

LOS ANGELES POLICE COMMISSION

***REVIEW OF THE DEPARTMENT'S
QUARTERLY DISCIPLINE REPORT***
2nd Quarter, 2009



Conducted by

OFFICE OF THE INSPECTOR GENERAL

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Inspector General

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I. Introduction

The Los Angeles Police Department (LAPD or Department) prepares a quarterly report regarding discipline imposed, including Categorical Uses of Force (CUOFs) found to be out of policy, within 45 days after the end of each quarter. The Department has completed its report for the Second Quarter of 2009 (Quarter). The Board of Police Commissioners (Commission or BOPC) received its copy of the Department's Quarterly Discipline Report (Department's Report) on August 25, 2009. The Office of the Inspector General (OIG) has reviewed the Department's Report and submits its own Report to the Commission. This report is also submitted to satisfy one of the requirements of the Transition Agreement between the United States of America and the City of Los Angeles dated July 17, 2009.¹

During this Quarter, the OIG interpreted some of the statistical data contained in various tables within the Department's Report. Section II of this Report contains the OIG's analysis of some of the information found within the tables contained in the Department's Report and expands upon the information contained therein.

In Section III, the OIG reviewed cases closed during the Quarter that contained at least one allegation of Biased Policing. On March 31, 2009, the Commission approved the formal revision of the Department's previous policy regarding "Racial Profiling," in favor of adopting the term "Biased Policing." At the same time, the Department issued protocols on this subject, in which the term Biased Policing replaced Racial Profiling. However, as of this writing, various entities within the Department continued to use the term Racial Profiling, and, in fact, all of the closed complaints reviewed by the OIG during this Second Quarter used the term Racial Profiling. Accordingly, within this Report, the OIG will use the specific term utilized by the Department when referring to a specific investigation, report, or chart. The areas focused upon included, but were not limited to, whether the Investigating Officer (I/O) followed the Professional Standards Bureau's Biased Policing Investigations Protocols dated March 31, 2009, whether the investigation was fair and objective, whether the adjudication results were supported by the evidence and whether a reasonable effort was made to identify and interview relevant witnesses and gather pertinent evidence.

In Section IV, the OIG discusses cases closed during the Quarter that were determined to be Out of Statute (OOS). This Report includes five such cases that were closed during the Quarter. The OIG was provided with additional documentation to explain why these cases fell OOS and what remedial action, if any, was taken to avoid similar recurrences.

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

Section VI contains information about the need to update Training, Evaluation and Management System (TEAMS) Reports to reflect the Commission's findings regarding CUOF incidents.

¹ The Transition Agreement requires, in part, that the OIG "to conduct two (2) reviews...., of the Department's policies and protocols pertaining to the prohibition of biased policing." "The OIG shall review a random sample of completed complaint investigations alleging biased based policing."

Finally in Section VII, the OIG provides overall conclusions about the cases that we reviewed this Quarter.

On October 19, 2009, OIG staff met with Internal Affairs Group (IAG) personnel and received a draft response to our preliminary findings in this report. The information provided by IAG in their response was taken into consideration prior to finalizing this report. IAG will submit its formal response to this report at a later date.

II. Analysis of Statistical Information Within the Department's Report

As a result of our review of the Department's Report, we utilized the information provided and conducted some additional analysis to aid the Commission in its review and evaluation of the discipline imposed during this Quarter.

Sustained Information Summary

A classification of an allegation as Sustained means that the Department's investigation disclosed that the act complained of did occur and constituted misconduct. The standard of proof used by the Department in adjudicating administrative complaint investigations is a preponderance of the evidence, which means, "the greater weight of the evidence...that has the most convincing force."²

Using the information contained in the Department's Report, we determined that the percentage of sustained allegations was 10.2% (total number of sustained allegations/total number of allegations = 332/3247 = 10.2%). Also using the information in the Department's Report, we determined that the percentages of sustained allegations for each of the 10 most common allegations this Quarter were as follows, in descending order of sustained rate:

Allegation	Sustained Rate	No. of Sustained Allegations/ Total Number of Allegations
Preventable Traffic Collision	60.6%	80/132
False Statements	22.9%	22/96
Neglect of Duty	11.0%	73/662
Unbecoming Conduct	9.4%	57/607
Other Policy/Rule	5.0%	6/121
Discourtesy	1.6%	8/493
Unauthorized Force	0.3%	1/346
False Imprisonment	0.0%	0/198
Unlawful Search	0.0%	0/100
Racial Profiling	0.0%	0/88

² Black's Law Dictionary 1220 (8th ed. 2004).

Allegation Summary

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

Classification	Sustained Allegations/ Total Allegations	Sustained Rate	Percentage of Total Allegations	Number of Accused Employees³	Number of Employees w/ Sustained Allegations
Accidental Discharge	1/2	50%	0.1%	2	1
Alcohol Related	10/15	66.7%	0.5%	15	10
Discourtesy	8/493	1.6%	15.2%	493	8
Discrimination	0/23	0.0%	0.7%	23	0
Dishonesty	1/7	14.3%	0.2%	7	1
Domestic Violence	9/32	28.1%	1.0%	32	9
Ethnic Remark	2/20	10.0%	0.6%	20	2
Failure To Appear	13/27	48.1%	0.8%	27	13
Failure To Qualify	9/16	56.3%	0.5%	16	9
Failure To Report Miscon.	0/3	0.0%	0.1%	3	0
False Imprisonment	0/198	0.0%	6.1%	198	0
False Statements	22/96	22.9%	3.0%	96	22
Gender Bias	0/1	0.0%	0.0%	1	0
Improper Remark	7/35	20.0%	1.1%	35	7
Insubordination	5/5	100.0%	0.2%	5	5
Misleading Statements	4/9	44.4%	0.3%	9	4
Narcotics/Drugs	2/8	25.0%	0.2%	8	2
Neglect of Duty	73/662	11.0%	20.4%	662	73
Off-Duty Altercation	4/9	44.4%	0.3%	9	4
Other Policy/Rule	6/121	5.0%	3.7%	121	6
Preventable Traffic Coll.	80/132	60.6%	4.1%	133	80
Racial Profiling	0/88	0.0%	2.7%	88	0
Retaliation	1/24	4.2%	0.7%	24	1
Service	0/4	0.0%	0.1%	4	0
Sexual Misconduct	11/32	34.4%	1.0%	32	11
Shooting Violation	1/1	100.0%	0.0%	1	1
Theft	3/44	6.8%	1.4%	44	3
Unauthorized Force	1/346	0.3%	10.7%	347	1
Unauthorized Tactics	2/87	2.3%	2.7%	87	2
Unbecoming Conduct	57/607	9.4%	18.7%	607	57
Unlawful Search	0/100	0.0%	3.1%	100	0

³ Data in this column were taken from Table II in the Department's Report. Employees are separately counted for each complaint and for each allegation type; thus a single employee may be counted repeatedly. Accordingly, the numbers in this column do not match the exact number of employees against whom the allegations were sustained.

Ethnic Remark and Discourtesy Sustain Rate by Year and Quarter

The Commission requested information about the number of complaints that have been initiated that include at least one allegation of Ethic Remark and Discourtesy. We have included that information and the sustained rate for each type of allegation over the last four quarters.

Year/Quarter	Sustained Allegations/Allegations	Overall Sustained Rate
Ethnic Remark		
2009/2	2/20	10%
2009/1	3/12	25%
2008/4	4/20	20%
2008/3	3/17	17.6%
2008/2	1/24	4.2%
Totals	13/93	13.9%
Discourtesy		
2009/2	8/493	1.6%
2009/1	6/565	1.1%
2008/4	12/480	2.5%
2008/3	9/550	1.6%
2008/2	8/594	1.3%
Totals	43/2682	1.6%

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Allegation Summary by Employee Rank – Listed by Allegation Type

Using the information in Table F, the OIG obtained sustained allegation rates, broken-out by rank, calculated both by total allegations, and by total allegations excluding Preventable Traffic Collisions (PTCs), Failures to Appear (FTAs) and Failures to Qualify (FTQs). The results are depicted in the table below.

	Sustained Allegations/ Allegations	Overall Sustained Rate	Sustained Allegations/ Total Allegations (Minus PTCs, FTAs, & FTQs)	Overall Sustained Rate (Minus PTCs, FTAs, & FTQs)
Allegation Total	333/3250	10.2%	231/3074	7.5%
Command Staff ⁴	1/40	5.0%	0/38	0.0%
Lieutenant	10/40	25.0%	6/34	17.6%
Sergeant	25/152	16.4%	18/139	12.9%
Detective	41/288	14.2%	34/275	12.4%
Police Officer III	47/558	8.4%	28/524	5.3%
Police Officer II	132/1287	10.3%	75/1193	6.3%
Police Officer I	24/208	11.5%	20/197	10.2%
Reserve Officer	5/15	33.3%	4/14	28.6%
Detention Officer	0/7	0.0%	0/7	0.0%
Civilian Personnel	47/655	7.2%	46/653	7.0%

Ten percent (10.2%) of all misconduct allegations were sustained during this Quarter. Seven percent (7.5) of all allegations were sustained when PTCs, FTQs, and FTAs were removed.

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⁴ The OIG noted that there was one allegation sustained against Command Staff, for Preventable Traffic Collisions (CF No. 09-001369) this quarter. Table F incorrectly notes that Command Staff had two sustained allegations. TEAMS II Development Bureau reports that it has since corrected the error in this report. Command Staff had forty allegations included in this quarter's Report, which is an increase from the 1st Quarter of 2009 which contained 18 allegations.

III. Review of Biased Policing Cases

A. Statistical Information

As a precursor to our review of the biased policing cases in this report, the OIG noted the following disposition for allegations of Biased Policing for the past five quarters:

Biased Policing 2nd Qtr 2009

Dispositions	No. of CF's	% of Total CF's	No. of Allegations	% of Total Allegations
Duplicates ⁵	2	3.8%	2	2.2%
Insufficient Evidence to Adjudicate	6	11.3%	8	8.8%
No Department Employee	1	1.9%	1	1.1%
No Misconduct	1	1.9%	2	2.2%
Unfounded	44	83%	78	85.7%
Totals	54		91	

Biased Policing 1st Qtr 2009

Dispositions	No. of CF's	% of Total CF's	No. of Allegations	% of Total Allegations
Duplicates	1	1.8%	2	2.5%
Insufficient Evidence to Adjudicate	4	7.1%	4	5.1%
No Department Employee	1	1.8%	1	1.3%
Unfounded	50	89.3%	72	91.1%
Totals	56		79	

⁵ Volume 3, Section 820.05, provides the following information about duplicate complaints: "When a preliminary investigation of a complaint reveals the incident is the same as another complaint already under investigation (Complaint Form [CF] number assigned), the complaint shall be cross referenced with the master CF number of the investigation which is related to the duplicate. Any additional or new information shall be noted as part of the supervisor's preliminary investigation and forwarded to IAG which will close the duplicate complaint, cross reference the CF number to the master complaint CF number, and forward the additional information to the appropriate investigators.

Biased Policing 4th Qtr 2008

Dispositions	No. of CF's	% of Total CF's	No. of Allegations	% of Total Allegations
Duplicates	1	2.4%	2	2.7%
Insufficient Evidence to Adjudicate	2	4.9%	4	5.4%
No Department Employee	2	4.9%	3	4.1%
No Misconduct	3	7.3%	5	6.8%
Unfounded	33	80.5%	60	81.1%
Totals	41		74	

Biased Policing 3rd Qtr 2008

Dispositions	No. of CF's	% of Total CF's	No. of Allegations	% of Total Allegations
Duplicates	1	1.8%	2	2.1%
Demonstrably False	1	1.8%	1	1.1%
Insufficient Evidence to Adjudicate	4	7.0%	5	5.3%
No Misconduct	3	5.3%	5	5.3%
Not Resolved	2	3.5%	2	2.1%
Unfounded	48	84.2%	79	84.0%
Totals	59		94	

Biased Policing 2nd Qtr 2008

Dispositions	No. of CF's	% of Total CF's	No. of Allegations	% of Total Allegations
Duplicates	2	3.6%	2	2.2%
Insufficient Evidence to Adjudicate	2	3.6%	2	2.2%
No Department Employee	5	8.9%	5	5.4%
No Misconduct	2	3.6%	4	4.3%
Policy Procedure	1	1.8%	2	2.2%
Unfounded	44	78.6%	77	83.7%
Totals	56		92	

B. Introduction

Complaints alleging Biased Policing have been an ongoing concern for the Board of Police Commissioners and for the Los Angeles Police Department. As a result, Biased Policing Investigations Protocols (Protocols) were promulgated by the Department and adopted by the Commission first in 2007. The Protocols contain guidelines for the investigations of Biased Policing allegations and have been amended and refined over the last few years. Last year, the Commission requested that the OIG review Biased Policing investigations to determine whether the Protocols are being properly utilized. The results of our review were compiled in a report submitted to the Commission on January 22, 2009. At that time, there were relatively few cases to review which were investigated after the approval of the Protocols dated July 17, 2008. For this review, the OIG was able to analyze a larger number of complaints which were investigated using the Protocols.

C. Definition

The most recent version of the Protocols for investigating Biased Policing allegations was adopted by the Commission on March 31, 2009. The Protocols begin with a definition of Biased Policing from Department Manual Section Volume 1, Section 345, which provides as follows:

Discriminatory conduct on the basis of actual or perceived race, color, ethnicity, national origin, religion, age, gender, gender identity, sexual orientation, or mental or physical disability in the conduct of law-enforcement activities is prohibited. Police-initiated stops or detentions, and activities following stops or detentions, shall be unbiased and based on legitimate, articulable facts, consistent with the standards of reasonable suspicion or probable cause as required by federal and state law.

Department personnel may not use an individual's actual or perceived race, color, ethnicity, national origin, religion, age, gender, gender identity, sexual orientation, or mental, or physical disability (to any extent or degree) in conducting stops or detentions, or activities following stops or detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group.

Department personnel seeking one or more specific persons who have been identified or described in part by their race, color, ethnicity, national origin, religion, age, gender, gender identity, sexual orientation, or mental or physical disability may rely in part on an individual's real or perceived race, color, ethnicity, or national origin, gender, sexual orientation, or disability only in combination with other appropriate identifying factors and may not give real or perceived race, color, ethnicity, national origin, gender, gender identity, sexual orientation, or disability undue weight.

