

INTRADEPARTMENTAL CORRESPONDENCE

December 6, 2012
1.13

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: CONDITIONAL OFFICIAL REPRIMANDS - SUPPLEMENTAL REPORT

RECOMMENDED ACTION

1. That the Board of Police Commissioners REVIEW and APPROVE this report.

DISCUSSION

On April 24, 2012, the Board of Police Commissioners directed the Department to complete a supplemental report addressing the use of the Conditional Official Reprimand for sustained complaints resulting from Categorical Use of Force incidents subsequently deemed Administrative Disapproval - Out of Policy. The supplemental report is attached for your review and approval.

If you have any questions, please have a member of your staff contact Deputy Chief Mark Perez, Commanding Officer, Professional Standards Bureau, at (213) 473-6672.

Respectfully,



CHARLIE BECK
Chief of Police

Attachment

INTRADEPARTMENTAL CORRESPONDENCE

November 28, 2012
13.5


TO: Chief of Police

FROM: Commanding Officer, Professional Standards Bureau

SUBJECT: CONDITIONAL OFFICIAL REPRIMANDS - SUPPLEMENTAL REPORT

On April 24, 2012, the Board of Police Commissioners directed the Department to complete a supplemental report addressing the use of the Conditional Official Reprimand for sustained complaints resulting from Categorical Use of Force incidents subsequently deemed Administrative Disapproval - Out of Policy. The supplemental report is attached for your review.

If you or your staff has any questions, please call me at (213) 473-6672.


MARK R. PEREZ, Deputy Chief
Commanding Officer
Professional Standards Bureau

Attachment

**CONDITIONAL OFFICIAL REPRIMANDS
SUPPLEMENTAL REPORT
DECEMBER 5, 2012**

On April 24, 2012, at the direction of the Board of Police Commissioners (BOPC), the Los Angeles Police Department (Department) submitted a comprehensive assessment of the Conditional Official Reprimand (COR) in comparison to traditional approaches to discipline. In response, the BOPC directed the Department to complete a supplemental report addressing the use of the COR for sustained complaints resulting from Categorical Use of Force (CUOF) incidents subsequently deemed Administrative Disapproval - Out of Policy. This report compares the CUOF-related cases for which the accused employee received a COR to those which resulted in other penalty types.

Methods and Data

Using information from the Complaint Management System (CMS) and Use of Force Review Division data, Internal Affairs Group identified all sustained complaints generated as a result of CUOF incidents deemed Administrative Disapproval - Out of Policy by the BOPC, which closed in 2010, 2011 and 2012 through July 10, 2012. The cases resulting in a COR were examined in comparison to those of a similar type which did not result in a COR.

Allegations of misconduct reported in conjunction with the CUOF but not specifically related to the BOPC's adjudication findings were not included in this analysis. For example, when a CUOF was used to effect an arrest and the arrestee reported to the use of force investigator that the officer used profanities or harassed him on prior occasions, those complaints were not evaluated for this report.

Within the specified time period, seven employees received the penalty of a COR from complaints generated out of five CUOF incidents. These cases and the sustained allegations are shown in Table 1 below.

Table 1: CORs & Categorical Use of Force Incidents	Year Closed	Allegations Sustained (No.)
OIS¹ - Negligent Discharge	2010	Officer 1: Accidental Discharge ² (1)
OIS - No Hit	2010	Officer 1: Unauthorized Tactics (1) & Unauthorized Force (1)
		Officer 2: Unauthorized Tactics (1)
OIS - Hit	2011	Officer 1: Unauthorized Tactics (1)
OIS - Hit³	2012	Officer 1: Unauthorized Tactics (1) & Unauthorized Force (1)
OIS - Hit	2012	Detective 1: Unauthorized Tactics (1)
		Officer 1: Unauthorized Tactics (1)

¹ Officer Involved Shooting.

² Although this type of incident is considered to be a Negligent Discharge, the current misconduct allegation type is Accidental Discharge, as specified on the Complaint Statistical Information form, LAPD, Form No. 1.19.

