

LOS ANGELES POLICE COMMISSION

*REVIEW OF THE DEPARTMENT'S
QUARTERLY DISCIPLINE REPORT*
3rd Quarter, 2008



Conducted by

OFFICE OF THE INSPECTOR GENERAL

ANDRÉ BIROTTE, JR.
Inspector General

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I. Introduction

The Consent Decree requires that the Los Angeles Police Department (LAPD or Department) prepare 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 (See Consent Decree Paragraph 88). The Department has completed its report for the Third Quarter of 2008 (Quarter). The Board of Police Commissioners (Commission or BOPC) received its copy of the Department's Quarterly Discipline Report (Department's Report) on November 14, 2008. As required under Consent Decree Paragraph 89, the Office of the Inspector General (OIG) has reviewed the Department's Report and has submitted its own Report to the Commission.

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 Racial Profiling. The OIG reviewed these cases to determine the overall quality of the investigations. The areas focused upon included, but were not limited to, whether the Investigating Officer (I/O) followed the Racial Profiling Investigations Protocols dated May 15, 2007, 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. Since the last time we reviewed racial profiling cases, the Department has improved upon its use of the Protocols and is continuing to make its own improvements and conduct additional training.

In Section IV, the OIG discusses cases closed during the Quarter that were determined to be Out of Statute (OOS). This Report includes seven 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 two 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.

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

On January 21, 2009, OIG staff received a response to our preliminary findings in this report from the Commanding Officer (C/O) of the Internal Affairs Group (IAG). The information provided by IAG in their response was taken into consideration prior to finalizing this report.

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

As a result of the OIG's review of the Department's Report, the information provided was utilized to conduct 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."¹ Preponderance of the evidence is also "the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be."²

Using the information contained in the Department's Report, we determined that the percentage of sustained allegations was 13.6% (total number of sustained allegations/total number of allegations = 433/3188 = 13.6%). Based on the information in the Department's Report, we also 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	82.4%	89/108
Neglect of Duty	21.1%	147/698
False Statements	13.8%	12/87
Unbecoming Conduct	12.7%	74/581
Unlawful Search	4.5%	4/89
Unauthorized Force	2.3%	7/308
Discourtesy	1.6%	9/550
False Imprisonment	0.5%	1/214
Racial Profiling	0.0%	0/92
Other Policy/Rule	0.0%	0/79

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¹ Black's Law Dictionary 1220 (8th ed. 2004).

² Id.

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 Allegations¹
Accidental Discharge	2/2	100%	0.1%	2	2
Alcohol Related	4/6	66.7%	0.2%	5	4
Discourtesy	9/550	1.6%	17.3%	385	8
Discrimination	0/26	0.0%	0.8%	22	0
Dishonesty	5/18	27.8%	0.6%	14	3
Domestic Violence	17/26	65.4%	0.8%	5	2
Ethnic Remark	3/17	17.6%	0.5%	10	3
Failure To Appear	22/36	61.1%	1.1%	36	22
Failure To Qualify	12/24	50.0%	0.8%	24	12
False Imprisonment	1/214	0.5%	6.7%	179	1
False Statements	12/87	13.8%	2.7%	64	8
False & Misleading Stmts.	5/5	100.0%	0.2%	2	2
Gender Bias	1/2	50.0%	0.1%	2	1
Improper Remark	6/47	12.8%	1.5%	26	5
Insubordination	2/4	50.0%	0.1%	4	2
Misleading Statements	4/6	66.7%	0.2%	6	4
Narcotics/Drugs	5/12	41.7%	0.4%	6	3
Neglect of Duty	147/698	21.1%	21.9%	452	82
Other Policy/Rule	0/79	0.0%	2.5%	40	0
Preventable Traffic Coll.	89/108	82.4%	3.4%	107	88
Racial Profiling	0/92	0.0%	2.9%	78	0
Retaliation	0/21	0.0%	0.7%	15	0
Service	0/5	0.0%	0.2%	2	0
Sexual Misconduct	0/17	0.0%	0.5%	10	0
Shooting Violation	0/2	0.0%	0.1%	2	0
Theft	2/49	4.1%	1.5%	30	2
Unauthorized Force	7/308	2.3%	9.7%	207	3
Unauthorized Tactics	0/57	0.0%	1.8%	45	0
Unbecoming Conduct	74/581	12.7%	18.2%	335	46
Unlawful Search	4/89	4.5%	2.8%	68	2

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.

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 below table.

	Sustained Allegations/ Allegations	Overall Sustained Rate	Sustained Allegations/ Total Allegations (Minus PTCs, FTAs, & FTQs)	Overall Sustained Rate (Minus PTCs, FTAs, & FTQs)
Allegation Total	433/3188	13.6%	310/3020	10.3%
Command Staff ⁴	4/23	17.4%	3/22	13.6%
Lieutenant	4/35	11.4%	3/32	9.4%
Sergeant	28/136	20.6%	15/121	12.4%
Detective	37/184	20.1%	24/165	14.5%
Police Officer III	63/556	11.3%	42/520	8.1%
Police Officer II	168/1211	13.9%	106/1135	9.3%
Police Officer I	51/237	21.5%	43/225	19.1%
Reserve Officer ⁵	3/7	42.9%	3/7	42.9%
Detention Officer ⁶	11/25	44.0%	11/25	44.0%
Civilian Mgmt	0/4	0.0%	0/4	0.0%
Civilian Personnel	22/103	21.4%	22/103	21.4%
Unknown/Invalid	42/667	6.3%	38/661	5.7%

Thirteen percent (13.6) of all misconduct allegations were sustained during this Quarter. Ten percent (10.3) of all allegations were sustained when PTCs, FTQs, and FTAs were removed.

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⁴ The OIG noted that there were a total of four allegations sustained against Command Staff, two were for Neglect of Duty (CF No. 06-005995), one was for Unbecoming Conduct (CF No. 08-001728), and the other was for a PTC (CF No. 08-003114).

⁵ The OIG noted that the 42.9% sustained rate for Reserve Officers during the 3rd Quarter represents the fifth highest rate of sustained allegations for this group in the last 10 quarters, after 62.5% from the prior quarter and 69% from the first quarter of 2008. Further, three of the seven total allegations were for Unbecoming Conduct, two of which were sustained. Last quarter, four of the eight total allegations were for Unbecoming Conduct, three of which were sustained.

⁶ The OIG noted that the 44% sustained rate for Detention Officers during the 3rd Quarter represents the sixth highest rate of sustained allegations for this group, it was 25.6% from the prior quarter and 30.2% from the first quarter of 2008. Further, seven of the 25 total allegations were for Unbecoming Conduct, five of which were sustained, while six of the 25 total allegations were for Neglect of Duty, three of which were sustained. The OIG will monitor this issue closely to see whether the rate goes up or down in the upcoming quarters.