D. The Protocols' Investigative Strategies

The current Protocols were utilized by IAG Investigating Officers (I/O or I/O's) during the investigation of some of the cases reviewed in this report⁶ and establish distinct steps that an I/O can take when investigating Biased Policing allegations. Those strategies are as follows:

Case Preparation:

- Gather and review all documents related to the incident (including but not limited to DFARs, FIs, sergeant's logs, arrest reports, traffic citations, and any audio or video recordings, including in car camera recordings of the incident.
- If applicable and/or feasible, determine final outcome of any related traffic citation, legal proceeding, which complainant alleges was a result of biased policing.
- If CP alleges officer selectively enforced law, allowing persons of other minority status to avoid similar enforcement, examine enforcement activities for the day around time of incident. Document in Investigator's Note.
- Obtain photographic and visual documentation such as tinting of vehicles, diagrams of locations, etc.
- Canvass location, interview all witnesses.
- Generally, all CPs should be interviewed. However, in some instances, letters or other correspondence may provide specific enough information to not require an interview. Decisions to not interview CPs shall be approved by Section OICs. Consideration should be given to sufficient specificity in correspondence, ability to interview the CP, distance of time from the incident to the date of correspondence, other exiting reviews such as court proceedings, etc. The decision to not interview CP shall be documented in an Investigator's Note.

Complainant Questions:

- What behaviors on the part of the officer(s) the complainant believed supported biased policing? *Probe for specific articulation.*
- Actions of officer at scene?
- Could the officer have seen the complainant's race or other factor for bias? Direction of approach of officer?
- CP searched? Location searched? Type of search? Scope of search?
- Length of detention?
- Vehicle windows tinted if driving? Window position at time of stop? (Obtain copy of windows.)
- Complainant's definition or understanding of biased policing? *Probe for specific articulation.*
- Other statements made by officer that indicate bias?
- Officers provide explanation for detention or stop?

⁶ Older versions which were utilized by investigators in the reviewed cases will be attached as appendices to this report.

Officer Questions:

- Reason for the stop, search or detention?
- Obtain details specific to conclusionary statements such as, "officer safety," "uncooperative," "high crime area"; or "consensual encounter." Require articulation.
- Location of officer when first encountered CP?
- Did officer(s) know the race or other factor of bias of subject prior to the stop or detention?
- Was race or bias category (minority status, etc.) a factor in the stop or detention? If the answer is "yes," have the officer(s) explain;
- If there was a search associated with the stop or detention, ask the officer(s) to articulate the reason(s), scope, type and intent of the search.
- Lighting conditions, distance when the officer(s) made the observations?
- Windows tinted? Position of windows at time of initial observation?

Additional Questions for Officer - Other than Self-Initiated Activities:

- Outside information, which lead to detention, such as a radio call, citizen flag down, etc.?
- If outside initiated information caused the detention, determine if the detention was reasonable (i.e., the complainant, in fact matched the description in the radio call). Determine what factors the officer relied upon in concluding that the suspect matched the description of the call.
- Determine if the officer completed any documentation related to the stop, and include this documentation as addenda. If there are no other extenuating circumstances and the reason for the detention, search or other law enforcement activity is reasonable, legal and justified, no further investigation is necessary. (Officer interviews must be conducted.)

The Department also emphasizes that "All completed personnel complaint investigations containing an allegation of Biased Policing shall be reviewed by the Section Officer in Charge and the Commanding Officer, Criminal Investigation Division, or the Commanding Officer, Administrative Investigation Division, and finally, the Commanding Officer of Internal Affairs Group, before distribution to the concerned commanding officer for adjudication."

To assist the I/Os and C/Os in their review, the Department has developed a checklist, which generally incorporates the concepts outlined in the Protocols above that investigators must complete and include in the investigation.

In addition, on September 19, 2009, the Commanding Officer, IAG, met with IAG personnel for a single purpose meeting regarding Biased Policing Investigations. Attending the meeting were the Commanding Officers, Administrative Investigation Division and Criminal Investigation Division, and all of the Officers In-Charge and Assistant Officers-In Charge of every IAG Investigative Section.

During the meeting between IAG, the Commanding Officer reinforced the Department's and IAG's commitment to critically scrutinize the quality and thoroughness of Biased Policing Investigations. In addition to revisiting the Professional Standards Bureau Biased Policing Protocols, dated March 31, 2009, the Commanding Officer re-emphasized various investigative

strategies to examine any alleged constitutional policing violations as they relate to search and seizure, detentions, and arrests.

Furthermore, during the meeting between the OIG and IAG on October 19, 2009, IAG indicated that they were considering assigning a more senior investigator to investigate Biased Policing complaints involving officers with multiple prior Biased Policing complaints to ensure that any subsequent complaints were thoroughly explored.

E. Methodology

This Quarter the OIG conducted in-depth reviews of complaints that contained at least one allegation of Biased Policing. For this Report, the OIG limited the cases reviewed to those that were closed between April 1, 2009 and June 30, 2009. During the second Quarter of 2009, a list generated from the Department's Complaint Management System (CMS) revealed that 53 complaints were closed during this time period, with at least one allegation of Biased Policing. Forty-four of these cases were adjudicated as Unfounded, one was No Misconduct, six cases were Insufficient Evidence to Adjudicate, and two cases were duplicates. It was determined that a random sample would be selected and reviewed.

In order to determine which of the 53 cases would be selected for review, a random number generator was used to select a sufficient set of unique numbers in the range of 1 to 53 to allow for the selection of a final sample of 20 cases. The Department of Justice (DOJ) requested that we include two cases that had allegations of Discourtesy and a Disposition of Not Resolved.⁷ We substituted these two requested cases into the sample and removed two others to reach our final sample of 20 cases.

In conducting this review, a matrix was utilized by first and second-level reviewers. This matrix contained 56 questions designed to evaluate whether the investigators utilized the Biased Policing Protocols and whether the investigation and adjudication properly addressed the complainant's allegation of Biased Policing. In addition, we reviewed 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 the standards enunciated in the Department's "Management Guide to Discipline" (July 2004) and the "Civilian Penalty Guide" to Discipline Standards (January 2008).

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

⁷ CF Nos. 08-004309 and 07-006629.

F. Findings

The OIG previously reviewed Biased Policing cases as a part of our Discipline Report for the Third Quarter of 2008. The Commission asked the OIG to review these cases to determine if the Biased Policing Protocols adopted by the Commission in 2009 were being utilized by the Department during its investigations and what impact they have had on the quality of the investigations. In our 2008 review, the OIG identified investigative issues in four of the seven cases the OIG reviewed, either because all relevant witnesses were not interviewed, not all allegations were framed, or the proper Protocols may not have been used during the investigation. The 2008 review also revealed that investigators were familiar with and showed an understanding of the Protocols and were trained in their usage. Furthermore, IAG implemented regularly scheduled training on the use of the Protocols in Biased Policing investigations. Our current review again focused upon the use of and familiarity with the proper Protocols, as well as determining whether such cases were being properly investigated.

Overall, the OIG believed that there was enough information gathered during the investigation in 14 of these 20 cases (70%) to allow the adjudicator to make an informed decision, although the OIG did note some investigative concerns included in the reviews below. In six cases; however, we believed that the investigation did not contain enough information and some of the adjudications were not supported by factual information. In these six cases, we identified a lack of factual support for the adjudications, that witnesses were not interviewed, that follow up questions were not asked, that supportive documentation was missing, that the investigations did not properly address whether racial profiling applied to all of the law enforcement actions involved in the case, and, in a few cases, that allegations were not framed properly or at all.

In particular with respect to adjudication rationales, we noted several instances in which the OIG believes that the adjudicator's rationale was not based on information gathered in the investigation. Additionally, at times the rationales appeared to be unsupported because the underlying investigation was incomplete.⁸

With respect to witness interviews, we note that the Commanding Officer of Internal Affairs Group has mandated through the Protocols that all complainants and all accused employees will be interviewed unless there is justification for not doing so. However, because of the importance of conducting thorough interviews in these types of cases, there should be very few instances in which the involved persons in a complaint are not interviewed. We also noted concerns in several cases either due to leading or incomplete questioning during the interviews.⁹

With respect to supplemental documentation, the OIG noted two concerns. First, different versions of the Protocols were utilized to investigate these cases because as noted previously, the Protocols have been updated on several occasions since their inception. Therefore, depending on the date the investigation was conducted, a different Protocol may have been in effect, which contain different strategies and investigative requirements. Several of the case files did not contain a copy of the version used by the investigator or the Racial Profiling Checklist which are

⁸ CF Nos. 07-006629, 08-001751, 08-002941, 08-003275, 08-003538, and 08-004979.

⁹ CF Nos. 07-006629, 08-001751, 08-002941, 08-003275, and 08-003538.

both required documentation.¹⁰ This lack of documentation made it difficult for us to determine whether the investigators complied with the applicable Protocols.

Additionally, not all of the I/O's were familiar with the Protocols or the types of law enforcement actions to which racial profiling allegations may apply. In some cases we also noted that the investigations focused primarily on determining whether the initial stop/detention was based on racial profiling. However, as noted in the questioning required in the Protocols, the stop, the length of the detention, any searches and other law enforcement activities must also be reviewed.¹¹

It should be noted that this most recent version of the Protocols require the I/O to probe the length of the detention and the reasonableness thereof, as well as the legality and/or justification of any search conducted subsequent to the initial stop, in response to a recognition by IAG that these had been areas of concern in previous Racial Profiling investigations. Moreover, the OIG recognizes that some of the investigations described below in which the OIG noted concerns about similar issues were investigated prior to the implementation of the latest Protocols, and, as such, such issues may not have been afforded the same level of investigative focus as those surrounding the initial detention and/or stop. However, the OIG commends the Department for recognizing the need to expand the Protocols to ensure that future investigations afford similar levels of scrutiny to areas such as the length of the detention and any post-detention searches. The results of our review of all twenty cases are included in the next section.

G. IAG's Response

As noted previously, the OIG met with IAG and received a preliminary response to the concerns we raised within our report. The preliminary responses to each case were detailed and thorough, however as the responses were not finalized, IAG will submit its own completed response to this report at a later date. In general we noted that in its preliminary response, IAG concurred that many of the steps that the OIG believed would have been prudent to carry out would have been beneficial to the investigations. However, IAG did not believe that these additional steps would have altered the resulting adjudications. IAG believed that all of the investigations contained enough information for the adjudicators to make informed decisions.

H. Case Summaries and Analysis

Summaries of cases and our analysis of investigations are listed below.

1. CF No. 07-006629

a. Summary

This complaint was filed by a complainant who alleged that the accused employees, Accused 1, 2 and 3, made discourteous remarks toward him, would not advise him of the nature of a possible warrant for his arrest, "searched his pockets without permission," and "dissuaded him from filing

¹⁰ CF Nos. 07-006629, 08-001751, 08-002050, 08-003021, 08-003538, 08-004309, 08-004431, 08-004474, 08-005033, and 08-005575.

¹¹ CF Nos. 07-006629, 08-003275, and 08-003538.

a personnel complaint.” An additional three allegations of Biased Policing were framed against the accused employees for detaining the complainant and transporting him to an area police station “because of his race.” However, the OIG believes that the complainant did not make these specific assertions of Biased Policing and that these allegations may have been improperly framed against the accused employees. This issue is discussed in more detail below.

The investigation revealed that the accused employees detained the complainant, an African American male, because the accused employees claimed to have observed the complainant and two other males in possession of open containers of alcohol in public and also claimed to have “smelled the odor of marijuana.” The investigation did not ascertain as to whether the smell was coming from the person of the detainees or from the area near them. Two additional officers (Witnesses A and B) were also present but did not participate in the initial detention. During the detention, the accused employees conducted a warrant check on the complainant and were notified of a possible match. As a result, the accused employees transported the complainant to the area police station to confirm the warrant.

The investigation also revealed that during his interview, the complainant denied having any alcohol on his person or using narcotics. Moreover, the complainant stated that he did not have a warrant and tried to convince the accused employees of this fact. Additionally, although one of the reasons for the detention provided on the officers’ Daily Field Activities Report (DFAR) was a narcotics investigation; the investigation revealed that neither narcotics nor narcotics-related contraband were recovered by officers during the investigation.

The investigation resulted in nine allegations of misconduct against three accused employees, one of which was unknown (Accused 3) for Biased Policing, Discourtesy, Unlawful Search and Unbecoming Conduct. The allegations of Biased Policing and Unbecoming Conduct against Accused 3 were found to be Insufficient Evidence to Adjudicate, while the Discourtesy allegation against Accused 3 was Not Resolved. In addition, one allegation of Discourtesy against Accused 1 was Not Resolved. All of the remaining allegations of Biased Policing, Unlawful Search, and Discourtesy against Accused 1 and 2 were Unfounded. The rationale provided that “[n]othing in the facts of the case, the statements of [the complainant], or the officers’ statements supplies any evidence of Biased Policing.” The adjudicator also noted that, “[the officers] needed to verify whether or not [the complainant] had a warrant, and they followed Department policy and procedure in transporting him to the station and bringing him before the Watch Commander.” Lastly, the adjudicator found no evidence that any discourteous remarks were made and Accused 1’s search of the complainant during his detention was “clearly reasonable, legal and proper.”

b. Analysis of Investigation

Our review revealed four significant investigative deficiencies which we believe may have impacted the adjudication. First, we noted that the I/O may not have completely understood the definition of Biased Policing. For example, in this case, the I/O repeatedly asked the involved and accused employees if they stopped and detained the complainant and transported the complainant to the area police station solely because of the complainant's race. Biased Policing is not the sole use of race as the determining factor in an officer's decision to stop, detain or search an individual but is an officer's use of race to any degree absent other relevant and legal

factors or suspect-specific information. The Department's policy prohibiting Biased Policing (Manual Section 1/345) reads, in part, "Department personnel may not use race, color, ethnicity, or national origin (to any extent or degree) in conducting stops or detentions, or activities following stops or detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group." (Emphasis added) Therefore, the I/O's questioning of the accused employees as to whether their actions were based solely on the complainant's race may have inhibited a thorough examination and analysis of the incident and the accused employees' actions.

Second, the investigation contained three significant inaccuracies that could have had an impact on the adjudication of the complaint. First, Accused 1's paraphrased statement indicated that, "[Accused 1] did not recall [the complainant] objecting to the removal of his identification from his pockets." However, during his/her recorded interview, Accused 1 indicated that the complainant had in fact objected to Accused 1's search inside his pockets and made a statement along the lines of "Hey you can't go in my pockets."