³ One allegation of Unauthorized Force was sustained against Officer 1's partner also. However, the partner (Officer 2) received the penalty of an official reprimand. This case is reported under the separate heading, "Mixed COR Penalty & Traditional Penalty." See Page 9.

A total of fifteen incidents were identified as comparison cases that closed in 2010, 2011 and 2012 through July 10, 2012.⁴ The distribution of these cases is as follows:

Officer Involved Shooting - Negligent Discharge	6 Incidents (involving 6 officers)
Officer Involved Shooting - No Hit	4 Incidents (involving 5 officers)
Officer Involved Shooting - Hit	5 Incidents ⁵ (involving 7 officers)

Because the defined groups to be examined are relatively small, all of the COR and traditional penalty cases identified were included in the analyses rather than taking samples.

Comparative Analysis - CORs & Traditional Penalties

Below is an analysis of sustained personnel complaints generated as a result of CUOF incidents deemed Administrative Disapproval - Out of Policy by the BOPC. The cases for which the accused employee received a COR were compared with those which resulted in other penalty types.

OIS - Negligent Discharge

COR Penalty

Case 1: One Negligent Discharge case resulted in the officer receiving a COR. The Probationary Police Officer I was on-duty unloading his firearm for a weapons inspection at roll-call. Rather than using the loading/unloading barrel designated for that purpose, the officer chose an "open space" behind the station to unload. After pulling back the slide of the semi-automatic pistol to visually inspect the chamber and observing a live round, he released the slide with his finger on the trigger and the weapon discharged. The round was fired into dirt near heavy foliage and did not cause injury or property damage.

One Accidental Discharge⁶ allegation was sustained. The officer had no prior pattern of conduct. The COR indicated that if the officer commits the same or substantially similar misconduct again within five years, he will receive a suspension of at least ten days.

Traditional Penalties

Six Negligent Discharge incidents resulted in sustained complaints with traditional penalties, ranging from admonishment to five suspension days. The backgrounds of the officers varied, including their training, tenure, and experience. The situations, potential for injury, and actual outcomes of the negligent discharges also varied, affecting the penalty and training decisions. The incidents are listed in order of ascending penalties.

⁴ One Law Enforcement Related Injury (LERI) CUOF with a complaint that closed during the specified time period was not included in this analysis because no complaints related to LERIs resulted in a COR.

⁵ One of these incidents is listed under the separate heading, "Mixed COR Penalty & Traditional Penalty" because one officer received a COR while the other received an official reprimand. See Page 9.

⁶ Although this type of incident is considered to be a Negligent Discharge, the current misconduct allegation type is Accidental Discharge, as specified on the Complaint Statistical Information form, LAPD, Form No. 1.19.

Case 1: This incident involved a Recruit Officer six weeks before graduation. During a break from firearms training, he went to the locker room to oil his weapon because he had several malfunctions which he attributed to a lack of oil. The recruits had been warned that they had a round in the chamber and not to handle their weapons once they left the range. Because he was in a hurry to disassemble and oil the weapon, the recruit officer did not conduct a chamber check or chamber clearance drill. With the muzzle pointed toward the floor, the recruit pressed the trigger during disassembly. One round was discharged into the tile floor and no one was injured. One allegation of Accidental Discharge was sustained with the penalty of an admonishment, however the recruit resigned before the penalty was imposed.

Case 2: A Police Officer II, off-duty at his residence, emptied and cleared his weapon to practice dry firing, un-holstering and re-holstering with a new holster. After completing approximately twelve evolutions, he reloaded the weapon. Forgetting that he reloaded, the officer decided to practice one more time. When he pressed the trigger, he discharged one round into the front door of his residence. There were no injuries. One allegation of Accidental Discharge was sustained with the penalty of an official reprimand.

