who the driver was at the time of the accident, each witness potentially had valuable information regarding the incident. Therefore, the OIG would have preferred that the I/O had interviewed all witnesses.

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

During this Quarter, two cases were closed that were determined to be Out of Statute (OOS).<sup>11</sup>

Summaries of the OOS cases are as follows:

### **CASE AA**

Employees A, B, and C were charged with Neglect of Duty in connection with the analysis of evidence in a pending criminal case. When it was discovered that the evidence had been misplaced, Employee D (an unknown employee) was charged with Neglect of Duty for misplacing the evidence and Supervisor A was charged with Neglect of Duty for failing to notify a more senior supervisor that the evidence was missing. After the Department investigated, each allegation was Sustained.

Employee A received a penalty of a two-day suspension, which was militarily endorsed<sup>12</sup> to a five-day suspension. Employees B and C each received a penalty of a one-day suspension, which was militarily endorsed to a two-day suspension. Supervisor A received a three-day suspension that was militarily endorsed to a seven-day suspension. Supervisor A appealed his case to the Civil Service Commission. One of the grounds upon which he based his appeal was that the case was Out of Statute.

---

<sup>11</sup> These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. Both cases are discussed herein.

<sup>12</sup> When Bureau or Group commanding officers have insights or recommendations that differ from the first-level reviewer, any comments or recommendations are included in a separate Intradepartmental Correspondence which becomes a Military Endorsement.

The Department presented evidence and argued at the appeal, in front of a Hearing Examiner, that an uninvolved supervisor was notified about the missing evidence on August 11, 2006, and that Supervisor A was served with his Notice of Suspension in a timely manner on August 13, 2007.<sup>13</sup> Therefore, the case was still within the statute of limitations when Supervisor A was served. However, the Hearing Examiner, after listening to sworn testimony, determined that Supervisor A had notified an uninvolved supervisor that the evidence was missing on or before July 12, 2006, and the statute of limitations began at that time. Supervisor A was served with his Notice of Suspension on September 5, 2007, rendering the case out of statute.

The Civil Service Commission adopted the Hearing Examiner's findings, ruled that the statute of limitations had expired, and that Supervisor A's "suspension is not sustained."

In this case, there were no recommendations of remedial action to avoid similar investigations from going OOS.

Employees B and C filed grievances with the Police Commission arguing that the statute of limitations in their cases had also expired. The Police Commission granted the grievances and dismissed the cases based on the ruling by the Civil Service Commission in Supervisor A's appeal.

### **CASE BB**

On September 17, 2003, a criminal investigation was initiated against Sergeant A. The allegations originated as a result of an ongoing federal/local joint task force investigation, which involved narcotics trafficking. On October 15, 2006, the Department determined that there was insufficient evidence to charge Sergeant A with a crime and the administrative investigation began. Sergeant A was interviewed in regard to the misconduct allegations on November 13, 2006. As a result of the November 13 interview and a subsequent interview conducted in December 2006, allegations of False Statements, Narcotics/Drugs, Neglect of Duty, and Unbecoming Conduct were framed against Sergeant A. As the United States Attorney's Office was continuing its criminal investigation into the narcotics trafficking, that office requested that the administrative investigation into Officer A's misconduct be prolonged until after the indictments were handed down for the other suspects.

Due to possible State criminal charges being filed against Sergeant A, the case was tolled. On March 7, 2007, the Los Angeles County District Attorney's Office declined to prosecute Officer A and the administrative investigation proceeded.

On February 27, 2008, Sergeant A was served with his notice that the Department had Sustained the allegation of False Statements and was directing Sergeant A to a BOR.

---

<sup>13</sup> The Department argued that because August 11 and 12, 2006, was a Saturday and Sunday, the Department had until Monday, August 13, 2007, to serve the employee.

On December 16, 2008, the BOR found Sergeant A guilty of False Statements. During the adjudication of the case, however, the BOR determined that the administrative investigation began on October 15, 2006. As such, the BOR found the allegation to be out of statute and no discipline was imposed.

There were no recommendations for remedial action to avoid similar recurrences contained within the investigative file received by the OIG.

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

During this quarter, three complaints were 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 these cases, including corresponding complaint information, the Commission's findings, and any discipline imposed.<sup>14</sup> Case summaries as well as the Commission's findings are discussed below.

