

LOS ANGELES POLICE COMMISSION

*Review of the  
Department's Quarterly Discipline  
Report  
Fourth Quarter 2009*



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

DJANGO SIBLEY  
Acting Inspector General

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## **I. INTRODUCTION**

Approximately 45 days after the end of each quarter, the Los Angeles Police Department (LAPD or Department) publishes a quarterly report regarding discipline imposed on Department employees. The Department's quarterly report includes Categorical Uses of Force (CUOFs) found to be out of policy. On March 3, 2010, the Office of the Inspector General (OIG) received a copy of the Department's Quarterly Discipline Report (Department's Report) for the Fourth Quarter of 2009 (Quarter). The OIG has reviewed the Department's Report and is herewith submitting its own Report to the Honorable Board of Police Commissioners (Commission). This Report is designed to comply with Paragraph III.B.3.a. of the Transition Agreement (TA), dated July 17, 2009, between the United States of America and the City of Los Angeles and constitutes the second of two mandated reviews of the Department's policies and procedures pertaining to the prohibition of Biased Policing.<sup>1</sup>

In Section II of this Report, the OIG has interpreted some of the statistical data contained within the Department's Report, to provide figures for Sustained rates by allegation type and Sustained rates by employee rank.

Section III contains the OIG's review of cases that were closed during the Quarter and which contained at least one allegation of Biased Policing. On March 31, 2009, the Commission approved the formal revision of the Department's previous policy regarding "Racial Profiling," which involved, among other things, the adoption of the term "Biased Policing." At the same time, the Department issued new investigative protocols on this subject. The OIG's review evaluated whether the Investigating Officer (I/O) followed the Department's current Biased Policing Investigation Protocol, dated March 31, 2009 (Protocols), 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 examines the four cases that were closed during the Quarter and were determined to be Out of Statute (OOS) by the Department. The OIG focused on the Department's explanation as to why these cases fell out of statute and what remedial action, if any, was taken to avoid similar recurrences.

Section V contains our review of the two complaints closed during the Quarter which were related to CUOF incidents in which the Commission adopted a finding of Out of Policy and/or Administrative Disapproval (AD) and were closed during the Quarter. These incidents are enumerated in Table L of the Department's Report.

On April 20, 2010, OIG staff met with Internal Affairs Group (IAG) personnel to discuss our preliminary findings. The information provided by IAG in response to the issues we identified was taken into consideration prior to finalizing this Report.

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<sup>1</sup> The TA mandates, among other things, that the OIG "conduct two (2) reviews . . . of the Department's policies protocols pertaining to the prohibition of biased policing." The TA provides that this review shall cover "a random sample of completed complaint investigations alleging biased based policing."

## **II. ANALYSIS OF STATISTICAL INFORMATION WITHIN THE DEPARTMENT'S REPORT**

The OIG utilized the information included within the Department's Report and conducted some additional analysis to aid the Commission in its own review and evaluation of the discipline imposed during this Quarter.

### Sustained Allegation Information Summary

The classification of an allegation as Sustained means that the Department's investigation revealed, based upon a preponderance of the evidence, that the act complained of occurred and constituted misconduct.

Using the information contained in the Department's Report, we determined that the percentage of Sustained allegations was 9.7% of the total allegations (total number of Sustained allegations/total number of allegations =  $258/2651 = 9.7\%$ ). The percentages for the ten highest Sustained rates by allegation type this Quarter in descending order were as follows:

<b>Allegation</b>	<b>Sustained Rate</b>	<b>No. of Sustained Allegations/ Total Number of Allegations</b>
Alcohol Related	100.0%	5/5
Shooting Violation	100.0%	1/1
Preventable Traffic Collision	87.0%	20/23
Insubordination	81.8%	9/11
Domestic Violence	50.0%	4/8
Narcotics/Drugs	50.0%	1/2
Failure to Qualify	47.1%	8/17
Dishonesty	41.7%	5/12
Failure to Appear	39.3%	11/28
Misleading Statements	31.2%	5/16

Allegation Summary

The table depicted below utilizes data from the Department's Tables C and I1 to provide a summary of the Sustained rate by misconduct type, the misconduct type as a percentage of total allegations, and the number of accused employees with Sustained allegations for each classification of misconduct.<sup>2</sup>

<b>Classification of Misconduct</b>	<b>Sustained Allegations/ Total Allegations</b>	<b>Sustained Rate</b>	<b>Misconduct Type as a Percentage of Total Allegations</b>	<b>Number of Accused Employees</b>	<b>Number of Employees w/ Sustained Allegations</b>
Alcohol Related	5/5	100%	0.2%	5	5
Discourtesy	14/407	3.4%	15.4%	287	7
Discrimination	0/11	0.0%	0.4%	6	0
Dishonesty	5/12	41.7%	0.5%	8	4
Domestic Violence	4/8	50.0%	0.3%	4	3
Ethnic Remark	1/22	4.5%	0.8%	13	1
Failure To Appear	11/28	39.3%	1.1%	24	9
Failure To Qualify	8/17	47.1%	0.6%	17	8
Failure To Report Misconduct	0/4	0.0%	0.2%	3	0
False Imprisonment	2/215	0.9%	8.1%	178	2
False Statements	12/81	14.8%	3.1%	61	9
Improper Remark	4/23	17.4%	0.9%	16	3
Insubordination	9/11	81.8%	0.4%	8	7
Misleading Statements	5/16	31.3%	0.6%	8	4
Narcotics/Drugs	1/2	50.0%	0.1%	2	1
Neglect of Duty	94/581	16.2%	21.9%	383	65
Off-Duty Altercation	2/7	28.6%	0.3%	5	1
Other Policy/Rule	3/105	2.9%	4.0%	67	3
Preventable Traffic Collision	20/23	87.0%	0.9%	22	19
Racial Profiling/ Biased Policing <sup>3</sup>	0/99	0.0%	3.7%	80	0
Retaliation	0/11	0.0%	0.4%	2	0
Service	0/7	0.0%	0.3%	4	0
Sexual Misconduct	0/4	0.0%	0.2%	3	0
Shooting Violation	1/1	100.0%	0.0%	1	1
Theft	2/22	9.1%	0.8%	12	2
Unauthorized Force	2/266	0.8%	10.0%	176	1
Unauthorized Tactics	3/81	3.7%	3.1%	62	2
Unbecoming Conduct	48/472	10.2%	17.8%	262	27
Unlawful Search	2/110	1.8%	4.1%	77	2

<sup>2</sup> A note accompanying Table I1 of the Department's Report indicates the following: "The allegation total is the number of instances of an allegation for the year. One employee may have multiple instances of the same allegation. One employee may also have multiple allegation types made against him."

