

LOS ANGELES POLICE COMMISSION

***Review of the
Department's Quarterly Discipline
Report
Third Quarter 2010***



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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**OFFICE OF THE INSPECTOR GENERAL
REVIEW OF THE DEPARTMENT'S QUARTERLY DISCIPLINE REPORT
THIRD 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, the OIG has reviewed the Department's discipline Report for the Third Quarter of 2010, which the Commission received on December 15, 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 cases that were closed during the Third Quarter of 2010. For our review, the OIG selected cases that contained at least one allegation of Unauthorized Force with a disposition of Unfounded. Historically, the OIG has used its review of the Department's 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.

Section IV contains the OIG's review of the one complaint closed during the Quarter, which was determined to be OOS by the Department, including the Department's explanation as to why this case 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.

Section VI contains the OIG's review of additional cases that may be of interest to the Commission.

Section VII contains the recommendations formulated by the OIG.

Section VIII contains the OIG's conclusions.

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 7.6% of the total allegations.¹ The percentages for the ten highest Sustained rates by allegation type this Quarter in descending order were as follows:

TABLE 1

Allegation	Sustained Rate	No. of Sustained Allegations/ Total Number of Allegations
Shooting Violation	100.0%	1/1
Insubordination	93.8%	30/32
Alcohol Related	83.3%	10/12
Misleading Statements	66.7%	4/6
Narcotics	66.7%	6/9
Failure to Qualify	53.3%	8/15
Failure to Report Misconduct	50.0%	1/2
Preventable Traffic Collision	50.0%	1/2
Domestic Violence	36.4%	4/11
Improper Remark	29.4%	10/34

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¹ Total number of Sustained allegations/total number of allegations = 209/2762 = 7.6%. 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.²

TABLE 2

Classification of Misconduct	Sustained Allegations/ Total Allegations	Sustained Rate	Misconduct Type as a Percentage of Allegations	Number of Accused Employees	Number of Employees w/ Sustained Allegations
Accidental Discharge	0/1	0.0%	0.0%	1	0
Alcohol Related	10/12	83.3%	0.4%	8	8
Biased Policing	0/120	0.0%	4.3%	104	0
Discourtesy	7/552	1.3%	20.0%	392	6
Discrimination	0/13	0.0%	0.5%	4	0
Dishonesty	2/7	28.6%	0.3%	6	1
Domestic Violence	4/11	36.4%	0.4%	6	2
Ethnic Remark	2/15	13.3%	0.5%	10	2
Failure to Appear	2/27	7.4%	1.0%	27	2
Failure to Qualify	8/15	53.3%	0.5%	14	7
Failure to Report Misc.	1/2	50.0%	0.1%	2	1
False Imprisonment	1/217	0.5%	7.9%	185	1
False Statements	3/68	4.4%	2.5%	53	3
Improper Remark	10/34	29.4%	1.2%	19	6
Insubordination	30/32	93.8%	1.2%	8	6
Misleading Statements	4/6	66.7%	0.2%	5	3
Narcotics	6/9	66.7%	0.3%	6	3
Neglect of Duty	47/530	8.9%	19.2%	376	38
Off-Duty Altercation	0/2	0.0%	0.1%	2	0
Other Policy/Rule	6/81	7.4%	2.9%	54	4
PTC	1/2	50.0%	0.1%	2	1
Retaliation	0/3	0.0%	0.1%	0	0
Service	0/11	0.0%	0.4%	9	0
Sexual Misconduct	2/10	20.0%	0.4%	4	1
Shooting Violation	1/1	100.0%	0.0%	1	1
Theft	5/32	15.6%	1.2%	15	1
Unauthorized Force	1/275	0.4%	10.0%	197	1
Unauthorized Tactics	4/64	6.3%	2.3%	56	3
Unbecoming Conduct	52/518	10.0%	18.8%	310	28
Unlawful Search	0/92	0.0%	3.3%	66	0

² 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

	Sustained Allegations/ Total Allegations	Overall Sustained Rate (Including PTCs, FTAs, & FTQs)	Sustained Allegations/ Total Allegations (Minus PTCs, FTAs, & FTQs)	Overall Sustained Rate (Minus PTCs, FTAs, & FTQs)
Command Staff	0/12	0.0%	0/12	0.0%
Lieutenant	0/12	0.0%	0/12	0.0%
Sergeant	23/155	14.8%	23/154	14.9%
Detective	24/207	11.6%	22/205	10.7%
Police Officer III	21/459	4.6%	21/455	4.6%
Police Officer II	58/1232	4.7%	51/1200	4.3%
Police Officer I	12/164	7.3%	10/160	6.3%
Reserve Officer	1/4	25.0%	1/4	25.0%
Detention Officer	2/16	12.5%	2/16	12.5%
Civilian Personnel	68/501	13.6%	68/501	13.6%
Allegation Total	209/2762	7.6%	198/2718	7.3%

During this Quarter, 7.6% of all misconduct allegations against Department employees were Sustained. When PTCs, FTQs, and FTAs were excluded, 7.3% of all allegations were Sustained.

III. CASE REVIEWS

In preparation for the OIG's Third Quarter 2010 Quarterly Discipline Report (QDR), the OIG randomly selected cases that closed during the quarter which contained at least one allegation of Unauthorized Force with a disposition of Unfounded. Given the OIG's concern that the relatively small number of cases might increase the likelihood that the individually involved officers might be identified, the OIG has elected to exclude case numbers of individual complaints in this Open Session report.³ 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 114 complaints that contained at least one allegation of Unauthorized Force with a disposition of Unfounded that were closed during the Third Quarter of 2010. The OIG

³ 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.

chose a random sample of 25 complaints for review. The sample size was calculated based on a 95% confidence level, an expected error rate of 6%, and a plus precision of 7%.

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 (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.

Overall, the OIG found that the 25 complaint investigations were of good quality, well investigated, complete, and with one exception (Case C), the information gathered was sufficient to allow the adjudicator to make an informed decision. The OIG concurred with the disposition of each case with the exception of Case C. However, the OIG noted issues in the following three cases which it believed merited further discussion in this report.

