

LOS ANGELES POLICE COMMISSION

*REVIEW OF THE DEPARTMENT'S
QUARTERLY DISCIPLINE REPORT*
2nd Quarter, 2008



Conducted by

OFFICE OF THE INSPECTOR GENERAL

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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 Second 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 August 28, 2008. As required under Consent Decree Paragraph 89, the Office of the Inspector General (OIG) has reviewed the Department's Report and submits 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 a False Statement. The OIG reviewed these cases to determine the overall quality of the investigations. Areas focused upon included, but were not limited to, 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 thirteen 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 five 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. One of these CUOF incidents fell OOS and is also discussed in Section IV of this 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, we provide our overall conclusions about the cases that we reviewed this Quarter.

On September 23, 2008, the OIG staff received a response to our preliminary findings in this report from the Commanding Officer (C/O) of the Administrative Investigation Division (AID) of 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 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."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 15.4% (total number of sustained allegations/total number of allegations = 562/3651 = 15.4%). 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	90.8%	109/120
Neglect of Duty	22.8%	181/795
False Statements	21.2%	24/113
Unauthorized Tactics	12.1%	12/99
Unbecoming Conduct	10.9%	68/622
Other Policy/Rule	5.3%	5/95
False Imprisonment	4.3%	11/256
Unauthorized Force	2.1%	8/379
Discourtesy	1.3%	8/594
Racial Profiling	0.0%	0/92

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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	1/2	50.0%	0.2%	2	1
Alcohol Related	23/26	88.5%	4.1%	20	18
Discourtesy	8/594	1.3%	1.4%	369	5
Discrimination	0/18	0.0%	0.0%	12	0
Dishonesty	6/24	25.0%	1.1%	20	5
Domestic Violence	2/28	7.1%	0.4%	14	1
Ethnic Remark	1/24	4.2%	0.2%	17	1
Failure To Appear	33/41	80.5%	5.9%	40	32
Failure To Qualify	32/47	68.1%	5.7%	46	31
Failure to Report Miscon.	1/9	11.1%	0.2%	7	1
False Imprisonment	11/256	4.3%	2.0%	207	6
False Statements	24/113	21.2%	4.3%	85	15
Gender Bias	0/2	0.0%	0.0%	1	0
Improper Remark	12/51	23.5%	2.1%	26	10
Insubordination	8/8	100.0%	1.4%	7	7
Misleading Statements	1/6	16.7%	0.2%	6	1
Narcotics/Drugs	1/19	5.3%	0.2%	13	1
Neglect of Duty	181/795	22.8%	32.2%	488	98
Off-Duty Altercation	3/5	60.0%	0.5%	5	3
Other Policy/Rule	5/95	5.3%	0.9%	61	2
Preventable Traffic Coll.	109/120	90.8%	19.4%	117	107
Racial Profiling	0/92	0.0%	0.0%	73	0
Retaliation	0/14	0.0%	0.0%	8	0
Service	0/9	0.0%	0.0%	7	0
Sexual Misconduct	2/20	10.0%	0.4%	9	1
Shooting Violation	5/8	62.5%	0.9%	7	5
Theft	0/34	0.0%	0.0%	27	0
Unauthorized Force	8/379	2.1%	1.4%	240	6
Unauthorized Tactics	12/99	12.1%	2.1%	77	9
Unbecoming Conduct	68/622	10.9%	12.1%	344	42
Unlawful Search	5/91	5.5%	0.9%	67	3

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	562/3651	15.4%	388/3443	11.3%
Command Staff ⁴	2/22	9.1%	1/21	4.8%
Lieutenant	9/40	22.5%	8/39	20.5%
Sergeant	26/186	14.0%	12/168	7.1%
Detective	23/148	15.5%	14/135	10.4%
Police Officer III	103/668	15.4%	51/608	8.4%
Police Officer II	276/1416	19.5%	202/1328	15.2%
Police Officer I	30/226	13.3%	16/211	7.6%
Reserve Officer ⁵	5/8	62.5%	4/7	57.1%
Detention Officer	10/39	25.6%	10/39	25.6%
Civilian Mgmt	0/3	0.0%	0/3	0.0%
Civilian Personnel	45/94	47.9%	43/91	47.3%
Unknown/Invalid	33/801	4.1%	27/793	3.4%

Fifteen percent (15.4) of all misconduct allegations were sustained during this Quarter. Eleven percent (11.3) 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 two allegations sustained against Command Staff, one was for an Ethnic Remark (CF No. 07-005716) and the other was for a PTC (CF No. 08-001461).

⁵ The OIG noted that the 62.5% sustained rate for Reserve Officers during the Quarter represents the second highest rate of sustained allegations for this group in the last 10 quarters, after 69% from the prior quarter. Further, four of the eight total allegations were for Unbecoming Conduct, three of which were sustained. Last quarter, six of the 16 total allegations were for Unbecoming Conduct, all of which were sustained.

III. Review of False Statement Cases

A. Introduction

In our review of the Quarterly Discipline Report for First Quarter 2008, the OIG noted that the sustained rate for allegations of False Statements for the past two quarters (21.2% and 23.1%, respectively) had been significantly higher than it has been in previous quarters. We further noted that in our review of the last 10 quarters, the sustained rate for allegations of False Statements for the Second Quarter of 2008 was the third highest, after 23.1% from the prior quarter, and 25.9% in the Fourth Quarter of 2006. Upon further review, the OIG found that the sustained rate was 20.2% (18/89) for sworn employees and 66.7% for non-sworn employees (6/9).⁶

As noted previously, the OIG believes that the high overall percentage of sustained False Statement allegations demonstrates the Department's commitment to investigating and disciplining officers for conduct that is incompatible with the oath taken by police personnel. Because the OIG believes that this topic warrants further examination and discussion, we will continue to monitor this issue and report our findings in future reports.

False Statement Sustained Rate by Year and Quarter

Year / Quarter	Sustained Allegations/ Allegations	Overall Sustained Rate
2008/2	24/113	21.2%
2008/1	21/91	23.1
2007/4	6/67	9.0
2007/3	19/141	13.5
2007/2	14/120	11.7
2007/1	16/103	15.5
2006/4	15/58	25.9
2006/3	8/52	15.4
2006/2	7/57	12.3
2006/1	12/85	14.1

B. Definition

The majority of the included definition for False Statements herein was taken from the Department's Manual, Volume 3, Section 828. This Section defines False Statements as "any manner of communication, by a Department employee, including but not limited to oral, written, and electronic, made when he or she knew or should have known the statement was false at the time it was made or the employee fails to correct the statement upon learning of its falsity."

⁶ Unknown employees were not included in either calculation of sworn or civilian employees.

This Section also defines Misleading Statements, which is closely related to but distinguishable from False Statements, "as any manner of communication, by a Department employee, including but not limited to oral, written, and electronic, made when he or she:

- Provides information in an inaccurate context;
- Provides information designed to lead the investigator astray or misdirect others;
- Intentionally withholds information which is known or reasonably believed to be relevant; or,
- Intentionally fails to provide a complete or accurate account of matters which are known to the employee."

Further, the Manual asserts that "providing partial truth about an incident does not satisfy an employee's obligation for truthfulness when relevant information has been deliberately left out. In addition, an employee who becomes aware that a statement has been misunderstood or misrepresented has an obligation to correct the misunderstanding or misrepresentation. Failure to do so may create an inference that the employee made the statement with the intention to mislead."

"A "false statement" or a "misleading statement" constitutes misconduct when:

- It is made while carrying out an employee's duties;
- It results from actions incidental to an employee's duties;
- It is made while conducting a criminal or administrative investigation, even if the investigation is preliminary in nature; or,
- It is made by an off-duty employee arising from a circumstance in which the employee's occupation as a Department employee is a factor."

"Exception: False and misleading statements allowed by law, including those made for investigative purposes such as those required to conduct an undercover investigation, are **not** considered to be misconduct and therefore do not fall within these categories." (Emphasis in original.)

The Review and Evaluation (R&E) Chronicles dated July 2004, which are guidelines for the investigation, adjudication and processing of complaint investigations, also provides important information in forming False Statement allegations. The R&E Chronicles provides that "Deception' versus 'an error' is the key in determining whether to charge an employee with an allegation of false or misleading statement." If an employee provides "a viable explanation regarding the discrepancies or rectifies his/her prior statements, a false statement allegation would be inappropriate."

The R&E Chronicle also states that the administrative statute of limitations for False Statements "is the date of discovery when an uninvolved Department supervisor becomes aware that the statement or written document was in fact false."