<sup>3</sup> No allegations classified as Biased Policing were closed during this Quarter – only those alleging Racial Profiling. See footnote 7 *infra*.

Allegation Summary by Employee Rank and Listed by Allegation Type

Using the information in Table F, the OIG calculated Sustained rates by rank of the employee. These Sustained rates are calculated below two ways: when Preventable Traffic Collisions (PTCs), Failure to Appear (FTAs), and Failure to Qualify Allegations (FTQs) are included, and when these three types of allegations are excluded. The results are depicted in the table below.

	<b>Sustained Allegations/ Total Allegations</b>	<b>Overall Sustained Rate (Including PTCs, FTAs, &amp; FTQs)</b>	<b>Sustained Allegations/ Total Allegations (Minus PTCs, FTAs, &amp; FTQs)</b>	<b>Overall Sustained Rate (Minus PTCs, FTAs, &amp; FTQs)</b>
Command Staff	1/12	8.3%	0/11	0.0%
Lieutenant	0/11	0.0%	0/11	0.0%
Sergeant	44/189	23.3%	43/186	23.1%
Detective	20/189	10.6%	17/185	9.2%
Police Officer III	37/480	7.7%	28/465	6.0%
Police Officer II	109/1168	9.3%	85/1126	7.5%
Police Officer I	4/133	3.0%	3/130	2.3%
Reserve Officer	2/8	25.0%	2/8	25.0%
Detention Officer	5/13	38.5%	5/13	38.5%
Civilian Personnel	36/448	8.0%	36/448	8.0%
Allegation Totals	258/2651	9.7%	219/2583	8.5%

During this Quarter, 9.7% of all misconduct allegations against all Department employees were Sustained. When PTCs, FTQs, and FTAs are excluded, 8.5% of all allegations were Sustained.

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### **III. LAPD'S BIASED POLICING POLICY AND RELATED CASE REVIEWS**

#### **A. Introduction**

Complaints alleging Biased Policing have been a matter of ongoing concern for the Commission, as well as for the Department. As a result, a Biased Policing Investigation Protocol was first promulgated by the Department and adopted by the Commission in 2007. These Protocols contain guidelines for the investigation of Biased Policing allegations and have been amended and refined over the last few years.

#### **B. Biased Policing Policy**

On March 31, 2009, the Department revised its policy to include the phrase "Biased Policing" and to cover a larger universe of prohibited activities. Currently, Department Manual Volume 1, Section 345, provides as follows:

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

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

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

#### **C. Investigative Protocols and Checklist**

On March 31, 2009, the Commission adopted the most recent version of the Protocols for investigating Biased Policing allegations. The current Protocols include the following investigative strategies<sup>4</sup> for handling Biased Policing complaints:

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<sup>4</sup> Although the Protocols do not include specific language to the effect that the I/O "shall" follow the strategies outlined therein, the Biased Policing Investigation Checklist dated September 2009 (Checklist), and the earlier checklist dated July 1, 2008, both include a question as to whether the applicable Biased Policing Investigation Protocols were "reviewed by the investigator and included as a supplemental document to the investigation." During our April 20, 2010, meeting, the Commanding Officer (C/O) of IAG indicated that both the most current Protocols and the Checklist are available online to all IAG investigators and, that going forward, IAG will not

**Case Preparation:**

- Gather and review all documents related to the incident, including but not limited to Daily Field Activity Reports (DFARs), Field Interview Cards (FIs), sergeant's logs, arrest reports, traffic citations, and any audio or video recordings, including in-car camera video<sup>5</sup> recordings of the incident.
- If applicable and/or feasible, determine final outcome of any related traffic citation or legal proceeding which the complainant alleges was a result of biased policing.
- If the complainant alleges the officer selectively enforced the law, allowing persons of other minority status to avoid similar enforcement, examine enforcement activities for the day around time of incident. Document in Investigator's Note.
- Obtain photographic and visual documentation such as tinting of vehicle windows, diagrams of locations, etc.
- Canvass location, interview all witnesses.
- Generally, all complaining parties (CPs) should be interviewed. However, in some instances, letters or other correspondence may provide specific enough information to not require an interview. Decisions to not interview CPs shall be approved by Section Officers in Charge (OICs). Consideration should be given to sufficient specificity in correspondence, ability to interview the CP, amount of time from the incident to the date of correspondence, other existing reviews such as court proceedings, etc. The decision to not interview CP shall be documented in an Investigator's Note.

**Complainant Questions:**

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

**Officer Questions:**

- Reason for the stop, search or detention?

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require that copies of either be included in the underlying investigation. In addition, the C/O indicated that IAG would circulate a reminder to all investigators that they are expected to understand and follow the most recent versions of both.

<sup>5</sup> According to an oral report provided by the C/O of the Department's Information Technology Bureau to the City Council's Public Safety Committee on April 26, 2010, the Department has been testing the in-car camera video system among senior lead and gang officers within Southeast Division and, on April 25, 2010, expanded it to all patrol officers within Southeast Division. After 30 days of successful division-wide implementation in Southeast, the system will then be rolled out to 77<sup>th</sup> Division.

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

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

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

This most recent version of the Protocols suggests, among other things, that the I/O probe the length of the detention, as well as the legality and/or justification of any search conducted subsequent to the initial stop and "[o]btain details specific to conclusory statements such as, 'officer safety,' 'uncooperative,' 'high crime area,' or 'consensual encounter.'"

Finally, the Protocols mandate that "[a]ll completed personnel complaint investigations containing an allegation of Biased Policing shall be reviewed by the Section Officer in Charge and the Commanding Officer, Criminal Investigation Division, or the Commanding Officer, Administrative Investigation Division, and finally, the Commanding Officer of Internal Affairs Group, before distribution to the concerned commanding officer for adjudication."