CASE A

SUMMARY

The complainant, a male White, while walking along the sidewalk became involved in a verbal dispute with members of a Latino family who were standing nearby. The complainant observed Witness A, a 10-year-old female member of the Latino family, staring at a prominent birthmark on his face. The complainant asked Witness A what she was staring at. Witness A responded that the complainant was crazy. Witness A and her family then continued along the sidewalk. The complainant followed the family and challenged Witness A's father to a fight. Subject 1, the mother of Witness A, after hearing the complainant challenge her husband to a fight, used the umbrella that she was carrying to strike the complainant on his back. This prompted the complainant to call 911 and report the assault.

Officers A and B arrived, contacted both parties, and began an investigation. As the officers began talking with the complainant, the complainant referred to the members of the Latino family as "F**king Mexicans, they are f**king immigrants and can't get a job here." The

complainant's demeanor led the officers to believe that the complainant was a threat to the safety of the officers and the family members. As such, the officers handcuffed the complainant.

After the officers handcuffed the complainant, the complainant lunged across the police vehicle toward the family members and yelled, "You f**king piece of sh*t Mexicans." The complainant was then placed inside the police vehicle. As the officers were conducting their investigation, the complainant referred to Officer A as the "Chinese girl thing" and Officer B as "Hispanicky." At the conclusion of their investigation, the officers completed a crime report, which named the complainant as the victim of a battery committed by Subject 1.

In all, investigators formed ten allegations for this complaint, including that an officer was discourteous; two officers failed to thoroughly investigate a crime; two officers threw the complainant's backpack on the ground; one officer unnecessarily handcuffed the complainant; two officers used excessive force; and two officers were racially biased toward the complainant when they showed favoritism to the Latino family. All of the allegations were adjudicated as Unfounded.

UNDISPUTED FACTS

Subject 1 used her umbrella to strike the complainant on the back. The complainant was handcuffed, searched, and placed inside a police vehicle until the investigation was concluded. A crime report was generated listing the complainant as the victim of a battery.

DISPUTED FACTS

The complainant alleged that Officers A and B displayed concern and sympathy for the Latino family, thus showing favoritism toward the members of the family. The complainant alleged that showing favoritism toward the Latino family was a racially biased act on the part of Officers A and B. Further, the complainant alleged that Officers A and B unnecessarily handcuffed the complainant and slammed him against a police vehicle in a display of Unauthorized Force. The officers denied the allegations.

INVESTIGATIVE ANALYSIS

The supervisor who initially interviewed the complainant, knowing that some of the allegations involved Unauthorized Force and Biased Policing, encouraged the complainant to participate in the Alternative Complaint Resolution (ACR) process. Initially, the complainant agreed to resolve his complaint in this manner. However, at the conclusion of the process, the complainant was not satisfied with the outcome and as such, a complaint investigation was initiated.

Department policy defines ACR in relevant part as follows:

A Non-Disciplinary or Disciplinary complaint may be designated for the ACR mediation process when all to the following criteria are met:⁴

- The complaint of the alleged misconduct is Non-Disciplinary or Disciplinary but minor in nature (e.g., discourtesy, disrespect, or a minor Neglect of Duty, etc.) as alleged by the public;

⁴ Los Angeles Police Department Manual 2005, Volume 3, Section 819.

- The employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he is accused; and,
- The complainant and the employee have agreed to participate in good faith.

Allegations formed in this case included Unauthorized Force and Biased Policing. Neither of these allegations should be considered minor in nature and as such, the OIG believes initial efforts by the interviewing supervisor to initiate the ACR process in this case were inappropriate. It was this concern which the OIG believed merited further discussion in this report.

CONCLUSION

As to the ultimate adjudication of the allegations, the OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision, and we agree with the disposition of Unfounded for all of these allegations. Among other things, Officer C's Discourtesy allegation involved him failing to stop and assist the complainant. The investigation revealed that although Officer C stopped at the scene, he was transporting a prisoner in his vehicle and was unable to investigate the crime. By his own admission, the complainant agreed that he instigated the confrontation with the Latino family and was uncooperative with Officers A and B. The investigation revealed that the complainant's aggressive actions justified the complainant's detention inside the police vehicle while Officers A and B conducted an investigation. The complainant described the officers throwing his backpack on the ground but was unable to provide a more descriptive account of the details, and the adjudicator concluded that dropping the complainant's backpack on the ground by itself was not misconduct. Detectives reviewed the crime report which listed Subject 1 as the suspect and subsequently closed the case as Unfounded. There were no marks or bruises on the complainant to support the battery allegation. Moreover, the complainant did not provide any statements or observations which supported his allegation that the officers were biased.

CASE B

SUMMARY

At approximately 1:00 a.m., the complainant, who had been inside his residence drinking alcohol, decided to walk to a nearby store to purchase more alcohol. Officers A and B were on patrol in a marked police vehicle. The officers observed the complainant walking along the sidewalk and noted that he was stumbling and yelling at passing traffic. The officers contacted him to assess his condition. The officers noted that the complainant's eyes were red and bloodshot and that he had a strong odor of alcohol about his person. The officers ordered the complainant to raise his hands but instead he put them inside his jacket pockets. The officers feared that he may be reaching for a weapon and grabbed his arms, removing them from his pockets, placed him in an arm control hold, and put his arms behind his back. The officers moved the complainant to their police vehicle, which they used as support to control the complainant's movements while they handcuffed him. The complainant, given a choice of being taken to jail or a sober living facility, chose the latter and was then transported to a sober living facility. Once accepted into the facility, the officers released the complainant and resumed patrol duties.

Allegations that both officers arrested the complainant without cause and that one officer used excessive force against the complainant were Unfounded.

UNDISPUTED FACTS

The complainant was in a public place when he was contacted by the police officers. The complainant had consumed alcoholic beverages. The complainant was detained, handcuffed, placed in a police vehicle, and transported to a sober living center.

DISPUTED FACTS

The officers claimed that the complainant was intoxicated to the extent that he was unable to care for his own safety or the safety of others. The complainant disputed this claim. The complainant alleged that prior to handcuffing, he was unnecessarily thrown against the police vehicle. The officers disputed this claim.