III. Review of Racial Profiling Cases

A. Introduction

Complaints alleging Racial Profiling⁷ have been an ongoing concern for the Board of Police Commissioners and for the Los Angeles Police Department. As a result, Racial Profiling Investigations Protocols (Protocols) were promulgated by the Department and adopted by the Commission on May 15, 2007. The Protocols contain guidelines for the investigations of racial profiling allegations. Last year, the Commission requested that the OIG review racial profiling investigations to determine whether the Protocols are being properly utilized. The results of our review were compiled in a report submitted the Commission on November 16, 2007.⁸ At that time, there were relatively few cases to review which were investigated after the approval of the Protocols. The OIG advised the Commission that it would revisit the issue once IAG was able to fully train its investigators in the use of the Protocols and once a sufficient amount of time had passed to accumulate a more sizeable population of racial profiling cases to review. The results of our more recent review are compiled in this report.

B. Definition

The Protocols begin with a definition of racial profiling from an International Association of Chiefs of Police publication:

Any police activity that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads police to a particular individual who has been identified as being, or having been, engaged in criminal activity.

“Racial Profiling” at its core concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches, and other law enforcement investigative procedures. It is premised on the assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity.

⁷ “Biased based policing” is the proposed term change for “racial profiling” by IAG in the Racial Profiling update Quarterly report dated November 4, 2008.

⁸ In each quarterly review of the Department's Report, the OIG normally selects a specific allegation type upon which to focus our review. At the Commission's request, the OIG completed its Review of the Department's Use of the Professional Standards Bureau's Racial Profiling Investigative Protocols for cases that closed during the 3rd Quarter of 2007. That report was approved by the Commission on November 16, 2007. Since the OIG issued the November 16th report about a specific allegation type, our Review of the Department's Quarterly Discipline Report, 3rd Quarter, 2007 which was issued on January 18, 2008, did not contain a section covering a specific allegation type.

C. The Protocols' Guidelines

The Protocols for investigating racial profiling allegations adopted by the Commission on May 15, 2007 were utilized by IAG Investigating Officers (I/O or I/O's) during the investigation of the cases reviewed in this report. The Protocols established distinct steps an I/O shall take when investigating complaints which contain at least one allegation of racial profiling.⁹ The Protocols provide investigators with two different courses of action to be taken during an investigation depending upon whether the police activities being reviewed are "other than self-initiated" (where the officer responds to a radio broadcast or citizen flag-down) or "self-initiated" (where an officer stops someone using his/her own discretion).

For "Other than Self-Initiated Activities," the Department requires that the following steps shall be taken:

- Interview the complainant or review to assess the viability of the racial profiling accusation, specifically examining complainant's perspective regarding the behavior displayed by the accused.
- Determine if outside information (e.g., radio call or citizen flagdown) could have factored into the accused's decision to detain the complainant.
- If outside information was a factor, determine if the detention was reasonable, looking at whether the complainant matched the description in the radio call and evaluating the factors the accused relied upon to conclude that there was a "match."
- Examine any documentation related to the stop and include as addenda.
- The Department believes that "[I]f 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."

With respect to "Self-Initiated Activities," the Department requires that the following steps shall be taken:

- Gather all pertinent documents that could be related to the investigation.
- Interview all witnesses, including the complainant, and canvass the location.
- With respect to the accused interview, ask the officer to articulate the reason for the stop, search, or detention; ask the officer to give additional details if they say the reason for the stop was "officer safety," an "uncooperative" complainant, or the "high crime area"; ask the officer to explain further if he/she says that race or ethnicity was a factor in the stop or detention; ask the officer to articulate the reason for the search if there was one; ask the officer about peripheral factors, if relevant, such as lighting conditions, distance away from

⁹ IAG developed New Protocols for investigating biased policing. They are attached as Addenda A. The steps outlined in the New Protocols are advised to be used by IAG investigators in conjunction with the Protocols approved on May 15, 2007, when conducting personnel investigations. The New Protocols will be in effect on January 1, 2009. The New Protocols reflect the revised policy and terminology of "Biased based policing" to include, "Standards of Review" which provide investigators with case law or other policies that are applicable to biased policing.

the complainant when making original observations, and tinted windows; identify and resolve inconsistent statements; ask follow-up questions as appropriate; and examine the officer's stop-data history as appropriate.

- Use additional investigative tools, as necessary, to complete the investigation.

The Protocols also contain "Other Considerations to be Used to Determine Investigative Strategy." This section requires the I/O to determine whether "Racial Profiling" is the only allegation, can be disproved from the complainant's own statement, and whether other evidence exists. Further, the I/O should determine whether the complainant can articulate any behavior on the part of the officer that can be construed as racial profiling and whether there is probable cause for the detention, search, or other law enforcement activity. After reviewing these other considerations, the I/O shall then make a determination as to whether or not officer interviews are necessary to determine whether or not probable cause existed and the actions taken were reasonable.

The Department also emphasizes that every complaint with a racial profiling allegation will be reviewed by the C/O of either the Criminal Investigation Division (CID) or Administrative Investigation Division (AID) of Professional Standards Bureau (PSB) prior to distribution to the Area C/O for adjudication. To assist the C/O's 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.

C. Methodology

This Quarter the OIG conducted in-depth reviews of complaints that contained at least one allegation of a Racial Profiling and Gender Bias.¹⁰ For this Report, the OIG limited the cases reviewed to those that were closed between July 1, 2008 and September 30, 2008. During the Third Quarter of 2008, a list generated from the Department's Complaint Management System (CMS) revealed that 59 complaints were closed during this time period, with at least one allegation of a Racial Profiling and Gender Bias.¹¹ Fifty-two of these cases were adjudicated as either "Unfounded" or "No Misconduct, 6 cases were adjudicated as either "Sustained, Not Resolved, Insufficient Evidence to Adjudicate, [or] Demonstrably False, and one case was a duplicate. It was determined that a random sample would be selected from the Unfounded/No Misconduct cases to review, but that all of the remaining 7 Sustained, Not Resolved, Insufficient Evidence to Adjudicate, [or] Demonstrably False cases would be reviewed. A unique number from 1 to 52 was assigned to each of the 52 Unfounded/No Misconduct cases in the order they appeared on the list generated from CMS. In order to determine which of the 52 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 52 to allow for the selection of a final sample of 10 cases. Each of the 10 Unfounded/No Misconduct cases was requested along with the other 7 cases for a total of 17 cases. Seven of the cases were checked out to the Department of Justice (DOJ), and were therefore unavailable for review. One¹² of the cases was a "Sustained" Gender Bias complaint

¹⁰ The OIG added Gender Bias allegations in anticipation of the Department's change to a policy prohibiting Biased Policing which will include Gender Bias.

¹¹ Of the sample only two complaints contained allegations that included Gender Bias.

¹² This case was CF No. 07-002902.

which did not support the definition of "Biased Based Policing" as defined by IAG and was therefore excluded from the sample. Two other cases¹³ were excluded because after further review by IAG it was determined that they were not racial profiling cases. OIG staff reviewed all of the remaining seven cases in the sample.