C. Methodology

This Quarter the OIG conducted in-depth reviews of complaints that involved at least one allegation of a False Statement. For this Report, the OIG limited the cases reviewed to those that were closed between April 1, 2008 and June 30, 2008. During the Second Quarter of 2008, a list generated from the Department's Complaint Management System (CMS) revealed that 62 such complaints were closed during this time period, with at least one allegation of a False Statement. Of the 62 cases, the OIG only selected cases which received an "Unfounded" adjudication and which were initiated after 2006. A unique number from 1 to 26 was assigned to each of the remaining 26 cases in the order they appeared on the list generated from CMS. In order to determine which of the 26 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 26 to allow for the selection of a final sample of 10 cases. Ultimately, we believe the cases selected for review contained complicated fact patterns or serious allegations of misconduct.

In conducting this review, a matrix was utilized by first and second-level reviewers. This matrix contained 36 questions designed to evaluate the quality, completeness, and findings of the completed investigation, including whether the discipline imposed was justified and appropriate in light of the surrounding circumstances, the employee's disciplinary history, and the standards enunciated in the Department's "Management Guide to Discipline" (July 2004) and the "Civilian Penalty Guide" to Discipline Standards (January 2008). In addition, a Crib Sheet, which provides an explanation and an example for each question in the matrix, was utilized by the reviewers of each case.

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.

Although we reviewed 10 cases that were closed during the Quarter, there were a total of 40 False Statement allegations, because some of these cases involved multiple allegations. In the cases we reviewed, as discussed previously, all 40 allegations of False Statement cases were adjudicated as "Unfounded."

D. Findings

In summary, our review of False Statement cases revealed that overall we believe IAG conducted investigations that contained enough information for the adjudicators to utilize in making a final adjudication in nine of the 10 cases. The results of our review of all 10 cases are included in the next section.

In the nine cases in which we concurred, for the most part, the OIG found that there was enough information gathered during the investigations to allow the adjudicators to make informed decisions and concurred with the resulting adjudications; although there were additional interviews that we would have preferred to have been conducted or there were additional steps we would have preferred to have been taken by the Investigating Officers (I/O). We found in these cases that the I/O's made efforts to either canvass the area and/or interview possible witnesses. We also found that I/O's went to great lengths to gather the relevant evidence, which included trying to obtain video recordings from an Area station's camera and from a complainant.

In the one case upon which we disagreed, we believe the I/O should have conducted additional interviews and provided additional information about an interview that was conducted. We also disagreed with portions of the adjudicator's rationale.

E. Case Summaries and Analysis

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

1. CF No. 07-005056

a. Summary

This complaint was filed against three officers whom the complainant alleged falsely arrested him for narcotics sales. The complainant also alleged that he was racially profiled and that one of the three officers included false information on the arrest report, falsified evidence, and committed perjury. The complainant advised in his original correspondence that when he was arrested, officers violated his Constitutional rights. In addition, the complainant advised in the same correspondence that the officers gave false testimony in court "by saying that [they] never found any drugs in [his] pocket but rather in [his] shoe" which contradicted the arrest report thereby making the arrest report false. Finally, the complainant alleged that the officers fabricated evidence but he did not provide further detail regarding that allegation.

The investigation revealed that the accused and his/her partners stopped the complainant when they observed a narcotics transaction taking place. Upon approaching the persons involved in the transaction the officers observed a crack pipe in the complainant's front right coin pocket. An officer then searched the complainant and recovered a razor blade as well. The arresting officer also recovered \$330 in wadded miscellaneous bills. The investigation also revealed that when the complainant was transferred to the police station and during the pre-booking search, a clear plastic baggie containing off white solids resembling cocaine was recovered from the complainant's shoe.

The investigation did not determine why the complainant alleged racial profiling or a violation of his Constitutional rights as the complainant was not interviewed. The investigation did not determine what the false statement was that was allegedly made during the court case, as no court transcripts were provided.

The investigation resulted in a total of six allegations of misconduct against three accused officers. The allegation that one of the three officers falsified the arrest report, evidence, and committed perjury was also classified by the Department as "Unfounded" based on the following rationale: The complainant "could not provide any specific detail to support his perception that the three officers racially profiled him. Counter to his allegation," the complainant appears to be of a different race than he actually is. The complainant's actual race is the same as one of the officers, "supporting the probable cause for the arrest." Further, "[t]he officers' observations and arrest were conducted in full public view, in an area known for heavy narcotics use and sales. The officers' attention was drawn to the illegal activity by the suspects' actions and by the crack pipe sticking out of [his/her] pants pocket." The allegation that the accused officers racially profiled the complainant was classified by the Department as "Unfounded."

b. Analysis of Investigation

Our review revealed a few investigative deficiencies, which we believe impacted the adjudication. First, the OIG believes the investigation would have benefitted from interviewing the complainant and witnesses. We believe that the complainant and his witnesses, the co-defendant (Witness 1), or another person who was identified (Witness 2) as possibly having involvement, should have been interviewed as a part of this complaint. The complainant's correspondence was used as his statement, but the letter was incomplete as was noted by the adjudicator, who wrote that the complainant "could not provide any specific detail to support his perception that the three officers racially profiled him." The complainant was not interviewed and therefore not given an opportunity to provide specific details about the False Statements and Racial Profiling. We do, however, commend the I/O for interviewing the accused officers. And, we note that the officers all stated that they were aware of the complainant's race prior to his arrest, as all of the involved officers identified the complainant as being Hispanic.

The OIG is aware that the Department might not agree that the information gathered by interviewing the complainant or witnesses would necessarily change the adjudication of the complaint. Still, we believe that in order for the Department to state that the preponderance of the evidence suggests that it is more likely that the officers did not racially profile the complainant, the complainant has to have an opportunity to provide his version of events as well as any additional information given by witnesses that could help prove (or disprove) the allegations.

Second, the OIG believes there was insufficient detail provided in the summary of the interview with the Deputy District Attorney (DDA) that prosecuted the case. An I/O note states that the I/O spoke with the DDA who said that he prepared the complainant's case for trial and that he did not note anything wrong with the case that would raise any concerns. The complainant noted that there was false information provided by the accused officers during court hearings about where the officers located the narcotics, however, the summary does not indicate whether any specific questions of this nature were posed to the DDA about the issue.

Third, the OIG believes the adjudicator's rationale with regard to racial profiling seems to rely on an incorrect belief. The adjudicator stated the following rationale in reference to the allegation of racial profiling in the Letter of Transmittal (LOT): "Counter to his allegation,

[Complainant] appears Black, but has a Hispanic family name; he was Cuban born. [Complainant]'s co-defendant, arrested at the same time and place, was Hispanic. One of the three arresting officers, [name omitted] is Hispanic and the officer who wrote the arrest report, supporting the probably [*sic*] cause for the arrest." The adjudicator seemed to be saying that it can't be racial profiling because all of the involved parties are Hispanic or that racial profiling is unique to only African-Americans. However, racial profiling or biased policing is not dependent upon the race of the officers and may involve complainants and officers of the same race.

c. Department's Response

In its response to the OIG's Analysis of the Investigation, the C/O of IAG's Administrative Investigation Division noted that the Department could have interviewed the complainant and his witnesses as a part of this investigation. However, he opined that there was no basis for the interviews given that the complainant was held to answer and convicted in the underlying criminal case. As to the sufficiency of the summary of the DDA's testimony, he further noted that the summary was sufficient and if the DDA had noted anything amiss, the DDA would have brought this information to the Department's attention. Finally, with respect to the adjudicator's rationale, the C/O agreed with this point and noted that as a whole the Department could benefit from training about racial profiling and bias-based policing. He further noted that the adjudicator did provide other information to support the adjudication.

d. Conclusion

After receiving and reviewing the Department's response on this issue, the OIG continues to believe that there was not enough information gathered during the investigation to allow the adjudicator to make a fully informed decision.

2. **CF No. 07-001543**

a. Summary

This complaint was filed against 10 Department employees, eight of whom the complainant alleged made or wrote false statements about him suffering from a terminal illness. The complaint also included two allegations against two Department employees for allegedly failing to report misconduct when they found out about it during the adjudication of another complaint. The complainant advised that the accused employees made false statements or recorded information referring to him/her as suffering from a medical condition from which he/she does not suffer. The complainant also advised that the Department employees violated City of Los Angeles policy when they wrote that he/she suffered from this medical condition.