To assist the I/Os and the C/Os in their review, the Department developed a checklist, which generally incorporates the concepts outlined in the Protocols above, that investigators must complete and include in the investigation. That checklist was most recently updated in September of 2009. The prior version was dated July 2008.<sup>6</sup>

**D. Enhancement in the Investigative Process**

By February 1, 2010, IAG had launched a unit dedicated solely to investigating complaints containing allegations of Biased Policing. Currently called the Constitutional Policing Unit

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<sup>6</sup> Given that the complaints reviewed for this Quarter were closed between October 1, 2009, and December 31, 2009, and that investigations are normally completed several months prior to the case being sent to the involved command for adjudication, we believe it would be unrealistic to expect the I/Os in the majority of the cases we reviewed to have utilized the September 2009 checklist in conducting their respective investigations.



(CPU), it is staffed by a Detective III and three Sergeant IIs, with plans to increase the number of investigators assigned to the unit up to a total of eight. The CPU reviews every complaint alleging Biased Policing at intake and selects for investigation those with the most significant potential constitutional violations.

According to IAG, with the deployment of the CPU, the following investigative and adjudicative practices are being implemented:

- ❑ All statements of complainants containing allegations of Biased Policing are currently being transcribed instead of paraphrased.
- ❑ All complainants whose intake interviews were conducted by an entity other than CPU (many of which involve interviews at an Area) are being re-interviewed by CPU.
- ❑ All involved officers and percipient witness officers are being interviewed.
- ❑ Any field supervisor who responds to an incident at the request of an officer or a complainant is being interviewed.
- ❑ Any recordings captured by an officer during a traffic stop or other contact are being transcribed.
- ❑ Given previous concerns expressed both by the OIG as well as the C/O of IAG regarding the adjudication of Biased Policing allegations at the chain of command (Area) level, IAG will complete a recommended adjudication, including any suggested training, for completed Biased Policing investigations and forward it to the accused officer's chain of command for review.

### **E. Methodology for Case Reviews**

The original population reviewed by the OIG consisted of 59 complaints that were closed during the Fourth Quarter of 2009 (October 1 to December 31, 2009), which contained at least one allegation of Racial Profiling.<sup>7</sup> The OIG eliminated from the population the ten complaint investigations in which it was determined that no Department employee was involved and/or which were closed as duplicates of other investigations.

Additionally, based on IAG's representations that they are continuing to enhance the quality of their Biased Policing investigations, the OIG further limited its review to those complaint investigations that were initiated after the most recent Protocols were implemented. There were a total of 11 such complaint investigations remaining. The OIG reviewed all 11.

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<sup>7</sup> Given that the Department did not officially adopt the term Biased Policing until March 31, 2009, in addition to querying the Department's Complaint Management System (CMS) for Biased Policing complaints (of which there were none), we ran queries in CMS for complaints classified as Racial Profiling (there were 59). However, within the investigations we reviewed, some of the allegations were framed as "Biased Policing" as opposed to "Racial Profiling." We have discussed the continued classification of complaints as Racial Profiling with CMS with the CO of IAG who has indicated that his staff will be addressing this issue going forward. To avoid further confusion, heretofore within this Report we will utilize the term Biased Policing to refer to either Racial Profiling or Biased Policing allegations.

In conducting this review, a matrix was utilized by first and second-level reviewers. This matrix contained 60 questions designed to evaluate whether the investigators utilized the appropriate Biased Policing Protocols, whether the investigation and adjudication properly addressed the complainant's allegation of Biased Policing, and whether the discipline imposed was justified and appropriate in light of the surrounding circumstances, the employee's disciplinary history, and the standards enunciated in the Department's "Management Guide to Discipline" (July 2004) and the "Civilian Penalty Guide" to Discipline Standards (January 2008).

OIG staff also reviewed all available recorded interviews conducted in connection with the 11 investigations. 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 recorded interviews as recommended by first-level reviewers.

#### **F. Evaluation of Investigation Quality**

Overall, the OIG found that the quality of the Department's Biased Policing investigations has improved since our first review of Biased Policing investigations under the Transition Agreement. In only two of the 11 cases did we identify possible issues with the handling of Biased Policing allegations that we believed merited discussion in this Report. These cases are described below.

It should be noted that both cases involved traffic stops only, with no subsequent law enforcement activity after the initial stop, such as ordering the complainant out of the car and/or searching the complainant and/or his vehicle. Moreover, neither complainant provided any evidentiary support for their Biased Policing allegations (such as the making of ethnic remarks by the accused officers) other than their respective beliefs that they were stopped because of their race.

#### **CF No. 09-002148**

##### **UNDISPUTED FACTS**

The involved officers conducted a traffic stop, cited the driver (complainant) for running a red light, and issued him a warning for speeding. There was a passenger in the complainant's car. The stop occurred at night when it was dark outside. The complainant did not have plates on his car. The complainant believed the accused officer should have given him "a break" and should not have cited him. The complainant alleged he was racially profiled because if he was white, he believed he would not have been cited.

The Department framed one allegation of Biased Policing. This allegation was adjudicated as Unfounded based on the adjudicator's conclusion that the complainant "provided absolutely no foundation for this allegation, other than to say, he . . . is Hispanic, and that Black and Hispanic drivers are singled out for stops by police." Moreover, the adjudicator noted that the accused

officer “has no pattern of conduct that would support a tendency toward the alleged behavior” and that probable cause for the traffic stop was supported by the traffic citation issued to [the complainant]” which the complainant could have challenged the citation in court. Finally, the adjudicator noted that “[a]nother factor, while not conclusive, tends to counter [the complainant’s] allegation, was that the accused officer is also Hispanic.”

### DISPUTED FACTS

The complainant denied running the red light or travelling at the speed indicated by the officer<sup>8</sup> and claimed he was stopped because of his ethnicity. Both officers stated they were unable to determine the complainant’s ethnicity until after the car was stopped and they approached the driver to discuss the infraction. According to the complainant’s tape-recorded interview, after the officers had driven away, the complainant re-contacted them to obtain the contact information for their Watch Commander so he could file a complaint about the traffic stop. The complainant alleged that during this conversation the accused officer was angry and initially did not want to give the contact information to the complainant. Ultimately, the information was provided to the complainant. The complainant’s paraphrased statement did not identify the existence of this second encounter with the officers.