In conducting this review, a matrix was utilized by first and second-level reviewers. This matrix contained 30 questions designed to evaluate whether the investigators utilized the Racial Profiling Protocols and whether the investigation and adjudication properly addressed the complainant's allegation of racial profiling. In addition, 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.

D. Findings

The OIG previously reviewed Racial Profiling cases as a part of our Discipline Report for the Third Quarter of 2007. The Commission asked the OIG to review these cases to determine if the Racial Profiling Protocols adopted by the Commission in 2007 were being utilized by the Department during its investigations and what impact they have had on the quality of the investigations. Our 2007 review revealed that, the OIG identified investigative issues in five of the six 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 2007 review further raised the larger issues of: whether investigators were familiar with and showed an understanding of the Protocols and whether necessary training was being provided to all investigators and supervisors involved in the investigation of Racial Profiling cases. As noted previously, the OIG decided to revisit these topics to evaluate the Department's progress in the utilization of the Protocols. In this report, the OIG notes significant progress by the Department in the familiarity and usage of the Protocols by investigators and supervisors.¹⁴ Furthermore, IAG has implemented regularly scheduled training on the use of the

¹³ These cases were CF Nos. 07-006047 (Discrimination) and 08-002310 (Discourtesy), respectively.

¹⁴ The Racial Profiling Checklist which is required by the Protocol was included in six of the seven cases reviewed during this report. The OIG also found that in two (CF Nos. 07-002608 and 08-000160) of the seven cases the checklist questions were answered incorrectly. And, in one of the cases (CF No. 08-000059) the checklist was answered for only one of the two accused officers. The C/O of IAG advised that the checklist will also be revised as the Department continues to refine the Protocols.

Protocols in Racial Profiling investigations. As a result, our current review focused more upon determining whether such cases were being properly investigated. Overall, the OIG noted that there was enough information gathered during the investigation of the majority of these cases to allow the adjudicator to make an informed decision, although the OIG did note some investigative concerns in some of the cases identified below. The results of our review of all seven cases are included in the next section.

E. Case Summaries and Analysis

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

1. CF No. 07-002608

a. Summary

This complaint was filed against an officer whom the complainant alleged was racist, and detained him on a traffic stop because he believed the complainant was a gang member. Three additional allegations were framed against the officer for discourtesy, unnecessary handcuffing, sitting the complainant on the curb, and slamming the complainant on the trunk of his vehicle. The complainant advised that he was driving alone and was pulled over after passing through an intersection. The accused officer, who was also the contact officer, approached the vehicle from the driver's side and informed the complainant that he had been stopped for an inoperable rear tail light. According to the complainant, the accused officer stopped him because he looked like "one of the local Shoreline Crip gang members" whom he alleged the accused identified by name. The complainant was visibly upset and irate and exited the vehicle without being told. The accused officer placed two sets of handcuffs on the complainant due to his stature, size, and aggressive behavior, and searched him. The complainant stated that the accused officer told him that he was being handcuffed because he was "a strong black man."

The investigation revealed that the complainant had been issued a citation two weeks prior for "No Registration" in a different car. The reason the complainant took the current car which belonged to his father-in-law was because he knew it was "clean." After stopping the complainant and receiving his protestations about the reason for the stop, both officers depressed the brakes of the complainant's vehicle to verify if the brake light was operational and both officers had differing answers. Although, the accused officer stated he conducted a traffic stop for an inoperable tail light, the partner officer stated that the tail light was working but was faint. The complainant said the tail light was working. The accused officer did not issue a citation for the brake light and removed the handcuffs from the complainant. According to the accused officer, he did not issue a citation to the complainant because he wanted to promote the "Spirit of the Law," in order to develop a positive relationship between the community and peace officers.

The I/O's in this case were clearly familiar with the Racial Profiling Protocols, and referred directly to them within the investigation. We commend the I/O's for interviewing the complainant twice.

The Racial Profiling Investigation Checklist was included in the investigation. The OIG was provided with the chronological record in this case, and the checklist was attached to it. We note

however, that the I/O answered "Yes" incorrectly as to whether the Protocols and the PSB Notice dated February 15, 2007 were included as supplemental documents in the investigation. It is a minor point however, because the I/O used the Protocols in the investigation. The investigation resulted in a total five allegations of misconduct against the accused officer ranging from unauthorized force to racial profiling.

A review of the recommended adjudication found that all of the allegations were originally classified as Unfounded based on the following rationale: the complainant's "inability to remain consistent casts doubt on his credibility. Conversely, the involved officers provided consistent believable accounts of the incident." Those allegations were Military Endorsed by the Bureau C/O to "Not Resolved" based on the fact that although both officers stated that the reason for stopping the complainant was for an inoperable brake light, the accused officer in his statement said that in testing the brakes after the initial stop, his/her partner advised him/her that the brakes were not working. The partner officer's statement contradicts the accused officer's statement, noting that the brakes appeared to be working but were "faint."

b. Analysis of Investigation

Our review revealed a few investigative deficiencies, which we do not believe impacted the adjudication. In one instance, the accused officer was asked if he/she was aware of the complainant's race prior to stopping him, however, he/she did not respond to this question. The accused was then immediately asked whether the complainant's race played any part in the stop, to which he replied in the negative. We would have preferred that the I/O require a response to the first question, before moving on to the next. Whether or not the officer saw the complainant's race is one of the factors to be gathered according to the Protocols. We would also have preferred the I/O ask more detailed questions of the two officers to resolve the inconsistency between the statements about whether the taillight was operating normally.

The allegations were ultimately adjudicated as "Not Resolved." This adjudication seems to be appropriate given the fact that that the officers were in agreement about the reason for the initial stop. Furthermore, there were no independent witnesses to verify either officer's conflicting statement about whether the brake light was operating properly after the stop.

c. Conclusion

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

2. **CF No. 07-004919**

a. Summary

This complaint was filed against a supervisor, the accused, whom the complainant alleged was engaging in racial profiling. The complainant, along with a supervisor and a probationary officer, rode for several hours together in a patrol car during their regular shift. The complainant

said that the accused supervisor engaged in "racial profiling" during their time together by "stopping" only Black and Hispanic individuals.

The investigation revealed that the complainant telephonically contacted the Area's Patrol Adjutant to arrange a meeting with the Area's C/O to discuss a formal grievance he/she had initiated to address a negative performance evaluation he/she had been served. During the telephonic conversation, the complainant described an experience he/she had with the accused supervisor when they rode together for several hours in a patrol car. The accused supervisor had been working with the complainant to demonstrate his/her expectations of the complainant as a senior training officer. As a result, the accused supervisor had been disappointed with the complainant's field performance related to "field observation" enforcement, which led to the negative performance evaluation.

The investigation further revealed that the I/O in this case was familiar with the Protocols, and referred directly to them within the investigation, eliminating any ambiguity about his/her understanding of the Protocols.