**CASE CC – Unintentional Discharge**

Officer A deployed a Department-issued Benelli semi-automatic shotgun as he assisted in serving a narcotics-related search warrant. At the conclusion of the search, Officer A returned to his police vehicle to download the shotgun to patrol ready. Officer A pointed the barrel of the shotgun in a downward angle as he disengaged the safety; however, he did not conduct a chamber check for live ammunition. Officer A then depressed the shotgun's trigger which resulted in a round being discharged. No injuries occurred as a result of the discharge.

The BOPC found that Officer A's Unintentional Discharge (UD) required a finding of Administrative Disapproval – Negligent Discharge.

In this instance, Officer A violated basic firearm safety rules, which resulted in an UD. Officer A failed to check for a live round in the chamber before depressing the shotgun trigger. Therefore, the UD of Officer A's shotgun unjustifiably and substantially deviated from approved Department training and was negligent in nature.

A finding of Administrative Disapproval – Negligent Discharge is a finding where it was determined that the UD of the firearm resulted from operator error.

The COP determined that Officer A's future performance would be most appropriately addressed through extensive retraining and a personnel complaint for misconduct.

The personnel complaint by the Department alleged that Officer A, while on-duty, negligently discharged his firearm. The Department Sustained the personnel complaint with discipline of a one-day suspension. In its penalty rationale, the Department cited Officer A's five Sustained

---

<sup>14</sup> Discipline for the three CUOF cases contained in this report was imposed by Chief Beck.

complaints for Neglect of Duty and reported that his complaint history reflected a lack of focus by the officer. The Department's intent by this penalty was to modify Officer A's behavior and believed that the penalty was sufficient to prevent reoccurrences. The OIG concurs with the Department's rationale and proposed discipline given that none of Officer A's prior complaints involved UDs and that he would be given firearms safety training in connection with this incident.

### **CASE DD – Unintentional Discharge**

Officer A was on-duty and had finished roll call briefing when, in anticipation of a pistol inspection, he decided to examine his Glock .40 caliber service pistol for cleanliness. To examine his pistol, Officer A exited the station and proceeded to a grassy area to the rear of the building. Standing on the grass, Officer A un-holstered his pistol, pointed it in a downward angle, and pulled the slide back. Upon examination, Officer A observed a live round in the chamber of his weapon. Officer A then, with his finger on the trigger, released the slide which inadvertently caused him to depress the trigger resulting in a round being discharged. Officer A then entered the station but failed to disclose the UD to his supervisor until an hour and a half after the incident.

The Board of Police Commissioners found that Officer A's UD required a finding of Administrative Disapproval – Negligent Discharge.

In this instance, Officer A violated basic firearm safety rules which resulted in an UD. After Officer A observed a live round in the chamber, he failed to remove his finger from the trigger which resulted in a round being discharged from the pistol. Therefore, the UD of Officer A's pistol unjustifiably and substantially deviated from approved Department training and was negligent in nature.

A finding of Administrative Disapproval – Negligent Discharge is a finding where it was determined that the UD of the firearm resulted from operator error.

The COP determined that Officer A's future performance would be most appropriately addressed through extensive retraining and a personnel complaint for misconduct.

The personnel complaint by the Department alleged that Officer A, while on-duty, negligently discharged his firearm and he failed to notify a supervisor of his UD in a timely manner. The Department Sustained both allegations of the personnel complaint with discipline of a Conditional OR. The Conditional OR states that if Officer A commits the same or substantially similar misconduct within the next five years, a ten-day suspension will be imposed. In its rationale, the Department cited that Officer A has no similar complaints; he has received extensive remedial firearms training and that he had been out of the academy for five months at the time of the incident. The application of the discipline in this case was designed to instruct, train, correct, and strengthen Officer A. The OIG concurs with the Department's rationale and discipline.



As a result of Officer A's delay in reporting his UD, a second allegation was framed for Neglect of Duty. The Neglect of Duty allegation was adjudicated as Non-Disciplinary, Actions Could Have Been Different resulting in the issuance of a Comment Card. In its rationale, the Department cited Officer A's inexperience and that the delay in reporting the incident was partially due to the time it took him to research Department policy related to an UD. Upon realizing the significance of his actions, Officer A reported the UD to his supervisor. The OIG concurs with the Department's rationale and proposed discipline given Officer A's short tenure with the Department and the relatively short delay in reporting during which time he attempted to research his reporting responsibilities.