INVESTIGATIVE ANALYSIS

Initially, the Department framed three allegations of False Imprisonment and Unauthorized Force. During the OIG's review of the recordings in this investigation, the OIG noted that the investigating officer (I/O) asked the complainant what he believed was the biggest complaint he had regarding this issue. The complainant responded by saying, "a Black guy walking down the street at 1:00 o'clock, what is going on with him?" The OIG believed that the complainant's response involved an allegation of Biased Policing and should have been framed as such.

The OIG brought this additional allegation to the attention of Internal Affairs Group (IAG) who re-opened the case and conducted a supplemental investigation. In February of 2011, IAG completed its investigation into the complainant's allegation that he was detained without cause and that a Black man could not walk the streets of Los Angeles at 1:00 a.m., without being stopped by the police.

CONCLUSION

The OIG believes that there was enough information gathered during the investigation for the adjudicator to make an informed decision as to the three initial allegations, and we agreed with the resulting dispositions for those three allegations. All allegations were adjudicated as Unfounded. The rationale for the False Imprisonment allegations was that the officers determined that the complainant was indeed intoxicated and he was transported to a sober living facility for treatment. The rationale for the adjudication of the Unauthorized Force allegation was that the officers' actions were consistent with their training to use a stationary device, in this case the car, as a controlling agent to contain the movement of an intoxicated person.

As it related to the supplemental investigation into the complainant's Biased Policing allegation, according to the adjudicator, the complainant did not provide supporting evidence for his statements and was unable to explain how his race was a factor in the officer's decision to stop him or transport him to a sober living facility. Additionally, the adjudicator determined that there were no chemical tests or documentation to corroborate the officer's opinion that the complainant was intoxicated and unable to care for his own safety. No independent witnesses were found that could confirm or refute that the complainant was intoxicated. As such, the

adjudicator determined that the most appropriate disposition was Not Resolved. The OIG concurs with the adjudicator's finding as to this allegation.

CASE C

SUMMARY

Subject 1, while driving his vehicle, pursued and fired rounds at Victim A. Victim A drove into the rear parking lot of a police station to escape Subject 1. Subject 1, however, followed Victim A into the parking lot where he continued to fire rounds. Officers observed the confrontation and interceded. Subject 1 fled. Officers A and B pursued Subject 1 a short distance to his residence where he stopped. The officers observed Subject 1 throw a firearm from his car before they ordered him to exit. As the officers were taking Subject 1 into custody, a Non-Categorical Use of Force (NCUOF) occurred, which resulted in Subject 1 suffering a broken nose. Subject 1 was taken into custody where he was treated for his injuries. As a result, a NCUOF investigation was conducted by an area supervisor.

The Department supervisor who conducted the NCUOF investigation indicated that he "canvassed [the block where the suspect was taken into custody] for additional witnesses with negative results. Due to the late night hour that the incident occurred, no witnesses to the incident were located."

The only witnesses who were interviewed in connection with the NCUOF investigation were the involved and witnessing police officers.

Accordingly, as a result of the NCUOF investigation, the NCUOF was adjudicated as in policy.

Four days after the incident, Subject 1's sister called the IAG hotline to complain that her brother had given up and was in a prone position when unknown uniformed officers handcuffed him, then slammed him into the pavement numerous times and kicked him in the face. These unknown officers then slammed Subject 1's head into the side of a parked car several times.

The complainant also indicated she had spoken to Witness A who resided on the same block as where the incident occurred (the same block the NCUOF I/O indicated he had canvassed without success) who claimed to have videotaped the officers slamming Subject 1's head into the car but that the police had taken his camera away and erased the videotaped footage. The complainant also indicated that Witness A's mother (who also lived on the same block) was an additional witness to the incident.

As a result, a complaint investigation was initiated, and three allegations were framed: that Unknown officers used unauthorized force against Subject 1, Unknown officers kicked Subject 1 in the face, and that unknown officers erased video footage from Witness A's camera. The allegations of unauthorized force and Subject 1 being kicked in the face were adjudicated as Unfounded against Unknown officers and the allegation involving the video footage was adjudicated as Not Resolved against Unknown Officers.

UNDISPUTED FACTS

After his arrest, Subject 1 was treated for a broken nose. At the time of the complaint investigation, Subject 1 was in custody for attempt murder and the case was about to be settled with a plea agreement in connection with which Subject 1 was going to admit guilt on two counts of attempted murder and two counts of attempted murder on a police officer.

The NCUOF investigation included as addenda pictures of the suspect's bloody nose and face, as well as a picture of a white SUV with what appeared to be blood all over the right rear window and side panel.

DISPUTED FACTS

The complainant, Witness A, and Witness A's mother (Witness B) all indicated that Subject 1 was not resisting when the officers used force on him. Per the NCUOF investigation, the involved and witness officers, who were not interviewed as part of the complaint investigation, contradicted the claim that the suspect posed no resistance to be taking into custody. According to the complainant, unknown officers pounded Subject 1's head into the ground and against a car. According to Witness A, as officers took Subject 1 to the ground, they struck him with their knees, feet and arms, and an unknown officer suddenly ran up and kicked Subject 1 in the face. Moreover, several officers later struck Subject 1's face against the window of an adjacent white SUV, estimated at 10-15 times by Witness A due to all the blood left on the vehicle. According to Witness B, the officers pulled the complainant out of his vehicle, placed handcuffs on him, and threw him to the ground. Then they struck him with a baton several times, and kicked him in the face and body, as well as punching him. They then stood him up and took him next to a white van and, though she could not see what they were doing, she could hear the impacts against the white van.

As it relates to the camera issue, Witness A indicated that he observed that Subject 1, who was a close family friend, was intoxicated, so Witness A went inside to retrieve a camera because he felt something was going to happen. Witness A attempted to get the camera to record but was unsuccessful. An unknown nephew turned the camera on record. Witness A then observed what he described to be the unnecessary force used against Subject 1, including an unknown Hispanic officer kicking Subject 1 in the face. This same officer told Witness A that if he approached any closer, they would take him to jail. Witness A then claimed several officers flashed their lights at him to block his recording.