The investigation revealed that the complainant made criminal threats about killing his/her C/O. The Threat Management Unit was notified. A Restraining Order was granted ordering the complainant to stay away from the Division and the C/O. The complainant had a firearm that was confiscated from his/her residence and he/she was subsequently terminated from the Department. A criminal investigation was completed and statements were taken from the involved employees. The case was declined for prosecution, but these same witness employees

were then accused of false statements in this complaint for mentioning the complainant's alleged illness when they were interviewed during the previous criminal investigation. The I/O obtained the criminal investigation and all of the statements therein, therefore they did not interview the accused employees. The complainant, however, was interviewed.

The investigation resulted in 10 allegations of misconduct against 10 accused employees; eight for allegedly making or writing false statements that the complainant suffered from a terminal illness; and two allegations for failing to report misconduct against employees involved in another complaint. These allegations were classified by the Department as "Unfounded" based on the following rationale: The complainant's medical condition was "central to the creditability of [his/her] threat against [the C/O's] life" and "the criminal investigation reflects that [the complainant] was the source of the information about [his/her] medical condition." Additionally, the statements made during the criminal investigation "about [the complainant's] threat and medical condition [were] corroborated by other employees" while "cooperating with a criminal investigation as required" and they were "obligated to report the threat" to the chain of command. The rationale for the adjudication of the allegations of failure to report misconduct and alleged misconduct against the employees involved in that complaint was that the complainant attempted to misuse the Skelly response process in another investigation to assert misconduct against other employees. However, because at the time the complainant was a Department employee and not a public complainant, he/she could not use a Complaint of Employee Misconduct Form.

b. Analysis of Investigation

Our review revealed no investigative deficiencies that impacted the adjudication. The Department made every effort to obtain evidence regarding the alleged misconduct.

c. Conclusion

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

3. **CF No. 07-002455**

a. Summary

This complaint was filed against an officer whom the complainant alleged fabricated the case against him by coercing a shooting victim to identify him as being responsible for the shooting.

The investigation revealed that a witness and his brother were traveling in a vehicle when a suspect fired several shots at the vehicle striking the witness in the back. When initially interviewed the victim provided the description of the suspect and a vehicle driven by the suspect. The shooting was assigned to the accused officer for further investigation and after reviewing the initial report and interviewing the victim the accused officer believed that he/she knew who was responsible for the crime based upon the suspect's description and vehicle driven. The accused officer subsequently detained the complainant as a suspect in the shooting and

he/she and his/her partner subsequently had the victim look at several photographs, one of which was of the complainant. The victim identified the complainant as being responsible for the shooting and he was arrested and charged with the crime.

The accused officer and his/her partner next transported the victim to where the shooting occurred and while en route the witness pointed out an individual who was the complainant's father, which confirmed in the accused officer's mind that the victim knew the complainant prior to the shooting. The victim subsequently advised the officer that he was afraid for his brother's and his safety and indicated a desire to not pursue the case against the complainant.

Approximately two months after the shooting, the victim, in a deposition with the complainant's attorney, stated that the complainant was not the individual who had shot him. Furthermore, one month later the witness failed to identify the complainant during a line-up. A preliminary hearing was subsequently held during which the victim testified that the complainant was not responsible for the shooting and that the accused officer had verbally coerced him into identifying the complainant. The judge dismissed the charges against the complainant based upon the victim's testimony, but the prosecuting attorney refiled the charges. The complainant was then bound over for trial as the Hearing Commissioner found that the victim's recantation of his initial identification of the complainant lacked credibility.

Two trials were held involving the charges against the complainant and each resulted in hung juries. The complainant ultimately pled to a lesser charge and was sentenced to time served.

The investigation resulted in two allegations of misconduct against the accused officer. Specifically, that the accused officer coerced the victim into identifying the complainant as his assailant and that he/she fabricated the attempted murder case against the complainant. The first allegation was classified by the Department as "Unfounded" based upon the following rationale: The fact that the victim recanted his photo identification of the complainant was not "tantamount to wrong doing" on the part of the officer. Furthermore, the DDA advised the investigators that "witnesses commonly withdraw their identification of suspects." Additionally, it was the complainant not the witness who brought forth the allegations against the accused. The second allegation was also classified by the Department as "Unfounded" based upon the following rationale: "The investigation found no evidence" to substantiate that the accused officer fabricated the case.

b. Analysis of Investigation

Our review revealed no investigative deficiencies that impacted the adjudication. To the contrary the investigating officers did a commendable job as they were unable to interview the complainant, the victim or other possible witnesses and had to rely solely on court testimony as evidence.

c. Conclusion

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

4. **CF No. 07-002957**

a. Summary

This complaint was filed against two officers who arrested the complainant for the possession of cocaine. The complainant alleged that the officers included false information on the arrest report. The complainant advised that when he was pulled over there were two other occupants in the vehicle. The officer did not list the other two occupants on the arrest report thereby the complainant alleged that "the accused completed and submitted a false report of the incident, which resulted in his incarceration." According to the complainant the inclusion of the additional occupants on the report would have cast a doubt as to the possible owner of the narcotics in the vehicle. The complainant also alleged that the officers did not have probable cause to arrest him or to search his vehicle.

The investigation revealed that the accused and his/her partner stopped the complainant for California Vehicle Code Section 5200 (a) (no vehicle license plates). Officers ran a check on the complainant for wants/warrants and found that the complainant had two outstanding warrants. After the complainant exited the vehicle, officers "observed/recovered from the driver's seat in plain view a (2 3/4") glass tube, which was burnt on both ends containing copper wire mesh with off-white residue commonly used to smoke crack cocaine." The officers then conducted a vehicle search and recovered two off-white rock-like solids resembling rock cocaine from the floorboard between the driver's seat and the center compartment. The arrest report did not mention the passengers, and the officer writing the report put a line through the area where involved persons would be listed.

The investigation also revealed that the complainant plead guilty to the possession of narcotics and received time served and formal probation for the charge. During the preliminary hearing in the criminal trial of this matter, the accused officer advised that there were other occupants in the vehicle and the complainant's attorney was given an opportunity to cross-examine the officer about this issue. Therefore, it did not appear that the accused officer was trying to hide the existence of the other occupants. It was only after the complainant pled guilty, a letter was submitted after sentencing from one of the other occupants in the vehicle admitting that the narcotics and narcotics paraphernalia, which were recovered in the complainant's vehicle, were hers and that she was too scared to admit that to the officers because she was on active parole at the time of the incident.

The investigation resulted in six allegations of misconduct against the accused officers. The allegation that the accused officers arrested the complainant without cause, unnecessarily searched his vehicle, and falsified the arrest report were classified by the Department as "Unfounded" based on the following rationale: "[The complainant] was pulled over for ... no front license plate," which is evident because the arrest report contains a vehicle identification number instead of a license plate. Also the complainant had two misdemeanor warrants and when he was arrested the officers observed the drug paraphernalia and drugs "within arms reach of his person." Furthermore, the adjudicator indicated that "it was apparent that the officers

failed to list or mention any other occupants of the vehicle. This fact is an apparent error on the part of the officers and should not be considered an act of misconduct.”

b. Analysis of Investigation

Our review revealed no investigative deficiencies that impacted the adjudication of the investigation. The OIG would have preferred that the accused officer and his/her partner were interviewed to confirm that there was no intent to leave the witnesses off of the arrest report, particularly because the accused put a line through the area on the report for listing witnesses. The clarification of this point would have assisted in better assessing whether this was a training issue for the officer or a neglect of duty.

c. Conclusion

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

5. CF No. 07-003754

a. Summary

This complaint was filed against an officer whom the complainant alleged included false information on an arrest report. The complainant advised that when he was pulled over for a traffic violation, the officer then subjected him to tests to find out whether or not he was under the influence of a narcotic. The complainant advised that only one set of tests was conducted at the stop location, but the officer wrote in his/her report that a second set of tests were conducted at the station. The complainant alleged that the second set of tests “never happened,” but that the officer went so far as to give specific information about tests that never occurred. The complainant also denied the officer’s report that he refused to provide a sample for a urine test, but that he told them he was unable to do so. Finally, the complainant also alleged the accused wrote in his/her report that the complainant said he had not used methamphetamine for two weeks, when the complainant actually said it had been two months.

The investigation revealed that the accused and his/her partner stopped the complainant after they observed him change lanes without signaling, which almost caused a traffic collision. After the stop occurred, the accused saw the complainant conceal something in his front waistband. The partner officer removed the complainant from the vehicle and conducted a pat down search of the complainant, which resulted in the recovery of a glass pipe from the complainant’s waistband that contained a white residue resembling methamphetamine. The officers thought the complainant was displaying signs of being under the influence of a controlled substance, due to him sweating profusely, having eye tremors, standing in a rigid manner, having a “blank stare,” holding his jaw in a rigid manner and being unable to speak understandably. The accused checked the complainant’s pulse, which was elevated, and conducted a Rhomberg Test⁷, which

⁷ According to the investigation a “Rhomberg Test, is having the defendant stand with his feet together, tilt their head back, and count to 30 while the arresting officer is also counting the same. Usually, when the defendant is under the influence of a stimulant, they will finish [counting] faster than the officer.”

the complainant was unable to perform accurately. At that point, the complainant was arrested and transported to the station for booking.