### **CASE EE – Lethal Use of Force**

Sergeant A responded to a location where officers were attempting to take Subject 1 into custody. As Sergeant A arrived, he observed several officers with their pistols drawn. Additionally, Sergeant A observed Subject 1 standing in the street approximately 40 feet from the officers and saw that Subject 1 was armed with a knife. According to Sergeant A, Subject 1 made a motion toward the officers which Sergeant A interpreted as an impending assault. Sergeant A noted that several bystanders were in the immediate area. Believing that it would be unsafe for the officers to fire at Subject 1 due to the bystanders, Sergeant A, who was still driving his police vehicle, decided to drive his vehicle into Subject 1. Without notifying the officers of his tactical plan, Sergeant A drove his police vehicle in front of the officers and struck Subject 1 propelling him onto the hood of the police vehicle. As Subject 1 rolled off the hood, he fled the area. Subject 1 was later located and taken into custody.

A finding of Out of Policy, Administrative Disapproval was rendered by the Use of Force Review Board that reviewed this CUOF investigation. The Office of the Chief of Police adopted their recommendations without amendment, a finding that was unanimously adopted by the Commission.

In this instance, Sergeant A devised and executed a tactical plan without informing the officers present of his intentions. As a result of his tactical plan, Sergeant A placed himself directly in the line of fire of the officers. Sergeant A's actions were not consistent with Department tactical concepts.

Subject 1's actions in conjunction with his distance of 40 feet from the officers did not constitute an immediate threat. Therefore, Sergeant A's use of Lethal Force unjustifiably and substantially deviated from approved Department training resulting in a finding of Administrative Disapproval.

The COP determined that Sergeant A's future performance would be most appropriately addressed through a Tactical Debrief along with Extensive Retraining and the issuance of a personnel complaint.

The personnel complaint by the Department alleged that Sergeant A, while on-duty, utilized unauthorized tactics during a tactical situation and utilized unauthorized force during a tactical situation. The Department Sustained both complaint allegations with a classification of Sustained, No Penalty. In its rationale, the Department cited that Sergeant A devised and executed a tactical plan without communicating his intentions to his fellow officers and, as a result of his actions, fellow officers were placed in jeopardy; his tactical decisions unjustifiably and substantially deviated from approved Department tactical training; his perception that the subject presented an immediate threat was unreasonable; and utilizing the police vehicle to strike Subject 1 was unreasonable. Additionally, the Department noted that a review of Sergeant A's complaint history did not identify any pattern of conduct within the prior five years which was consistent with the allegations in this complaint. The Department Sustained the complaint but imposed No Penalty.<sup>15</sup>

The COP, in his report, wrote that Sergeant A had been involved in two prior CUOF incidents in which "One of them notably identified an issue wherein numerous officers on scene were not aware that Sergeant [A], an officer at the time, deployed or fired the Urban Police Rifle at the suspect, which during the time he fired the weapon, could have caused a potential crossfire situation. This action was similar to this case where Sergeant [A] developed a plan and initiated it without alerting other officers of his plan, resulting in the potential of another crossfire situation."

The OIG does not concur with the decision not to impose suspension days in this case in light of Sergeant A's CUOF history coupled with his multiple poor decisions in this incident.

## **VI. RECOMMENDATION/CONCLUSION**

The Board of Police Commissioners relies upon the OIG to review, analyze, and report to the Commission on each of the Department's Quarterly Discipline Reports to assist the BOPC in assessing the appropriateness of any discipline imposed by the COP. In doing so, historically we have found it useful in assessing the appropriateness of discipline to compare the imposed discipline to applicable Department guidelines and standards. The OIG noted that in 8 of the 13 cases reviewed in this report, the discipline imposed was a Conditional OR. As written guidelines for the use of a Conditional OR do not currently exist, it was difficult for the OIG to assess the appropriateness of the discipline imposed in these cases. As such, the OIG recommends that the Department consider establishing criteria by which to create guidelines for the appropriate use and consistent application of a Conditional OR. Overall, however, the OIG determined that the complaint investigations were thorough, complete, and of good quality.

---

<sup>15</sup> No evidence was located to indicate that the COP was presented with the adjudication for review or approval and as such, may have been unaware of the ultimate decision. In a 15.2 prepared by the OIG to the BOPC on December 18, 2007, entitled Discipline Imposed on Categorical Uses of Force Adjudicated as Administrative Disapproval/Out of Policy by the Board of Police Commissioners, the OIG recommended that "the Chief of Police review the final adjudication and penalty, if applicable, of *all* complaints arising from an AD and/or OP finding by the BOPC."