In addition, Witness A indicated that officers patted him down and told him he "couldn't have anything on [him] while standing outside." Then, a male White officer took the digital camera from him and went inside his residence. The officer did not exit the front so Witness A felt he must have gone out the back of the residence. Approximately 30 minutes later, Witness A was allowed to go inside his residence. He found his camera on a counter and determined that there was no video recorded when he retrieved it as well as some photographs which he took earlier at a party which were deleted.

As described in more detail below, since no officers were interviewed in connection with the complaint investigation, and since none of the complainant's or witnesses' claims were

referenced in the NCUOF, the OIG believes the above-described claims of the complainant and witnesses A and B are more appropriately described as "disputed."

INVESTIGATIVE ANALYSIS

Consistent with Department policy, a NCUOF investigation was initiated immediately following the incident. As part of that investigation, the NCUOF I/O indicated that he canvassed the area but was unable to locate (non-police) witnesses to the incident. The NCUOF I/O opined that the canvass failed to locate witnesses due to the early morning hour when the incident took place. The NCUOF investigation ultimately determined that the actions of all involved officers were in policy.

In its review of the complaint investigation, the OIG noted that the complaint I/O relied upon the "statements" provided by Officers A, B, C, and D in connection with the NCUOF investigation. No further interviews were conducted by the IAG I/O of the officers in connection with the complaint investigation.

According to the NCUOF investigation, the officers' statements to the NCUOF I/O regarding the force used were "consistent with the arrest report."⁵ However, as no mention was made during the NCUOF investigation of the specific claims asserted in the subsequent complaint investigation including that Subject 1 was kicked in the face, slammed against the pavement, or slammed against a vehicle, the OIG believes it was incumbent upon the complaint investigators to conduct follow-up interviews with the officers to address these new claims regarding the force alleged to have been used against Subject 1 as he was being taken into custody.⁶

The OIG believes that the involved officers were critical witnesses to this incident and should have been interviewed by the complaint I/O to assess the validity of the complainant and witness accounts, not only as to their claims of additional force used against Subject 1 that were not described in the NCUOF investigation, but also Witness A's allegations regarding the events surrounding his efforts to film the incident.

Moreover, the OIG's review of the tape-recorded interviews with the complaint witnesses reveals what we believe to be inadequate efforts by the complaint I/O to solicit additional physical descriptors of the officers involved in the alleged misconduct to assist in identifying them.

⁵ Department Special Order No. 13 (May 26, 2004) (NON-CATEGORICAL USE OF FORCE REPORTING – REVISED) provides in relevant part, "Tape recording interviews with Department employees is not required. The related crime and/or arrest report or Form 15.7 will serve as documentation of the involved Department employee statement."

⁶ The NCUOF investigation indicates that, due to the pending criminal investigation for attempted murder, the NCUOF I/O was advised by Robbery Homicide Division (RHD) detectives not to *Mirandize* or interview Subject 1 in connection with the NCUOF investigation. However, an I/O Note in the complaint investigation indicates that "[a]t the time of the UOF investigation, [Subject 1] did not give a statement and was not interviewed because he subsequently invoked his Miranda rights. The [complaint] I/O received permission from [his] attorney . . . to conduct a digitally recorded interview of him while in custody." According to that interview, Subject 1 did not recall being arrested or anything that occurred on that day.

On a related note, the complaint investigation framed and adjudicated the allegations against Unknown officers. As it relates to the allegations of force, we believe that the universe of officers who could have been involved in the application of force against the complainant was arguably limited, especially since the NCUOF I/O identified four officers who were involved in applying force while taking Subject 1 into custody. The OIG believes that had the complaint I/O actually interviewed these officers, as well as the witness officers identified in the NCUOF investigation, allegations could have been framed and properly adjudicated against named officers. Further, interviewing at least the involved and witness officers, combined with asking for further identifying information of Witness A regarding the officer involved in the alleged seizure of his camera, could have also assisted in framing and adjudicating the second allegation against a known officer.

Finally, the OIG believes the statements of Witness A and Witness B (who referred to Subject 1 as "my son") that they were present in the early morning hours when Subject 1 was taken into custody and that they, as well as a "crowd," were questioning officers as to why they were hitting the complainant, raise questions as to the adequacy of the NCUOF I/O's efforts in canvassing for witnesses to the use of force. Though the I/O who conducted the NCUOF investigation indicated that he "canvassed [the block where the suspect was taken into custody] for additional witnesses with negative results," and ascribed his inability to locate witness to "the late night hour that the incident occurred," it should be noted that both Witness A and Witness B indicated that they were outside, observing the use of force, when it occurred, as well as a "crowd" as described by Witness A. Though it is possible that Witness A and Witness B did not want to speak to the NCUOF I/O, the question still remains as to why they or other members of the alleged "crowd" were not identified as potential witness by the NCUOF I/O. Moreover, it should be noted that the complaint I/O never addressed with either Witness A or B whether any attempts were made to contact them by the NCUOF I/O in the aftermath of the use of force.

CONCLUSION

The rationale for Unfounding the Unauthorized Force adjudication included the fact that the NCUOF investigation went through several levels of review, each of which determined that the force used on Subject 1 was "In Policy." In addition, the adjudicator claimed there were several discrepancies⁷ between Witness A and B's descriptions of the force that was used on Subject 1. The adjudicator opined that these witnesses' "alleged recollection or perception of how the force was applied by the officers is slanted by their biases, not fact." Finally, the adjudicator relied on the fact that Subject 1 made no claim of unauthorized force when he was interviewed by the complaint I/O.

Though the issue of the appropriate adjudication classification is arguably moot given that the allegations were framed against Unknown officers, the OIG believes that the adjudicator

⁷ These alleged discrepancies include that Witness B claimed officers struck Subject 1 several times with a baton, though Witness A was never sure he observed any officer with a baton during the arrest. In addition, Witness A claimed Subject 1 was taken to the ground, handcuffed, and then beaten. Witness B described Subject 1 as getting handcuffed, then thrown to the ground, then beaten. Witness A described an officer approaching Subject 1 from behind a police car and kicking him in the face. Witness B made no mention of this. Further, Witness B made no mention of officers yelling profanities at Subject 1 and threatening to shoot him, as Witness A had claimed.

improperly discredited the complaint witnesses. That, combined with the failure to interview any of the involved or witness officers, does not support the Unfounded adjudication.