The investigation further revealed that the I/O did a thorough job of interviewing the complainant and accused employee. The I/O asked the complainant and the accused employee detailed questions about each stop recorded on the Daily Field Activities Report (DFAR) to gather a complete picture of the series of events that took place during the shift with the accused supervisor, including two unlogged stops.

The Racial Profiling Investigation Checklist was included in the investigation. The OIG was provided with the chronological record in this case, and the checklist was attached to it.

The investigation resulted in one allegation of misconduct against the accused supervisor. The allegation that the accused supervisor engaged in racial profiling was classified by the Department as "Unfounded" based on the following rationale: "When formally interviewed, the complainant was unable to provide any substance to his/her initial "racial profiling" claim against the accused supervisor."

b. Analysis of Investigation

Our review revealed no investigative deficiencies, which would have impacted the adjudication. However, the OIG would have preferred that the I/O interview the Adjutant who completed the telephonic complaint in order to get his/her input regarding the complainant's allegations.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision, including the thorough review and questioning with respect to the officer's work product information.

3. **CF No. 07-006138**

a. Summary

This complaint was filed against two unknown officers, whom the complainant alleged stopped him solely because of his race. The complainant advised that he was driving westbound and the officers were driving eastbound when they made a u-turn and began to follow him. The complainant was eventually stopped by the officers. The complainant alleged that when he was stopped he asked the contact officer the reason for the stop and the contact officer stated, "we'll get to that." The officer proceeded to ask whether the vehicle was a rental car; the complainant confirmed that it was and showed him/her the keychain which had the rental agency logo on it. According to the complainant the officer then took his driver's license, ran it in the computer and returned it to him. After his license was returned to him, the partner officer told the contact officer that they had to respond to a radio call and the officers left without providing a reason for the stop or issuing a citation. The complainant believed that because he was not provided any reason for the stop, the only reason he was stopped was because the officers were both white and he was Mexican.

The investigation revealed that there was no record of a stop made at the location indicated by the complainant nor was there a record of any LAPD employee requesting/checking the complainant's driver's license or name. The investigation indicated that other police agencies frequent the area.

A review of the tape recorded interview of the complainant revealed that the telephone number taken by the preliminary investigator was different than the phone number documented on the complaint face sheet. The investigator was unable to contact the complainant because when he/she called the telephone number it was the wrong number. The investigator did go to the address provided by the complainant but was unsuccessful in locating him. The complainant had not provided an apartment number.

The complainant was interviewed by the preliminary investigator during the initiation of the complaint. However, neither the complainant nor the accused were interviewed by the I/O during the primary investigation of this case. Further, the I/O did not complete or include the Racial Profiling checklist in the investigation. The I/O did include the Protocols for racial profiling investigations dated February 15, 2007 with the investigative file.

The investigation resulted in one allegation of misconduct against two unknown employees. The allegations that the accused officers engaged in racial profiling were classified by the Department as, "Insufficient Evidence to Adjudicate," based on the following rationale: "The complainant provided limited information when initiating the complaint and a thorough use of Department resources was unable to corroborate the allegation."

b. Analysis of Investigation

Our review revealed an investigative deficiency which may have impacted the adjudication. The preliminary investigator documented the complainant's area code incorrectly on the complaint

facesheet, but the correct number was recorded in the complainant's tape-recorded interview. Later, the I/O made an effort to find the complainant, but apparently did not notice the correct number; therefore he did not interview the complainant. We do believe the preliminary investigation was thorough and that it contained very detailed questions about the officers' identities. However, a simple mistake by the preliminary investigator, which went unnoticed by the I/O, prevented the complainant from being interviewed further about the identities the accused officers.

c. Department's Response

In its response to the OIG's Analysis of the Investigation, the C/O of IAG agreed that it was simply an error on the I/O's part to miss the correct contact number for the complainant on the tape recording. He also agreed that the I/O did make other extensive efforts to locate the complainant.

d. Conclusion

It is unclear whether there was enough information gathered during the investigation to allow the adjudicator to make an informed decision about the allegation of racial profiling against the accused officer.

4. **CF No. 08-000059**

a. Summary

This complaint was filed against one known officer and one unknown officer whom the complainants alleged racially profiled them. The two complainants are husband and wife. They alleged that on several occasions they were stopped by officers on motorcycles and asked for their driver's license and sometimes registration and insurance but not cited for anything and were not told what they did wrong.

The investigation revealed that the known accused officer and other officers had issued citations to the husband on three occasions for traffic violations. There were no citations issued to the wife. One of the stops involved a driver license check and a warning. The investigation also revealed that the motorcycle officers working in the area where the complainants reside were working a special detail. The goal of the detail was to reduce the amount of unlicensed drivers involved in hit and run traffic collisions, but the complainants were not aware of the officers' assignments at the time of the stops.

The I/O in this case was acquainted with the Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist was included in the investigation. However, the checklist was filled out with responses only in reference to the unknown officer. The checklist responses did not address the accused officer's interview questions. The OIG was provided with the chronological record in this case, and the checklist was attached to it.

The investigation resulted in two allegations of misconduct against the accused officers. The allegation that an unknown officer racially profiled him on an unknown date during a traffic stop was classified as "Not Resolved" based on the following rationale: the investigation was unable to determine the identity or division of assignment of the unknown officer.

The allegation that the known accused officer, while on duty, racially profiled her on an unknown date was classified as "Unfounded" based on the following rationale: The investigation revealed that by the complainants own admission, her vehicle did have a broken tail light, which provided justification of the stop. It was further noted that the complainants did not fully cooperate in the investigation.

b. Analysis of Investigation

Multiple times during her interview, one of the complainants advised that she does not believe that the known accused officer was justified in stopping her and her husband on different occasions. She further alleged that she believes all of the stops, except one, involved racial profiling. However, the investigation did not contain an allegation for one of the stops about which she complained. The OIG believes an additional allegation should have been framed for this particular stop. This complainant also alleged twice that the accused officer had "a bad attitude." The examples she gave of may not have risen to the level of discourtesy, but the I/O should have asked follow up questions before determining that an additional allegation was unwarranted.

The OIG would also have preferred that the I/O examine the work product of the accused officer as suggested by the Protocols. This extra step, although not required, could have provided additional insight.

c. Department's Response

In its response to the OIG's Analysis of the Investigation, the C/O of IAG agreed that additional allegations could have been framed in this investigation. He also opined that the I/O should have provided a Spanish speaking translator during his interview with the female complainant¹⁵ and that the I/O should have interviewed the supervisor that took the complaint. As to the OIG's preference for the review of an accused officer's work product in racial profiling cases, the C/O advised that in the future, investigators will no longer be tasked with this type of review. The Department does not believe that a review will provide any information that can be used as evidence of racial profiling.

d. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision as to the allegations framed against the accused officer. However, as noted above more allegations could have been framed in this investigation.

¹⁵ The complainant advised she would have been able to answer the I/O's questions better if she had the use of a translator. She also requested that her husband have a translator for his interview.