### INVESTIGATIVE ANALYSIS

During the initial intake interview, the complainant told the interviewer that there was a passenger in the car. The interviewer asked for the passenger’s contact information. The complainant indicated that he wanted to talk to the passenger first to verify that it was okay to give the Department the passenger’s contact information. The interviewer told the complainant that someone from the Department would call back to get that information. However, it appears that no one from the Department followed up. Accordingly, an investigative lead that could have resulted in the identification of a witness was not fully pursued.

IAG responded that the I/O believed that since the allegation was based upon the complainant’s perception, it was not necessary to interview the passenger. However, according to IAG, the I/O has since been reminded of the Biased Policing Protocols and the necessity that all witnesses be interviewed. Further, IAG indicated that the I/O acknowledged his understanding of this requirement going forward. Accordingly, IAG determined that a supplemental investigation was not warranted.

Secondly, the investigation did not explore the complainant’s description of his subsequent encounter with the two officers, including his claim that the officers were mad and had an attitude. Neither officer was asked about this second encounter during his interview.

IAG responded that since “the intake supervisor did not pursue this line of questioning further . . . there was not enough information to frame an allegation of Discourtesy,” though they recognized that the officers ultimately did supply the complainant with the requested information. IAG also indicated that, “[i]deally, [the accused officers] should have summoned a supervisor to the scene in order to have [the complainant] address his concerns at that time.”

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<sup>8</sup> According to the complainant, one officer informed him that he was travelling 40 miles per hour in a 35-mile per hour zone. The complainant indicated that he believed he was driving either 36 or 37 miles per hour.

### ADJUDICATIVE ISSUES

The OIG brought the following potential adjudicative issues to the attention of the involved Area command.<sup>9</sup>

First, the adjudicator stated, “[a]nother factor, while not conclusive, tends to counter [complainant’s] allegation, was that the accused officer is also [of the same race].” The OIG informed the Area command of our<sup>10</sup> position that the fact that the accused officer was the same race as the complainant is not a factor upon which a determination of Biased Policing should be made.

The Area responded that, “[a]lthough noted in the Letter of Transmittal, the race of the officer and the race of the complainant was not considered as an adjudicating factor.” Moreover, the Area indicated its agreement that “the race of the officer or the complainant is not a factor to be considered in determining if biased policing occurred.” Finally, the Area indicated, that “[a]s a result of the identification of this issue, [the Area Command] will require training of all supervisors to ensure an understanding of the Biased Policing Protocols.”

Second, the adjudicator noted that the existence of probable cause for the stop was supported by the issuance of a traffic citation which the complainant had an opportunity to challenge in court. We noted that such a statement presupposes that the citation was legitimately issued, which is pertinent to this investigation. However, the investigation revealed no effort to determine whether the complainant ever contested the citation in court and/or the outcome of any such challenge.<sup>11</sup>

The Area responded that “[t]he investigation concluded by the complainant’s own admissions, that at least one of the traffic violations did, in fact, occur.” Accordingly, “probable cause existed at the time of the traffic stop for the officer to take enforcement action.”<sup>12</sup> Though recognizing that “the investigator . . . did not determine the final outcome of the citation in traffic court, this fact is inconsequential to the adjudicator’s determination of probable cause, which is the foundation of this complaint.”

Ultimately, the Area concluded that, “[a]fter a secondary review of the original complaint investigation . . . and inspection of supplementary information and concerns noted by IAG, it is recommended that additional investigation or modification to the adjudication is unnecessary and unwarranted.”

The OIG believes that, based on a preponderance of the evidence presented, the Area’s decision

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<sup>9</sup> Initially, the OIG forwarded these issues to IAG, consistent with past practices. However, we were subsequently informed by IAG that all adjudicative issues, going forward, should be forwarded to the involved command.

<sup>10</sup> In its response to us, IAG indicated that it “does not base a complainant’s credibility on his ethnicity relative to that of the accused officer(s) or anyone else listed in the investigation.” The C/O of IAG also reiterated during our April 20<sup>th</sup> meeting that he has repeatedly spoken to the Area C/Os regarding this issue.

<sup>11</sup> The Protocols suggest that if applicable and/or feasible, an I/O should determine the final outcome of any related traffic citation which the complainant alleges was the result of Biased Policing.

<sup>12</sup> As it relates to the issue identified by the OIG and IAG regarding the fact that the I/O did not attempt to follow up with the complainant’s passenger, the Area responded, “[a]lthough an oversight, the passenger’s statement would have to have differed greatly from the complainant’s own statement to demonstrate any form of biased policing.”

to Unfound the Biased Policing allegation was reasonable.

### **CF No. 09-002355**

#### **UNDISPUTED FACTS**

The complainant was stopped by two officers for inoperable brake lights. The complainant claimed that both of his tail lights were in working order, but that the third tail light mounted in his rear window was not working. He alleged that the officers lied about the tail lights not working<sup>13</sup> and that they only stopped him because he was a "Hispanic male with a shaved head." The complainant was cited for "No Stop Lamps" and "No Proof of Insurance." The complainant acknowledged not having proof of insurance. The investigation also revealed that the complainant subsequently appeared in court with his "vehicle lights repaired and with proof of insurance" and that the citation was dismissed. The officers did not say anything inappropriate to the complainant during the stop, but the complainant claimed he felt the citation was a "show of disrespect."

The Department framed two allegations of Biased Policing, one for each of the involved officers.

The complainant also alleged that the officers followed him for 15 minutes before stopping him. However, according to the investigation, a MAPQUEST printout of the route from the school where the complainant dropped off his daughter, to the location where he was stopped revealed a travel time of only one minute, as opposed to 15 minutes. The adjudicator believed that "[t]his large discrepancy in time ... raises some doubt about [the complainant's] credibility." The adjudicator relied upon these proffered concerns about the complainant's credibility, coupled with a lack of any specific information that the officers stopped the complainant because of his race, and the fact that the officers had a legal reason to stop the complainant "and cite him for two California Vehicle Code violations," to Unfound both Biased Policing allegations.