The rationale for Not Resolving the allegation of erasing the video was based on the adjudicator's claim that Witness A admitted that he did not know how to operate the camera and the investigation's claim that no deleted images were located in the camera. Additionally, Witness A refused to provide any other names of possible witnesses who may have been able to provide greater insight to the investigators. Therefore, the adjudicator determined that the investigation disclosed insufficient evidence to clearly prove or disprove the allegation.

Again, the OIG believes that witness or involved officer interviews could have shed additional light on this allegation, including possibly identifying the officer who may have had contact with Witness A and/or taken his camera. Accordingly, the OIG believes that there was insufficient information gathered during the complaint investigation to allow the adjudicator to make an informed adjudication, and, therefore, we disagree with decision to Not Resolve this allegation against Unknown officers.

IV. DISCUSSION OF OUT OF STATUTE CASES

During this Quarter, one case was closed that was determined to be Out of Statute (OOS).⁸

Summary of the OOS case is as follows:

CASE AA

Detective A, while off-duty, allegedly used his position as a police officer to solicit and obtain business for a security company he ran while off-duty.⁹ Additionally, it is alleged that Detective A was engaged in his off-duty business without a work permit from the Department. Further allegations included that Detective A, while on-duty, had on three separate occasions accessed a Department computer system for personal use and while being interviewed by the Department's investigators regarding the allegations, Detective A made several false statements.

Ultimately, several allegations of Unbecoming Conduct, Neglect of Duty, and False Statements were formed against Detective A. The adjudicator Sustained all of the allegations and the COP directed Detective A to a Board of Rights (BOR). The BOR found Detective A guilty on all but one count of misconduct. Detective A was terminated from the Department.

Detective A appealed his case. According to a Superior Court Judgment issued on February 10, 2010, the California Court of Appeal upheld an earlier Los Angeles County Superior Court

⁸ This OOS case is listed in Table N of the Department's Report: Out of Statute Complaints. This case is discussed herein.

⁹ Another officer was allegedly present when this occurred and was charged with Neglect of Duty for failing to report the misconduct. The allegation was adjudicated within the statute of limitations and was found to be Not Resolved.

ruling that two of the counts violated the Statute of Limitations. The Court of Appeal upheld the remaining counts and the case was sent back to the BOR to impose a penalty. The BOR imposed a penalty of termination and Detective A was separated from the Department.

The investigation indicated that the statute of limitations in this case was "tolled beginning May 17, 2005, since it contained criminal allegations of unauthorized access to the [Department computer] system. The case was presented for criminal consideration and rejected by [the City Attorney's Office] on November 16, 2005. The new administrative statute date for this case is May 18, 2006." Detective A was served with the investigation, adjudication, and proposed penalty on March 30, 2006.

The case file did not include information detailing why the case exceeded the statute of limitations. Further, the case file did not include information about what the Department may have done to ensure that similar investigations do not exceed lawful statute requirements.

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

During this quarter, one complaint was closed that related to a CUOF incident 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. The case summary and Commission's findings are discussed below.

CASE BB – Officer Involved Shooting

Officer A was off-duty and driving with his spouse and child in his personal vehicle. Officer A was stopped at a red signal when his vehicle was rear-ended by Subject 1's vehicle. Subject 1 did not stop and fled the scene. Officer A followed behind Subject 1 in an attempt to obtain his license plate number. Subject 1 entered onto the freeway and Officer A followed with both vehicles traveling at excessively high rates of speed. In the meantime, Officer A's spouse called 911 and requested assistance.

Subject 1 left the freeway and Officer A followed as they drove into a residential area. Subject 1 stopped alongside a curb on a residential street and Officer A stopped nearby. Officer A got out of his car and went to his trunk to get a flashlight. Unable to find his flashlight, Officer A grabbed his handgun instead. Meanwhile, Subject 1 made a u-turn and was driving toward Officer A, who now was standing in the roadway alongside his vehicle. According to Officer A, he feared that Subject 1 intended to run him over with his vehicle. In response, Officer A fired three rounds at Subject 1. Subject 1 fled the scene and was not located.

The BOPC found that Officer A's Tactics required a finding of Administrative Disapproval. In this instance, Officer A's pursuit of Subject 1 in his personal vehicle exposed his family and the public to an unnecessary hazard. Officer A stepped out into the roadway and placed himself in the path of the oncoming vehicle. Officer A's actions were contrary to Department policy.

Department policy dictates that an officer shall move out of the path of an approaching vehicle instead of discharging a firearm at the vehicle, when the vehicle itself is the only weapon. The BOPC also found that Officer A's Drawing/Exhibiting his firearm was Out of Policy and required a finding of Administrative Disapproval. Under the circumstances, Officer A's drawing of his firearm did not support a reasonable belief that the situation might escalate to the point where deadly force would be needed. The BOPC found that Officer A's Lethal Use of Force in this case was not objectively reasonable and required a finding of Out of Policy, and required a finding of Administrative Disapproval.

The COP initiated a personnel complaint for misconduct against Officer A based on the BOPC findings. As a result of the personnel complaint, three allegations of misconduct were sustained against Officer A, which resulted in a 15-day Suspension.

The first allegation of misconduct was that Officer A, while off duty, used unauthorized tactics when he followed Subject 1 after the hit and run traffic collision. Following Subject 1 placed his family, himself, and other motorists in danger. Second, Officer A, while off duty, unnecessarily drew his firearm. Lastly, Officer A, while off duty, unreasonably discharged his firearm.

The COP determined that Department policy prohibits shooting at a moving vehicle. According to Special Order No. 1, dated, February 16, 2005, "Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force other than the vehicle . . . the moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants." Officer A fired three rounds. None of the rounds met the Department policy for use of deadly force in relation to a moving vehicle.

