

LOS ANGELES POLICE COMMISSION

Review
Of the Department's
Quarterly Discipline Report
First Quarter 2011
(PUBLIC, OPEN SESSION)



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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**OFFICE OF THE INSPECTOR GENERAL
REVIEW OF THE DEPARTMENT'S
QUARTERLY DISCIPLINE REPORT
FIRST QUARTER 2011
PUBLIC**

I. INTRODUCTION

Each quarter, the Los Angeles Police Department (LAPD or Department) publishes a Quarterly Discipline Report (Report) regarding employee discipline imposed in connection with internal investigation cases closed during that calendar quarter. The Report is submitted to the Board of Police Commissioners (BOPC or Commission) for their review and approval. The Report includes any discipline imposed for Categorical Uses of Force (CUOF) found to be out of policy¹ as well as investigations that were found to be out of statute.²

Historically, under the former Federal Consent Decree between the Department of Justice and the Department, the Office of the Inspector General (OIG) was responsible to review and analyze the Department's Report, then report to the Commission to assist in its oversight responsibilities. In conducting each review, the OIG evaluated completed investigations, assessed the quality of the investigation, and determined if the discipline imposed by the Chief of Police (COP), if any, was appropriate given the nature of the incident, what the investigation revealed, and the officer's prior relevant disciplinary history. The OIG has continued to prepare these reviews even after the Consent Decree was lifted. In this report, the OIG has reviewed the Department's Report for the First Quarter of 2011 (Quarter), which the Commission received on July 12, 2011.

Following this Introduction, this review is divided into seven additional sections. Section II discusses Department standards for discipline imposed on employees upon a finding of sustained misconduct. Section III contains the OIG's review of selected cases that were closed during the First Quarter of 2011. Consistent with past practices, the OIG focused its Report review on evaluating how the Department addressed a particular allegation of misconduct (e.g., Biased Policing, Unauthorized Force, Unlawful Search, etc.). For this review, the OIG selected cases that contained at least one allegation of Domestic Violence.

Section IV consists of the OIG's review of cases which contained at least one allegation of an Ethnic Remark. Section V contains the OIG's review of two complaints which the Department determined to be out of statute, including the Department's explanation as to why the cases lapsed and what remedial action, if any, was taken to avoid similar recurrences. Section VI contains the OIG's review of investigations of cases that had at least one allegation of Alcohol Related Misconduct. This section also contains a comparison of the nature of the misconduct and the discipline imposed.

Section VII contains the OIG's review of additional cases that may be of interest to the Commission. Section VIII contains the recommendations formulated by the OIG.

¹ The BOPC did not find any CUOF out of policy this Quarter.

² Refers to statutory time limits imposed under Cal. Gov't. Code § 3304.

In past reports, the OIG interpreted some of the statistical data contained within the Department's Report to provide charts depicting Sustained rates by allegation type and by employee rank. This quarter, the Department reformatted the data in its own report rendering redundant the information which the OIG historically provided. Therefore, those charts are no longer included in this report.

Finally, as a matter of perspective, the OIG reminds that this review contains only a topical sample of the actual number of complaint investigations that the Department closed during the Quarter. This review examines 33 investigations out of the total population of 270 for the Quarter, or approximately 12 per cent. A substantial portion of this review raises questions or issues regarding the 33 investigations discussed herein. However, we did *not* comment on the number of issues, concerns, or findings in those investigations with which we agreed. We have occasionally done so in the past in our reviews, but we omitted that information for this review in the interest of brevity. We also did not comment on 3 additional investigations that we reviewed, but found no issues at all. While the OIG endeavors to provide useful critical analysis to both the Commission and the Department, we do here acknowledge that overall the Department's complaint investigations are of high quality, particularly noteworthy in light of the volume of investigations completed.

II. STANDARDS FOR DISCIPLINE IMPOSED

A. Discipline Guidelines

In January 2002, the Department published the Management Guide of Discipline (Guide). Contained within the Guide was a Penalty Guide (Chart), a chart which provided adjudicators with a list of allegations and a corresponding list of the type of discipline that could be imposed for each allegation, ranging from a Written Penalty through appearance before a Board of Rights. The chart matched allegations with a range of possible discipline that could be imposed for the first, second, or third time an allegation was sustained against an employee.