5. **CF No. 08-000160**

a. Summary

This complaint was filed against two officers, whom the complainant alleged detained him based on his race and unnecessarily handcuffed him. One additional allegation was framed against one officer for an inappropriate comment, when he described the complainant as a “thug” during the detention. The complainant was leaving a movie theater with his girlfriend to go meet his mother who was there to pick them up. As they were leaving, the complainant noticed that a friend was being detained near the curb. As he approached the curb, the accused officers approached them and asked the complainant his age. Since he was a minor and it was past curfew, the officers believed the complainant was in violation of Los Angeles Municipal Code (LAMC) Section 45.03. The accused officers asked the complainant to sit down on the curb but he refused. The officers then proceeded to handcuff him and sat him in the back of their patrol car.

Three other teen Hispanic males were also stopped however, two ran away and one remained. The remaining Hispanic teen was instructed to report to the designated juvenile pickup spot. It was unclear from the investigation as to how the pickup spot was designated. The complainant's mother, who had been circling the theater to find her son, parked behind the patrol car and spoke with the officers. The complainant and his girlfriend were cited and released to the complainant's mother.

The investigation revealed that the accused officers were working a Curfew Task Force when they observed the two juveniles and detained them based on their youthful appearance. It is unlawful for any minor under the age of eighteen years to be present in any public place between 10 p.m. and sunrise of the immediate following day. The officer handcuffed the complainant due to his lack of cooperation and to maintain control of him and minimize the possibility of a more drastic means of restraint or a use of force incident.

The investigation further revealed that one of the officers actually cited three juveniles during the curfew detail as noted on the Daily field Activity Report (DFAR) of one of the accused officers. The other officer's DFAR is missing from the investigation and only two of the three citations are included in the file. The Chronological Record indicates that the I/O ordered three Field Data Reports, but they were not included in the file or mentioned in the investigation. Therefore, the OIG could not review the officers work product for the evening, which was relevant to whom the officers cited and whom they did not. The investigation further revealed that the I/O did not review the officers' other stop data/citations and did not provide an explanation as to why that information was not utilized.

The I/O in this case was familiar with the Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist was included in the investigation. The OIG was provided with the chronological record in this case, and the checklist was attached to it. The OIG noted however that a few questions were answered incorrectly on the checklist.¹⁶

¹⁶ The I/O answered yes as to whether a copy of the Protocols and the PSB Notice dated February 15, 2007 were included as supplemental documents. Furthermore, the I/O answered yes as to whether questions were asked of both

The investigation resulted in a total five allegations of misconduct against the accused officers. The allegations that each accused officer detained the complainant based on his ethnic background, unnecessarily handcuffed him while being cited were classified as "Unfounded" based on the following rationale: The officers stopped the juveniles based on their youthful appearance not their ethnicity and the male black complainant was handcuffed due to his lack of cooperation with the officers commands. Therefore, the officers acted in accordance with the established laws and Department policies and procedures.

The allegation that one of the accused officers made an inappropriate comment to the male black complainant was classified as "Non-Disciplinary: Employee's Actions Could Have Been Different" based on the following rationale: The officer used the word "Thug" as a descriptor for the complainant's behavior and the adjudicator noted that the officer should have used a better word to describe the noted conduct.

b. Analysis of Investigation

i. LAMC 45.03

After reviewing the investigation, it remained unclear as to whether the complainant and his girlfriend were in violation of LAMC 45.03. Exception (c) to this section states that the provisions of this section shall not apply when "The minor is returning directly home from a public meeting, or a place of public entertainment, such as a movie, play, sporting event, dance or school activity." The I/O also indicated this exception in the investigation in I/O note no. 1. It appeared that the juveniles that were detained and cited by the officers may have been subject to exception (c) since they had attended a movie and were on their way to the curb where complainant's mother had been waiting for them. The complainant and the complainant's girlfriend both communicated this fact to the officers.

There is no mention of a designated waiting area in LAMC 45.03. Therefore, it would also have been helpful to question all involved about the designated waiting area, including questions about how to reach the waiting area, were the complainant's on their way there, and is it required by law for them to wait in this area.

We understand that both the complainant and the complainant's girlfriend had their day in court, but we do not know what analysis if any was given to this issue at their court hearings. The OIG believes it would have been helpful to any reviewer to have more analysis about the applicability of LAMC 45.03.

officers about the lighting and distance when the officers first made their observations of the complainant. However, only one officer was asked during the interview about the lighting. Lastly, the I/O answered "No" on the question regarding whether there was a search associated with the detention. On tape one of the accused officers indicated that a pat down (definition not provided) was conducted after he/she applied the handcuffs. The I/O did not question the extent of or the reason for the pat down.

ii. Unresolved Material Inconsistencies

The OIG also noted that the I/O may have been able to resolve some material inconsistencies in the investigation, by asking appropriate follow-up questions. The investigation revealed that there were others in the area with youthful appearances that the officers did not detain or cite. The accused officers advised that it was their discretion as to who they stopped that night. There were no follow-up questions about why the complainant, his friend, and the complainant's girlfriend in particular were singled out. There were also no follow up questions as to why the complainant's girlfriend was treated different than the Hispanic juvenile that was directed to go to the pick-up spot. The rationale for the Hispanic juvenile was that he was cooperative even though he was in violation of the curfew, however, there is no indication that the complainant's girlfriend was uncooperative, but she was still cited.

Further, the officers advised that the complainant was swinging his arms, yelling and screaming when asked to sit on the curb by the officers. However, the complainant advised that he initially just questioned why he was being asked to sit on the curb. And, the complainant's girlfriend was not asked in detail to corroborate the officers' version of complainant's behavior. If corroborated, the complainant's behavior would have been an indication that officer safety was at issue, thus giving the officers legal justification to handcuff him and sit him in the patrol car. The complainant's girlfriend said the complainant was "acting out" by asking why he was being made to sit on the curb. She did not verify that complainant was swinging his arms. Further, the officers confirmed that the complainant was not trying to flee. Furthermore, the complainant's girlfriend was asked leading questions about whether the complainant was acting like a "thug," to which she responded in the affirmative. However, there were no follow-up questions about her understanding of that term. Additionally, she advised that, when issuing her a citation, one of the officers said to her "that's what you get for having a thug boyfriend." There was also no follow up questioning about this statement.

The complainant noted that a majority of the individuals detained and asked to sit on the curb that evening were black or brown, but there other youthful looking individuals walking past, who were not stopped. Asking the officers about the race of these individuals and why they didn't stop these individuals and/or sit them on the curb would have been relevant to the analysis as well.