The investigation also revealed that once at the station, the officers advised that the complainant was given a second Rhomberg Test and his pulse continued to be elevated. The accused filled out the Admonishment for Urine Test form,⁸ which provided that the complainant at first said he was unable to give a urine sample but then refused to give a sample after the officers provided him with five cups of water. The investigation further revealed that the admonishment and tests given at the station were not recorded because the station's camera was unable to record at the time of the complainant's arrest.

The investigation did not determine whether or not the Watch Commander on duty that day was present when the admonishment and the second set of tests were given at the station. The Watch Commander was not interviewed during the investigation.

The investigation resulted in one allegation of misconduct against the accused officer. The allegation that the accused submitted an arrest report that he/she knew or should have known contained false information was classified by the Department as "Unfounded" based on the following rationale: "The complainant acknowledged that he was stopped for failure to signal," which was documented in the arrest report. Furthermore, the complainant admitted to submitting to at least one test that he performed incorrectly; admitted to having the glass pipe concealed on him; refused to provide a urine sample which would have cleared him of charges; and admitted to prior drug use and probation.

b. Analysis of Investigation

Our review revealed no investigative deficiencies that impacted the adjudication. The OIG would have preferred that the I/O interview the Watch Commander to confirm whether or not he/she was present when the admonishment and the second set of tests were given at the station. Nonetheless, the Department made an effort to obtain evidence regarding the alleged misconduct, which included trying to obtain a video recording from the station's camera.

c. Conclusion

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

⁸ The form provides the following warning: "A criminal complaint charging you with being under the influence of narcotics or drugs may be filed against you. A sample of your urine will be tested to determine whether or not you have drugs in your body. You do not have a constitutional right to refuse to provide a sample, nor the right to talk to an attorney before you provide the sample." Officers then record on the form the answers to questions about whether or not the defendant understands the warning and whether he/she will provide a sample.

6. **CF No. 07-004629**

a. Summary

This complaint was filed against an officer (Officer A) and his/her partner (Officer B), who the complainant alleged included false information on an arrest report. Specifically, the complainant alleged that the officers searched his residence for drugs because he was on probation; but in actuality his probation had ended about a month prior to the search. Furthermore, the complainant believed that the arrest report reflected that drugs found at the residence belonged to him, when the drugs may have belonged to his roommate. Additionally, the complainant believed that Officer A testified falsely in court that he/she observed the complainant engage in a hand-to-hand drug transaction. Finally, the complainant also alleged Officer A illegally monitored his residence and was discourteous to him, and Officer B stole money from the residence.

The investigation revealed that the officers received information that drugs were being sold from a residence and initiated surveillance at the location. At that time, the officers observed the complainant engage in a hand-to-hand transaction with Subject 1, who subsequently entered a vehicle, occupied by Subject 2, and drove away from the residence. Both subjects were arrested after drugs were recovered from their vehicle.

Subsequent to the arrests of Subjects 1 and 2, Officers A and B, along with other officers, searched the complainant's residence. The officers received information that the complainant was on formal probation with search conditions, pursuant to an inquiry with the Automated Probation System (APS), which produced a document reflecting that the complainant was on probation. It was later revealed that the complainant's probation had been terminated prior to the search of the residence but that fact had not been recorded in APS. Further, the investigation revealed that the information pertaining to the probation period's termination date was not accessible by the officers at the time of the complainant's arrest. While the officers were conducting the search, the complainant was allowed to go to a shed in the backyard to secure vicious dogs and while doing so was observed to remove a plastic bag and throw it over a wall. The plastic bag was recovered and found to contain narcotics.

Officer A testified at the complainant's preliminary hearing and trial. During the hearing and trial neither the complainant nor his attorney raised any issues about the accuracy of the arrest report or the truthfulness of Officer A's testimony.

The investigation resulted in eight allegations of misconduct against the accused officers. The allegations that Officers A and B falsified an arrest report, and Officer A lied about the complainant's probation status and gave false testimony in court were all classified by the Department as "Unfounded" based on the following rationale: Neither the complainant nor his attorney raised the issue of a false arrest report or the truthfulness of Officer A's testimony at time of trial. Furthermore, the officers did not provide false information regarding the complainant's probation status as an inquiry immediately prior to the search of the residence with APS reflected that the complainant was on probation and therefore his residence was subject to search. The allegations that Officer A illegally monitored the complainant's residence

and that Officer B stole money from the residence were adjudicated as "Unfounded." The allegation that Officer A was discourteous was adjudicated as "Not Resolved."

b. Analysis of Investigation

Our review revealed no investigative deficiencies that impacted the adjudication. The Department made every effort to obtain evidence regarding the alleged misconduct.

c. Conclusion

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

7. CF No. 07-004794

a. Summary

This complaint was filed against two officers whom the complainant alleged included false information on an arrest report. The complainant advised that when she was pulled over for a traffic violation, the officers falsified the police report when they documented the amount of marijuana that was recovered from her vehicle. The complainant also advised that when she read the arrest report she noticed that the officers had falsified the report. She alleged that they wrote that there were 19 grams of marijuana recovered from the vehicle, however on the vehicle impound report they documented that only 8 grams of marijuana were recovered. The complainant also alleged that the arrest report reflected that she waived her Miranda rights, which the complainant denied ever doing. Finally, the complainant also alleged that she never had a police record "in her life."

The investigation revealed that the accused and his/her partner stopped the complainant after they observed a broken tail light and no license plates. The complainant advised the officers that she did not have a driver's license, current vehicle registration, or insurance. The officers advised that they smelled marijuana coming from the vehicle, at which point the occupants were removed from the vehicle for officer safety reasons. The complainant was to be arrested for driving without a valid license. The officers conducted a search incident to arrest, and with directions from the complainant, located marijuana, a scale, cash and several "small baggies." At that point, the complainant was also arrested for the sale of marijuana and transported to the station for booking.

Testing by the Department later revealed that the total weight of the marijuana in the baggies was more than 19 grams. However, once it was removed from the baggies, the marijuana only totaled approximately 8 grams. The second weight was not on the arrest report or vehicle inventory, since this information was unavailable to the officers at the time of the arrest. Further, the DDA prosecuting the case advised the I/O that the complainant had been arrested once for battery and had a second arrest for the sale of marijuana.

The investigation resulted in two allegations of misconduct against the accused officers. The allegation that the accused officers submitted a falsified police report was classified by the Department as "Unfounded" based on the following rationale: The complainant's "statements indicate discrepancies between the amounts of marijuana listed on the arrest report and the vehicle report." However, the investigation "points out that this information is listed nowhere on the vehicle report." The complainant also "told the I/O that she has never had a police record and has never done anything wrong in her life," however the complainant had been arrested twice previously. The adjudicator further opined that given the complainant's credibility, "[u]nder the circumstances, the preponderance of evidence clearly shows these allegations to be unfounded."

b. Analysis of Investigation

Our review revealed no investigative deficiencies that impacted the adjudication. The Department made every effort to obtain evidence regarding the alleged misconduct.

c. Conclusion

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

8. **CF No. 07-006385**

a. Summary

This complaint was filed against an officer whom the complainant alleged had falsely arrested her son, failed to adjust a female arrestee's handcuffs upon request, and made false statements in his/her testimony.

The complainant indicated that her son and a female subject were approached by the accused officer while waiting to be picked up from a park by the girl's father. According to the complainant, the accused officer had observed the two together in the park and falsely arrested them for curfew violation.⁹ Both subjects were handcuffed and transported to the local Community Police Station (CPS) where they were detained under non-secure detention conditions. According to the complainant, while the juveniles were detained, the female complained of her handcuffs being too tight, and the accused officer did not loosen the handcuffs. The complainant's son and the female subject were cited for curfew violation and released to a parent.

The investigation revealed that both individuals contested their ticket and appeared before a Hearing Officer. Present was the accused officer, both subjects, the father of the female subject, and the complainant. After testimony was heard from both sides, the Hearing Officer found both subjects guilty of the curfew violation, for which they received community service.

⁹ The complainant's son was 17 years old at the time this complaint was filed and the other involved person was 15 years old.

The investigation also revealed that the complainant's son and female subject refuted some of the allegations made by the complainant. Specifically, both the son and female subject advised the I/O that the accused officer had adjusted the handcuffs after arriving at the CPS. Further, the complainant's son stated that he did not believe that the accused officer lied in court.