The OIG believes that Officer A, the victim of a misdemeanor hit and run collision, used poor judgment in his decision to pursue Subject 1 at a high rate of speed. This action endangered not only his family but also other motorists. Officer A compounded his poor decision by following Subject 1 off the freeway and into a residential area. Subject 1's decision to draw his firearm was not reasonable based on the available facts. Subject 1's fleeing from the scene of a misdemeanor crime did not support a reasonable belief that the situation might escalate to the point where deadly force would be needed. Finally, Subject 1's actions did not rise to the level of deadly force. Officer A chose to leave his vehicle, a position of cover, and place himself in the roadway in the path of Subject 1's vehicle. The only threat to Officer A was from the vehicle itself and he should have moved out of the path of the oncoming vehicle per Department policy.

Officer A did not have a prior history of similar complaints. However, based on the severity of the repeated lapses of judgment committed by Officer A in this case, which placed himself, his family, and other possible motorists in danger, the OIG questions whether a more significant penalty was warranted in this case.

VI. OTHER CASES OF INTEREST TO THE COMMISSION

The OIG noted that the following two cases contained within the Department's QDR might be of interest to the Commission and, accordingly, have analyzed them below.

CASE CC – Ethnic Remark

SUMMARY

Officers A and B, both probationary officers, were assisting with crowd control at a crime scene accompanied by their Field Training Officers (FTOs). Officer A was attempting to move a crowd of bystanders when Supervisor A, the incident commander, approached him and stated, "Are you a wetback or a police officer?" Officer A felt degraded by the comment and later that day told his FTO what had occurred.

Meanwhile, at the same crime scene, Officer B asked his FTO if a citizen could leave that crime scene to go to work. Officer B was directed by his FTO to ask Supervisor A the question. Supervisor A first reminded Officer B in a raised voice that no one comes in or out of the crime scene. Officer B stated that at the time he "had a shocked look on his face for being yelled at for asking a question" and walked away to inform the citizen. As Officer B was walking away, Supervisor A said loudly, "What the f**k did I tell you? I don't need you giving me that f**king stupid face. Just do what the f**k I'm telling you to do." Officer B felt degraded and reported the incident to his FTO immediately after telling the citizen that she could not leave.

Officer A and B's FTOs telephonically contacted an off-duty supervisor and reported the incident that day. A personnel complaint was generated by an uninvolved supervisor and two allegations of misconduct were framed against Supervisor A.

The allegations against Supervisor A included an ethnic remark, "Are you a wetback or a police officer?" and an improper remark, "What the f**k did I tell you. I don't need you giving me that stupid face. Just do what the f**k I'm telling you to do." Both allegations were Sustained.

UNDISPUTED FACTS

Officers A and B were at the same crime scene as Supervisor A. Officers A and B are Hispanic as is Supervisor A.

DISPUTED FACTS

According to Supervisor A, after observing Officer A's failed attempt to move a crowd of bystanders back from a crime scene, he called Officer A away from the crowd and asked him if he was a "Westec Security Guard or Los Angeles Police Officer?" Officer A denied that Supervisor A used the term Westec Security Guard. Supervisor A recalled speaking to Officer B in a "harsh tone" but denied using any profanity during that conversation.

INVESTIGATIVE ANALYSIS

The allegations of misconduct initially formed in the investigation were both framed as Improper Remarks. After an administrative review of the two allegations, the second allegation, involving the use of the term "Wetback," was changed to an allegation of an Ethnic Remark.

The CO adjudicating the complaint determined that Officers A and B separately and independently reported the misconduct to their FTOs, which made them "fresh complaint witnesses." The officers were also independently directed to document the misconduct on an Employee Report Form 15.7. According to the CO, the fact that the officers were willing to document the incident reinforced their credibility. Supervisor A's complaint history was also taken into consideration. According to the CO's Letter of Transmittal, Supervisor A had a prior Discourtesy complaint of a similar nature in which he used profanity with an employee. The CO wrote that Supervisor A's prior complaint was enough to be considered as a possible pattern of conduct.

Initially, Supervisor A's CO recommended that allegation one involving the use of the term "Wetback" be adjudicated as Non-Disciplinary – Employee's Actions Could Have Been Different, Counseling. The CO's rationale was that the accused employee "acknowledged that [Officer A] had a significant Spanish accent that can cause confusion or misunderstanding, then it was his responsibility to compensate for the accent and to ensure that he was fully understood when he gave direction to subordinate officers or when he verbally addressed them during the course of his duties."

The CO recommended that allegation two involving the use of profanity be adjudicated as Sustained with a penalty of an Official Reprimand.

The Bureau CO Militarily Endorsed the Area recommendation, indicating that both allegations be Sustained with a penalty of a four-day suspension and Cultural Diversity training. The rationale for the Military Endorsement was as follows: "[T]he complaint investigation supports that two probationary officers, independent of each other, immediately reported to their respective Field Training Officers that [Supervisor A] directed inappropriate remarks to them. Based on the officers' credibility it is clear that [Supervisor A] responses are self-serving. Therefore, [Supervisor A] failed to accept responsibility for his actions and a more severe penalty is necessary...."

After consideration of the Military Endorsement, the COP ultimately changed the penalty to be imposed on Supervisor A. The final adjudication for allegations one and two was Sustained with a penalty of a Conditional OR. The conditions were that Supervisor A would receive a minimum of a 15-day suspension or demotion or both if he engages in the same or similar type of misconduct during the remainder of his employment with the Department. Additionally, Supervisor A received Cultural Diversity training.

CONCLUSION

The Department Sustained one allegation of Ethnic Remark and one allegation of Improper Remark against Supervisor A. The Bureau CO's recommended discipline for this misconduct was a four-day suspension and Cultural Diversity training. The COP's Conditional OR requires

a minimum of a 15-day suspension, demotion, or both, at the discretion of the COP, for a future similar act. As the Department has not created guidelines or standards for the use of Conditional ORs as discussed in the OIG's prior Quarterly Discipline Report, it was difficult for the OIG to assess the appropriateness of the discipline imposed in this case.

However, given the nature of the allegations, and the potential for liability and repercussions of a supervisor making the kind of comments which were Sustained against the accused, the OIG believes that on the surface the penalty of a Conditional OR appears too lenient, especially in light of the accused's prior history of speaking inappropriately to subordinates.