#### **DISPUTED FACTS**

Thirty minutes after the stop, the complainant went into the Area police station to file a complaint. The complaint intake Sergeant observed the brake lights on the car and noted that the two lower right and left lights were in working order. However, the upper middle light was not working. The complainant stated that he did not fix the lights prior to coming to the station. According to the officers' paraphrased interviews, and an I/O Note, the officers indicated that they both observed "that all of the brake lamps were out at the time of the citation." Though acknowledging its existence in an investigative note, the I/O did not ask the officers any clarifying questions regarding this apparent discrepancy.

#### **INVESTIGATIVE ANALYSIS**

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<sup>13</sup> The Department explained that pursuant to Department Manual Section 3/810.05, complaints are normally not taken when a complainant disputes a traffic citation. In these cases, the complainant is directed to the appropriate traffic court. If a complainant claims the officer is lying regarding a particular traffic violation, they are again directed to the respective traffic court where the case can be heard before a presiding magistrate. If the complainant claims the officer lied in court when testifying, then a complaint would be taken and investigated accordingly, based upon the outcome of the court proceeding. In this case, the complainant went to traffic court to demonstrate that he had fixed his brake lights, but never challenged the traffic citation. The Department further explained that allegations of False Statements are reserved for officers who are allegedly dishonest when completing a report or speaking to a supervisor.

Per the complaint face sheet, the complainant alleged that the officers lied about his brake lights not working. The OIG informed IAG that we believed further questioning should have been conducted of the officers in an attempt to clarify the apparent discrepancy between the condition of the lights as observed by the intake Sergeant and the officers' initial claim that none of the lights was working.

IAG responded that the involved I/O indicated that he/she "did not believe it was important to resolve the discrepancy since only one inoperable light is required to satisfy the Vehicle Code violation and other mechanical issues could also be involved." However, IAG also acknowledged that "it is important for the [I/O] to attempt to resolve any inconsistencies that are discovered." They further indicated that, in this case, "a brief follow up interview with both officers should have been made in order to confirm their observations in contrast to what [the intake Sergeant] observed." Finally, staff from IAG's Review and Evaluation Section "advised [the I/O] of the importance of resolving any discrepancies to eliminate confusion on the part of the adjudicator and/or reviewer" and that the I/O indicated "[he/she] understood."

### ADJUDICATIVE ISSUES

Informed of IAG's acknowledgement of the investigative concern we identified, the Area indicated that, "[t]here is no nexus that would lead a reasonable adjudicator to include that a discrepancy in the facts of citation, uncontested in court, was an incident of biased policing/racial profiling." They noted that, in this case, the complainant did not dispute the traffic citation in court. Rather, he returned to court with proof that the light had been fixed. In addition, the Area noted that the complainant could not provide any factual support for his claim of Biased Policing, other than that the issuance of the citation was a "sign of disrespect" and that he was "an Hispanic with a shave head." The officers did not say anything inappropriate during the traffic stop nor was the complainant subject to a search of his person or vehicle or asked about his gang affiliation.<sup>14</sup>

### CONCLUSION

The OIG believes that, based on a preponderance of the evidence presented, the Area's decision to Unfound the allegations was reasonable.

#### **G. Other Identified Issues**

In the following three cases, the OIG noted issues unrelated to either the investigation or adjudication of the Biased Policing allegations:

#### **CF No. 09-002707**

The complainant was stopped by a motor officer who was working a seatbelt enforcement detail. The accused officer cited the complainant for not wearing his seatbelt. The complainant indicated that he was wearing his seatbelt and that the accused officer pulled him over because he is bald and has a goatee. Additionally, the complainant indicated that the accused officer told

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<sup>14</sup> Though not raised by the Area, it should be noted that the officers in this case did not order the complainant out of the car, which is a common claim in Biased Policing complaints.

him to "Pull the "F" over." One allegation of Biased Policing and one allegation of Discourtesy were framed. Both were Unfounded.

Though there were no independent witnesses to the alleged discourteous comment, the adjudicator claimed that, due to the complainant's "allegations" and his statements that "he is frequently stopped by other law enforcement agencies," the complainant's credibility was "dubious." Accordingly, the adjudicator opined that the accused's statements "are far more plausible."

The OIG forwarded to the involved command our concerns regarding the adjudicator's discrediting of the complainant based on his claim of prior contacts with various law enforcement agencies, which we believed was unmerited. Rather, we believed that since there were no independent witnesses to the alleged comment, and it was only the officer's word against the complainant's, the adjudication of the Discourtesy allegation should have been Not Resolved, instead of Unfounded.

#### AREA RESPONSE/CONCLUSION

The Area responded by indicating its concurrence with the findings of the OIG. Further, the Area indicated it would change the adjudication of the Discourtesy allegation (Allegation 1) from Unfounded to Not Resolved since there were no independent witnesses to the alleged comment and would notify the accused officer accordingly.

#### CF No. 09-001480

Two officers responded to a radio call of a "415 man" outside of an abortion clinic. There were counselors (protestors) present who were outside of the clinic handing out pamphlets to and praying with patrons of the clinic. One of the counselors called and made a complaint against the accused officer alleging that the officer contacted one of her friends because she was African-American and threatened to strike her with a baton. The Department framed one allegation that the accused threatened the complainant because of her race and one allegation that the accused threatened to strike her with a baton. Both allegations were Unfounded.

The investigation revealed that the accused officer felt like he/she was being surrounded by a crowd of approximately eight to ten counselors. At this point, the accused officer removed his/her baton fearing that the encounter had a potential to escalate and also to de-escalate the situation.

In correspondence to IAG, the OIG identified what we believed to be the existence of unresolved conflicting statements between the accused officer and his/her partner. We also raised concerns regarding the fact that the supervisor who responded to the scene and spoke to some of the involved parties was not interviewed. Further, the OIG indicated that it would have been helpful for the I/O to have taken photographs of the location to assist in the investigation.