The investigation resulted in three allegations of misconduct against the accused officer. The allegations that the accused falsely arrested the complainant's son, failed to adjust the female subject's handcuffs, and made false statements in court were classified as "Unfounded," based on the following rationale: "There was ample reason to arrest the subjects for curfew violation." Further, the complainant's son and the female subject both stated that the accused officer had adjusted the handcuffs after arriving at the CPS. Finally, the allegations were made by a third-party who did not have direct knowledge of the events that took place in the park. The C/O ascertained that the complainant's son must have provided the complainant with a different version of events from what the complainant's son relayed to the I/O during the investigation.

b. Analysis of Investigation

Our review revealed no investigative deficiencies that impacted the adjudication. The Department made every effort to obtain evidence regarding the alleged misconduct.

c. Conclusion

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

9. **CF No. 08-000923**

a. Summary

This complaint was filed against an officer whom the complainant alleged included false information on an arrest report. The complainant initially advised that he had video and audio evidence to prove the false statements on the arrest report but he did not specify which statements were false. When the complainant appeared in court, he pled guilty and produced no evidence. The I/O met with the complainant to obtain the evidence and the complainant stated that it was destroyed on the advice of his lawyer.

The investigation revealed that the accused reviewed an internet website's posted advertisements to investigate possible prostitution activity. The accused called and spoke with the complainant who directed the accused to the location. During the conversation the complainant agreed to exchange sex for \$100.00. The accused notified his/her partner and vice officers. The officers then formulated a tactical plan. The officers responded to the location. The accused officer met with the complainant who invited the accused inside the residence. The details of the agreement were discussed again and the accused officer recognized the complainant's voice from the previous phone conversation. There was another person inside the residence who also agreed to participate. The accused officer also recognized the other person from the website's advertisement. The complainant offered the accused some condoms and the accused used a ruse

to exit the apartment and signal the vice team that was in place outside. The complainant and the other person were arrested without incident.

The investigation also revealed that the accused documented the phone number and all conversations with the complainant in the arrest report. The accused stated that the advertised price was the same amount that was agreed to inside the residence and the phone number on the advertisement matched the phone number the complainant provided during the booking.

The I/O did not record or summarize the telephone conversation with the complainant during which the I/O tried to obtain the evidence. The I/O did make a note explaining that the complainant stated that the evidence was destroyed. The I/O did not interview the complainant about the allegation in the complaint.

The investigation resulted in one allegation of misconduct against the accused officer. The allegation that the accused documented false statements in an arrest report was classified by the Department as "Unfounded" based on the following rationale: The complainant had the "opportunity to contest the validity of the Arrest Report in court." However, the complainant pled guilty to the charge of prostitution and destroyed the evidence.

b. Analysis of Investigation

Our review revealed no investigative deficiencies that impacted the adjudication. The OIG would have preferred that the I/O interview the complainant to make sure there were no new allegations. Nonetheless, the Department made an effort to obtain evidence regarding the alleged misconduct, which included trying to obtain a video recording from the complainant.

c. Conclusion

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

10. **CF No. 08-001027**

a. Summary

This complaint was filed against an officer whom the complainant alleged provided a false statement during his/her application process before becoming a Department employee. The investigation revealed that approximately four years prior to the filing of this complaint, the complainant filed a different complaint alleging that the accused had ended their marriage and became involved in a relationship with his/her training officer. This initial investigation was adjudicated as "No Misconduct." Then, four years later, the complainant filed this complaint alleging that during their marriage, when the accused returned home from interviewing as a candidate for the Department, the accused confessed that he/she had lied during his/her interview about the prior use of marijuana. There were no witnesses to the event and there was no evidence that the accused had made such a confession in regards to his/her alleged use of marijuana. The complainant stated to the I/O that this alleged use of marijuana was prior to his meeting the accused and that during the time they were together, the accused had never used

marijuana. The complainant continued to attempt to contact the accused after the dissolution of the marriage, and consequently the accused sought a Temporary Restraining Order against the complainant.

The investigation resulted in one allegation of misconduct against the accused officer. The allegation that the accused, before becoming a Department employee, provided a false statement during his/her application process was classified by the Department as "Unfounded" based on the following rationale: "This investigation demonstrates that [the complainant] is developing a pattern of retaliation against [the accused] for ending their marriage and is the apparent sole genesis of this complaint."

b. Analysis of Investigation

Our review revealed no investigative deficiencies that impacted the adjudication. The Department made every effort to obtain evidence regarding the alleged misconduct.

c. Conclusion

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

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IV. Discussion of Out Of Statute Cases

During this Quarter, 13 cases were closed that were determined to be Out of Statute (OOS).¹⁰ 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 13 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, however, improper classification of statute dates again resulted in several cases falling OOS during this Quarter.

Summaries of the OOS cases are as follows:

CF No. 00-0473

This complaint involved multiple officers implicated in the Rampart investigation of the 1990s. After a review of the investigation the OIG was unable to determine how the case fell or was determined to be OOS. Memoranda from the COP dated September of 2000 suggested that the allegations against the accused officers were already found to be OOS at that time. The OIG understands that this case was extremely complex and involved many officers over many years and resulted in a series of complicated investigations, criminal and civil proceedings and Boards of Rights (BORs), all of which contributed to the significant confusion and delay in the aftermath of the scandal. It appears that this particular case was administratively closed during this Quarter and as such, is included in this Report.

CF No. 04-4126

This complaint involved a civilian employee who failed to provide several Doctor's Certificates as required by a Notice of Excessive Absenteeism, which had been served on him/her due to excessive absence from work.

It appears that the statute lapsed because the reporting supervisor initially incorrectly identified the date the misconduct was reported to the Department, which resulted in IAG establishing an incorrect statute date. The investigation was completed after the correct statute date. All of the allegations would have been sustained, were they not OOS. Accordingly, the Department could not impose any discipline.

Training was provided to the involved supervisor to prevent recurrence of the situation.

¹⁰ These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. All 13 cases are discussed herein. Only 13 of 1566 (.008) complaints fell OOS during the Second Quarter.

CF No. 05-3303

This complaint was initiated against an officer in a specialized unit by another officer in the unit who alleged that the accused officer created a hostile work environment for him/her. The Department tolled the investigation because of the unavailability of a "critical witness," who was away on extended travel. The witness subsequently retired before being interviewed and refused to be interviewed subsequent to his/her retirement. The Department adjudicated the complainant as "Not Resolved" and the accused officer submitted a Skelly response in which he/she argued that the individual was not a "critical witness" and that he/she could have been interviewed within a year of the alleged misconduct being reported. The Department agreed with the Skelly response and classified the complaint as being OOS.

Therefore, it appears that the statute lapsed because the Department inaccurately tolled the statute date using the provision for tolling that pertains to critical witnesses.

The investigator was counseled and provided training relative to proper tolling procedures.

CF No. 06-0724

This complaint involved two officers that responded to a request for service from another officer who observed illegal activity from a Closed Circuit Television Unit. As a result of the response three persons were arrested. One of the three could not be connected to the crime and was not booked, but the officers used force upon this person. The day after that person was released, she filed this complaint. This case was being considered for submission as a criminal case to the District Attorney's (DA) Office because the officers were accused of Unauthorized Force but it was determined that it did not meet the criteria for presenting criminal misconduct to the DA. Therefore, this case was not presented to the DA's office for filing.

It appears that the statute lapsed because the Department inaccurately tolled the statute date using the provision for tolling that pertains to on-going criminal investigations. This tolling provision is only applicable if the matter is presented to the prosecuting authority.

The C/O of this Division provided that his personnel be advised about the correct application of this tolling provision and the need to submit cases tolled under this provision to the DA for review.

CF No. 06-1153

This case involved an unknown officer who was allegedly "Discourteous" to the complainant, when the officer asked if the complainant was a "fag or something." The complaint originated during the time period that officers from Area A were on loan to Area B to supplement a crime suppression deployment.

Eleven months after the incident, Area B's Complaints Coordinator discovered that the complaint was very close to statute. Area A was contacted and it was discovered that none of the Area A supervisory staff had conducted an investigation. By the time the error was discovered,

it was too late to complete the investigation prior to the end of the statute date. The probable disposition is unknown because the investigation was never completed, resulting in the case falling OOS.

The C/O of Area B sent a 15.2 to the C/O of IAG providing an explanation as to why the above referenced complaint went out of statute. It provided that staff from Area B believed the complaint was being handled by a third area, however, Area B did not receive any formal written confirmation that the other area was investigating the complaint.