Case 3: A Detective II working a specialized assignment assisted his unit serve a search warrant, which resulted in the seizure of approximately 250 firearms. In order to render the firearms safe while still present at the warrant location, the detective attempted to download a 9mm Heck & Koch semi-automatic handgun. He directed the barrel down toward a rubber mat covering the concrete garage floor. The detective conducted a chamber check and observed a round in the chamber. When he lowered the charging handle to its original closed position, the handgun discharged. The projectile lodged into the rubber mat and garage floor, but did not cause any injury.

Although the detective had a prior negligent discharge in 2006 that resulted in a two-day suspension, it was determined that the circumstances were not similar to this incident.⁷ In this case, one allegation of Accidental Discharge was sustained with an official reprimand and additional training.

Case 4: An on-duty Police Officer II, assigned to the front desk, failed to follow established procedure when she conducted a shotgun inspection at the beginning of watch. She took the shotgun to the loading/unloading barrel and without conducting a chamber check to verify the condition of the weapon, opened and closed the action, causing it to chamber a round. She placed the safety in the "off" position and did not visually inspect the chamber. When she pulled the trigger during the inspection, the shotgun discharged one round into the air, but did not cause any injury or property damage. One allegation of Accidental Discharge was sustained with a penalty of one suspension day.

⁷ The 2006 negligent discharge occurred during the tactical service of a search warrant. While searching a residence for suspects, the detective switched his firearm from his primary hand to his secondary hand and inadvertently pulled the trigger, firing a round into an empty closet.

Case 5: This incident involved a Police Officer II assigned to a specialized enforcement unit. During a search for narcotics at a residence, the officer was armed with a semi-automatic Benelli shotgun, loaded to capacity with one round in the chamber. After the search, the officer walked back to the police vehicle to download the shotgun and return it to "patrol ready." He failed to conduct a chamber check prior to disengaging the safety mechanism and depressed the trigger resulting in an unintentional discharge. Because personnel assigned to special duty assignments who are entrusted to use specialized weapons systems undergo extensive firearms training, it was determined that remedial training alone would not suffice. One allegation of Accidental Discharge was sustained with a penalty of one suspension day.

Case 6: Three off-duty officers, a Police Officer III (Officer 1) and two Police Officers IIs (Officers 2 & 3) met in another city for a night out. After going to two local bars, they went to a hotel room where they discussed dinner plans. Officer 1 decided not to take his pistol because he planned on drinking more alcoholic beverages. He removed the pistol from his pants pocket to unload it, opened the cylinder of the revolver, allowed what he believed to be five rounds fall into his hand and placed them in his pocket. He closed what he believed was an empty cylinder, canted the revolver in what he believed was a safe direction and pressed the trigger discharging a round. The round struck Officer 2 in the abdomen.

One allegation of Accidental Discharge was sustained against Officer 1 with a penalty of five suspension days.

OIS - No Hit

COR Penalty

Case 1: While their unit status showed Code-Six at another location, two Police Officers IIs stopped at a fast food restaurant and encountered a possible robbery suspect who appeared to be surprised by the police presence. The suspect jogged to the restaurant holding his waistband as an object bounced in his right front pants pocket. Although the officers were aware of his suspicious behavior, Officer 1 went into the restaurant without his partner, Officer 2, still intending to get food. The suspect looked in Officer 1's direction and appeared to be surprised and nervous. Officer 1 thought the suspect might have been intending to commit a robbery and made contact.

When the suspect fled, Officer 1 pursued on foot while his partner followed in the black & white. The suspect turned his upper torso and pointed a pistol in Officer 1's direction. Officer 1 drew his pistol and fired. The suspect ran through several parking lots of fast food restaurants. Eventually Officer 2 exited the vehicle and continued the pursuit on foot. Officer 1 saw Officer 2 chasing the suspect and decided to separate in an effort to cut off the suspect's path. Officer 2 yelled the suspect's location to his partner who was out of view.