Additionally, the officers' Field Data Report provided that there was no search and no pat down/frisk, but in the officer's statement he said he did do a pat-down search. We think the officer should have been asked about this information not being included in the FDR.

iii. Additional Witness Interviews

In an effort to answer some of the unresolved questions, the OIG noted that other witnesses should have been interviewed in the investigation. For example, when the complainant and the complainant's girlfriend exited the theater, the complainant's girlfriend noticed that complainant's friend was sitting on the curb near the officers. The complainant and the

complainant's girlfriend were on a double date with this friend and his girlfriend. This second couple could have been important witnesses to what happened because they were at the scene when the complainant and the complainant's girlfriend arrived down the stairs and encountered the officers.

iv. Method of Questioning

At times, the I/O seemed to suggest an answer to his questions by the method in which they were posed. This method was apparent during when the officers' discussed why they handcuffed the complainant and the complainant's behavior. We previously discussed the method by which the complainant's girlfriend was questioned.

v. The Accused Officers' Work Product

The OIG would also have preferred that the I/O examine the work product of the accused officer as suggested by the Protocols. This extra step, although not required, could have provided additional insight.

c. Department's Response

In its response to the OIG's Analysis of the Investigation, the C/O of IAG agreed that the I/O could have interviewed the additional witnesses and asked more follow-up questions as a part of this investigation. He also opined that the I/O could have used less closed-ended questions and more open-ended questions during the interviews conducted. As to the sufficiency of the analysis of LAMC 45.03, he further noted that a thorough review of the applicability of this section was critical to the case. We previously noted the Department's response as to the use of the officers' work product.

d. Conclusion

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

6. **CF No. 08-000957**

a. Summary

This complaint was filed against two officers, whom the complainant alleged stopped him because of his ethnicity, searched his pants pocket, and searched his vehicle. The complainant also complained that one of the accused officers was unprofessional, because the officer told him to "shut his mouth," and pushed him causing an injury to his hand.

The investigation revealed that the officers issued the complainant a citation for an illegal right turn. Prior to stopping the vehicle, the officers also noticed that the complainant's vehicle had no license plates affixed to the front or rear of it. The officers also did not observe a temporary registration form affixed to any of the windows on the vehicle. During the traffic stop, Officer B

also noticed a single key in the ignition. The complainant advised the officers that he was driving a vehicle that he just purchased from an auction.

The investigation further revealed that one of the officers conducted a search of the interior of the vehicle for weapons after the suspect became argumentative and agitated. The search took place while the citation was being written and they all waited for the arrival of a supervisor, who was requested by the complainant. Officer A said "he did so because he became concerned after the suspect entered the vehicle and adjusted his mirror in order to monitor the officers' movements, and began to make furtive movements by reaching under the driver and passenger seats."

The Chronological Record of the investigation revealed that the I/O made six attempts to obtain copies of the complainant's medical records in order to substantiate his claim of an injury as a result of his contact with the officers.

The I/O in this case was familiar with the Protocols, and referred directly to them within the investigation. The Racial Profiling Investigation Checklist was included in the investigation. The OIG was provided with the chronological record in this case, and the checklist was attached to it.

The investigation resulted in a total eight allegations of misconduct against the accused officers; ranging for Discourtesy, Unlawful Search, Racial Profiling, Unbecoming Conduct, and Unauthorized Force. A review of the recommended adjudication found that the Unlawful Search, Racial Profiling, and Unbecoming Conduct allegations were classified as "Unfounded" and the Discourtesy and Unauthorized Force allegations were classified as "Exonerated" based on the following rationale: The officers conducted the traffic stop based on the complainant's traffic violation. The complainant admitted that he did not have a license plate or temporary permit to drive the vehicle. The officers had probable cause to stop the complainant due to the traffic violation and knowledge of crime patterns in the Area. Furthermore, for officer safety, the officers advised they conducted a search for weapons after the complainant became argumentative and agitated.

b. Analysis of Investigation

Our review revealed no investigative deficiencies that would have impacted the adjudication. We would have preferred that the I/O examine the work product of the accused officer as suggested by the Protocols. This extra step, although not required, could have provided additional insight.

We also noted that the adjudicator's rationale with regard to racial profiling included, but did not rely upon, an incorrect belief. The adjudicator stated "It should be noted that [name omitted] is African-American, and it is illogical to accuse [him/her] of racial profiling against another African-American." We disagree. Racial profiling or biased policing is not dependent upon the race of the officers and may involve complainants and officers of the same race. Biases are not

unique to one group of persons. We also noted this belief from a different adjudicator in a case from our report about the Department's Report for the 2nd Quarter of 2008.¹⁷

c. Department's Response

In its response to the OIG's Analysis of the Investigation, the C/O of IAG advised that during a recent Command Officers' training, the belief that an officer of the same race as the complainant cannot engage in racial profiling or biased policing was thoroughly discussed at length, debated and refuted.

d. Conclusion

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

7. **CF No. 08-001740**

a. Summary

This complaint was filed against an officer whom the complainant alleged detained her on a traffic stop because she was African-American. The complainant advised that she was driving with her three children in the car and was pulled over after passing through an intersection. The accused officer, who was also the contact officer, approached the vehicle from the driver's side and informed the complainant that she had been stopped for running through a stop sign at the intersection. The accused officer also asked the complainant something to the effect of "Do you live in this neighborhood?" The complainant believed that the accused officer questioned her about living and belonging in the neighborhood because she was African-American.

The investigation revealed that the accused officer and his/her partner were assigned to monitor traffic in the involved intersection specifically for drivers that failed to stop at posted stop signs. The investigation also revealed that, according to the accused officer, residents of the neighborhood regularly complained to the Department about people not stopping in the intersection. When the complainant was stopped, the accused and his/her partner were parked in a patrol car approximately 50 feet from the intersection with a clear view of the limit line. The officers observed the complainant "roll through" the stop sign and conducted a traffic stop.

The investigation also revealed that the accused officer asked the complainant if she was from that neighborhood because if she was from that neighborhood then she should be aware that there was a stop sign posted at the intersection.

The I/O in this case was clearly familiar with the Protocols, and referred directly to them within the investigation, eliminating any ambiguity about his/her understanding of the Protocols.

¹⁷ CF No. 07-005056. In its response to us reporting this issue, IAG agreed, and provided that as a whole the Department could benefit from additional training about racial profiling and bias-based policing.

The Racial Profiling Investigation Checklist was included in the investigation. The OIG was provided with the chronological record in this case, and the checklist was attached to it.

The investigation further revealed that the I/O reviewed the officer's citations from the night the complainant was stopped and cited. The officers cited a total of eight drivers that evening, which included violators that were Middle Eastern, Hispanic, and White. The complainant was the only African American stopped and cited by the officers that night.