Additionally, we noted an inaccuracy in the summary of Accused 2's statement. The I/O noted that the reason for the detention/stop was a narcotics investigation but Accused 2 never made this statement; although other officers did. During his/her interview, Accused 2 stated that the reason for the stop was unknown to him/her as he/she was standing next to the patrol vehicle in a parking lot approximately 100 feet away from the location of the stop. Determining which officers participated in the detention, ascertaining the reasons for the detention, and which actions each officer conducted were important to the investigation. However, the I/O noted that "[t]he investigation was unable to determine which two officers were driving and which two officers were conducting the foot beat," in part, because the "statements of all four officers were not consistent on this point." The OIG noted however that three of four involved officers noted that Accused 1 and 2 were conducting the foot beat and Witnesses A and B were following in a vehicle. Only one officer, Accused 2, stated that he/she was standing by the patrol vehicle and was not a part of the foot beat. As noted previously, determining which officers were walking and driving was important for the I/O to properly investigate issues pertaining to the initial detention.

The OIG believes that the I/O did not ask proper follow up questions to explore this and other issues, including, but not limited to, the accused employees' reasons for the stop and search, under what authority Accused 1 could lawfully retrieve the complainant's identification without the complainant's consent, and what the complainant meant when he indicated during his interview that he had "this" problem in the past with the police.

Third, the OIG questions whether the adjudicator's analysis relative to the unlawful search was complete. The Letter of Transmittal (LOT), quoting from the California Peace Officers Sourcebook (CPOS or Sourcebook), justified Accused 1's retrieval of the complainant's identification during the initial detention for purposes of establishing the complainant's identity, and stated, "When you have detained a suspect, you are allowed to take whatever investigative actions are reasonable under the circumstances. Although it is wise to use the least intrusive means available to verify or dispel your suspicion, this is not a constitutional requirement."

However, the OIG noted that the Sourcebook also states that, "...[officers] should be very careful about conducting other searches for identification during a detention, such as by reaching into a suspect's clothing or looking through his wallet. One published appellate case specifically prohibits a 'pat down search' for identification even during a traffic stop...Normally, a search is not permitted unless (1) you have consent, (2) you are concerned about a possible weapon, (3) you have 'probable cause' to arrest and/or search, or (4) it is a 'last resort,' that is, you have already given the detainee the opportunity to cooperate by following your requests and he has refused."¹²

The complainant stated that he objected to Accused 1 going into his pockets and stated that had the accused employee asked for his identification he would have provided it to him/her. The OIG questions whether it was proper for Accused 1 to retrieve the complainant's identification, which was located within the complainant's wallet inside his pants pocket. Furthermore, the OIG questions the adjudicator's analysis in light of Accused 1's admission during his/her interview that he/she remembered the complainant objecting to the accused employee going inside his pants pocket.

Fourth, the OIG found that the I/O asked leading questions during several interviews with the accused employees but particularly so during Accused 1's interview. For example, there was a troubling sequence during the I/O's interview of Accused 1 where the I/O seems to suggest to the accused employee that he/she did not recover any narcotics during his/her investigation because there were not any narcotics to be found. However, the accused employee had first stated that the complainant put the narcotics on the ground. The I/O should have used non-leading questions to ask what exactly the accused employee saw in the complainant's or witnesses' hands, instead of closing this line of questioning. We note that an additional allegation for failing to secure narcotics could have been framed, had non-leading follow up questions been used.

In addition to the aforementioned concerns, the OIG also noted that although the I/Os in this case appeared to be familiar with the Biased Policing Protocols, and referred directly to them within the investigation, the I/Os did not include the Biased Policing Investigation Checklist and appropriate version of the PSB Protocols as supplemental documents in the investigation, as required.

c. Conclusion

The OIG believes that there was not enough information gathered during the investigation to allow the adjudicator to make an informed decision, on the unlawful search allegation in particular, and therefore we question the resulting adjudication.

2. CF No. 08-001546

a. Summary

This complaint was filed by a complainant who alleged that officers were "discourteous throughout [their] contact" with him, "failed to provide him with medical treatment," failed to

¹² California Peace Officers Sourcebook, Section 2, Subsection III, Search and Seizure, Detentions/Stops.

properly care for his property,” “extended his detention because of his race,” “refused to listen to him because of his race,” and “failed to take a personnel complaint.”

The investigation revealed that two of the three accused employees, Accused 1 and 2, stopped the complainant, an African American male, for riding a dirt bike motorcycle on the sidewalk without a helmet at night. During his interview the complainant admitted to the violations. The complainant went on to advise the I/O that during the stop he cursed and raised his voice at the accused employees. This is consistent with the statements of Accused 1 and 2, who during their interviews both indicated that the complainant was uncooperative and confrontational and regularly used profanity toward them during the stop. At a later point during the stop, the complainant felt ill, and requested a Rescue Ambulance (RA) and a Department supervisor. The complainant believed racial profiling had occurred because “if he had been White, the officers would have written him a ticket and he would have been able to push his motorcycle home.”

The investigation also revealed that the third accused employee, Accused 3, a supervisor, responded to the scene and attempted to interview the complainant but the complainant continued his verbal attacks against the accused employees, including Accused 3, and Accused 3 discontinued his/her attempts to speak with the complainant. The complainant was then transported by the RA to a local hospital for further medical treatment and Accused 3 asked Accused 2 to ride in the RA with the complainant because the complainant had not yet signed the citation and was still in custody.

The investigation resulted in 12 allegations of misconduct against the accused employees for Biased Policing, Discourtesy, Unauthorized Tactics, and Neglect of Duty. The allegation of Unauthorized Tactics framed against Accused 1 for handcuffing the complainant without cause was Exonerated. The rationale provided that “[the complainant], by his own admission, was aggressive toward the officers and was uncooperative with their investigation.” All of the other allegations were Unfounded. The rationale provided that “[a]fter a thorough investigation and an overall review of the complainant, his statements, his allegations, and with attention to undisputed facts and evidence, it is evident that [the complainant] suffers a severe lack of credibility. His allegations were refuted by his own contradictions, self-serving statements, and as documented in Allegations 4 and 5, by the physical evidence.”

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. The I/O canvassed the area and attempted unsuccessfully to locate a specific witness who the complainant identified as having recorded the incident with a video camera.

The I/Os in this case were familiar with the Biased Policing Protocols, and referred directly to them within the investigation. The Biased Policing Investigation Checklist, the Protocols dated January 16, 2009, and the PSB Notice dated February 15, 2007, were included as supplemental documents in the investigation, as required.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

3. **CF No. 08-001751**

a. Summary

This complaint was filed by a complainant who alleged that officers violated his rights and harassed him when he was stopped while counting his money on the street. He alleged that two officers (Accused 1 and 2) stopped him, searched him, and removed his vehicle key, and then unlawfully searched his vehicle. He was ultimately arrested for a narcotics related charge. The complainant alleged that the reason that he was stopped was because he was a Black man with money in a narcotics area. Specifically, eight allegations were framed against four accused employees, including for the unnecessary detention, the unnecessary search of his person and vehicle, False Arrest, and Biased Policing. The complainant was arrested for a violation of Health and Safety Code section 11352(a) – Possession of Narcotics for Sales. The two individuals he allegedly sold cocaine to were arrested for a violation of Health and Safety Code section 11350(a) – Possession of Rock Cocaine. According to a conversation the I/O had with the prosecuting Deputy District Attorney (DDA) one of these two individuals was prosecuted along with the complainant and was found Guilty by the same jury which found the complainant Not Guilty of Possession of Narcotics for Sales.

The complaint was initiated by the complainant filing a letter outlining his concerns one month prior to his acquittal on the narcotics related charges.

The investigation revealed that Accused 1 and 2 stopped the complainant after being directed to him by officers (Accused 3 and 4) assigned to an observation post (OP), who had observed the complainant engage in two narcotics transactions. The complainant was handcuffed and searched due to the narcotics investigation. Moreover, Accused 1 indicated that he/she asked the complainant if he was on parole, to which he responded that he was. Accused 2 searched the complainant and recovered \$126 in various denominations (including \$46 in one-dollar bills) from the complainant's socks and from his hands. An additional \$70 was located in the center console of his vehicle when it was searched, after Accused 1 and 2 obtained the vehicle key from the complainant.

The police report written by Accused 3 indicated that Accused 3 observed the complainant, on two separate occasions, remove a solid off-white substance resembling rock cocaine from a black plastic bindle. However, the police report does not indicate whether the bindle was recovered from the complainant's person when he was arrested – only the currency and the vehicle key.

The police report also indicated that between the time of the second transaction and the time of the complainant's detention, the complainant walked out of the accused employees' view. Neither Accused 1 or 2 indicated in their interviews taken during the investigation that they recovered a plastic bindle from the complainant.

All eight allegations, including the two allegations of Biased Policing against Accused 3 and 4, were Unfounded. An analysis of the rationale is provided below.

b. Analysis of Investigation

Our review revealed investigative deficiencies which we believe impacted the adjudication. First, the complainant and other potential witnesses were never interviewed. The I/O chose to rely on the complainant's letter, which the I/O indicated "detailed the nature of his complaint." We believe an interview with the complainant would have been helpful to evaluate the credibility of the accused employees' observations, specifically those of Accused 3 and 4, who claimed to have observed the complainant involved in two separate narcotics transactions. Moreover, an interview with the complainant might have shed light on the basis for the complainant's acquittal, and, in particular, how the testimony of two of his defense witnesses may have influenced the jury. These witnesses are only referenced once in the investigation, in the court case minutes attached as addenda. No further identifying information regarding their whereabouts and relation to the complainant are included in the investigation.

The investigation did not provide enough information to explain the basis for the complainant's Not Guilty verdict. The I/O's chronological record only alludes to a conversation between the I/O and the DDA, in which the DDA indicates that he "did not have any idea of why [the complainant] was found not guilty," but opines that "the jury selection was not the best he has seen."¹³ However, the complainant's letter conveys his claim that no drugs or drug paraphernalia were found on his person, which we believe deserved further exploration by, at a minimum, interviewing the complainant.

Moreover, although the I/O asked open-ended, non-leading questions of the accused employees, the I/O did not explore with any of the involved employees the possible explanations for why the complainant, who was initially observed by Accused 3 to have removed narcotics from a clear plastic bindle, was found to have neither narcotics nor a plastic bindle on his person when he was detained.¹⁴ On a related note, no further follow up was conducted by the I/O regarding the particulars of the two narcotics transactions. Accused 3 and 4 both claimed to have observed the complainant engage in, other than a statement that he had been involved in two separate narcotics transactions.

Further, we believe a more in-depth and critical analysis of the complainant's underlying narcotics arrest was merited in light of the Not Guilty finding and the disciplinary history of Accused 3, who appeared to be the main officer involved in this case, which reflects at least five additional complaints of Biased Policing over the past five years, all involving narcotics arrests with which he/she was involved. Indeed, two of those five additional cases, like the underlying case, involved complainants who were arrested by Accused 3 for narcotics offenses but who were found Not Guilty after a jury trial. A sixth complaint that was initiated by a co-defendant

¹³ Apparently, I/O Note No. 1 was not updated to reflect this conversation, since the Note reads as follows: "[t]he I/O made several attempts to contact [the DDA] with negative results.

¹⁴ In Accused 3's interview, he/she states that he/she observed the complainant to have this plastic bindle in his hand when making the narcotics transactions. However, when the I/O summarized the accused employee's statement at the end of the interview, the I/O misquoted him/her by attributing to him/her the claim that the complainant had the bindle in his hand when he was detained. Accused 3 does not clarify the I/O's apparent mischaracterization.

who was prosecuted along with the complainant, similarly involved claims of Biased Policing, which were not framed based on the following rationale:

"Because of the pre-planning involved for the narcotic taskforce and the probable cause for [the defendant's] arrest . . . [the defendant's] arrest does not fit the criteria of racial profiling."

In addition, Accused 3 has had another 13 complaints alleging False Imprisonment during the same time frame. Though all of these Biased Policing and False Imprisonment complaints were either Unfounded or Exonerated, we noted investigative deficiencies with four prior cases we reviewed which caused us to believe that a further in-depth review of Accused 3's prior complaint and arrest history was merited. However, because none of Accused 3's prior Biased Policing or False Imprisonment cases has been either Sustained or Not Resolved, he/she does not fit the criteria for referral to the Department's Risk Management Executive Committee. Instead, we have forwarded our concerns regarding Accused 3 to the Department for their review and proper action.

Finally, as it relates to the adjudication, the LOT contains several statements/claims that are not supported by the investigation. First, the adjudicator claims, "[t]he complainant did not offer any evidence in support of his allegations." However, the I/O chose not to interview the complainant, relying solely on his letter, so it would seem unfair to criticize the complainant for not providing evidence to support his allegations when he was not offered the opportunity to do so.

In addition, the adjudicator makes the claim that, "it was noted that despite living in [Area A], [the complainant] did not offer any information that supported him being in [Area B], an area known for blatant narcotics use and sales."¹⁵ However, without interviewing him, there was no way to verify any of this information.

Moreover, there is a statement in the LOT that "the arrest was found to be lawful and devoid of any evidence of racial profiling." We presume this is based on the fact that the complainant was held to answer for the charges during a preliminary hearing (though he was later found Not Guilty by a jury), but there is no further information contained in the adjudicator's rationale as to what this conclusion is based upon.

The I/O in this case appeared to be familiar with the Protocols, and the Biased Policing Investigation Checklist dated February 15, 2007 was included as a supplemental document in the investigation. The Protocols and the PSB Notice, however, were not included.

c. Conclusion

The OIG believes that there was not enough information gathered during the investigation to allow the adjudicator to make an informed decision regarding the allegations in the complaint.

¹⁵ Though we acknowledge the complainant's prior history of narcotics sales for which he was on parole at the time of his arrest makes the possibility of an innocent explanation for his presence in Area A more remote, we still believe that it was incumbent upon the I/O to interview the complainant to allow him the opportunity to explain his purpose for being in Area A that day.

Further, as discussed above, we do not believe some of the conclusions reached by the adjudicator were supported by the underlying investigation.