Officer 2 ordered the suspect to stop. The suspect complied and went to the ground in a prone position. Concerned the suspect would try to escape before his partner arrived, Officer 2 holstered his pistol and approached the suspect to take him into custody. The suspect attempted to escape by pulling away and pushing himself up from the ground. The suspect's movements caused Officer 2's service pistol to fall from his holster onto the sidewalk, about two feet from the suspect's left shoulder. Because he feared the suspect might arm himself, Officer 2 punched the suspect twice on the side of his head. When Officer 1 arrived, he placed his foot on the back of the suspect's neck or head. The suspect stopped resisting and was ultimately taken into custody.

The incident was found to be deficient in several areas including, initiating contact prior to the partner's arrival, updating their location with Communications Division (CD), separation during a foot pursuit, apprehension versus containment and broadcasting during a foot pursuit. Additionally, the Chief of Police was critical of Officer 1's decision to place his foot on the back of the suspect's head area.

One allegation of Unauthorized Tactics was sustained against Officer 2. One allegation of Unauthorized Tactics and one allegation of Unauthorized Force were sustained against Officer 1. Both officers, who had minimal field experience and no similar pattern of conduct, received the penalty of a COR. The CORs stated that if the officers receive a sustained allegation of misconduct involving deficient tactics within the next five years, they will receive a minimum of five suspension days. In addition to receiving training, the officers were required to provide roll-call training to demonstrate their proficiency.

Traditional Penalties

Four OIS - No Hit incidents involving five officers resulted in sustained complaints with traditional penalties, ranging from an official reprimand to termination. These incidents are listed in order of ascending penalties.

Case 1: Two Police Officers IIs, who routinely worked as partners, were on patrol and decided to attempt a consensual encounter with two male pedestrians. Officer 1, the driver, stopped the police vehicle about five feet from the suspects. Officer 2, the passenger, noticed that Suspect 1 looked nervous and appeared to be startled when he saw the officers. As Officer 2 opened his door to make contact, he saw Suspect 1 grab his waistband with one hand and start running. Believing Suspect 1 had a gun, the officers began to pursue Suspect 1 and broadcast that they were in foot pursuit of an armed suspect. Suspect 2 ran in a different direction and out of sight.

At some point, Officer 1, without communicating his intentions to his partner, decided to return to the vehicle because he left the engine running. He activated the overhead lights and proceeded to follow the pursuit.

During the pursuit, Officer 2 observed Suspect 1 holding a handgun. Officer 2 continued the foot pursuit, lost sight of the handgun and observed Suspect 1 unsuccessfully attempt to climb over a wall. When Suspect 1 reached down to the ground as if to pick something up, Officer 2 ordered him to put his hands up, but he did not comply. Then Suspect 1 reached down into the grassy area, produced a handgun and pointed it at Officer 2. Fearing for his life, Officer 2 fired one round at Suspect 1. Although he was not hit, Suspect 1 dropped the gun and climbed over the wall. Officer 2 remained at his location and guarded Suspect 1's gun while a perimeter was established and he was taken into custody.

It was determined that Officer 1 unjustifiably and substantially deviated from approved Department tactical training when he separated from his partner. Officer 1 had no prior pattern of similar conduct. One allegation of Unauthorized Tactics was sustained against Officer 1 with the penalty of an official reprimand and extensive retraining.

Case 2: A Sergeant I and a Police Officer II were conducting surveillance on a suspected narcotics dealer's residence. The suspect entered a vehicle and left the location. The sergeant and officer requested a unit in a black and white police vehicle to stop the suspect, however the suspect's vehicle suddenly pulled into a driveway. The officer exited his vehicle and attempted to detain the suspect, resulting in a foot pursuit. The sergeant followed behind the officer. As the suspect climbed over a wall, the officer believed the suspect pointed a weapon at him and an OIS occurred.

The sergeant arrived at the officer's location and they went to where the suspect was last seen. The suspect fled again. The officer again chased the suspect while the sergeant went to the street to set up a perimeter. The officer entered the same yard as the suspect and was charged by a 115-pound Rottweiler, resulting in a second OIS. The officer continued to another yard where he located the suspect. Because the officer had no handcuffs, he had to await the arrival of another officer to handcuff the suspect.