CASE DD – Biased Policing

SUMMARY

The complainant was stopped at an intersection facing eastbound. As she began to make a right-hand turn to go southbound, a bicyclist "came out of nowhere" into the crosswalk causing the complainant to slam on her brakes. Officers A and B were stopped facing northbound (perpendicular to the complainant). The officers made a U-turn and followed the complainant, now traveling southbound, "ran" her license plate, and pulled her over. The complainant was cited for failing to yield to a pedestrian in a crosswalk.¹⁰

The complainant challenged the traffic citation in a "trial by declaration," and it was dismissed. The complainant said that no reason was given for the dismissal.

The complainant alleged that the officers stopped her because she is White, young, female, has tattoos, was driving a "beat up" car, and was in a Latino neighborhood known for drugs. The complainant further alleged that during the traffic stop, Officer A asked her for her keys in a loud voice and with a forceful tone, and that Officer A did not tell her why she was stopped. The complainant said she asked Officer A if he wanted to see her license and he replied "Yeah I do. Give it to me." The complainant also alleged that Officer A demanded to see what was in the black bag, and while pointing to a white bag that was on the floor of her car, said "That one right there." The complainant showed him the bag which was empty.

The complainant asked Officer B why she was stopped and he told her it was because she almost hit a bicyclist. According to the complainant, Officer B asked her, "Why are you so nervous? Do you have something to hide?" and "What's wrong with you?"

Additionally, the complainant alleged that Officer A lied about the following information on the traffic citation: that the complainant failed to yield to a pedestrian in the crosswalk, that the complainant was the registered owner of the car, and that the complainant was traveling 15 miles per hour at the time of the violation.

¹⁰ The complainant received a traffic citation for violating Vehicle Code Section 21950(a) which states in relevant part, "The driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection . . ." Further, Vehicle Code Section 467(a)(1) states, "A 'pedestrian' is a person who is afoot or who is using any of the following: (1) A means of conveyance propelled by human power other than a bicycle."

Six allegations were framed: that Officers A and B stopped the complainant based on her race, that Officer A unlawfully demanded to see the contents of the bag in the complainant's car, that Officer A was discourteous when he demanded the complainant's car keys and was rude to her during the traffic stop, that Officer B was discourteous to the complainant during the traffic stop, and that Officer A did not advise her of the reason for the traffic stop. The six allegations were adjudicated by the Area as Unfounded based on the following:

“By her own statements, [the complainant] stated he [sic] believed that the officers would have been able to see that she was a short female, but didn't think that they would be able to tell her race [S]he stated that neither [Officer A] nor [Officer B] made any statements that indicated bias.

[The complainant] was unable to articulate what 'rude manner' was. If the statements were in fact stated, they are not misconduct. They are investigative questions. Should they be asked of everyone that an officer encounters, the answer would be 'No.' Tone of one's voice is very subjective. In an instance where a person is the recipient of an adverse action (a traffic ticket), feelings and viewpoints can be skewed. [Officer A's] statement that the bag looked out of place on the floor board of the car [sic]. He wanted to made [sic] sure that it did not contain a weapon. Based on that concern, it was not illegal for him to ask.

[The complainant] stated that [Officer A] did not tell her the reason for the stop. Based on her statements, she was told by [Officer B]. [Officer A] stated he informed her of the reason for the stop at the initial contact. Nowhere does it mandate that a particular officer must be the one that informs you of the reason for the stop.”

UNDISPUTED FACTS

At the intersection, a bicyclist entered the crosswalk when the complainant was attempting to make a right-hand turn. The complainant was not asked to get out of her car nor was she searched. Officer A asked the complainant if she was on probation or parole. She told him that she had an issue as a minor but referenced it being irrelevant now. The citation was later dismissed through “trial by declaration.”

DISPUTED FACTS

Officer A said that the cyclist entered the crosswalk on his bicycle, but when the cyclist could not figure out whether the complainant was going to allow him to proceed across the street,¹¹ he got off his bike and walked it the rest of the way through the intersection. The complainant alleged that the cyclist rode his bike across the entire intersection.

The complainant claimed that Officer A was rude, hostile, yelling, and had no reason to ask about her criminal history or gang membership. Further, the complainant said that she felt uncomfortable and “not safe” because of Officer A's demeanor, tone, and body language.

¹¹ Officer A said he surmised this based on the cyclist's facial expressions.

Officers A and B denied all of the complainant's allegations.

INVESTIGATIVE ANALYSIS

The OIG identified several areas of concern similar to those we outlined in our "Supplemental Review of Biased Policing Complaint Investigations," dated December 1, 2010 (Biased Policing Report). However, it should be noted that the Biased Policing Report was published after this case was investigated. Moreover, this case was not investigated by the Department's Constitutional Policing Unit (CPU) as it was initiated prior to CPU's creation. That being said, we noted the following concerns with the investigation.

a. Assessing the Credibility of the Officers' Claims that they Did Not Know the Race of the Complainant Before Conducting the Traffic Stop

The officers indicated that they could see the gender of the complainant but not her race. However, the officers were not asked why they were able to see her gender but could not discern her race.¹² Further, Officer A indicated that he could see that there was one occupant of the vehicle but did not see her face, although he could see that she was looking at the cyclist in the intersection. The complainant indicated that her driver's side window was broken and, therefore, open. Moreover, the complainant proceeded in a direction that may have afforded the officers an opportunity to see her race before they initiated the traffic stop. Additionally, the incident occurred during daylight hours. None of these issues were explored by the I/O.

b. Evaluating the Officers' Articulation of the Justification for their Actions

Officer A was unable to adequately articulate his legal justification for asking the complainant to turn off her car and give him her keys or to see the bag inside her car. Officer A indicated that whenever he conducts a traffic stop he asks for the person's keys to avoid the potential for flight, pursuit, or escalation of the incident. However, he did not articulate why he believed the complainant posed a risk.¹³ Additionally, he asked to see a bag that was on the floor of the complainant's car because he said it was "something out of the ordinary" so he wanted to make sure it did not contain a weapon or open container. However, he did not explain why the bag looked out of the ordinary and the I/O did not ask him additional questions in this regard.