IAG responded that it agreed that the I/O "clearly did not probe deeply enough during [his] questioning of [the involved officers]." In addition, IAG acknowledged that "[p]hotographs . . . would have provided . . . a more accurate view" of the relative position of the involved parties. Finally, IAG agreed that the involved supervisor should have been interviewed.

IAG also acknowledged that the accused officer needed further training in crowd management and, specifically, when to call for additional resources, so as to avoid this type of situation in the future. Additionally, IAG indicated their belief that the on-scene supervisor should have initially been more proactive, including stationing more officers at the scene so that the accused officer would not have found him/herself in this situation.

IAG indicated they believed that "it would be far more advantageous to the Department and the community to address the incident and related allegations as a training issue for all parties," including the responding supervisor. Accordingly, they indicated that they would notify the involved Area to make the appropriate training recommendations and that they would also notify the I/O of the investigative issues highlighted by the OIG.

#### **CF No. 09-001786**

The complainant was driving a car with tinted windows that were rolled up. A traffic stop was initiated by two officers because the car had illegally tinted windows for which the complainant was cited. There were two potential witnesses in the complainant's car. The initial intake Sergeant at the Area asked the complainant "Do they want to be a part of this?" to which the complainant responded, "no." Though IAG's investigation ultimately revealed that these witnesses would not have been in a position to have provided any additional information which would have impacted the adjudication of the Biased Policing allegations, we believe it would have been a more prudent investigative practice for the Sergeant to have obtained contact information from the passengers and allowed the I/O to make the ultimate decision as to whether to attempt to interview them.

We forwarded our concerns to the Area CO who indicated that he would take appropriate action to address the issues.

#### **IV. DISCUSSION OF OUT OF STATUTE CASES**

During this Quarter, four cases were closed that were determined to be Out of Statute (OOS).<sup>15</sup> We reviewed these investigations to determine the reasons that the cases were not completed prior to the statute date and whether remedial actions were taken to prevent recurrence. We also reviewed four Intradepartmental Correspondences (15.2s) related to these cases provided to us by the Department, as well as the case files themselves. All of the cases contained a 15.2 that detailed the remedial actions taken by the Department.

Summaries of the OOS cases are as follows:

#### **CF No. 05-002370**

The complainant filed a Claim for Damages on February 2, 2002, alleging conspiracy, unwarranted shooting and denial of medical treatment. Risk Management Group received the claim and forwarded it to IAG, creating an administrative statute date of February 6, 2003. However, no complaint was initiated as a result of the Claim for Damages. An IAG

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<sup>15</sup> These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. All four cases are discussed herein.



investigation into the matter was unable to clearly identify why no complaint was initially filed. The complainant filed a lawsuit regarding the same issues on May 6, 2005, which generated CF No. 05-002370. All allegations contained in the lawsuit were previously brought to the Department's attention via the Claim for Damages in 2002, rendering the allegations OOS by more than two years.

The C/O of IAG submitted a 15.2 to the Chief of Police (COP) indicating that action has been taken to preclude similar complaints from going out of statute in the future. Specifically, the 15.2 indicated that since 2002, both Risk Management Group and Complaint Classifications Unit now keep a precise record of every Claim for Damages received by Risk Management Group and the outcome of every preliminary investigation by Complaint Classifications Unit.

### **CF No. 07-005277**

This complaint involved an employee who had allegedly failed to appear in court after being served a subpoena, but who had submitted an Overtime Report for being "on call." The complaint resulted in three allegations of misconduct, two of which were classified as Exonerated. The remaining allegation, which alleged the accused employee submitted an Overtime Report for compensation which he/she was not entitled to, would have been classified as Sustained, with a penalty of a directed Board of Rights hearing, had it not fallen OOS.

The statute date for the complaint was September 18, 2008. The complaint was initially investigated and submitted for approval on April 30, 2008. However, it was reassigned for further investigation on July 15, 2008. It was then submitted for approval on September 10, 2009, nearly a year out of statute.

The 15.2 to the COP indicated that to ensure that similar investigations do not go OOS in the future the involved Bureau has taken the following actions:

"Additional controls will be implemented to ensure that Chain of Command investigations will validate the correct statute date. Also, as an additional preventive measure, an early alert mechanism notifying the Bureau when a complaint approaches the statute date was built into the protocol."

### **CF No. 08-003167**

This complaint involves an employee for whom a misdemeanor warrant was issued because the employee allegedly did not adhere to the terms of his/her probation for a DUI conviction. The complaint resulted in one allegation of misconduct alleging that the employee failed to pay a court mandated fine. The allegation would have been classified as Sustained, with a penalty of a directed Board of Rights, had it not fallen OOS.

The Department became aware of the allegation on July 4, 2008, but a personnel complaint was not initiated until July 9, 2008. The statute date was incorrectly determined based upon the date the complaint was initiated, rather than the date it was reported to a Department supervisor. Additionally, in a 15.2 from the Bureau to IAG, it indicated that the adjudication efforts were inefficient as the case was sent back for revisions several times. This resulted in a five month

delay from the time the investigation was completed to when it was served upon the accused employee on July 7, 2009.

The Department's 15.2 to the COP indicated that to ensure that similar investigations do not go OOS in the future the Bureau has taken the following actions:

“Additional controls will be implemented to ensure that Chain of Command investigations will validate the correct statute date. Also, as an additional preventive measure, an early alert mechanism notifying the Bureau when a complaint approaches the statute date was built into the protocol.”

#### **CF No. 09-000285**

This investigation involved a CUOF, Officer Involved Shooting (OIS) No. 006-08, which the Commission adjudicated on January 20, 2009. The Commission rendered an AD finding relative to the involved employee's tactics. Due to the circumstances of the incident, the COP directed that a personnel complaint be initiated. The supervisor who generated the complaint form used the date of the Commission's determination as the statute date, rather than the date of the occurrence of the use of force. As a result of the miscalculation of the statute date, the Department did not complete the investigation and adjudication prior to the statute of limitations expiring.

According to the 15.2 to the COP, the involved supervisor was given training regarding the proper calculation of the statute date. Additionally, the Complaint Management System requires complaint forms to be routed through the chain of command to obtain approval from the Commanding Officer, Use of Force Review Division.