4. **CF No. 08-002050**

a. Summary

This complaint was filed by a complainant who alleged that an officer “racially profiled him, which led to his arrest,” that two officers “slammed him to the ground causing injury, removing skin over his right eye and hurting his neck during his arrest,” that four officers, “refused to get him medical treatment when they saw him eat a large amount of narcotics,” that four officers, “refused to get him medical treatment for injuries obtained during the unauthorized use of force,” and during another incident at another time one of the same officers used unauthorized force when he choked him.

The investigation revealed that the accused employees were assigned to a specialized detail working in a task force due to narcotics complaints. One of the accused employees was working the observation post, two were part of the arrest team and two were assigned to uniformed chase.¹⁶ “The officer in the observation post observed the complainant meet with another individual. The officer observed a narcotics transaction between the complainant and the other individual and requested officers to respond to the location. The complainant was detained by the officers without incident.” The accused employees’ report provided that the complainant sold narcotics to another individual who was also arrested. A glass crack pipe was located on the complainant’s person, but no narcotics. The narcotics were recovered from the purchaser. The complainant contended during his interview with the I/Os that officers were “picking on a particular race and enforcing the law to the extremes.” Additionally, the complainant “believed the treatment that he was given in a predominately Black and Hispanic area would be different than a White person in a predominately White area.” The complainant also contended that a use of force occurred causing injuring to his right eye, which the complainant described as being “puffy, red, and was injured to the degree that it was swollen closed for weeks after the incident.” The complainant stated that the injury would be visible on his booking photo. The complainant also stated that another accused employee watched him eat the narcotics because the accused employee kept saying that he could not believe the complainant’s “constitution.” However, the investigation showed that this accused employee who allegedly saw him eat the narcotics was not working that day. Lastly the complainant indicated that during a different incident one of the accused employees had choked him unconscious.

The investigation resulted in twelve allegations of misconduct for Biased Policing, Unauthorized Force and Neglect of Duty. All of the allegations were Unfounded and supported by appropriate rationale. The rationale also provided that the complainant “admitted to his participation in a narcotics transaction and that the arrest report as written by one of the accused employees was accurate.” The complainant also indicated that he was slammed to the ground by the accused employees causing injury to his eye; however, when asked by the watch commander if he was injured, he indicated that he was not. Additionally, in the booking photo the complainant’s eye does not appear to be swollen or puffy and the complainant’s eye is open. Regarding, the

¹⁶ The “chase team” refers to uniformed officers assigned high visibility positions during tactical operations and who are called upon to take enforcement actions when needed.

complainant's allegation that the accused employees failed to provide him medical treatment when they saw him eat a large amount of narcotics and for the injuries sustained during his arrest, the complainant indicated that "he knew ingesting that amount of narcotics was dangerous," yet he admitted that he did not tell the accused employees or the watch commander that he ingested narcotics. Additionally, the complainant indicated that he had no issues when he spoke to the watch commander and there was no evidence of injury. Lastly with regard to the allegation that referred to another incident all together, the complainant changed his story throughout the interview and said, "I (the complainant) could just start talking and start talking about a bunch of things."

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. The I/Os in this case were familiar with the Biased Policing Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist dated February 15, 2007, was included as a supplemental document in the investigation, but the PSB Notice and Protocols were not included.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

5. CF No. 08-002453

a. Summary

This complaint was filed by a complainant who alleged that officers had stopped him because he was Black.

The investigation revealed that the accused employees stopped the complainant, an African American male, because one of the tail lights on his vehicle was inoperative. Subsequent to reporting the alleged incident the complainant refused to be interviewed and no further information could be developed regarding the incident.

The accused employees had no independent recollection of stopping the complainant when they were interviewed and had to rely on their Daily Field Activities Report and an Incident Report to provide any information to the I/O regarding the stop because of the number of vehicle stops that they made between initiating the stop and their being interviewed.¹⁷ Moreover, the accused employees visited the location where the complainant was stopped and were shown the complainant's Department of Motor Vehicles (DMV) computer generated color image in an attempt to refresh their memory of the incident, but they were still unable to remember. The investigation further revealed that the complainant was not issued a citation involving the inoperative tail light and was only issued a warning.

¹⁷ One of the accused employees was interviewed about two months after the stop and the second almost three months.

One allegation of Biased Policing was initiated against each of the officers and the Department adjudicated each of the allegations as Insufficient Evidence to Adjudicate based upon the lack of information developed during the investigation.

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. The I/O made repeated attempts to contact the complainant, which included visiting the complainant's residence, sending him a letter, telephoning him and contacting the complainant's building manager. The I/O also interviewed one of the accused employees twice to clarify matters during the investigation.

The I/O in this case was familiar with the Biased Policing Protocols. The investigation included the Racial Profiling Investigation Checklist dated July 1, 2008, the Professional Standards Bureau Notice dated February 15, 2007, and the Professional Standards Bureau Racial Profiling Investigation Protocols dated July 1, 2008, as required.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

6. CF No. 08-002941

a. Summary

This complaint was filed by two complainants, a driver and a passenger, who alleged that two officers stopped them due to race only, inappropriately searched them, unnecessarily tore one complainant's shirt, and were discourteous during a traffic stop.

The investigation revealed that the accused employees stopped the complainants, two African American males, for a cracked front windshield. Upon stopping the vehicle, the accused employees instructed the complainants to exit the vehicle, stating that they smelled the odor of marijuana in the vehicle. According to one accused employee, the driver admitted to smoking marijuana earlier in the day. The accused employees then conducted a pat down search of both complainants and searched the vehicle.

During his interview, the driver admitted to having a cracked windshield and stated that he had been stopped for this vehicle code violation on prior occasions, but stated that he did not have and did not smoke marijuana. The complainant alleged that, "[The officers] really wanted to mess with somebody, and profiled us because we were black. [He/she] just stared us down [he/she] seemed to have the intent of I'm going to see, you know, whether they're up to, because they look suspicious, because they're black."

The driver admitted that, at the time of the stop, the passenger was bent over tying his shoe. The officers yelled at him to "get [his] hands up" and instructed him to exit the vehicle. According to the driver, when he told the accused employee that he thought he was being racially profiled,

he/she "got all riled up," and stated, "I'll give you something to racial profile," and instructed him to exit the vehicle, where he/she proceeded to ask him questions about gang affiliation and tattoos. While searching him, the complainant alleged that the accused employee intentionally ripped his shirt to view a tattoo on his arm and stated, "Don't run, there is a canine around the corner." The accused employees then dropped the passenger's identification and instructed the driver to pick it up, which the driver felt was "disrespectful." The accused employees did not issue the complainants any citations during this incident.

The investigation resulted in five allegations of misconduct against the accused employees for Biased Policing, Unbecoming Conduct, and Discourtesy. All of the allegations were Unfounded. An analysis of the rationale is included below.

b. Analysis of Investigation

Our review revealed investigative deficiencies which we believe impacted the adjudication. Further, we noted that some of the rationale language was overly speculative and unsubstantiated by the investigation.

In reviewing the taped interviews of the accused employees, we believe that the I/O did not conduct comprehensive questioning regarding several key items brought up by the complainants during their interviews, such as the accused employees' comments "I'll give you something to be racially profiled about" and "don't run, there is a canine around the corner"; the claim that the accused employees were yelling at the complainants to show them their hands as they approached the car; the claim that the accused employees asked the complainants if they were on parole or probation; the length of the detention; the nature and extent of the search, including searching underneath clothing for tattoos; and if the accused employees obtained consent to search.

The accused employees' responses to these questions could have provided valuable post-stop information for the adjudicator. Specifically, the I/O should have made a better effort to flesh out the issues of the searches of both individuals and the car because, based on the complainants' interviews, neither complainant gave the impression that the accused employees ever asked or received permission to search either them or the vehicle.

Further, the failure by the I/O to question the accused employees on any of these points, coupled with the fact that the I/O's Chronological Log does not mention reviewing the complainants' interviews for paraphrasing until a month after the accused interviews, suggested that the I/O did not listen to the complainants' interviews prior to interviewing the accused employees. We also noted potential areas of clarification that the I/O did not explore with a follow-up interview of the complainants, such as if the complainants gave the accused employees consent to search them and the vehicle.

The I/O also did not include potentially valuable physical documentation in this investigation, such as the accused employees' DFAR for the date of the incident, or a printout from Communications Division for the date and intersection in question. These documents may have provided information about the nature of the stop and/or the length of the detention.

Finally, with respect to the investigation quality, we noted that the I/O did not frame all allegations. First, as noted above, the driver alleged that the accused employees made two additional discourteous statements: "I'll give you something to be racially profiled about" and "don't run, there's a canine around the corner." These were not framed as separate allegations of discourtesy. Second, though it was not explored in sufficient detail during the complainants' interviews, it seems that the complainants took issue with being searched; this was not framed as separate allegations of either Racial Profiling or Unlawful Search.

The OIG believes that the I/O framed the allegation regarding the driver's torn shirt too narrowly. By focusing only on whether the officer tore the shirt, and asking both of the accused employees only if they saw a torn shirt or saw anyone tear a shirt, the I/O failed to explore another possible allegation related to the tearing of the shirt: Unlawful Search. Even if the accused employee had not torn the shirt and merely pulled down the shirt, we believe based on the information contained in the accused employees' interviews, this would have been improper if done without the complainant's permission, as it would be beyond the scope of a lawful pat down for weapons and narcotics. Indeed, the passenger complainant also alleged that one of the accused employees pulled his sweatshirt down to look for tattoos.

We noted that the rationale language was speculative and not based on facts in the investigation. For example, the rationale suggested that the accused employees' leniency (in not issuing the complainant a citation for the cracked windshield) was due to complainant's coercion: "very often, officers conducting lawful business are coerced into backing down or ceasing investigative actions by persons demanding their rights or threatening to make a complaint." Yet, aside from the complainant stating, "it seems you are racial profiling me," there is no evidence that the complainant coerced or threatened the accused employees, nor did either of them state that [he/she] felt coerced or threatened. In fact, in [his/her] interview, one officer stated that the complainants were being "cooperative" and had a "good demeanor."

The adjudicator also noted that "it is important to remember, in [this] area, officers conducting enforcement action will be dealing with either Black or Hispanic persons almost exclusively" to prove that biased policing did not occur. While it is helpful to know the ethnic/racial make-up of a particular area, the fact the accused employees are dealing with a particular race/ethnicity in an area does not, in and of itself, disprove that biased policing occurred.

With respect to Allegation 3 (tearing the shirt), the adjudicator concluded that "the condition of the shirt is more consistent with poor workmanship in manufacturing." This is a fully unsubstantiated statement that does not appear to be based on any factual evidence included in the investigation. Further, with respect to Allegations 4 and 5 (discourtesy when asked to pick up the passenger's identification), the adjudicator stated, "both officers deny the allegation," which is also a factually inaccurate statement. The investigation revealed that neither accused employee recalled the identification falling or asking the complainant to pick it up.

Finally, the adjudicator goes on to state that "Allegation 3, 4, and 5 are very close to being simply petty, retaliatory in nature and consistent with [the complainant's] interpretation of being given a 'break.'" There is no factual evidence to support these speculative statements.

The I/O in this case was familiar with the Biased Policing Protocols, although he/she did not refer directly to them within the investigation. The Racial Profiling Investigation Checklist dated April 4, 2007, the Protocols dated November 13, 2007, and the PSB Notice dated February 15, 2007, were included as supplemental documents in the investigation, as required.

c. Conclusion

The OIG believes that there was not enough information gathered during the investigation to allow the adjudicator to make an informed decision regarding the allegations in the complaint. Further, as discussed above, we do not believe some of the conclusions reached by the adjudicator were supported by the underlying investigation.

7. CF No. 08-003021

a. Summary

This complaint was filed by a complainant who alleged that two officers racially profiled him when they stopped him for having tinted windows. The complainant also alleged that the officers were discourteous when they asked him if he had purchased his vehicle used because it implied that he could not afford a new car.

The investigation revealed that the accused employees stopped the complainant, an African American male, for having tinted front windows which were too dark and issued a "fix-it" ticket. During his interviews, the complainant stated he had seen other vehicles with similarly tinted windows that had not receive citations, and that other officers have observed his tinted windows in the past and not issued citations. Further, prior to writing the citation, he observed the accused employees speaking on the sidewalk and believed they were attempting to find a reason to cite him. To him, these factors indicated that they stopped him because of his race. The complainant stated that he had purchased the vehicle with the tinted windows and that his front driver's side window was partially rolled down at the time of the stop.

During their interviews, the accused employees stated that they observed the tinted driver's side window and conducted the traffic stop based on their observations. They did not know the complainant's race prior to approaching the driver's window. One accused employee acknowledged that he/she asked the complainant if he had purchased the vehicle used. The accused employee explained that this question was intended to determine if the complainant had purchased the vehicle from a used vehicle dealership (where the vehicle's windows may have been tinted after market) or new from a factory dealership, which would not tint the windows so darkly. The accused employee did not intend to imply that the complainant could not afford a new vehicle.

The investigation resulted in three allegations of misconduct against the accused employees for Racial Profiling (2) and Discourtesy. All of the allegations were Unfounded. The rationale provided that the accused employees did not know the complainant's race prior to the stop, had cause to stop the vehicle, and issued a valid citation. Further, the accused employee's question regarding when the complainant purchased the car did not constitute misconduct.

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication, although we noted that even though the complainant was interviewed twice, the I/O potentially missed opportunities to identify other witnesses. In his initial complaint letter, the complainant wrote that there was a witness who walked right past the stop, but the I/O did not seek additional information from the complainant regarding this witness. We also noted that, in another I/O note, the I/O stated, "as the facts of this investigation are not disputed, no canvassing was necessary due to the nature of the incident." The OIG is unable to assess the validity of this statement because of the absence of information about the potential witness. Finally, we noted that the I/O also gathered the relevant physical evidence, including photographs of the complainant in his vehicle.

The I/Os in this case were familiar with the Biased Policing Protocols, and referred directly to them within the investigation. The accused employees' interviews included questions mandated by the Protocols. The Racial Profiling Investigation Check List dated July 17, 2008 was included as a supplemental document in the investigation, but the PSB Biased Policing Investigation Protocols and the PSB Notice were not included.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

8. CF No. 08-003275

a. Summary

This complaint was filed by a male complainant who alleged that two officers (Accused 1 and 2) stopped him because he was Black and had unlawfully detained him.