The investigation resulted in one allegation of misconduct against the accused officer. The allegation that the accused officer inappropriately detained the complainant on a traffic stop because she was African American was classified by the Department as, "Unfounded," based on the following rationale: There was no evidence that the accused officer conducted a racially motivated stop. The accused officer's primary detail that evening, along with his/her partner, was traffic enforcement. The complainant was stopped because she was observed by the accused officer failing to stop for a posted stop sign. In addition, the accused officer asked the complainant if she lived in the neighborhood because if she did, she should be aware that a stop sign was posted at the intersection.

b. Analysis of Investigation

Our review revealed no investigative deficiencies, which impacted the adjudication. The Department took the time to speak to the complainant and gave her an opportunity to provide information about her complaint.

c. Conclusion

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

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IV. Discussion of Out Of Statute Cases

During this Quarter, seven cases were closed that were determined to be Out of Statute (OOS).¹⁸ We reviewed these investigations to determine the reasons that the cases fell OOS and whether remedial actions were taken to prevent recurrence. We also reviewed seven Intradepartmental Correspondences (15.2s) related to these cases provided to us by the Department, as well as the full case files.

We noted in a previous Report that the Department's training for investigators now includes a specific section on the proper classification of statute dates

Summaries of the OOS cases are as follows:

CF No. 01-1326

This complaint involved two officers implicated in the Rampart investigation of the 1990s. These officers became involved in an Officer Involved Shooting (OIS) that resulted in the death of the suspect. The review of the OIS investigation was conducted by a Use of Force Review Board whose report indicated that the OIS was deemed in policy. No complaint was initiated at that time. Approximately 18 months later, the Rampart Corruption Task Force began reviewing the shooting case and two Neglect of Duty allegations were framed against the officers. Both allegations, contained in a different CF No., were OOS at the time of the initiation of the complaint.

Approximately two years later, numerous other allegations came to the Department's attention in a claim for damages. Eventually a lawsuit was filed and, although the case was tolled for nearly six years due to the civil litigation, these allegations ended up falling OOS.

It appears that the statute lapsed due to several factors including "the lack of a concerted effort by the Department to monitor the civil litigation related to this case." Training has been implemented by the Bureau to prevent a recurrence in the future.

CF No. 05-5331

This complaint was initiated against an officer in a specialized unit involving the reported theft of his/her Department issued weapon. The officer reported that the weapon was placed in a cardboard box during the process of his/her moving to a new office. The officer subsequently placed the box into his/her personal vehicle and parked the vehicle in his/her residence garage for several days. When the officer went to retrieve the weapon he/she could not find it in the box. An initial investigation revealed that moving personnel were in the specialized unit when the officer initially placed the weapon in the box.

The statute lapsed because the complaint was never forwarded to the adjudicating officer and the specialized unit did not track the complaint from its inception through its completion.

¹⁸ These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. All 7 cases are discussed herein. Only 7 out of 1368 (.0051 or .51%) cases were OOS in the 3rd QTR.

Additionally, the complaint would not have been Sustained because the officer subsequently found the weapon and advised her C/O, who failed to advise the complaint investigator of the fact.

The specialized unit instituted procedures to properly track complaints from their initiation to completion to a prevent recurrence in the future.

CF No. 06-003912

This complaint involved a supervisor, the accused, who was alleged to have made remarks that were gender and racially offensive and discriminatory in nature. The complaint stemmed from two incidents, occurring on separate dates, whereby remarks were made by the accused to a subordinate. The investigation resulted in two allegations of misconduct against the accused officer for making an Ethnic Remark (Allegation No. 1) and an Improper Remark (Allegation No. 2).

The Area C/O adjudicated both allegations as Sustained. At the conclusion of the complaint investigation, the accused supervisor was served with the notice of proposed disciplinary action that recommended a three-day suspension. The accused supervisor opted for a Board of Rights hearing, claiming that the sustained allegations against him were out of statute.

An IAG review determined that Allegation No. 1 was in statute because the accused supervisor was served with the notice of proposed disciplinary action one day prior to the expiration of the statute. However, the same review determined that Allegation No. 2 had actually been reported to the Department prior to Allegation No. 1. Therefore, Allegation No. 2 was determined to be OOS because the proposed discipline was served on the accused supervisor after the statute date.

The IAG Bureau C/O submitted a 15.2 to the Area's Bureau C/O explaining the results of its review. The original three-day suspension was discussed with the Area Captain, and remained the recommended penalty for Allegation No. 1, which was consistent with the Management Guide to Discipline. It appears that no remedial action was recommended in this case.

CF No. 06-4487

This complaint involved an unknown sworn Department employee who was alleged to have been involved in a false arrest, theft, unauthorized use of force and racial discrimination. A complaint was initially generated in Section A of Bureau A. Section B of Bureau A then sent the complaint to Division A for investigation. However, Division A did not conduct an investigation and had no record of receiving the complaint. The complaint was eventually discovered well after the statute date and determined to be OOS.

It appears that the statute lapsed due to the misdirection of the complaint for investigation, which resulted in the case falling OOS, as Division A does not investigate complaints. This was the third complaint erroneously sent to Division A for investigation that also fell OOS.

The C/O of IAG submitted a 15.2 to the Chief of Police and advised that the commanding officers of Section B and Division A provided training to their respective staff regarding the proper handling and routing of personnel complaints.

CF No. 07-004726

This complaint involved an officer who became involved in a Non-Categorical Use of Force (NCUOF) while making an arrest. The investigation into the NCUOF was conducted by an Area patrol sergeant, Sergeant A, and subsequently found to be In Policy by the Area chain of command. The investigation was conducted in accordance with Department Manual Section 3/830.10 and forwarded to the Bureau for review. It is unknown what action, if any, was directed by the Bureau.

Approximately one year later, a sergeant in another division, Sergeant B, reviewed the NCUOF report and related arrest report, and determined that two allegations of unauthorized force were alleged against the officer by the complainant. That same day a personnel complaint was initiated. However, the administrative statute date was one year from the date that the allegations were brought to the Department's attention, which was the date the NCUOF occurred. An investigation was not conducted. The Department concluded that because the complaint was initiated one day prior to the administrative statute date, proceeding with the investigation would have proven to be fruitless. Thus, the complaint was allowed to fall OOS.

It appears that the statute lapsed due to the fact that Sergeant A, in addition to the Area chain of command, determined that there were no allegations brought forth by the complainant while Sergeant B believed that the complainant had made allegations against the officer. Although Sergeant B initiated a complaint, the complaint was initiated too close to the administrative statute date, precluding a proper investigation.

The IAG C/O submitted a 15.2 to the Bureau and recommended that the Bureau review the case to handle as they deem appropriate.

CF No. 08-000192

This complaint involved an officer who became involved in a Preventable Traffic Collision (PTC). The officer was monitoring a pursuit broadcast and was in the process of activating his/her emergency equipment to join the pursuit as the monitoring supervisor. The officer failed to clear the intersection and collided with another vehicle.

It appears that the statute lapsed due to the fact that Traffic Coordination Section (TCS), Emergency Operations Division, did not receive a copy of the Traffic Collision Report from the Division that completed the collision investigation. Therefore, a Fleet Safety Review Board project was not generated.

The Fleet Safety Report was discovered during a lawsuit stemming from the incident when Risk Management Group notified TCS of the collision and sent them a copy of the traffic report. The

Division did not complete the complaint face sheet until after the statute date. Therefore the complaint was OOS by the time it was processed.