Several tactical deficiencies were identified in the investigation. The officer engaged in a foot pursuit of a suspected narcotics dealer without his required equipment, including extra ammunition, handcuffs and a police radio. He was also found to be deficient for continuing the foot pursuit following the OIS rather than going into containment mode. The sergeant, as the secondary officer in the foot pursuit, failed to broadcast the location and direction of the foot pursuit or request additional resources. The sergeant was also found to be deficient due to his lack of supervisory oversight. It was determined that both the sergeant and officer intentionally and knowingly separated from each other during the foot pursuit.

Neither the sergeant nor the officer had a similar prior pattern of misconduct. Although the officer received training for prior Non-Categorical Use of Force incidents, none resulted in a complaint investigation. The sergeant and officer each received a sustained allegation of Unauthorized Tactics with the penalty of an official reprimand and extensive retraining.

Case 3: An off-duty Police Officer II, driving with his wife and three-year-old daughter, was the victim of a misdemeanor hit and run traffic collision on a freeway off-ramp. The officer followed the suspect's vehicle, which accelerated away with three occupants inside. Despite requests from his wife to stop, the officer continued to follow the vehicle. When the suspect's vehicle eventually stopped, the officer exited his vehicle and attempted to retrieve his flashlight from the trunk so he could read the vehicle's license plate. While standing at the rear of his vehicle, the suspect's vehicle made a U-turn and headed toward the officer. The officer grabbed his two-inch revolver and stepped into the roadway. As the vehicle approached, the officer moved out of the way and fired three rounds at the driver.

It was determined that the officer used poor judgment, which resulted in an OIS. He placed his family, himself and the public at risk by following the suspect's vehicle, placed his family in a tactical situation with no immediate avenue of escape and fired at a moving vehicle.

Three allegations, one each of Unauthorized Tactics, Unauthorized Force and Shooting Violation were sustained. The officer had no prior pattern of conduct. He was directed to a BOR, relieved of duty pending the investigation and ultimately given fifteen suspension days with extensive retraining.

Case 4: In this case, an off-duty Police Officer II went to a bar with friends. While they were leaving, he became involved in a verbal and physical altercation outside the bar, resulting in an OIS. He fired two to three rounds from inside his vehicle and fled the scene without establishing a crime scene or ensuring the safety of citizens. The officer drove to his residence, removed his shirt and the license plates from his vehicle, and hid them in his residence. He did not contact a supervisor for approximately two hours and only after consulting with other on-duty officers.

The investigation revealed the officer was not in imminent danger. The drawing and discharging of his firearm were found to be unnecessary and inconsistent with Department policy. In addition, the officer (1) was under the influence of alcohol when he discharged his firearm; (2) failed to ensure the safety of citizens after discharging his firearm; (3) failed to ensure the preservation of the OIS scene; (4) failed to report the OIS in a timely manner; (5) removed and concealed evidence from the OIS scene; (6) instructed witnesses to leave, making them unavailable to investigators; (7) operated a vehicle under the influence of alcohol; (8) failed to register his off-duty weapon with the Department armory; and (9) compromised an official police investigation.

The following allegations were sustained: one Unauthorized Tactics, one Shooting Violation, two Alcohol-Related, five Neglect of Duty and four Unbecoming Conduct. The officer, who had no prior pattern of conduct, was terminated at a BOR.

OIS - Hit

COR Penalty

Case 1: Prior to leaving the station for patrol, two Police Officers II gathered information about recent Burglary from Motor Vehicle (BFMV) crimes. The crime reports described the suspects as armed, male Hispanics with short hair. While patrolling the area of the BFMVs, the officers observed a male who matched the suspect description and pulled their vehicle parallel to him with the intent to conduct an investigative pedestrian stop. The suspect looked in the officers' direction and grabbed his front waistband. Believing he was armed, the officers exited the black & white police vehicle and took cover. The officers gave the suspect simultaneous verbal commands to raise his hands. The suspect initially complied with the commands then dropped his hands back to his waistband. The officers saw what they believed to be a firearm concealed in his waistband area. Both officers had their weapons drawn. The suspect complied with the officers' commands to raise his hands and turn around, but remained fidgety and continued to look over his shoulder at the officers.