The complainant advised that during early morning hours he was walking home from a store with his bicycle when accused employees called him over, detained him, handcuffed him and sat him on the curb to question him. The complainant had gone to the store to obtain a beer, which was in his back pocket. The complainant based his racial profiling allegation on the fact that three other males, two Hispanic males and one White male, walked past the location during his detention but were not stopped or questioned by the accused employees. During his interview with a responding supervisor, the complainant described the Hispanic males as "Eses"¹⁸ with shaved heads, baggie pants and white shirts and advised that the White male was running and carrying a two-foot long stick.

The investigation revealed that the accused employees stopped and detained the complainant, an African American male, following the receipt of an early morning radio call in which the caller reported that he had "heard a noise at the side gate." The call report further provided that "nothing else seen or heard, PR (Person Reporting) adv[ised] he was the vic[tim] of [an] assault tonight and susp[ect] knows where he lives, PR req[uests] officers check the area." The radio

¹⁸ "Ese" is a slang term used colloquially to refer to Hispanic gang members.

call did not provide any further information regarding whether the caller had observed anyone or anything responsible for the noise. The caller did not articulate that a crime occurred at the time he made the call.

The investigation also revealed that Accused 1 audio recorded a majority of the stop with the complainant, after the complainant had been handcuffed and was sitting on the curb. The investigation provided that upon officers arriving at the location the complainant was questioned and detained because he was the only person they observed. The responding supervisor also recorded his/her interactions with the complainant, after he/she was requested to come to the scene. This supervisor also recorded a second interview a day later with the complainant to get more information about his complaint.

Accused 1's audio recording captures the complainant questioning both accused employees as to why he was stopped and not the other three individuals in the area. Accused 1 responded "... if there's a prowler in the area and they're coming out right over here where I heard those noises from the bushes and then you come walking up I'm going to question you." Throughout the recording Accused 1 maintains that the complainant emerged from bushes near the residence of the caller. The audio recording also captured the complainant's rebuttal of the accused employees' assertions that he was coming out of the bushes. On Accused 1's recording, the complainant can be heard to say that the bushes are "where the store's at" and Accused 1 responds "I know." And, on both Accused 1 and the responding supervisor's recordings, the complainant can be heard to say "I'm not coming out the bushes. Why do you say it like I just jumped out the bushes or something? I'm walking from 7-11 and I see the police go by this way, I jump off my bike like damn I don't have no light on it, I don't have no helmet. I don't want them to stop me." Finally, on the supervisor's recording the complainant said that "[the accused employee] said I just came out the bushes. Nah. I'm coming from the [expletive omitted] store..."

Later when again questioning Accused 1 about the stop, the complainant said "two Hispanic gangbangers just walked by and a white man comes by with a stick and y'all didn't say nothing to him, but a young black man comes by walking by and y'all cuff him up and have him on the street sitting down." Accused 1 responded that "I saw where they came from" to which the complainant replied "you saw where I came from too." No other information was garnered from the audiotapes as to any of the involved individuals' locations when first observed by the accused employee.

After he had been detained for approximately 10 minutes, the accused employees subsequently learned from the reporting party placing the call that a White person was involved in the earlier assault and the complainant was released. The reporting party also confirmed that he had never seen anyone on his property, but had heard a noise and did not look out.

During his detention, the complainant continually complained to Accused 1, Accused 2, and the responding supervisor that the handcuffs were put on too tight and caused injury to his wrists. The complainant refused to be treated, but asked for and was given an icepack for his wrists. No photographs were obtained of the complainant's injuries.

The investigation resulted in one allegation of racial profiling against each of the accused employees and one allegation of unlawful detention. The unlawful detention allegation was Exonerated because the officers had sufficient information, based upon the radio call, to stop and detain the complainant, who was the only person in the area upon their arrival. The adjudicator also relied upon the assertion that the complainant admitted to emerging from the bushes near the caller's residence. The racial profiling allegations were Unfounded because the radio call was not race specific and the complaint was observed in the area associated with the call.

b. Analysis of Investigation

Our review revealed investigative deficiencies which we believe impacted the adjudication. First, neither the complainant nor the accused employees were interviewed by the I/O. The complainant was briefly interviewed by the responding supervisor at the scene and later by telephone, but very little detail was provided in those interviews. An I/O note provided that the Protocols "stipulates that in cases where outside initiated information caused the detention (i.e., radio call) and the I/O determines that the reason for the detention, search, or other law enforcement activity is reasonable, legal, and justified, no further investigation or interviews of the involved officers is necessary."

We believe, however, interviews were necessary because the investigation did not provide enough information to determine whether the accused employees had legal justification (probably cause or reasonable suspicion) to stop the complainant. First, we note that the 9-1-1 caller did not articulate that a crime had occurred. On their recordings, the accused employees and the responding supervisor continually explained to the complainant that they were responding to a "prowler" call. However, the information provided to the officers through their in car computers prior to their arrival only indicated that the caller heard a noise at his side gate, but "nothing else seen or heard." All of the accused employees acknowledged to the complainant that they had no suspect information and that the caller had only heard a noise, therefore, it appears that when they detained the complainant, they were not investigating a crime.

Additionally, we understand that suspicious behavior on the part of complainant may have given the accused employees legal cause to detain him. However, we were unable to determine if the officers were able to articulate enough facts to justify a detention, since they were not interviewed. An I/O note provided that the complainant "acknowledged on the recording that he emerged from the bushes on the side of the residence and that he was pushing his bicycle because his bicycle light was not working. [The complainant] refused to explain why he was in the area, but stated that he had gone to [the convenience store] earlier to buy beer." However, in both interviews recorded by the responding supervisor and on Accused 1's recording, the complainant denies he was coming out of the bushes. Instead, the complainant consistently advises that he was walking his bicycle from the store.

Additionally, because there were no interviews, the investigation did not contain information about which direction the accused employees came from or the complainant's location in proximity to the caller's house when they first noticed the complainant. The complainant was also not asked these questions during his preliminary interviews with the responding supervisor. Accused 1 notes that when he/she saw the complainant, he was "across the street." However, we

have no frame of reference for how near this location was to the caller's home. Additionally, neither the accused employee nor the complainant were asked about the time that the other individuals who were on the street that night arrived and their locations when first cited by the complainant and accused employees.

The investigation also did not contain pictures of the location, so we were unable to view the bushes that the complainant was said to have emerged from or the route the complainant took that night. It is difficult to tell from the recording as to whether the bushes are next to a walkway and the complainant just walked past them causing them to rustle, or whether the complainant was concealed in the bushes. Concealment may provide a legal reason to stop the complainant, whereas making contact with bushes next to a walkway may not.

Furthermore, because the investigation did not reveal legal cause for the accused employees to detain the complainant, the additional actions taken such as handcuffing him and sitting him on the curb, may also not have been justified. Accused 1 advised that "[t]he reason you are in handcuffs is because you failed to cooperate." The complainant responds that he did not have to cooperate since he contested their right to detain him.

Finally, it appeared that an additional allegation could have been framed for the injuries that the complainant claimed occurred during the detention. And, had the complainant been interviewed by the I/O he may have also obtained photographs.

Other than one quote from the Protocols we were unable to determine if the I/O was familiar with the Department's Racial Profiling Investigation Protocols dated July 1, 2008, which were included as a supplemental document in the investigation, because neither the complainant or the accused employees were interviewed by the I/O and they weren't asked the relevant questions provided by the Protocols. The Racial Profiling Investigation Checklist was also included, as required.

c. Conclusion

The OIG believes that there was not enough information gathered during the investigation to allow the adjudicator to make an informed decision.

9. **CF No. 08-003356**

a. Summary

This complaint was filed by a complainant who alleged that that an officer "detained him because he was black."

The complainant believed that "he was targeted because he is Black and resembled a drug dealer." The complainant contended that the "police see people walking down the street all day, every day, and they don't get tickets." The investigation revealed that the accused employee stopped the complainant, an African American male, because the complainant committed a violation of Vehicle Code (VC) Section 21956(a), Pedestrian in the Roadway. The officers were "conducting crime suppression duties and looking for pedestrian violations."

During his recorded interview, the complainant admitted that he walked in the roadway to bypass several people standing on the sidewalk and then returned to the sidewalk when it was clear. He was then stopped by the accused employees. The accused employees asked the complainant if he was on parole or probation and the complainant advised that he was on parole. The officers then searched the complainant, including his shoes and socks.

The investigation also revealed that the complainant refused to sign the traffic citation and told the accused employee that the only reason he was stopped was because he is black. At that point the accused employee requested a supervisor to the scene. Additionally, one of the accused employees advised that one hour prior to citing the complainant, he/she cited a female, Hispanic for violation of VC 21955, Jaywalking. The DFAR for the day was included, but a copy of the citations issued by the accused employees that day was not.

The investigation resulted in one allegation of misconduct against the accused employee for racial profiling. The allegation was Unfounded. The rationale provided that "other than asserting that he is a Black man, the complainant has no information to support his claim. There is convincing evidence that the officers did their job, and did it properly."

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. The I/O's in this case were familiar with the Racial Profiling Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist, the Protocols and the PSB Notice dated February 15, 2007, were included as supplemental documents in the investigation, as required. We noted that the I/O included the appropriate documentation in the investigation related to that citation and canvassed the location for witnesses. We commend the I/O for doing so.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

10. **CF No. 08-003493**

a. Summary

This complaint was filed by two African American females who alleged that the accused employees detained them without cause and solely based on race.

Accused 1, a detective, conducted surveillance from a distance on a location because he had received information about a wanted felony warrant suspect from another detective. The suspect was wanted on two outstanding felony warrants and was also recently wanted in connection with a home invasion. Accused 1 said he also observed a tattoo on the passenger's arm, consistent with the fact that the suspect reportedly had a tattoo of "187" on her forearm as well. This information about the tattoo was known to Accused 1 at the time of the stop, as it was included

in the information provided to him by another detective. The complainant who bore a strong physical resemblance to the suspect (though not a completely identical resemblance) came out of a residence in the vicinity and entered a vehicle driven by the co-complainant, which pulled away.

Accused 1 followed the vehicle and requested back-up. The patrol officers (Accused 2 and 3) who responded to Accused 1's call for assistance conducted a high risk felony vehicle stop upon receiving confirmation from Accused 1 that the suspect was inside the vehicle. Both the driver and the passenger were given commands to exit the vehicle and lie on the ground. The complainants were allegedly irate, yelling and uncooperative. When Accused 1, who had conducted the surveillance, realized the passenger had been misidentified as the suspect, the complainants were released.

The investigation resulted in allegations that the accused employees detained both complainants (passenger and driver) without cause and due to race, and also that the officers failed to provide their names when asked. The allegations were Unfounded. One additional allegation, regarding the fact that the officers employed unauthorized tactics by ordering the passenger out of the vehicle was adjudicated as "Employee's Actions Did Not Rise to the Level of Misconduct."

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. However, we would have preferred that the I/O had asked additional follow-up questions to elicit more information in several areas in the investigation.

First, we noted that a key issue was how much the complainant resembled the wanted suspect. The suspect and the passenger-complainant were of a similar age and height. However, the complainant was almost 25 pounds heavier than the suspect. The two women also appear to share some similar facial characteristics; though ultimately, they do not resemble one another facially, as the complainant's face is much fuller in her photograph.

Next, we note that Accused 1 had information prior to the stop that the suspect reportedly had a tattoo of "187" on her forearm. While conducting the surveillance, he/she also observed a tattoo on the passenger's arm, "consistent with" but not identified as the numbers 187. In his/her recorded interview, Accused 1 said he/she observed a tattoo on the passenger's arm, but he/she never said if it was located on her forearm, nor did he provide any further information regarding what the tattoo looked like. Nonetheless, the adjudicator's rationale provided that "[Accused 1] noted a tattoo on [the passenger's] forearm consistent with a similar tattoo that [the suspect] bore on one of her forearms." We believe the I/O could have asked more questions about the tattoo on the passenger's arm before the adjudicator deemed it to be consistent with the suspect's tattoo.

Second, we also noted that some of the details regarding the tactics and circumstances surrounding the scene that were included in the involved supervisor's recorded interview were left out of the written paraphrased statement. The supervisor arrived on scene as the detention was already underway. He/she stated in his recorded interview that he/she "wanted to de-brief the incident because it looked so chaotic" and that this was not a "textbook" high risk stop. The supervisor also stated that he/she wanted to avoid any appearance of confrontation between

patrol and detectives, so he had the patrol officers leave. He also stated that he discussed with detectives the timeliness of telling the patrol officers that these were not the suspects. None of this detail is included in the paraphrase, even though it is relevant to the supervisor's perspective of how this incident was conducted.

Along those same lines, one of the accused officers said in his/her paraphrase that he/she and his/her partner both gave the complainants commands, which might have led to the supervisor's description of a "chaotic" scene. It can be considered bad tactics for two officers to give commands at approximately the same time, as it can lead to confusion. Follow up questioning from the I/O on these issues, could have assisted with a potential training issue.

Finally, the I/Os in this case were familiar with the Racial Profiling Protocols and used the questions contained within the protocols to structure the officers' paraphrased statements. The Racial Profiling Investigation Checklist dated July 1, 2008, the Professional Standards Bureau Notice dated February 15, 2007, and the Professional Standards Bureau Racial Profiling Investigation Protocols were included as supplemental documents in the investigation, as required.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision, although there were some additional questions which should have been asked by the I/O to better evaluate the accused detective's actions.

11. **CF No. 08-003538**

a. Summary

This complaint was filed by a Hispanic complainant who alleged an officer continually harassed him and others at a local convenience store and in a public park, used "racist language" against him, and "unlawfully targeted" him because of his race. The complainant also alleged that he heard that this accused employee used unnecessary force on an unknown third party when he pushed this person to the ground.

During his interview, the complainant stated that he has played soccer in a public park "every Sunday for the last few years," that he stands in front of a convenience store every day, "drinking coffee and eating bread, while waiting for work," and that he does his laundry in this location. The complainant alleged that the accused employee has repeatedly harassed him and other Hispanics at the park, store and laundry because of their race and has used profanity and threats. The complainant also believed he was being treated differently than other races/ethnicities because the accused employee threatened to cite him for having a dog, which was not his, off leash in the park. The complainant later observed that the accused employee did not cite the actual dog owner, who was White, despite the dog still being off leash.