Additionally, Officer A wrote on the traffic citation that the complainant had been traveling 15 miles per hour at the time of the violation. In his interview, he stated that he wrote that in error and had completed a Citation Correction Form. However, the Citation Correction Form included in the investigation showed a correction regarding the date the complainant was to appear in court, not the speed. The I/O did not address this inconsistency with Officer A.

¹² The officers both said they knew she was female because they could see her long hair but could not remember if the windows were up or down. Both said they knew the windows were not tinted, and there was nothing obstructing their view of the driver.

¹³ In the Letter of Transmittal, this was identified as a training issue: "While there may be circumstances that would make this action reasonable, not every traffic stop dictates that type of action. It is not consistent with our training."

c. Tone/Tenor of Officer(s)' Interaction with Complainant

The complainant alleged that Officer A immediately demanded her keys in a hostile manner. He then asked to see the bag in the car. She indicated that Officer A did not tell her the reason she was stopped. The complainant stated that Officer A asked her if she had a criminal record, if she was in a gang, and if she had drugs or a weapon in her car. After the complainant offered her driver's license to Officer A, she said he asked her if she was on probation or parole, but she told him it was none of his concern. The complainant said she told Officer A that she had been arrested when she was a minor, it was off her record, and did not matter and that Officer A replied, "Let me be the judge of that. I'm in charge of that."

Officer A acknowledged asking for the complainant's keys and to see what was in the bag. However, he denied ever raising his voice or being rude or disrespectful to the complainant.

At a minimum, we believe that the tenor and tone of the interaction between the complainant and the accused officers, based on all of their statements, may have contributed to the complainant's perception that she was the victim of Biased Policing.¹⁴ Moreover, as described in more detail below, we do not believe the investigation contained sufficient information to justify Unfounding the Discourtesy allegations.

ADJUDICATIVE ANALYSIS

The OIG believes that the adjudication of the Biased Policing allegations was not supported by a preponderance of the evidence. First, the I/O improperly characterized the complainant's claim that she "didn't think [the officers] would be able to tell her race." Instead, the tape recorded interview revealed that the complainant stated, "I don't know if they know my race." Further, the officers said they were able to see her gender but they were not asked why they could not see her race when her driver's-side window was open and given her direction of travel in relation to the officers prior to being stopped. Moreover, the adjudicator acknowledged that the officers should have cited the cyclist instead of the complainant. Along those lines, there is no reference in the adjudication to the citation being dismissed. And, ultimately, there were no independent witnesses to this incident.

As to the allegation that Officer A unlawfully demanded to see the contents of the bag in the complainant's car, the OIG believes that Officer A did not sufficiently articulate a lawful justification for this request, including failing to articulate why the bag looked out of the ordinary or why he suspected it may contain weapons or an open container.

Regarding the Discourtesy allegations, the adjudicator indicated that the complainant was unable to articulate what "rude manner" was and that even if the comments were said, the statements were not misconduct. However, the adjudicator also opined that the particular questions would not be appropriate in every circumstance, yet provided no indication as to why they were appropriate here. Further, the adjudicator opined, "In an instance where a person is the recipient of an adverse action, (a traffic ticket) feelings and viewpoints can be skewed." Such language

¹⁴ We believe such cases provide an opportunity for the CO to explore the accused officer's communication skills.

seems to discredit the complainant without accompanying evidentiary support.

Finally, the adjudicator stated that the basis for adjudicating the allegation that Officer A did not advise the complainant of the reason for the stop, as Unfounded was because "Nowhere does it mandate that a particular officer must be the one that informs you of the reason for the stop." However, according to the Department's Traffic Manual, Section 1/304A, "after an appropriate greeting, the citing officer shall immediately inform the violator of the reason he was stopped."

Accordingly, for the above reasons, the OIG believes that the adjudication of the allegations in this case was not supported by the investigation.

VII. RECOMMENDATIONS

The Commission relies upon the OIG to review, analyze, and report to the Commission on each of the Department's Quarterly Discipline Reports to assist the Commission in assessing the appropriateness of any discipline imposed by the COP. The OIG has noted that imposing an OR that includes specified conditions has become an increasingly more common form of discipline. The OIG has also noted that the Department routinely uses the Conditional OR in lieu of alternative discipline, usually suspension days. Additionally, in most cases a Conditional OR carries with it the promise of significantly more severe discipline than would have originally been appropriate for any subsequent violation of a similar act. A Conditional OR, therefore, in practice represents a different level of discipline than an OR without conditions. Moreover, as we have noted in prior QDR's, there are currently no written guidelines for the use of a Conditional OR, which continues to make it difficult for the OIG to assess the appropriateness of the imposition of a Conditional OR in a particular case.

The Department's Quarterly Discipline Report captures and reports data for each classification of discipline including ORs. The Report, however, does not currently distinguish ORs from Conditional ORs. The lack of distinction between these two different forms of discipline creates difficulty for the Commission and the public to gain a true picture of the actual discipline imposed in many cases. As such, the OIG recommends that the Department consider adding language to its Report that provides a clear distinction between an OR and a Conditional OR.

As it relates to Case C, we believe this case raised issues not only about the adequacy of the underlying NCUOF investigation but also the subsequent complaint investigation, specifically as it relates to the sufficiency of the Department's efforts to obtain a complete picture of the nature and amount of force that was used on Subject 1.

We understand that the Department, at the suggestion of the Commanding Officer of IAG, is currently re-evaluating how NCUOF incidents are being investigated, including considering suggestions that the NCUOF I/O be required to record all percipient (non-police) witness interviews and that all percipient witness and involved officers report their observations/actions in a separate Investigative Action/Statement Form, Form 3.11.0.

We recommend that the Commission direct the Department to report back on the status of these discussions at the appropriate juncture.

VIII. CONCLUSION

The OIG reviewed 25 Unauthorized Force investigations in preparing its Report. Overall, with one major exception described above, the OIG found that the investigations were of good quality, well investigated, complete, and the information gathered was sufficient to allow the adjudicator to make an informed decision.

As it relates to the related NCUOF investigations, we commend the Department's efforts to re-evaluate how the approximately 1,700 NCUOF incidents which occur Department-wide are investigated. We look forward to working with them in this regard.