Officer 1 holstered his weapon and began to approach the suspect to take him into custody. When Officer 1 made contact with the suspect's right arm, a struggle ensued. Officer 2 holstered his pistol and grabbed the suspect's left arm. Because the suspect continued to struggle, Officer 2 used four to five knee strikes in an attempt to gain compliance. The suspect continued to resist, broke free from Officer 1 and placed his hand on the grip of the handgun he had in his waistband area. Officer 2 stepped back, advised his partner he was going to shoot, and fired three rounds at the suspect's upper torso. When the suspect went down and the officers re-approached to take him into custody, the suspect rose to his feet, started to run and reached for his waistband. Fearing he was about to be shot and unaware that Officer 1 had removed the suspect's handgun, Officer 2 fired another round at the suspect's upper torso, causing the suspect to fall immediately.

Officer 1's actions were found to be deficient in the following areas: leaving cover to handcuff an armed suspect, failing to go Code-Six as soon as practicable, failing to request additional personnel and conduct a high-risk prone search once additional officers arrived. One allegation of Unauthorized Tactics was sustained against Officer 1 with the penalty of a COR and extensive retraining. The COR stated that if the officer receives a future complaint where he is alleged to be deficient in his tactics at a CUOF incident, he will receive no less than a 15-day suspension.

Case 2: Three officers, a Detective II, a Police Officer III (Officer 1) and a Probationary Police Officer 1 (Officer 2) accompanied a domestic violence victim to her home after the suspect threatened to kill her. The detective and officers went to her home to check for the suspect, but failed to check inside the residence or look for alternative ways the suspect could gain entry. The officers returned to the house with the victim some time later and allowed her to enter the residence alone. About an hour and a half later, the officers were unable to reach the victim by phone. After making and receiving several disconnected calls to and from her cell phone and hearing screaming in the background, the officers went to the window of the

victim's residence and saw the suspect murder her. Officer 1 shot the suspect who later died from a self-inflicted knife wound.

The detective and Officer 1 each received a sustained allegation of Unauthorized Tactics with the penalty of a COR for tactical deficiencies and retraining. Neither one had a prior pattern of conduct. The detective's deficiencies included poor tactical planning and communication, separation and failure to check to victim's apartment. His COR stated that if he commits the same or substantially similar misconduct in the next five years, he will receive a suspension of at least fifteen days and downgrade to a non-supervisory rank.

Officer 1's deficiencies included poor tactical planning and communication, separation, failure to obtain an emergency protective order, failure to check to victim's apartment, and requesting "back-up" instead of "help." His COR stated that if he commits the same or substantially similar misconduct in the next five years, he will receive a suspension of at least fifteen days. In addition, he was downgraded from a Police Officer III to a Police Officer II.

Mixed COR Penalty & Traditional Penalty

Case 1: Two Police Officers IIs, working a gang enforcement detail, were patrolling in a black & white when they heard a loud noise, which led them to turn their vehicle around. They observed a male black walking on the sidewalk with his hands under his sweatshirt or waistband. Without updating their unit status through CD, the officers drove slowly behind the suspect. Officer 1, the passenger officer, said something like, "Hey," to the suspect from a distance of approximately fifteen feet. The suspect looked over his shoulder at Officer 1 and continued walking while moving his hands under his shirt or waistband. Believing the suspect was armed, Officer 1 alerted his partner (Officer 2) that the suspect was going for his waistband.