#### **V. CUOFS ADOPTED AS OUT OF POLICY OR ADMINISTRATIVE DISAPPROVAL BY THE COMMISSION**

During this Quarter, two complaints were closed that were related to CUOF incidents in which the Commission adopted a finding of Out of Policy or AD. Table L in the Department's Report contains additional summary information on each of the two cases, including corresponding complaint information, the Commission's findings and any discipline imposed. Of the two CUOF incidents, both were OIS's with hits. Abridged descriptions of each incident, as well as the Commission's findings, are discussed below.

#### **OIS No. 078-08**

Officer A was in his/her personally owned sport utility vehicle (SUV) on a freeway on-ramp when he/she glanced at the vehicle's right side rearview mirror and saw another vehicle attempting to pass using the shoulder. Officer A was off-duty, wearing civilian clothes, and was accompanied by his/her thirteen-month-old son, who was secured in a car seat in the back seat. The other vehicle, a pickup truck driven by Subject 1, collided with Officer A's vehicle as it tried to pass. Officer A then followed the pickup truck. In a 911 call, an independent witness stated that both vehicles were driving on all lanes of the roadway and reached speeds of approximately 100 miles per hour. Officer A followed Subject 1 until he got off the freeway and stopped in a grocery store parking lot, a distance of approximately 5.5 miles. Officer A was armed with a

pistol carried in a retention holster secured on the right waistband. The pistol and holster were concealed by Officer A's un-tucked shirt.

In the grocery store parking lot, Officer A got out of the car and opened the rear door on the passenger side to get some air to the child because it was more than one hundred degrees outside. Subject 1 also got out of his pickup truck and the two approached each other. Officer A indicated that Subject 1 was furious, had clenched fists, his face was red, his veins were popping out of his neck, and he was using profanity. Officer A identified him/herself as an LAPD officer and told Subject 1 to stop. Officer A said that when Subject 1 was adjacent to the driver's door of his/her SUV, Subject 1 was still aggressive. Officer A lifted his/her shirt to show his service pistol and continued to talk to Subject 1 who continued to advance. Officer A said Subject 1 made a C-grip with his left hand and stretched that hand out toward Officer A's son, who screamed. While Subject 1 still had his hand extended into the car toward the child, Officer A felt the child's life was in danger and shot Subject 1 once in the chest.

Witness accounts differ as to when Officer A drew his/her service pistol and where Officer A and Subject 1 were located when the shot was fired. Additionally, none of the witnesses reported seeing Subject 1 with his arm extended into the SUV.

The Commission found that Officer A's tactics warranted Administrative Disapproval. First, while off-duty and driving a personally owned vehicle on the freeway on-ramp, Officer A was the victim of a misdemeanor hit-and-run traffic collision. Officer A made the decision to follow the subject by driving on the right shoulder and at an unsafe speed, in violation of the California Vehicle Code and with his/her one-year-old son in the vehicle. Officer A's decision unnecessarily jeopardized his/her safety, the child's safety and the safety of the public. Officer A should have contacted 911 and filed the appropriate reports with the California Highway Patrol (CHP).

Second, according to independent witnesses, while in the grocery store parking lot, Officer A got out of the car and moved toward the subject, giving up what little tactical advantage he/she had. Because there was no evidence that immediate action was required, Officer A should have called 911 and been a witness, rather than confronting Subject 1 and involving his/her one-year-old son in a tactical situation.

The Commission also found that Officer A's Drawing/Exhibiting/Holstering of his/her weapon was out of policy, warranting Administrative Disapproval. According to Officer A, Subject 1 redirected his attention from Officer A and fully extended his left arm toward Officer A's son with his left fingers formed in a "C" configuration, which Officer A believed was a choking grip. After hearing his/her son scream and fearing for the child's safety, Officer A drew his/her service pistol. Several witnesses indicated that Officer A had his/her service pistol drawn when he/she first got out of the car, which conflicted with Officer A's statement. Officer A's stated justification for drawing the weapon was that the subject reached into the vehicle towards his/her son. The preponderance of the evidence indicated that this did not occur. As such, Officer A's drawing of his/her weapon was not authorized.

Finally, the Commission found that Officer A's Lethal Use of Force was out policy, warranting Administrative Disapproval. The Commission found that the preponderance of the evidence indicated that Subject 1 neither approached the rear passenger door of Officer A's vehicle nor

was in a position to reach into the vehicle to harm Officer A's child. Witness statements indicated that Subject 1 was shot before he reached the front of Officer A's SUV. This version of events is further supported by the witness statements that indicated that Subject 1 immediately fell to the ground after being shot, the description of the scene as depicted by a responding CHP officer and deputy sheriff, and by the physical evidence.

As a result of the Commission's AD findings, CF No. 09-002642 was generated against Officer A. Four allegations were Sustained – one for each of the Commission's AD findings and another allegation that Officer A made misleading statements to Force Investigation Division (FID) investigators who were conducting an official investigation. As a result, the COP directed Officer A to a Board of Rights which found Officer A Guilty of all four counts and terminated him/her.

Based on the severity of Officer A's actions, which resulted in an unwarranted shooting, jeopardized the safety of Officer A, his/her small child, and the public, and the lack of credibility demonstrated by Officer A, the OIG believes that this was an appropriate penalty.

### **OIS No. 006-08**

Based on prior information, Officers A and B, along with Detective A, arranged a Gun Buy Operation. They requested assistance from Detective B and Officer C. Officer A drafted a Tactical Plan which assigned operational responsibilities to the following personnel: Detective A -- field supervisor; Officers A and B – surveillance equipment; and Detective B and Officer C -- observation point. Each wore a ballistic vest over plainclothes. The plan also included a uniformed patrol unit (Officers D and E) assigned as the take-down/arrest team. During the operation Officers D and E engaged Officers F and G, another uniformed patrol unit. Officer A conducted a briefing for Officer B and Detective A. Later, in the field, Detective A briefed Detective B and Officers C, D and E on the tactical plan.