The C/O from Area B reminded his administrative staff "that personnel complaint investigations shall only be considered reassigned to another entity upon receiving written approval from the C/O of IAG." Additionally, Area B personnel were advised to continue to track all complaints "until the C/O of [Area B] expressly states that there is no longer a need."

CF No. 06-3739

This complaint involved an officer that retired from the Department and indicated that he/she resigned because his/her supervisors discriminated against and created a hostile work environment for him/her while the complainant was under their command.

It appears that the statute lapsed because the complaint, which contained serious allegations, was lost due to the workload volume of IAG. A complaint form was initiated two days after the resignation was filed, however it was never assigned to any area or division for investigation. IAG was notified about the statute date at least one month in advance, however no further action was taken at that time.¹¹

The Department considered this lapse an anomaly due to the workload volume of this area and noted that there are systems in place that would normally prevent such an occurrence.

CF Nos. 06-4957, 06-4958, and 06-4959

These three complaints involved officers who failed to qualify. Two out of the three officers believed it was not their month to qualify, and the third officer simply forgot to qualify.

It appears that the statute lapsed because the investigations were misplaced. The C/O had reviewed the three complaint investigations and recommended that all three be sustained and that each officer receive a penalty of an "Admonishment." However, the investigations were misplaced and subsequently fell OOS prior to being served on the officers.

The Division has tightened its complaint tracking systems and the involved personnel received training. Further, the section officer in charge (OIC) is now included as a recipient of the Statute Report, which details all investigations pending adjudication that are 30, 60, and 90 days from their statute dates.

¹¹ IAG receives weekly notifications of complaints that are nearing their statute dates. This report is called the Statute Report – 90 Days. A copy of a 90 Day report dated approximately one month earlier than the statute date of this complaint was included in the investigation.

CF No. 06-006102

This complaint was filed against an officer for physically assaulting the complainant as the complainant attempted to video tape officers conducting a pedestrian stop.

It appears that the statute lapsed because of a lack of due diligence by the Department. The case was assigned to three different investigators, but it took over five months after the complaint was generated for the first investigative entry to be made in the chronological record. The complaint was then tolled for approximately eight months during which the District Attorney's Office considered filing criminal misconduct charges, which it ultimately decided against. Finally, the Department miscalculated the new statute date and Skelly'd the officer past the correct statute date, thus resulting in the complaint falling OOS.

The C/O advised the I/O's immediate supervisor to speak to the I/O about this case and counsel as appropriate.

CF No. 06-006841

This complaint was filed against Officer A for Neglect of Duty and failure to properly book the complainant's property resulting in its loss; and against supervisory Officer B for failure to initiate a personnel complaint against Officer A and for failure to properly direct Officer A in booking the property.

It appears that the statute lapsed because the Department inaccurately calculated the statute date. The date of the incident was eight months prior to the complainant reporting his complaint. It was presumed that the statute date would be one year after the report date, however, an investigation was conducted which revealed that Officer A notified Officer B that the complainant's property was lost within a month of the incident date. Therefore, the correct statute date was actually seven to eight months prior to the calculated date.

The investigation was completed approximately 60 days prior to the correct statute date. However, because the correct statute date was not discovered, the investigation was held for several months for administrative purposes and Officer A was not served in a timely manner. The adjudicator had recommended that all four allegations be classified as "Sustained," but no penalty could be imposed because the statute date has passed.

The C/O of IAG submitted a 15.2 to the Bureau and recommended that the Bureau review the case to determine the appropriate remedial action.

CF No. 07-001133

This complaint was filed by an officer against numerous Department employees, including "high ranking" supervisors and command staff, for collaborating to cover-up corruption within the Department. In addition, the complainant alleged that the accused officers made improper remarks and engaged in unbecoming conduct. This information was revealed when the

complainant provided testimony during a deposition for a civil law suit. However, there was no record that a complaint investigation was conducted regarding these issues.

It appears that the statute lapsed because according to the Department, the complainant's deposition did not provide any specific incidents of corruption and a portion of the deposition was placed under seal, limiting the reviewer's ability to identify the accused officers or substantiate the alleged misconduct. Further, the Department contends that the allegations of improper remarks and unbecoming conduct were already investigated in another complaint investigation, CF No. 01-1869. The Department also indicated that the complainant disclosed these allegations of misconduct to command staff in 2001 and the statute of limitation expired in 2002. As a result, these allegations were determined to be OOS.

Due to the fact that portions of the transcripts were under seal, the OIG was unable to review the transcripts to verify that the complainant did not provide enough specific information for the Department to conduct an investigation. Further, the earlier case in which the improper remarks and unbecoming conduct allegations were apparently addressed was misplaced by the Department and as such could not be reviewed by the OIG.

It appears that no remedial action was recommended in this case since the allegations fell OOS six years prior to the initiation of this complaint.

CF No. 07-003438

This complaint involves a negligent discharge of a firearm. The BOPC recommended Administrative Disapproval (AD) for the discharge. The Use of Force Review Board (UOFRB) generated a timely personnel complaint.

It appears that the statute lapsed due to several factors. The investigation was not properly entered into the database system that tracks complaint investigations and the employee tasked with tracking investigations misinterpreted the statutory deadline to be one year after the complaint was reported versus the correct statute which is one year after the incident occurred. In addition, the personnel in charge of assigning investigations were not made aware that the investigation had been received by IAG.

As a result, personnel changes were made and new administrative controls were adopted. Access to information regarding the progress and status of complaint investigations is readily accessible to key personnel and weekly updates are mandated by the complaint coordinator.

A more detailed summary of the facts of this case will be included in Section V regarding OIS No. 101-06.

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

During this Quarter, five CUOF incidents were closed in which the Commission adopted a finding of "Out of Policy" or "Administrative Disapproval" (AD). All of the incidents were officer involved shooting (OIS) cases; one involved an animal, two were Negligent Discharge (ND) cases, one was an "OIS Hit,"¹² and the other was an "OIS Non-Hit" case. Table L in the Department's Report contains additional summary information on each of the five cases, including corresponding complaint information, the Commission's findings and the discipline imposed, if any. One of the cases fell OOS and was also discussed in Section IV of this Report. In previous reports, the OIG has noted higher numbers of CUOF cases that fell OOS. Only one case falling OOS during this Quarter is a positive step and the OIG recognizes the Department's vigilance in addressing these cases in a timely manner.

OIS No. 008-05

This case involved an OIS. During early evening hours, Officer C, a supervisor, was driving when he/she located a vehicle parked on the street with parts missing. A check confirmed that the vehicle had been stolen. However, before the officer recovered the car, he/she was called to the police station to handle a citizen complaint. Later, Officer C returned to the location of the car and discovered it was gone. Officer C obtained information that the car had been recovered at another location by another law enforcement agency. Subsequently, Officer C met with Officers A and B to discuss the fact that there had been several vehicles reported stolen in the area. Officer C directed Officers A and B to patrol the area for any suspicious activity related to stolen vehicles.

Officers A and B, while patrolling the area, observed an individual standing in an alley. As the officers entered the alley, the individual turned and ran out of sight of the officers. The officers considered this suspicious, so they proceeded up the alley and stopped at the location in the alley where the individual was last seen. As Officer A attempted to locate the individual, Officer A looked through an opening on the side of a closed garage door and observed a light on inside the garage. Officer A also heard voices inside the garage as well as the sounds of someone working on an automobile. Officer A believed the people in the garage might be auto theft suspects, so the officers investigated further by checking alongside the garage. There, they found a steel drum containing miscellaneous burnt car parts. Also, the ground in front of the garage appeared saturated with oil, and additional car parts were lying on the ground around the garage. Based upon these observations, Officers A and B believed that the garage was the possible location of an auto theft and dismantling operation, which is commonly referred to as a "chop shop".

Officers A and B moved to separate sides of the garage. Officer B contacted Officer C by radio and advised him/her of their location and that they may have located auto theft suspects therein. Officer C indicated he/she would drive to the location. Officer B also requested an additional

¹² An "OIS-Hit" involves an officer intentionally firing a round at a person from his/her service weapon and the round strikes somebody. An "OIS-Non-Hit" involves an officer intentionally firing a round at a person from his/her service weapon but nobody is struck by any rounds fired.

unit to respond. Officer C parked his/her vehicle at the entrance of the alley and walked down the alley toward Officers A and B.