According to the accused employee's paraphrased statement, he/she had previous contact with the complainant when he/she asked him and other groups of Hispanic males to stop loitering and consuming alcohol in the park. As a Senior Lead Officer, he/she had received letters from

business owners requesting that he/she remove individuals who were loitering in the area. Further, he/she stated that, although playing soccer in the park is prohibited, he/she did not prevent anyone from playing soccer in the park. The accused employee denied using profanity or engaging in racial profiling and could not recall using force on anyone on the date in question. However, we were unable to review the accused employee's tape recorded interview because it was inaudible.

The investigation resulted in three allegations of misconduct against the accused employee for unnecessary force, an improper remark, and racial profiling. Allegations 1 and 3 were Unfounded and Allegation 2 was Not Resolved.

b. Analysis of Investigation

Our review revealed deficiencies in the investigation which we believe impacted the adjudication. Additionally, we do not concur with the adjudication of Allegations 1 and 3 (unnecessary force and racial profiling) as we noted concerns with some of the rationale language.

The I/O did not interview any witnesses or document any efforts to seek potential witnesses. During his interview, the complainant stated, "you call me in 20 minutes and I'll have a lot of guys in front of me and I want to give you two minutes to everyone. And you will see the complaint." In response, the I/O said, "Well, you can give them this number and if anyone likes to make a complaint, they are more than happy to call." In addition, the I/O did not even ask the complainant for the names of these possible witnesses or for any contact information. The complainant also stated that the same group of potential witnesses is harrassed by the accused employee, and that they play soccer in the park every Sunday. Accordingly, the I/O could have canvassed either the soccer area/park or the convinence store to locate witnesses.

The I/O also did not include relevant physical documentation in the file. Another I/O Note stated, "[the accused] provided numerous letters of reference from area businesses and residents complaining about the day-laborers loitering in front of the location." However, none of these letters were included as addenda, nor was documentation to show that the accused employee was not working in the area on the date in question. In addition the complainant also stated that he could provide photographs of the harrassment and of the accused employee, but there is no information in the investigation that the I/O attempted to follow up on this offer.

We were also concerned that the I/O did not provide an interpreter as the complainant requested to conduct his interview in Spanish, despite being provided information prior to the interview that the complainant was a Spanish-speaker (per the face sheet). Within one minute of the beginning of the tape-recorded interview, the complainant asked the I/O if he could speak with someone in Spanish because he could not communicate well in English and he, "wanted to give some explanations." In response, the I/O stated that there were no Spanish speakers and that the complainant's English was very good.¹⁹ We believe that the complainant should have been given an opportunity to fully express his complaint/allegations in his native language (Spanish).

¹⁹ While his English is passable, we noted that the complainant was not fluent in English. For example, he could not spell his own last name in English; when the I/O asked for his birth date initially, the complainant responded with his street address.

It is also important to note that many of the discrepancies between the complainant's and the accused employee's statements appeared to be resolved in favor of the accused employee, both by the investigator and the adjudicator. First, we noted that the investigator ran the complainant's criminal history, included it in the file without apparent justification, and cited it in the I/O Notes. The adjudicator then placed unnecessarily heavy weight on the complainant's criminal history to unfound the racial profiling allegation; specifically, the adjudicator referenced the complainant's history and legal status when he stated, "[the complainant] chose to ignore the law on an ongoing basis...[the complainant] is in this country illegally...this further demonstrates his irreverence for the law." It is unknown why the I/O sought or included the criminal history information other than to discredit the complainant. The adjudicator also discredited the complainant based on a factually inaccurate statement in the investigation: that during his interview the complainant repeatedly referred to the accused employee by a demeaning term, "Chapo."²⁰ We noted that the complainant himself did not call the accused employee by that name, rather, he told the I/O, "I know [the accused] only by 'Chapo,' they told me, because everybody talks about him." The complainant appeared to refer to the accused employee by the name others have given the accused employee. Moreover, the complainant only used this term once. Yet this fact was used by the adjudicator to suggest that the complainant had "animosity" toward the accused employee.

Second, both the investigator and the adjudicator seemingly assumed that, because the accused employee's actions were part of his/her "normal" police work, the alleged misconduct could not be true.

Finally, we do not concur with the adjudications of Allegations 1 and 3, those of unnecessary force and racial profiling, respectively. We believe that a more appropriate adjudication for Allegation 1, regarding the use of force against the unknown male, would be "Insufficient Evidence to Adjudicate," based on the fact that the unknown male did not complain separately, was not interviewed as part of this investigation, and the information about the alleged incident was communicated through a second unknown male. Although the record showed that the accused had not been working that day, the incident could have occurred on a different day. The I/O did not exhaust all means of seeking evidence, as noted in the investigative deficiencies above. Further, as noted, the rationale to unfound this allegation was based predominantly on the adjudicator's judgement of the complainant's criminal history and speculation about the complainant's feelings toward the accused employee.

It was unclear as to whether the I/O in this case was familiar with the Racial Profiling Protocols, because we were unable to review the tape-recorded interview of the accused employee to discern if questions specific to racial profiling were asked. The Racial Profiling Investigation Checklist, the Professional Standards Bureau, or the Professional Standards Bureau Racial Profiling Investigation Protocols were not included as supplemental documents in the investigation, as required.

²⁰ According to the investigation, "Chapo" is a Spanish slang term for "stunted dwarf."

c. Conclusion

The OIG believes that there was not enough information gathered during the investigation to allow the adjudicator to make an informed decision with respect to two of the three allegations.

12. CF No. 08-003775

a. Summary

This complaint was filed by a complainant who alleged that two police officers “racially profiled him.” The complainant alleged that the officers had no reason to contact him, as he had not been doing anything wrong.

The investigation revealed that the accused employees were assigned to assist with special enforcement in the area where the contact with the complainant occurred. There had been problems with transients loitering, blocking the sidewalk, and drinking alcohol in public. The accused employees observed the complainant standing in the roadway in violation of the VC Section 21956(a), Pedestrian in the Roadway. Upon initial contact with the complainant, he was belligerent, and also alleged that the accused employees were “racially profiling him.” Due to this accusation the accused employees immediately requested a field supervisor.

The accused employees ran a warrant check on the complainant and determined that he had an outstanding misdemeanor warrant for his arrest. After the arrival of the field supervisor, the accused employees arrested the complainant for the warrant and transported him to the station.

The investigation revealed that the complainant did not deny standing in the roadway. At first he stated he was waiting for his mother. He then stated he was preparing to enter the vehicle that he had been standing next to. The investigation revealed the vehicle was not registered to the complainant. The complainant stated he had bought the vehicle from a friend, but the name provided by the complainant did not match the registered owner of the vehicle.

The field supervisor canvassed the area for witnesses, and located a witness who stated the complainant had been standing in the roadway waiting for his mother when the accused employees made contact with him. The witness stated the complainant got upset when the accused employees asked him to step onto the curb. At that point, the witness heard the complainant tell the accused employees that they were “racially profiling him.”

The investigation resulted in one allegation against each accused employee for racial bias against the complainant due to his race. The allegations against both accused employees were Unfounded. The rationale provided that the complainant had been standing in the roadway, and had become argumentative towards the officers, which was verified by a witness. Based on the statements by all involved parties it was determined that the evidence did not support the complainant's claim of racial bias.

b. Analysis of the Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. The complainant was interviewed on tape by the on scene supervisor, who also canvassed the area and located an independent witness. The witness' testimony disproved the complainant's allegation.

The I/O in this case was familiar with the Racial Profiling Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist dated April 4, 2007, and the Professional Standards Bureau Biased Policing Investigation Protocol dated November 16, 2008, were included as supplemental documents in the investigation, as required.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

13. **CF No. 08-004309**

a. Summary

This complaint was filed by a complainant who alleged that an officer stopped him for a pedestrian violation because he looked African-American and had dreadlocks. Additionally, the complainant alleged the accused employee made a discourteous comment when he/she stated in a demeaning manner as if to make fun of the complainant, "Hey bro, I am from Cuba. I don't have my identification."

The investigation revealed that the accused employee stopped the complainant, a Cuban male, for crossing the street in violation of the VC Section 21954(a), Pedestrian Crossing Mid Block with heavy traffic. According to the complainant, there were several other pedestrians that had crossed the street in the same manner. Neither the complainant nor the accused employee described the race of the other pedestrians. The complainant admitted to crossing the street, but stated he was not aware it was against the law because he was visiting from another state. He felt the accused employee, who the complainant described as Hispanic, believed he was an African-American because of the color of his skin and dreadlocks. The complainant believed Hispanics, in general, often stereotype African-Americans, and that is the reason the accused employee singled him out. The accused employee indicated the sole reason for the stop was the complainant had crossed the street forcing traffic to break suddenly to avoid hitting the complainant. The accused employee stated that there were other pedestrians that crossed the street outside of a crosswalk, but they had not violated the right-of-way of on-coming traffic. The accused employee also advised that he/she explained to the complainant that he/she was working pedestrian stops in the area due to the number of traffic related deaths and injuries. Furthermore, the accused employee was working alone that day and advised that it is too confusing to stop multiple violators when he/she is without a partner.

The investigation revealed the accused employee requested identification from the complainant, who stated that he did not have his identification with him. The complainant called his wife, who was in a nearby apartment, and she came downstairs to verify the complainant's identity. About this time, the complainant realized that he actually did have his identification in his possession. When the complainant's wife arrived, the complainant alleged the accused employee made a demeaning comment, "Hey bro, I am from Cuba. I don't have my identification." The accused employee denied making the comment.

The investigation resulted in two allegations of misconduct against the accused employee for racial profiling, and making a discourteous comment. The allegation of Racial Profiling was Unfounded. It was noted in the adjudication that the conversation between the complainant and the accused employee was tense, but the exchange between them was not witnessed, and therefore this allegation was determined to be Not Resolved.

b. Analysis of the Investigation

Our review revealed no investigative deficiencies in the investigation which impacted the adjudication. The complainant was interviewed on tape by the on scene supervisor. The I/O attempted to re-interview the complainant and the complainant's wife, but both were nonresponsive. The I/O also made attempts to locate independent witnesses to the incident, however, none were located.

The I/O in this case was familiar with the Racial Profiling Protocols and referred directly to them within the investigation. The Racial Profiling Investigation Checklist dated February 15, 2007, was included as a supplemental document in the investigation, as required; however, the Protocols were not included.

c. Conclusion

The OIG believes there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

14. **CF No. 08-004431**

a. Summary

This complaint was filed by a complainant who alleged that two officers racially profiled him when they stopped him for having no front license plate.

The investigation revealed that the accused employees conducted a traffic stop on the complainant, an African American male, for having no front license plate and issued him a citation. The complainant stated he had seen other vehicles without front license plates that did not receive citations. The complainant believed he was only detained by the accused employees because "there were two Black guys in a nice car." The complainant became argumentative and uncooperative causing the accused employees to request a supervisor to the location.

The investigation also revealed that the responding supervisor taped-recorded some of the traffic stop involving the complainant. Subsequent to reporting the alleged incident, the complainant failed to cooperate with the investigation and no further information could be obtained regarding the incident.

The investigation resulted in two allegations of misconduct against the accused employees for Racial Profiling. All of the allegations were "Unfounded." The rationale provided that the accused employees had sufficient legal justification to stop the vehicle, conducted themselves properly during the traffic stop, and upon being asked to do so by the complainant, called a supervisor to the scene.

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. The I/O made repeated attempts to contact the complainant, which included telephoning him, speaking with the complainant's mother twice on the telephone, and sending him a letter. However, we also noted that, in an I/O note, the I/O stated, "The area was not canvassed due to the nature of the complaint." The OIG is uncertain as to what is meant by the "nature of the complaint," therefore we cannot assess whether the decision to not canvass was appropriate.

The I/O in this case was familiar with the Biased Policing Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist, the PSB Biased Policing Investigation Protocols and the PSB Notice were not included as supplemental documents in the investigation.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision regarding these allegations.

15. **CF No. 08-004474**

a. Summary

This complaint was filed by a complainant who alleged that two police officers racially profiled him and falsified an arrest report. The complainant had been driving his vehicle and was stopped, searched and arrested for possession of cocaine.

The investigation revealed that the accused employees first observed the complainant parked in a red zone. Accused 1 recognized the complainant from a previous contact, and was aware that he was on parole and had a suspended driver's license, during that prior contact. When the complainant saw the accused employees, he pulled away from the curb, and the accused employees noted an additional vehicle code violation of a cracked windshield. The accused employees stopped the complainant for illegal parking and the cracked windshield violation. Due to furtive movements made by the complainant as they approached his vehicle, the accused employees asked the complainant to step out of the vehicle. Based on his/her knowledge of the complainant's parole status, Accused 1 conducted a search of the complainant and retrieved

cocaine from the complainant's pocket. The complainant was arrested for possession of a controlled substance. The complainant alleged the accused employees detained him because he was an African American male, and that he was arrested for sales of cocaine, not possession. Additionally, he alleged that the accused employees had falsified documents involving the arrest. The accused employees denied that race was a factor in the arrest. The investigation revealed that the complainant was charged with possession of cocaine, not sales, and there was no evidence to prove that any documents were falsified. The complainant ultimately pled guilty to the charge of possession of cocaine and was sentenced to probation.

The investigation resulted in two allegations against each accused employee for Racial Profiling, and falsifying an arrest report. All of the allegations were Unfounded.

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. We noted, however, that the investigation did not contain verification of the complainant's parole status on the date of this stop, which was the asserted basis for the search of the complainant. The I/O could have asked additional follow up questions of the accused employees to ascertain how they knew the complainant was still on parole, and that his license was still suspended as of the date of this contact. We also noted that the complainant documented his complaint in a letter, but was not interviewed. The I/O made several attempts to interview the complainant; however, the complainant was non-responsive.

The I/O in this case was familiar with the Racial Profiling Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist dated April 4, 2007, and the Professional Standards Bureau Biased Policing Investigation Protocol dated December 9, 2008, were included as supplemental documents in the investigation, as required. The PSB Notice was not included.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

16. **CF No. 08-004868**

a. Summary

This complaint was filed by a complainant who alleged that that an officer "conducted a traffic stop on the complainant's vehicle, and issued him a citation because he was black."

The investigation revealed that the accused employee stopped the complainant, an African American male, around 9:30 pm because the complainant committed a violation of VC Section 24250, Driving with no Visible Headlights. During his interview the complainant indicated that the accused employee did not give the headlights enough time to lift up from the hood area once they were turned on. However, during the complainant's tape recorded interview the complainant acknowledged that he did not feel that the accused employee "lied" on the citation.