The officers positioned themselves for the operation and monitored the restaurant. When Subject 1 arrived at the location he was accompanied by another male, Subject 2. The addition of another subject caused officers to request additional assistance, an air unit and another patrol unit. Although it was dark outside, the restaurant was well lit. Officer C observed the gun buy using binoculars. During the conversation in the restaurant, Officer C observed (through his/her binoculars) Subject 1 pull up his sweater to show what appeared to be the grip of a black handgun in his front waistband. Officer C advised Detective B of his/her observation, and they broadcast to the rest of the units that Subject 1 had a gun in his waistband. During the transaction the surveillance equipment malfunctioned, and Officers A and B could no longer hear the conversation with Subjects 1 and 2. Officer C saw Subject 1 pull a rifle from his right pant leg and hand it to the buyer, which was put into a trash bag. Subject 1 was paid, and they all left the restaurant.

Officer A and B subsequently received information that Subjects 1 and 2 may be armed. Officers A and B broadcast this information to the other units. Detective B advised the chase units to come in and apprehend the subjects. Officer C drove to the location of the subjects. Officer C and Detective B got out of the car, verbally identified themselves as police officers and told the subjects to stop. Detective B drew his/her pistol while getting out of the car. Subject 2 immediately stopped and complied with the officers' orders, while Subject 1 stood with his

hands in his front waistband pocket. Officer C observed a Los Angeles County Sheriff's Department (LASD) unit coming into the area. Detective B also observed the LASD police vehicle coming toward his/her location, but mistook it for an LAPD chase unit. Detective B yelled, "I've got this guy," referring to Subject 2. Detective B approached Subject 2, applied his/her bodyweight on him and waited for LASD deputies to assist. Since Detective B could see Subject 2's hands, he/she holstered his/her pistol to avoid being mistaken for a suspect by the deputies.

Subject 1 fled. Officer C chased him. The arresting units were driving toward the location when they observed Subject 1 running with his hands in his waistband. Subject 1 then stopped, turned toward Officer C, lifted his sweater and reached into his waistband. Officer C believed Subject 1 was going to draw a gun. At this time, Officer C fired one shot hitting, Subject 1 in the leg. An ambulance responded and took Subject 1 to the hospital.

Detective A, the supervisor on the scene, did not separate the officers or take a public safety statement from them. Later, Sergeant A responded and took a public safety statement. Additionally, Sergeant A was never informed of the gun buy at the restaurant, and as a result, officers were not directed to protect or search that area or the area travelled by the subjects after the gun buy.

It was later determined that Subject 1 did not have a weapon. No other weapon, except the rifle, was recovered.

The Commission found that Detective A's tactics warranted an AD finding. First, the written operation plan lacked specifics relative to the responsibilities of each team member and the tactical briefing was conducted without all involved persons present. Second, the chosen location for the gun buy exposed citizens to potential harm. Third, the officers did not advise Communications Division or use the appropriate radio frequency for their communications, thus jeopardizing officer safety. Fourth, the operation was allowed to continue after the surveillance equipment failed. Fifth, the air unit was not briefed on when to respond and was not effectively used as a tactical resource. Sixth, Detective A did not obtain a public safety statement and ensure the timely separation of involved personnel. Seventh, the entire operation lacked sufficient supervisory oversight.

The Commission also found that Detective B and Officer C's tactics warranted Administrative Disapproval and that Officer's D and E's tactics warranted a Tactical Debrief. The Commission noted that Detective B deviated from the Tactical Plan when, while in plainclothes, he/she made contact with potentially armed subjects instead of maintaining observation post responsibilities and giving the chase and air units instructions to contact the subjects. The potential for misidentification by the LASD deputies could have had dire consequences. The Commission, however, felt that Detective B should have been familiar with the importance of adhering to the Tactical Plan and the unwarranted deviation represented a significant shortcoming in tactical performance. Further, once Detective B came into contact with the subjects, he/she did not broadcast to other units involved in the operation, thus limiting the capacity of other units to provide assistance.

As to Officer C, in addition to having the same concerns noted for Detective B, the Commission found that Officer C did not communicate to Detective B that the approaching unit was from the

LASD as opposed to an LAPD chase unit. Since the LASD deputies did not know about the operation, this would have limited their ability to provide immediate and appropriate assistance. Further, Officer C separated from Detective B leaving him/her with an un-handcuffed, potentially armed suspect. Lastly, Officer C dropped his/her radio while engaged in the foot pursuit, leaving him without a means of communication.

The Commission found Detective B and Officer C's Drawing/Exhibiting to be in policy and Officer C's Lethal Use of Force to be in policy, based on their conclusion that Officer C had sufficient reason to believe that he/she and other officers were in immediate threat of serious bodily injury or death. Officer C had observed what he/she believed to be the black grips of a handgun in Subject 1's waistband and, on two separate occasions, observed Subject 1 reach for that same area, resulting in a reasonable belief that he was in possession of a firearm. When coupled with Subject 1's actions of abruptly stopping, then turning and reaching for his waistband, it was objectively reasonable for Officer C to perceive that he/she was confronted with an immediate threat of serious bodily injury or death.

As a result of the AD finding regarding the tactics of Detective A, the COP directed that a personnel complaint be initiated for Detective A. This resulted in the generation of CF No. 09-000285. However, per a 15.2 contained within the file and as discussed above, this complaint fell OOS because a supervisor responsible for generating the necessary complaint face sheet mistakenly calculated the statute date for the complaint as commencing from the date of the Commission's findings of Administrative Disapproval, when the statute should have been calculated from the date of the underlying incident.

According to the 15.2, the involved supervisor was given training regarding the proper calculation of the statute date. Moreover, the Department's Case Management System is now on-line which requires the Personnel Complaint Form to be routed through the chain of command to include approval by the CO of the involved division where statute miscalculation by new personnel had been a recurring event.

## **VI. CONCLUSION**

Overall, the OIG found that Biased Policing allegations were appropriately investigated and adjudicated in the large majority of the cases reviewed, all of which pre-dated the creation by the Department of a specialized unit dedicated to investigating Biased Policing complaints – the CPU. Moreover, the OIG anticipates that the quality of these investigations will continue to improve as the CPU assumes greater responsibility for the investigation of these complaints and provide training to others in the Department similarly charged with investigating Biased Policing allegations.