In the interim, Officer A observed the silhouette of a person approach the inside of the garage door and peer through the opening at the edge of the door. Officer A stated that he/she identified him/herself as a police officer and ordered the individual to open the door. Officer A noted that someone in the garage replied, but he/she could not understand what that person said. Officer B stated that an individual inside the garage replied to Officer A, "Who are you? What do you want?" One of the individuals inside the garage told investigators that he/she heard someone outside the garage repeatedly ask for "[name omitted]," or words to the effect of "Is [name omitted] there?" and/or "[name omitted], open the door."

Officer A then heard two gunshots from inside the garage. Believing someone was shooting at him/her from inside the garage, Officer A raised his/her pistol and fired one round at the silhouette he had seen inside the garage and then retreated to cover. The round fired by Officer A struck the exterior of the closed garage door.

While Officer A made contact with the individuals inside the garage, Officer B remained on the other side of the garage, with his/her weapon drawn. Officer B recalled hearing two gunshots from inside the garage and one round fired by Officer A. As Officer C approached the garage from the alley, he/she heard two gunshots followed by another single gunshot. Officer C thought the gunshots had come from the area where Officers A and B were, but did not see either officer fire their weapon. Officer C moved forward taking cover behind buildings along the alley. When Officer C moved closer, Officer A told him/her that there were two individuals in the garage who had shot at him/her and he/she had returned fire.

Both Officers A and B ordered the individuals out of the garage, but they did not comply. Subsequently, other units arrived at the location along with an air unit. A perimeter was established around the location. Two additional highly specialized units also responded. One of those specialized units contacted the suspects who surrendered soon thereafter without further incident.

The BOPC found Officers A and B's tactics to be deficient, warranting AD. The BOPC determined that Officers A, B and C would benefit from additional formal training. In addition, the BOPC also found Officer A's use of force to be out of policy, warranting AD.

The BOPC noted that Officers A and B did not advise CD of their location or status and that Officers A and B did not discuss a tactical plan prior to approaching the fleeing individual in the alley, and the suspects in the garage. Additionally, the BOPC determined that Officers A and B should have requested an additional unit when they initially observed an individual run from the area of the garage, and that prior to verbally engaging the suspects in the garage the officers should have waited for additional officers to arrive and briefed those officers of the incident details. The BOPC also noted that Officers A and B, while waiting for responding units, were in close proximity to the garage doors and on both sides of the garage, thus creating a potential crossfire situation.

The BOPC was critical of Officer A's decision to use lethal force under the totality of the circumstances. Officer A was unable to discern any recognizable figures inside the garage and he/she was only able to see a silhouette through a crack at the side of the garage door. When Officer A heard the gunfire from the garage and believed he/she was being shot at, he/she was unaware of who fired the rounds or where specifically the suspect was located within the garage, and returned fire into the garage without firing at a specific target.

As a result of the AD findings, personnel complaint CF No. 05-6015 was initiated. The Department framed three allegations against Officer A for Unauthorized Force, Unauthorized Tactics and False Statements. The False Statements allegation was framed against Officer A because the Use of Force Review Board (UOFRB or Board) questioned the veracity of the officers' statements regarding whether they properly identified themselves to the suspects or if the officers attempted to utilize a ruse to cause the suspects to exit the garage. The False Statements allegation against Officer A was adjudicated as Not Resolved. Two of the allegations against Officer A, Unauthorized Force and Unauthorized Tactics, were Sustained. Officer A received a penalty of 10 suspension days. The penalty was within the Department's Guidelines, in light of the fact that a review of Officer A's complaint history revealed that although Officer A had four additional sustained complaints within five years of CF No. 05-6015 being initiated, none were for Unauthorized Force or Unauthorized Tactics.

The Department also framed two allegations against Officer B for Unauthorized Tactics and False Statements. As with Officer A, the UOFRB directed that an allegation of False Statements be framed against Officer B because the Board questioned the truthfulness of the officers' account of the incident. The False Statements allegation was adjudicated as Not Resolved. The Unauthorized Tactics allegation against Officer B was Sustained. Officer B received a penalty of five suspension days. The penalty was within the Department's Guidelines, in light of the fact that a review of Officer B's complaint history revealed that although Officer B had four additional sustained complaints within five years of CF No. 05-6015 being initiated, none were for Unauthorized Tactics.

OIS No. 101-06

This case involved a ND. Officers A and B were conducting a suicide investigation. Officer A was inside the location assisting a Los Angeles County Deputy Coroner while Officer B was outside the location speaking with the decedent's family members. The Deputy Coroner was unable to open the cylinder of the revolver used in the suicide and asked Officer A for assistance. Officer A took control of the revolver and while attempting to open the cylinder, discharged a round into a kitchen cabinet. No one was injured during the incident.

The BOPC noted that based on Officer A's lack of familiarity with revolvers as well as his/her limited tenure, it would have been prudent for him/her to consult with his/her training officer, Officer B, prior to handling the weapon.

The BOPC was critical that Officer A failed to adhere to basic firearm safety rules while handling the weapon and determined Officer A's use of force to be negligent, warranting AD.

Further, Officer A was directed to attend additional formal firearms training at Training Division.

As a result of the AD finding, personnel complaint CF No. 07-003438 was initiated. The Department framed one allegation against Officer A for ND, which was sustained.

As a result of the statute having expired, no penalty was administered.¹³

OIS No. 107-06

This case involved an OIS that occurred when several uniformed and plainclothes officers responded to a radio call regarding suspected burglary subjects in a residence. Upon arrival at the residence the officers established a perimeter around the house and planned to locate a point of entry, request the necessary resources and attempt to establish contact with any occupants of the residence. In the process of doing so, Officer A observed an open door to an attached garage and assembled an entry team to determine if the residence could be accessed through the garage.

Officers A, B, C, D, and E next proceeded towards the garage and Officer A was the first to enter the garage. Officer A immediately observed a large Rottweiler dog running towards him/her with its mouth open and growling. Officer A backed out of the garage and fearing for his/her safety, fired one round at the dog, which changed direction and ran towards Officer B, who was standing to the left of Officer A. Officer B fired one round at the charging dog, which ran past Officer B towards the walkway leading to the front of the residence.

Officer C, who was located at the walkway observed the Rottweiler running towards him/her and proceeded to backup but the dog continued to run in his/her direction. Fearing for his/her safety Officer C fired one round at the dog, which appeared to have no effect. Officer C next fired two additional rounds at the dog, which caused the dog to slow down and run past Officer C. Officer C admitted that he was aware that other officers, specifically, Officers A, B, and E were behind the dog when he fired the rounds but did not see them in the background when he engaged the dog and fired the rounds. Meanwhile, Officer D, who was initially assigned the second position on the entry team abandoned his/her position and ran past Officers B and C to the front of the residence upon Officer A encountering the dog.

As a result of the rounds fired by Officer C, Officer A sustained a gunshot wound to the right foot and Officer B sustained grazing wounds to his right hand and right shin. The dog fled the location and expired on a driveway north of the location. The burglary suspects were subsequently ordered from the residence and were determined to be truants, one of whom resided at the location.

Officer A was transported to an area hospital where he/she was treated for a gunshot wound/laceration to the small toe on his/her right foot, while Officer B was treated at the scene for minor lacerations to his/her right hand and right shin. A subsequent necropsy was conducted

¹³ A discussion regarding why this case fell OOS is contained in Section IV, "Discussion of Out of Statute Cases."

on the dog's remains and it was determined that the dog expired as a result of three gunshot wounds to the neck.

The BOPC found that the tactics of Officers A, B, C, and D were deficient, requiring AD and directed that the officers should be scheduled for formal training at Training Division. In addition, the BOPC determined that Officer E's tactics would benefit from additional divisional training. In finding the officer's tactics to be deficient, the BOPC noted that after the officers established a perimeter they failed to establish a tactical frequency to communicate with each other and perimeter officers were not advised of Officers A and B's observations. Furthermore, upon observing the open garage door Officer A abandoned his/her initial plan when he/she attempted to gain entry into the residence through the garage.

The BOPC was also concerned that no effort was made to replace any of the plainclothes officers occupying perimeter positions with uniformed officers. Furthermore, the BOPC noted that the plainclothes officers were equipped only with their service weapons and handcuffs, which would prevent them from being readily identified as police officers had a combative situation occurred. Additionally, the BOPC noted that when Officer D abandoned his/her position and ran past Officer B and C, his/her actions compromised the integrity of the entry team and diminished the overall safety of the officers.

The BOPC found that the officers had sufficient information to believe that their response to a burglary call could escalate to the point whereby deadly force might become necessary. Therefore, the BOPC found that Officers A, B, C, D, and E drawing their weapons was in policy and required no further action. Additionally, the BOPC found Officers A and B's use of force to be in policy. The BOPC further determined Officer C's use of force to be in policy, but ordered that Officer C receive formal training, as the BOPC believed that Officer C should have recognized that the discharge of his/her weapon could have inflicted serious injury to Officers A, B, and E. The BOPC further noted that Officer C should have given substantial consideration as to whether a dog bite posed more of an overall threat to Officer C than the discharge of a weapon in a crossfire situation.