Officer 1 unholstered his pistol and continued to watch the suspect. Officer 2 drove next to a parked vehicle, parallel to the suspect. Officer 1 saw the suspect continue to grab at his waistband, observed a dark object in the waistband and yelled, "Gun, gun, gun!" As the officers passed the parked vehicle, Officer 1 pointed his pistol at the suspect through his open window. The suspect turned toward the officers, removed his right hand from his waistband and pointed what Officer 1 believed was a gun at him. The officers ordered the suspect to stop and put his hands up, but he did not comply. The suspect looked at them and approached the black & white.

Officer 2 stopped the vehicle and Officer 1, believing he was going to be shot, fired one round at the suspect and then ducked behind the vehicle's passenger door. Officer 2 simultaneously attempted to place the vehicle in "park," exited the vehicle, drew his pistol and fired one round at the suspect. The investigation revealed that the suspect, who died at scene, had a black cellular phone clipped to his front waistband, but no weapon.

The officers were found to be deficient in several areas including failing to update their unit status and location with CD, closing distance and initiating contact with a suspect while seated in the police vehicle and their use of lethal force. The rounds fired were found to be out of policy because the preponderance of evidence did not support their account that the suspect constituted a lethal threat.

Neither officer had a similar pattern of conduct and both received extensive retraining. One allegation of Unauthorized Tactics and one allegation of Unauthorized Force were sustained against Officer 1 with the penalty of a COR. The COR stated that if in the future he is involved in an OIS in which his use of deadly force is found to be out of policy with substantially similar conditions, he will be directed to a BOR for termination. By initiating contact with a possibly armed suspect, and drawing and exhibiting his weapon while seated in the police vehicle, Officer 1 limited their options and placed his partner and himself at a significant tactical disadvantage.

One allegation of Unauthorized Force was sustained against Officer 2 with the penalty of an official reprimand. Although some of Officer 2's tactics warranted administrative disapproval, his drawing and exhibiting was found to be in policy because it was in response to his partner's statements. Officer 2's Unauthorized Force penalty was mitigated in that his use of force was based on several factors, including, his partner's excited warnings that the suspect had a gun, the suspect's blank wide-eyed stare, his sharp turn and rapid charge toward the officers, and the round Officer 2 heard fired, which was later determined to be his partner's.

Traditional Penalties

Four OIS - Hit incidents involving six officers resulted in sustained complaints with only traditional penalties. All six officers received the penalty of an official reprimand.

Case 1: This incident involved two Detectives IIs, assigned to a specialized enforcement unit, who were enlisted to assist in an investigation after a series of armed robberies. Once the suspects' vehicle was identified, the detectives initiated a surveillance operation. Detectives 1 and 2 observed the suspects appear to scout a location in preparation for a robbery and ultimately commit an armed robbery. With the assistance of additional personnel, they conducted a vehicle containment technique to effect the arrest. Detective 1 saw the right rear passenger suspect turn toward the officers holding a gun, shouted "Gun!" to alert the others and fired two buckshot rounds. Detective 2 thought Detective 1 was under fire and fired one buckshot round and 2 slug rounds in rapid succession. Believing the suspect was seeking cover and remained a threat, Detective 1 fired four additional slug shotgun rounds.

The last four rounds fired by Detective 1 and all rounds discharged by Detective 2 were found to be out of policy. It was determined that the preponderance of evidence did not support their accounts that the suspect remained a threat at that point. Having no prior pattern of conduct, both detectives received one sustained allegation of Unauthorized Force with the penalty of an official reprimand, extensive retraining and were reassigned.

Case 2: A Detective II and other police personnel were conducting surveillance of a suspected robbery suspect. The officers observed the suspect commit a robbery, and then used a vehicle containment technique to stop him. The detective saw the suspect point a gun in the direction of one of his partners, so he fired three rounds at the suspect, striking him. The detective then saw gunfire hit the window of a police vehicle. He believed, mistakenly, that the suspect was firing at the police vehicle, and fired three additional rounds. The Board of Police Commissioners disagreed with the Chief's recommendation and found the use of force out of policy. The Chief of Police directed that the detective receive training and an Official Reprimand for the use of lethal force. The point of difference between the Chief of Police and the Commission hinged on whether the detective had an objectively reasonable belief that the suspect was firing when the detective fired his last three rounds.