As a result, the Division has instituted new tracking system for all officer-involved traffic collisions and directed that copies of all such collision reports be automatically forwarded to TCS.

CF No. 08-000839

This complaint involved an officer who became involved in a Preventable Traffic Collision (PTC). The Commanding Officer for the Division recommended a Sustained adjudication, with a penalty of Admonishment.

It appears that the statute lapsed because the Traffic Coordination Section (TCS) sent a Fleet Safety Review Board request to the accused officer's Division. The Division did not complete the face sheet until after the statute date. TCS had to send the report a second time to the Division before action was taken. Therefore, the complaint was OOS by the time it was processed.

In response, the Division initiated procedures to prevent future recurrences of PTC's falling OOS. Once notification of a traffic collision involving Division personnel is received, they will immediately request the Traffic Collision Report. Additionally, a tracking system was developed to follow-up and monitor receipt of Fleet Safety Board requests for all Traffic Collision Reports. If the Fleet Safety Report Board request is not received within 30 days, the Division will request one from TCS.

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

During this Quarter, two CUOF incidents were closed in which the Commission adopted a finding of "Out of Policy" or "Administrative Disapproval" (AD). Both of the incidents were Negligent Discharge (ND) cases. Table L in the Department's Report contains additional summary information on each of the two cases, including corresponding complaint information, the Commission's findings and the discipline imposed.

OIS 061-07

This case involved an OIS that occurred when Officer A and B were participating in the training of recruit officers. Following completion of the initial phase of the training, which involved live fire exercises, the officers attempted to locate inert pistols to continue the training but were unable to locate any.¹⁹ Instead the officers obtained Airsoft pistols, which look similar to 9-millimeter Glock Model 17 pistols. The muzzle tip and magazine base of each Airsoft pistol was painted orange to distinguish it from a pistol capable of firing a live round. After obtaining the Airsoft pistols, the officers should have secured their primary service weapons but failed to do so as required by Department policy. Officer A's primary weapon was a 9-millimeter Glock Model 17, which was carried in a black polymer "Blackhawk" holster, secured to his/her duty belt.²⁰

While walking to the next training area Officer A proceeded to check the air pressure of what he believed was the Airsoft pistol by pointing it towards the ground and pulling the trigger. However, Officer A was actually holding his/her service weapon, at which point one round was expended from the pistol, which struck Officer B in the rear of the upper left thigh. Officer B received immediate first aid and was subsequently transported to a hospital for further treatment.

The BOPC found that the issues of "Tactics" and of Officer A "Drawing/Exhibiting/Holstering" did not apply but found that Officer A failed to adhere to basic firearm safety rules when he/she handled his/her actual service weapon instead of the Airsoft pistol.

As a result of the AD findings, personnel complaint CF No. 07-003492 was initiated. The Department framed one allegation against Officer A for negligently discharging his/her pistol, which resulted in injury to a fellow officer. The allegation was sustained and the COP imposed a penalty of a five-day suspension for Officer A, which appeared to be within the Department's Guidelines, in light of the fact that a review of the officer's complaint history revealed no prior sustained complaints for negligently discharging a firearm or any other sustained complaints of a serious nature.

¹⁹ An inert pistol is a weapon that can not fire live ammunition.

²⁰ When interviewed during the OIS investigation Officer A stated that he/she might have inadvertently placed the Airsoft pistol in his/her holster with the intention of placing the service pistol into one of his/her cargo pockets of his/her pants.

OIS No. 068-07

Officer A while on duty, visited a restroom within his/her duty station. No one else was present in the restroom at the time of this incident.

Officer A entered a stall and un-holstered his/her Glock 35 .40 caliber pistol. Noting that there was no shelf in the stall, Officer A hung his/her pistol by its trigger guard on the coat hanger inside the stall's door. Officer A then decided not to use the restroom. Intending to visit another restroom, Officer A retrieved his/her pistol. As he/she did so, a round discharged in an upward direction from the weapon, penetrating the ceiling of the restroom. Officer A then secured his/her pistol. Officer B, who heard the gunshot, responded to the restroom and obtained a Public Safety Statement from Officer A.

The BOPC noted that Officer A reached upward to reacquire his/her service pistol from its hanging position on the coat hanger hook, discharging one round upward in a slightly southeasterly direction, striking the ceiling approximately five feet from the pistol.

The BOPC was critical that Officer A failed to adhere to the basic firearm safety rules while handling his/her service pistol. A negligent discharge is a serious incident that cannot be mitigated. The BOPC found Officer A's lethal use of force to be negligent, warranting Administrative Disapproval. The BOPC has directed the Commanding Officer to schedule Officer A for additional firearms training at Training Division.

As a result of the AD findings, personnel complaint CF No. 07-003479 was initiated. The Department framed one allegation against Officer A for negligently discharging his/her pistol. The allegation was sustained and the COP imposed a penalty of an Official Reprimand for Officer A, which appeared to be within the Department's Guidelines, in light of the fact that a review of the officer's complaint history revealed no prior sustained complaints for negligently discharging a firearm or any other sustained complaints of a serious nature.

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VI. TEAMS II Reports

During our review of the CUOF cases included in this report and our previous three reports, we noted that in many of the cases the officers' TEAMS II reports were not accurately updated to include the correct status of the CUOF cases or the Commission's findings. In addition, we noted that in a few of the related personnel complaints, the accused officer's TEAMS II report did not accurately reflect the allegations as framed in the investigations. We forwarded these issues to the Department to determine if there was a systematic problem that prevented the accurate update of officers' TEAMS II reports. The Department recently advised that many of these cases had not been closed in the Department's Categorical Use of Force System (CUOFS), which is separate but related to TEAMS II. Although the findings of the Commission may have already been entered in CUOFS, the TEAMS II report can only display the findings when the case status is actually closed in the CUOFS.

The concern was that there may be a backlog of cases that need to be closed in the CUOFS to allow the findings to be viewable in TEAMS II. Since the OIG found this issue, TEAMS II has contacted UOF Review Division for a list of all cases that should be closed. TEAMS II is now in the process of completing a mass closing of these open 2006 and 2007 cases, which will be resolved in January of 2009. In the future, with the Department's resolution of this issue, we do not anticipate continuing to report about it.

VII. Conclusion

Overall, the OIG noted relatively few investigative concerns in the racial profiling cases we reviewed. It appears that the Department is continuing to make its own improvements and conduct additional training going forward. Given the severity of allegations and the public's interest in these types of cases, we commend the Department for the changes it has made and encourage them to continue to fully explore all of the issues raised by these types of complaints.

Additionally, on November 4, 2008, IAG and the Executive Director of the Police Commission presented an update on the progress of the Department's Racial Profiling investigations. As part of the recommendations, IAG stated that the OIG "shall provide more informal and frequent examination of biased based policing cases." In response to that request, the OIG will work with IAG to review and monitor racial profiling investigations and provide the Commission with insight into the progress of the Department's racial profiling investigations.