As a result of the AD findings, personnel complaint CF No. 07-004506 was initiated. The Department framed one allegation each against Officers A, B, C, and D for Unauthorized Tactics, which were sustained. The Chief of Police imposed a penalty of Official Reprimand against each of the officers, which appeared to be within the Department's Guidelines, in light of the fact that a review of the officers' complaint histories revealed no prior sustained complaints for Unauthorized Tactics since being employed by the Department.

OIS No. 037-07

This case involved an OIS. Officers B and C were in full uniform driving a black and white police vehicle and were assigned an urgent radio call at a "Special Location."¹⁴ Officer A, a

¹⁴ A "Special Location" is a location pre-designated by Communications Division that has specific comments or restrictions based upon the history of previous police response and interaction with the residents of the location. A supervisor, along with the primary unit, must respond to any call dispatched at that location.

supervisor, also in full uniform and driving a marked black and white police vehicle, responded to the location as well.

Officers B and C arrived at the location, knocked on the front door and announced their presence. A male voice from inside the residence, later identified as Subject 1, yelled profanities at the officers and turned the volume up on a television. Officers B and C pulled back toward the driveway, behind a vehicle, to cover the side of the residence.

Officers B and C again approached the front door of the residence and noted that all the windows were covered with paper, some of which had hand drawn pictures of a hand with a middle finger extended. Officer B knocked on the door for approximately one minute. Once again, Subject 1 screamed, yelled and turned up the volume on the television. Officers B and C retreated back behind the vehicle parked in the driveway.

At this time, Subject 3, the person who reported the incident, arrived and met with Officer B. Subject 3 stated that he had last spoken to the victim, Subject 2, who was still inside the residence, approximately 30 minutes prior and Subject 2 had stated she wanted to leave.¹⁵

Officer A arrived on scene and was briefed by Officer B. Officer A was then advised that a friend of the victim, Subject 4, who was also at the scene, was presently speaking with Subject 2 on her cellular phone. Officer A obtained the cellular phone and asked Subject 2 if she was alright. Subject 2 replied that she was unable to speak with Officer A because she was scared. The line was disconnected and Officer A advised Subject 4 to call Subject 2 back. When Subject 4 called back, Subject 1 answered the telephone. Officer A retrieved the telephone from Subject 4 and identified him/herself to Subject 1. Subject 1 replied with profanity and disconnected the line.

Additional officers began to arrive at the scene. Officer A devised a tactical plan to approach and enter the residence. Officers attempted to force entry into the residence via the front door but were unable to gain access. Officer A deployed officers to the east and west side of the residence to ascertain if there was any access points to use for entry into the residence. A door on the east side of the residence was identified and forced open to gain entry into the residence. Subject 1, who was nude and armed with a two-foot metal rod, which he/she held in a threatening manner, immediately confronted the officers. Subject 1 ignored verbal commands and continued to advance toward Officer B, resulting in an OIS.

Los Angeles Fire Department personnel responded and transported Subject 1 to the hospital where he failed to respond to treatment and died.

The BOPC found that Officer A's tactics were seriously deficient, requiring AD.

Although Officer A took several steps to resolve this incident, there were several areas of improvement that were identified. A command/operations post was never established for this incident and the inner and outer perimeters were never secured to control ingress/egress

¹⁵ Subject 1 had taken the keys to Subject 2's vehicle.

restrictions for the involved area. There were also indicators of possible mental illness associated with Subject 1. The Mental Evaluation Unit could have provided useful insight had notice been given. In addition, Officer A was uncertain if this incident met the criteria for a Special Weapons and Tactics (SWAT) response and thus did not notify Metropolitan Division. It would have been prudent for Officer A to notify Metropolitan Division and give them "First Right of Refusal" for this incident. In addition, prior to making entry into the residence, it would have been tactically prudent to evacuate the surrounding residences and ensure that the entry team personnel were aware of their assigned duties and that a less-lethal force option (e.g., TASER, Beanbag Projectile Shotgun) had been deployed.

The BOPC also determined Officers A, B, C, D, E, and F would benefit from additional formal tactical training regarding entry teams and tactical communications. The BOPC directed Officer A to receive additional divisional training in the proper handling of witnesses and investigative protocols following a CUOF.

As a result of the AD finding, personnel complaint CF No. 08-000221 was initiated. The Department framed one allegation against Officer A for Unauthorized Tactics, which was sustained. Officer A received a penalty of OR. The penalty was within the Department's Guidelines, in light of the fact that a review of Officer A's complaint history revealed no prior sustained complaints for Unauthorized Tactics within five years of CF No. 08-000221 being initiated.

OIS No. 085-07

This case involved a ND. Officers A and B, both in uniform, had just completed roll call. The officers checked out a Remington 870 shotgun and carried it to the parking garage. Officer B then loaded the shotgun to "patrol ready"¹⁶ condition and handed it to Officer A to place in their vehicle's shotgun rack.

Officer A was unaware whether Officer B had loaded the shotgun. According to Officer A, he/she pointed the shotgun upward and conducted a physical and visual check of the chamber. Officer A did not see or feel a round in the chamber. Officer A then checked the barrel, the ejection port, the extractor, and the firing pin, then closed the action to check the safety. Officer A then disengaged the safety and pulled the trigger, unintentionally discharging a round into the concrete ceiling of the parking garage.

Officer A immediately told Officer C, a supervisor, who was present in the garage, what had just occurred. Officer C verified that the officers were uninjured and directed Officer A to clear and unload the shotgun and to place it inside his/her vehicle.

The BOPC noted that Officer A, while assigned to patrol duties, was responsible for performing a shotgun check at the beginning of his/her shift. Officer A received the shotgun from his/her partner, who had already completed a safety check and loaded the shotgun to patrol ready. Officer A began to conduct a safety check of the weapon, without ensuring the weapon was

¹⁶ "Patrol Ready" means the shotgun is loaded with four rounds in the magazine, the firing chamber is clear and the safety is on.

unloaded. While performing the check, Officer A inadvertently loaded a live round into the chamber of the shotgun. As Officer A continued the check, he/she disengaged the safety and pulled the trigger to the rear, a required step of an unloaded shotgun check, resulting in the discharge of one round into the ceiling.

The BOPC determined that Officer A failed to adhere to basic firearm safety rules while handling the shotgun. The BOPC found Officer A's lethal use of force to be negligent, requiring AD. The BOPC directed the division C/O to schedule Officer A for additional firearms training at Training Division.

As a result of the AD finding, personnel complaint CF No. 07-004407 was initiated. The Department framed one allegation against Officer A for ND, which was sustained. The Area C/O recommended a two-day penalty. Officer A submitted a Skelly response. The C/O reconsidered the penalty after reviewing Officer A's Skelly response and changed the penalty to an OR. The penalty was within the Department's Guidelines, in light of the fact that a review of the officer's complaint history revealed no prior sustained complaint for negligent firearms handling within five years of CF No. 07-004407 being initiated.

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VI. TEAMS II Reports

During our review of the CUOF cases included herein, we noted that in all five of the cases the officers' TEAMS II reports were not accurately updated to include the correct status of the CUOF cases.¹⁷ In addition, we noted that in three of the cases, the Commission's findings were not included on the accused officer's TEAMS II report.¹⁸ We forwarded these issues to the Department and they were remedied within a few days of our correspondence.

VII. Conclusion

Overall, the OIG noted relatively few investigative concerns in the False Statement cases we reviewed. It appears the Department is investigating False Statement cases appropriately, as it is fully aware of its duty to investigate and adjudicate these cases in a thorough manner. We only took issue with the investigation and adjudication in one of the 10 cases reviewed in this report.

The number of OOS cases increased for the second straight quarter which caught the OIG's attention. Given the severity of some of the allegations made in these cases, we would recommend that the Department continue to train personnel that administer complaints about the pitfalls of calculating statute dates and using tolling provisions. We will continue to look at these issues in future reports, but we commend the Department for taking remedial action in a majority of the cases. Going forward, we hope the actions taken will result in a decrease of the number of OOS cases.

Finally, we found that overall the Department issued appropriate penalties in the CUOF cases reviewed.

¹⁷ OIS No. 008-05, OIS No. 101-06, OIS No. 107-06, OIS No. 036-07 and OIS No. 085-07.

¹⁸ OIS No. 008-05, OIS No. 101-06, and OIS No. 085-07.