The detective, who was involved in a similar incident less than one year prior to this incident, was administratively transferred to another assignment.

Case 3: Two Police Officers IIs, working a uniformed gang enforcement detail, were assigned to conduct high visibility patrol to deter retaliation after a series of rival gang shootings. They observed three known gang members together. The officers' awareness was heightened when they saw one of the gang members immediately separate from the others and walk directly to the front door of an apartment. The gang member positioned himself behind a female and placed his arms around her torso, which the officers found peculiar because they knew she was not his girlfriend and she appeared confused. The officers determined they had reasonable suspicion to detain him because of his actions, the recent shootings, a gang member funeral earlier that day and the officers' experience that gang members often separate from a group when they are in possession of contraband to avoid police contact.

When the officers approached the gang member, he ran and clutched the right side of his waistband. The officers pursued him on foot as he continued running while in possession of a firearm concealed in his waistband. Both officers drew their service pistols. As Officer 1 removed his radio to broadcast the foot pursuit, the suspect looked over his shoulder and pointed a firearm at him. Before Officer 1 had time to react, Officer 2 fired two rounds at the suspect, causing him to drop his gun and fall to the ground where he was taken into custody.

It was determined that the officers substantially deviated from approved tactical training by not notifying CD of their Code-Six location. Though the officers had prior instances of the same tactical deviation, they did not have any that resulted in personnel complaints. Both received one sustained allegation of Unauthorized Tactics with the penalty of an official reprimand and retraining.

Case 4: Two Police Officers IIs were on patrol working a gang enforcement detail. They observed several people gathered on the driveway and front lawn of a residence. Officer 1, the driver, stopped the police vehicle adjacent to the driveway when both officers recognized

several members of a gang consuming what appeared to be alcoholic beverages. When the group was illuminated with a flashlight, the officers saw the suspect immediately secrete an unknown object, which they believed was possibly a handgun, in his waistband and turn away from them. When the officers exited the police vehicle, the suspect ran down the driveway to the rear of the residence carrying a revolver in his right hand. Officer 2 followed the suspect to the rear of the residence with Officer 1 following Officer 2.

As Officer 2 rounded the rear of the property, Officer 1, in an attempt to contain the suspect, returned to the front. The suspect circled toward the front of the property and Officer 1. Officer 1 saw the gun in the suspect's hand and ordered him to drop it. The suspect continued running and pointed the gun at Officer 1. Officer 1 fired his service pistol twice, striking the suspect who fell and was taken into custody.

The investigation revealed that Officer 1's decision to separate from his partner during the pursuit of an armed suspect placed both of the officers at a significant tactical disadvantage and created a potential cross-fire situation. Additionally, it was determined that Officer 1, the secondary officer in the foot pursuit, did not broadcast until after the OIS occurred and the suspect was in handcuffs. Officer 1 had been involved in previous CUOFs where similar issues were identified, though none resulted in a complaint investigation. Three allegations of Unauthorized Tactics were sustained against Officer 1. He was given the penalty of an official reprimand, extensive retraining and administratively transferred to another division.

Comments

Officers in the cases where lethal force was used when it was clearly and indisputably not warranted received penalties commensurate with their actions. Officers in cases where CORs or ORs were used responded with only seconds or fractions of seconds to perceived deadly threats. Each case has its unique attributes. Despite surface similarities with others cases, each case requires the Chief of Police to assess the effects of accountability decisions with the responsibility and understanding of an experienced police executive, recognizing the needs of the individual officers involved, those who may learn about the decisions, and the concerns of the community. These decisions are often complex and can result in disagreement among even the most reasonable, well-informed, and well-intentioned reviewers. Thus the decisions are optimized to achieve many ends, with no single factor necessarily superior in priority to all others. Whatever the accountability decision, the Chief of Police is required by Charter to be the ultimate decision maker in disciplinary cases, and takes this responsibility solemnly and with all stakeholders in mind.