The investigation resulted in one allegation of misconduct against the accused employee for Racial Profiling. The allegation was Unfounded. The rationale provided that both parties were "in agreement that the complainant's vehicle was not operating with lights at the time it was first observed." Additionally, the rationale provided the following:

"Given that the stop occurred during hours of darkness, it is highly unlikely that the accused officer was able to decipher the race of the person driving the vehicle. That being said, the ability of the accused officer to accurately decipher the race of the driver is still open to speculation, however, there is no question that the accused officer had a legitimate reason to detain the complainant for the violation which he admittedly committed."

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. The I/O's in this case were familiar with the Racial Profiling Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist, the Protocols and the PSB Notice dated January 16, 2009, were included as supplemental documents in the investigation, as required.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

17. **CF No. 08-004979**

a. Summary

This complaint was filed by a third-party complainant who alleged that an African American neighbor was inappropriately detained and handcuffed as he walked home from the grocery store. The complainant alleged that the individual was racially profiled.

The accused employee allegedly recognized the suspect from prior contacts and also from viewing a wanted-felony suspect "notice" on the Department's Fugitive Warrant Section (FWS) web page two to three weeks prior to the incident. After the suspect was detained, the accused employee allegedly attempted to verify the individual's warrant status; first by requesting from Communications Division over the radio a run of the individual's warrant status and then subsequently by utilizing the Mobile Data Computer (MDC) of a police vehicle that arrived at a later time.

Running the individual over the MDC revealed that the warrant had allegedly been resolved, although there was no evidence of verification or confirmation as to this fact included in the investigation. The individual was then released by the accused employee. The length of the detention was unclear, as the complainant alleged it was 30 minutes, but the accused employee indicated in his/her interview that it lasted only five to ten minutes.

The investigation resulted in one allegation of Racial Profiling. The allegation was Unfounded by the adjudicator. The rationale provided that "investigation determined that [the accused employee's] actions were legal and appropriate," and "[t]here was no evidence to support the complainant's allegation" of racial profiling.

Neither the complainant nor the individual who was actually detained made themselves available for an interview, despite the I/O's attempts to contact them.

b. Analysis of Investigation

Our review revealed several investigative deficiencies which we believe impacted the adjudication. Primarily we were concerned about insufficient efforts to verify the accused employee's accounting of the facts and the suggestive nature of some questions asked during the accused employee's interview.

First, we believe there could have been a more extensive effort by the I/O to verify the accused employee's version of the facts. In particular, the I/O did not obtain available documentation that could have assisted in evaluating the accused employee's credibility as to the timeline of events in this incident.

The accused employee claimed that he/she knew that the individual had been included on a "wanted notice" from FWS' website, however independent verification of this claim was not obtained from FWS. Alternatively, the I/O could have obtained verification from Communications Division that the accused employee ran the suspect over the air, or that he/she subsequently ran him on the MDC, which showed the individual as having cleared up the warrant by an earlier arrest.

An I/O note provided that the "I/O ... attempted to locate documents related to the stop at Central Records. None were located." However, the accused employee's daily log was located as it was included in the investigation, but the "Field Interview" (FI) card referenced in the daily log was not. Additional documentation, such as an FI card, an MDC print-out, and/or a print out from Communications Division, would also help determine how long the individual was detained and whether or not a search occurred, as these issues were not resolved definitively by the investigation. The adjudicator opines that "[o]nce [the accused] determined that [the suspect] was no longer wanted [he/she] immediately released him." However, we are uncertain as to what this determination is based upon because the word "immediate" is not included in the I/O's paraphrase of the accused employee's interview in reference to the release of the suspect once it was discovered that the warrant was no longer outstanding.

The accused employee indicates in his/her interview that the entire detention lasted approximately five to ten minutes in length. Moreover, during the recorded interview, he/she also indicates that he/she initially detained the individual, ran him over the air, and then, upon learning that he came up as a Code-6 Charles suspect (meaning that he was wanted and possibly dangerous), the accused employee called for a vehicle unit to respond so he/she could run the individual over the MDC. None of this information is included in the paraphrase of the accused employee's interview.

Having access to the time periods when the accused employee ran the individual over the air, over the MDC, and when the accused employee cleared him/herself from the incident would assist in establishing the time frame of the entire detention. This is relevant to the issue of the continued legality of the detention, as an investigatory detention cannot legally last longer than necessary to effectuate the purpose of the stop.²¹

Additionally, our review revealed that a number of the I/O's questions were leading. There was also some unnecessary prompting/summarizing by the I/O. The I/O made statements such as, "race was not the sole factor in the stop, but it was one of the factors that gave you . . . the reasonable suspicion to stop him" and "the outside information that gave you the reasonable suspicion you said to believe this person had a warrant was the Department's Fugitive Website, and that's a resource that you consult regularly . . . in order to better familiarize yourself with persons in your area of assignment." The accused employee merely responded "yes" to both inquiries.

Despite the above reference concerns, the I/O in this case was familiar with the Biased Policing Protocols, and referred directly to them within the investigation. The Professional Standards Bureau Racial Profiling Investigation Protocols dated December 9, 2008, the Racial Profiling Investigation Checklist dated July 1, 2008, and the Professional Standards Bureau Notice dated February 15, 2007 were included as supplemental documents in the investigation, as required.²²

c. Conclusion

For the reasons outlined above, the OIG cannot say with certainty as to whether was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

18. **CF No. 08-005033**

a. Summary

This complaint was filed by a Hispanic male who alleged that officers stopped him because of his race.

The investigation revealed that the accused employees stopped the complainant for a broken windshield and broken tail light. During the traffic stop, the complainant requested a supervisor while he contested the issuance of the citation. The complainant disputed the reason for the traffic stop and said the accused employees had no probable cause to stop him. The complainant believed the accused employees stopped him to harass him because of his ethnicity. One of the accused employees initially inadvertently told the complainant that he was being stopped for not having a front license plate. One of the accused employees explained that their previous stop had been for no license plate and he/she had just made a mistake. The mistake resulted in the complainant being confused and believing that he was being stopped due to his race. A supervisor was requested and the responding supervisor provided an explanation for the stop but the complainant was not satisfied and stated that he would later respond to the station to provide

²¹ *Florida v. Royer*, 460 U.S. 491 (1983).

²² In addition, a significant amount of legal research was also included in the file.

a statement, but failed to do so. Both the complainant and his female passenger refused to provide further information to the supervisor or the accused employees, and refused to provide a statement regarding the complaint. The complainant was not searched or detained for an unreasonable period.

The investigation resulted in two allegations of misconduct against the accused employees for Racial Profiling. All of the allegations were Unfounded. The rationale provided that the complainant did not dispute that he had a broken windshield or broken tail light. Moreover, his accusation that he was stopped because of his race was not supported by any articulated facts.

b. Analysis of Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. The I/O attempted several times to interview the complainant; however, he failed to provide any clarification to either support his claim or make himself available for further questioning.

The I/O in this case was familiar with the Protocols and interviewed the accused employees to ensure that the questions mandated by IAG's Biased Policing Investigation Protocols were asked and answered. The Racial Profiling Investigation Checklist dated July 1, 2008, was included as a supplemental document in the investigation, as required; but the Professional Standards Bureau Notice, or the Professional Standards Bureau Racial Profiling Investigation Protocols were not included.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision.

19. **CF No. 08-005340**

a. Summary

This complaint was filed by a complainant who alleged that the accused employee "racially profiled her," "made an ethnic remark" towards her, "inappropriately engaged in a cellular telephone conversation" and "unnecessarily detained her longer than needed during a traffic stop."

The investigation revealed that the accused employee stopped the complainant, an African American female, for speeding. During her interview the complainant contested the issuance of the citation. The complainant went on to advise the I/O that during the stop the accused employee "took approximately thirty minutes to complete the citation and return to her vehicle" because the accused was "talking and laughing on [his/her] cell phone for approximately 20 minutes, while completing her citation." The complainant further contended that the accused employee was staring and at times glaring at her daughter and may have been doing so since "she was well developed up top." The complainant further contended that she told the accused employee that she had family in law enforcement and "knew the system," to which the accused employee replied "Oh so you people know how to get out of tickets and everything. You're just

going to get your people to write you off.” The I/O also attempted to interview the complainant’s passengers, but the passengers could not be interviewed after the complainant advised she was afraid to give their contact information.

The investigation also revealed that the accused employee “digitally recorded the traffic stop involving” the complainant. The recording disproved the complainant’s allegations against the accused employee in their entirety. The stop lasted approximately eight minutes and there was no ethnic remark or unprofessional behavior captured by the recording device. The investigation also included a summary of the I/O’s review of the accused employee’s citation book that was used on the day of the traffic stop. The I/O noted that the accused also cited “1 male Black, 3 male Whites, 2 male Hispanics, 1 Female White, and 2 female Hispanics.”²³

The investigation resulted in four allegations of misconduct against the accused employee for Racial Profiling, Ethnic Remark and two allegations of Unbecoming Conduct. All of the allegations were Unfounded. The rationale provided that the recording of the traffic stop made it “clear that none of [the complainant’s] allegations have any validity to them.”

b. Analysis of Investigation

Our review revealed no investigative deficiencies in the investigation which impacted the adjudication. The I/O contacted the complainant and attempted to contact witnesses to include their statements in the investigation and gathered the relevant recording of the stop.

Additionally, the I/O in this case was familiar with the Racial Profiling Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist, the Protocols dated January 16, 2009, and the PSB Notice dated February 15, 2007 were included as supplemental documents in the investigation, as required.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and we commend the accused employee for recording the stop.

20. **CF No. 08-005575**

a. Summary

This complaint was filed by an African American male who alleged that two officers “arrested him due to his ethnicity.” The complainant appeared to be ticket scalping, loitering and had outstanding warrants. The accused employees had previously warned him to take care of his outstanding warrants but when they stopped the complainant on this last occasion, he had not done so and, therefore, he was arrested on the outstanding warrants.

²³ The citations were not included in the investigation and there was a slightly different count given during the recorded interview of the accused employee than was written in the investigation. However, both counts showed that Hispanics and whites were cited more often than African Americans.

The investigation revealed that the accused employees conducted three pedestrian stops on the complainant on different days. During the first stop, an accused employee requested identification from the complainant and unbeknownst to them he gave them the name of a family member. During the second stop, the accused employees obtained the complainant's real name and found out that he had outstanding warrants. The complainant was released during this pedestrian stop with a warning to take care of the warrants. During the third stop, the complainant was arrested because the warrant was still active. The accused employees were working this detail, because they had received community complaints of loitering and ticket scalping in the area. During his interview the complainant admitted that he does sell tickets. However, the complainant believed that the accused employees only stopped and arrested African Americans and not Hispanics, who were also selling tickets in the same area. Additionally, the complainant alleged that on each occasion the accused employees "did not have a reason to stop him." The investigation revealed that both of the accused employees had made other arrests in the area for ticket scalping.

The investigation also revealed that the complainant stated on tape that the accused employees have also harassed him several times prior to having the outstanding warrants. He wanted it to stop and that is why he filed the complaint. The complainant alleged that the accused employees told him they would arrest him when they caught him selling tickets, so they could interrupt the sale. The accused employees denied having made this statement. However, the investigation revealed that they did not actually observe the complainant selling tickets and he did not have any tickets on him when he was arrested. The complainant was searched incident to the arrest, but he was not cited for loitering²⁴ nor arrested for false representation of identity to a peace officer, a misdemeanor,²⁵ after they discovered that he did not give them his real name.

The investigation resulted in two allegations of misconduct against the accused employees for Racial Profiling. Both of the allegations were Unfounded. The rationale provided by the adjudicator stated, "his criminal record clearly reflects a prior history of engaging in ticket scalping and he admitted to engaging in this activity in the course of his complaint interview. This coupled with the complainant's frequent presence and loitering activity[...] would tend to make the officers' believe that he was engaged in illegal scalping quite reasonable, lends credibility to the officers statements, provides independent legal justification for his prior detentions by those same officers and tends to indicate there was no racial basis or profiling involved."

b. Analysis of Investigation

Our review revealed no investigative deficiencies in the investigation which impacted the adjudication, although we would have preferred that the I/O canvass the area for witnesses. The complainant was alleged to have frequented the area with other regular ticket sellers who may have been able to provide information about this incident, the complainant's claims of harassment, and whether African Americans were detained/cited more often than Hispanics.

I/Os in this case were familiar with the Biased Policing Protocols, and asked the accused employees questions contained in the Protocols. The Racial Profiling Investigation Checklist

²⁴ California Penal Code Section 647c.

²⁵ California Penal Code Section 148.9.

from April 4, 2007 was included in the investigation as supplemental documents, but the Professional Standards Bureau Notice and the Professional Standards Bureau Racial Profiling Investigation Protocol were not included, as required.

Finally, the I/O noted that the accused employees were to receive training for not arresting the complainant on misdemeanor warrants. A supervisor "advised the I/O that the matter would be handled as a training issue and no additional allegation would be required." These accused employees' TEAMS reports do not reflect that any counseling or training was provided to the accused employees relative to this matter.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision, however, there may have been additional investigative steps which could have been taken by the I/O to better evaluate the accused employee's actions.

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IV. Discussion of Out Of Statute Cases

During this Quarter, five cases were closed that were determined to be Out of Statute (OOS).²⁶ We reviewed these investigations to determine the reasons that the cases were not completed prior to the statute date and whether remedial actions were taken to prevent recurrence. We also reviewed four Intradepartmental Correspondences (15.2s) related to these cases provided to us by the Department, as well as the full case files. All of the cases contained a 15.2 that detailed the remedial actions taken by the department.

Summaries of the OOS cases are as follows:

CF No. 05-4236

This complaint involved a sworn Department employee who alleged retaliation, discrimination, unbecoming conduct, improper remarks, neglect of duty at his/her workplace and that he/she observed various acts of misconduct by Department personnel. The complaint resulted in 16 allegations of misconduct against 11 Department employees.

The case was assigned to Division A for investigation. The case was tolled by Division A due to pending civil litigation in December of 2005. In January 2007, a state appellate court issued an opinion in the *Breslin v. City and County of San Francisco* case.²⁷ The *Breslin* case established the precedent that tolling under Section 3304 (d) (6) of the California Government Code only applies to allegations against officers specifically named in the lawsuit. Of the 11 accused employees in this case, two were removed from the lawsuit during the pendency of the cause of action, therefore the allegations against them were no longer tolled, and the statute began to run. Division A was unaware of the ramifications of the *Breslin* case and as a result the two allegations against the two removed employees fell out of statute (OOS).

The C/O of IAG submitted a 15.2 to the Chief of Police and advised Division A of the ramifications of the *Breslin* case on tolling in general, and this investigation, specifically. To ensure that investigations that involve lawsuits do not go OOS in the future, Division A will contact Risk Management Group or the City Attorney's Office on a regular basis to monitor the removal of accused employees from litigation.

CF No. 05-6135

This complaint, which was the master file for a total of four separate complaint investigations, involved a sworn Department employee who was alleged to have committed 11 separate acts of domestic violence against the complainant. All 11 allegations were initially classified as Sustained and the matter was going to be heard before a Board of Rights with a recommended penalty of Removal. However, two of the allegations against the accused employee were determined to be administratively out of statute.

²⁶ These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. All five cases are discussed herein. Only five out of 1401 (.0036 or .36%) cases were OOS in the 2nd QTR.

²⁷ The *Breslin* case, Case No. A111455, involved identical tolling issues.

It appears that the statute lapsed on the two allegations because the complaint investigation was received by the area for adjudication just one day before the statute date. The area adjudicated the complaint and submitted the investigation to the bureau the following day without notifying the bureau that it was the statute date. Therefore, the complaint investigation was not reviewed by the bureau until one day too late. The accused employee was to be sent to a Board of Rights on the remaining nine in statute allegations for possible removal from the Department; however he/she retired prior to the commencement of the Board.

The C/O of the bureau submitted a 15.2 to the Chief of Police and advised that the issue of the timely submittal of complaint investigations to the bureau was thoroughly discussed with the area and corrective actions were taken to prevent recurrences.

CF No. 05-0483

This complaint involved a sworn Department employee who allegedly failed to conduct a thorough investigation of three different burglaries. There were three neglect of duty allegations framed for each one of the burglary investigations. One of the allegations was Exonerated. Another allegation was Guilty based on a finding at a Board of Rights. The statute lapsed on the third allegation because a complaint investigation was not initiated on the date the Department became aware of the alleged misconduct, but at a later date. No information was provided as to any remedial action taken to prevent recurrence.

CF No. 08-005044

This complaint involved a sworn Department employee who was involved in a minor Preventable Traffic Collision (PTC). The Traffic Coordination Section (TCS) sent the Fleet Safety Report (FSR) to the accused employee's command upon the review being completed but it would appear that it was never received. Moreover, the command did not realize that it had not received a FSR regarding the accident and failed to initiate any action to obtain one. Accordingly, by the time a FSR was received by the officer's command the statute had already lapsed. This was the accused employee's second PTC and the complaint would have been sustained were it not OOS.

The C/O of Professional Standards Bureau submitted a 15.2 to the Chief of Police, and advised that action was taken by the division command to create prompts in its complaint tracking system to request an FSR, if one does not arrive in a timely manner to prevent recurrence.

CF No. 08-000636

This complaint involved a sworn Department employee who became involved in a Preventable Traffic Collision (PTC). The C/O of the Division recommended an Official Reprimand.

It appears that the statute lapsed because the division completed and approved the complaint face sheet, which contained an incorrect statute date. Pursuant to the recommendation of the IAG, the C/O of the Internal Affairs Group submitted a 15.2 to the Chief of Police, and advised the division complaint coordinator, and the bureau personnel responsible for tracking personnel complaints, of the appropriate calculation for determining the statute date for PTC's.

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

During this Quarter, three CUOF incidents were closed in which the Commission adopted a finding of Out of Policy or Administrative Disapproval (AD). Of the three CUOF incidents, one was an OIS No Hit, one Negligent Discharge²⁸ and one was a LERI. Table L in the Department's Report contains additional summary information on each of the three cases, including corresponding complaint information, the Commission's findings and the discipline imposed. Abridged summaries of the OIG's reports in these CUOF cases are included below.

OIS No. 034-08

This incident involved an accidental discharge of a weapon which occurred when an officer improperly handled his/her weapon after removing it from a lock box at a jail facility. The officer initially placed the weapon into the box to secure it prior to processing a prisoner and upon completing the processing retrieved the weapon from the box. As the officer proceeded to return the weapon to his/her holster, the officer inadvertently placed his/her finger on the trigger, which resulted in one round being discharged from the weapon. The round struck the floor of the facility and resulted in no injuries or property damage.

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

As a result of the incident, the area command initiated personnel complaint CF No. 08-001520 prior to the Commission's AD finding. The Department framed one allegation against the officer for negligently discharging his/her pistol. The complaint was Sustained-No Penalty/Training, which appeared to be within the Department's Guidelines, as the officer had no prior record of any incidents involving the negligent discharge of a weapon.

OIS No. 041-07

This incident involved a female victim who was abducted by unidentified males. The suspects left the scene of the abduction in a van and the incident was broadcast over the Department's communications system.

Shortly thereafter, the involved officer, a supervisor, observed the suspect van stopped at a traffic light. The officer, driving a marked police vehicle, pulled alongside the van with the driver's side doors of each vehicle facing each other. Prior to pulling alongside the van, the officer

²⁸ On July 22, 2008, the Commission approved a Use of Force Directive (Directive) which included the following definitions: "Accidental Discharge: The unintentional discharge of a firearm as a result of an accident such as a firearm malfunction or other mechanical failure, not the result of operator error;" and "Administrative Disapproval – Negligent Discharge: Finding, where it was determined that the unintentional discharge of firearms resulted from operator error, such as the violation of a firearm safety rule." All unintentional discharges which occurred after the adoption of this Directive will be defined accordingly. However, for purposes of the QDR, the Department still categorizes some Negligent Discharges as Accidental Discharges due to a lag in the updating of documentation for these types of incidents. The Department is working to bring the terminology in the QDR into agreement with the definitions in the Directive.

unholstered his/her pistol and had it in his/her right hand, while he/she utilized the other hand to broadcast an officer needs help call on his/her portable radio. The call was not broadcast to all units in the area as the officer's radio was in the car to car mode, but another police vehicle in the immediate vicinity, heard the help call and repeated the broadcast, area wide. From a distance of approximately six feet, the officer pointed his/her pistol at the driver of the van and ordered the driver to turn off the van's engine and to exit the van.

The driver did not comply and the van began to move slowly forward. The officer exited his/her police vehicle, saw the partially clad victim seated in the right front seat of the van and continued to shout commands at the driver. The van continued forward slowly and in an attempt to stop the van, the officer fired two rounds from his/her pistol at the left rear tire of the van. The van continued to move forward at which point the officer fired two more rounds at the left rear tire of the van. The officer next reassessed the situation and then fired two more rounds at the left rear tire of the van as it continued to move forward. As the van began to leave the scene the officer fired two or three more rounds at the van's left rear tire.

The victim and suspect vehicle were subsequently located a few blocks from where the initial encounter occurred. Three suspects were located on foot in the vicinity and taken into custody, while a fourth suspect was located at the original crime scene and taken into custody. A fifth suspect was able to escape. None of the rounds fired by the involved officer hit any of the suspects or victim.

The Commission found that the involved officer's Tactics warranted Administrative Disapproval (AD) based upon the fact that he/she decided to stop a vehicle without the assistance of additional officers knowing that the vehicle might contain more than one suspect. It was further noted that the officer was also at a tactical disadvantage when he/she pulled alongside the van and was unable to see into the van, which was slightly elevated in relation to the police vehicle. This situation did not allow the officer to properly assess the situation. Moreover, it was noted that the officer placed himself/herself in a vulnerable position when he/she exited the police vehicle and stood between the van and police vehicle, a position from which the officer could have been easily injured. It was also noted that the officer failed to properly utilize his/her radio to summon help.

The Commission found that the act of the officer Drawing/Exhibiting/Holstering his/her weapon was in policy but that the officer's lethal Use of Force warranted AD because the officer failed to adhere to the Department's shooting policy. Specifically, the Department's policy precludes shooting at a moving vehicle, "unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle." The policy further states that a "moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force."

As a result of the incident, the area command initiated personnel complaint CF No. 08-001111 prior to the Commission's AD finding, which resulted in the Department framing two allegations of misconduct against the involved officer for Unauthorized Force and Unauthorized Tactics. The Chief of Police sustained the allegations and imposed a penalty of a five-day suspension for the involved officer, which appeared to be within the Department's Guidelines, as the officer had

no prior similar sustained complaints. The officer was also ordered to attend formal training regarding the tactics he/she employed during the incident.

Head Strike No. 056-05

This incident involved Officers A and B, who were assigned to a specialized enforcement unit. The officers were driving a marked police vehicle and observed four documented gang members in a housing project in violation of one of the City's gang injunctions. As the officers drew near the suspects they immediately fled on foot. Officer A exited the police vehicle in foot pursuit of two of the suspects (Subjects 1 and 2), while Officer B remained in the vehicle, and attempted to cut off the suspects' avenue of escape. At times during the pursuit, Officers A and B lost sight of each other. Officer B eventually joined Officer A in the foot pursuit of Subjects 1 and 2.

As the pursuit continued, Subject 1 tripped and fell to the ground, while Subject 2 continued to run. While running Subject 2 reached for his waist band, which resulted in Officer A drawing his weapon, as he/she believed that Subject 2 was reaching for a weapon. Meanwhile, Subject 1 stood up from his fallen position and started to again run away from the officers and reached into his waistband for a possible weapon, which resulted in Officer B drawing his weapon. Officer B ordered Subject 1 to the ground and Subject 1 complied. At this point, the officers agreed that Officer B should continue the foot pursuit of Subject 2, while Officer A took Subject 1 into custody.

Officer A approached Subject 1 with his weapon still in his hand and placed his knees and a hand on Subject 1's back. A struggle ensued during which Subject 1 rolled on his side and grabbed for Officer A's holster. At this point Officer A, who was in the process of returning his/her weapon to the holster, pulled the weapon out of Subject 1's reach and struck him in the head with it. The head strike caused Subject 1 to bleed profusely.

Officer A attempted to again holster his/her weapon, when Subject 1 again reached for Officer A's holster where upon Officer A struck Subject 1 two times in the head with a closed fist. At this point, other officers arrived at the scene and assisted Officer A in taking Subject 1 into custody. While Officer A and Subject 1 were struggling, Officer B continued to search for Subject 2, who was eventually taken into custody by another officer.

The Commission found that both involved officers' Tactics warranted Administrative Disapproval (AD) as they separated from each other during the pursuit of the subjects. Specifically, it was noted that Officer A pursued the subjects on foot, while Officer B used the police vehicle, which resulted in the officers losing sight of each other. Moreover, Officer A attempted to take Subject 1 into custody, while Officer B continued to pursue Subject 2, which resulted in Officer A becoming involved in a use of force with Subject 1 with no back up. The Commission also found that Officer A should have holstered his/her weapon prior to approaching Subject 1 because having it un-holstered could have caused the weapon to accidentally discharge while Officer A struggled with Subject 1. Furthermore, the Commission was critical of the fact that this was Officer A and B's first day working together and that they had failed to adequately discuss tactics prior to their start of watch. The Commission also found that Officer A's utilization of his/her weapon to hit Subject 1 during the struggle warranted an

AD as the weapon was not a proper impact device and could have accidentally discharged during the struggle.

The Commission found that both officers' drawing and exhibition of their weapons was in policy, as was Officer A's punches to Subject 1's face with his/her fist when Subject 1 reached for Officer A's holster.

As a result of the incident, the area command initiated personnel complaint CF No. 06-2751 prior to the Commission's AD finding. This resulted in the Department framing two allegations of misconduct for Unauthorized Force and Unauthorized Tactics against Officer A and one allegation of misconduct for Unauthorized Tactics against Officer B. The Chief of Police sustained both allegations against Officer A and issued an Official Reprimand, which appeared to be within the Department's Guidelines, as the officer had no prior similar sustained complaints. Additionally, the Chief of Police sustained the allegation against Officer B and issued an Official Reprimand, which also appeared to be within the Department's Guidelines, as the officer had no prior similar sustained complaints. Officers A and B were each also ordered to attend formal training regarding the tactics they employed during the incident.

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VI. TEAMS II Reports and CMS

During our review of all of the Biased Policing cases, OOS cases and CUOF cases included herein, we noted that in all 28 cases the officers' TEAMS II reports were accurately updated to include the correct adjudication, correct penalty imposed, status of the case and/or the Commission's finding. In the past five quarters, there had always been at least one TEAMS report that had not been updated. We commend the Department for the accuracy provided in the reports of the cases we reviewed.

The OIG noted that Table F of the Department's Report indicates that there were 663 total allegations for Neglect of Duty and 74 allegations sustained. However, in Table C and Table II, the total allegations for Neglect of Duty are 662 and the amount sustained is 73. TEAMS II Development Bureau reports that this error has since been corrected. The correct total number of allegations for Neglect of Duty is 662 and the amount sustained is 73.

Additionally, the OIG reviewed a sample of five Allegation Types (NOD, PTC, False Statements, FTQ, and Alcohol Related) in Table F and cross referenced them with the supporting documentation in Appendix I. We also noted discrepancies in one of the five allegation types (PTC) sampled amongst the information contained in Appendix I. In that instance, the report erroneously reduced the total number of complaints listed in Appendix I. For example, Table F lists a total of 18 sustained allegations for PTC against a PO III. Yet Appendix I lists only 17 complaints. In this instance, Appendix I erroneously failed to list one PTC complaint, and should list 18 complaints. As previously noted, in Section II, there was also one other error with respect to the number of Command Staff PTCs. TEAMS II Development Bureau reports that it has corrected the errors in this report.

VII. Conclusion

Overall, the OIG noted some investigative concerns in 14 (70%) of the Biased Policing cases we reviewed, but did not believe those concerns impacted the adjudications. However, we noted major concerns in six cases (30%), due to a lack of factual support for the adjudications, witnesses not being interviewed, and a lack of proper follow up questions. Additionally, supportive documentation was missing, the investigations did not properly address whether racial profiling applied to all of the law enforcement actions involved in the case, and because some allegations were not framed properly or at all.

Last quarter, the OIG noted that the number of OOS cases increased from three to five and this quarter the number remained at five. The OIG appreciates that the Department continues to identify and take action to prevent cases from falling OOS. Finally, we found that the Department issued appropriate penalties in all three of the CUOF cases reviewed.