While the Chart was in fact a guide, it brought a sense of objectivity, equality, consistency, and predictability to the discipline process for adjudicators and accused employees. The Guide directed that if managers were inclined to deviate from the Chart, they "should provide a cogent explanation for the deviation." Further, the OIG used the Chart in evaluating the appropriateness of the discipline imposed to assist the BOPC in doing the same.

The OIG notes that this Chart is no longer used by the Department and it has not been replaced. As a result, the OIG had difficulty assessing if the discipline was appropriate in the cases reviewed for this report. The OIG was left to make a subjective determination rather than a comparison to a Department-defined standard. Also, the OIG was unable to measure whether any imposed discipline was consistent with a Department standard, as a standard is no longer defined or presented as was done previously in the Guide. It is the OIG's opinion that a Department-defined standard would assist Department adjudicators, the OIG, and the BOPC in determining whether discipline imposed is fair and consistent with other cases.

B. Conditional Official Reprimands

The OIG noted in this Report, as in several prior Reports, the use of Conditional Official Reprimands (CORs) as a form of discipline. In most cases where the OIG has conducted a review, we have observed a COR to be written notice to the offending employee that no further discipline will be imposed for the immediate offense on the condition that a subsequent violation of a similar act of misconduct during a specified time period will result in significantly more severe discipline. A COR, therefore, in practice represents a different level of discipline than an Official Reprimand (OR), which is imposed without conditions.

As identified in past Reports, CORs continue to pose challenges for the OIG in evaluating the propriety of discipline imposed.³ However, the OIG is aware that the Department is preparing a report for the Commission which is expected to provide detailed information defining the terms, use, and tracking of the COR as a disciplinary resource. The Department has advised that the report will likely be presented in the fourth quarter of 2011.

Also, the Report captures and reports data for each classification of discipline including ORs. The Report, however, does not currently distinguish ORs from CORs. The lack of distinction between these two different forms of discipline creates difficulty for the BOPC and the public to gain a true picture of the actual discipline imposed in many cases. As such, the OIG recommends that the Department consider adding language to its Report that provides a clear distinction between an OR and a COR.

III. REVIEW OF DOMESTIC VIOLENCE CASES

A. Methodology

Five cases involving at least one domestic violence allegation were closed during the Quarter. Of those, the OIG reviewed four. The fifth was deselected because the Department informed the OIG that another complaint had been made by the same complainant and the Department was considering whether the investigation would be re-opened. The Department later determined that the new complaint did not present new issues and the investigation was not re-opened.

In conducting its review, the OIG utilized a matrix for first and second-level reviewers. This matrix contained 37 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 and the employee's disciplinary history. The OIG staff also reviewed all available recorded interviews conducted in connection with the investigations. In reviewing the recorded interviews, the first and second-level reviewers utilized a separate matrix containing 18 questions designed to determine if: (1) the interviews were properly summarized to include all relevant information; (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.,

³ OIG Quarterly Discipline Report, First Quarter 2010, September 28, 2010; OIG Quarterly Discipline Report, Second Quarter 2010, November 9, 2010; OIG Quarterly Discipline Report, Third Quarter 2010, February 24, 2011.

whether the interviewer used inappropriate or leading questions or adopted a hostile or inappropriate tone with the witness); and if (5) logical follow up questions were asked by the interviewer.

B. Definition

Domestic violence is defined by the California Penal Code as:

Abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, “cohabitant” means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.⁴

C. Case Reviews

Case A

SUMMARY

This incident came to the Department’s attention from an outside law enforcement agency (Agency). The Agency responded to a domestic violence call at the home of two off-duty, married Department police officers (“husband” and “wife”).

The wife made a 911 call to the Agency saying that she had been pushed by the husband while inside their residence. Upon arrival of Agency officers, the husband and wife explained that they were in the process of a divorce; however, both still resided at their residence in separate rooms. The incident occurred after the husband left a written message requesting a box of personal items that were inside the wife’s room. The wife responded to the request by leaving a written message that said she would obtain the items when she returned home from work and advising the husband not to enter her room. The husband read the response from his wife and considered the message a “nasty response.”

When the wife arrived home, the husband confronted her about the written message she left. Not wanting to engage in an argument, the wife did not respond and entered her bedroom. According to the wife, the husband followed her into her room, walked up behind her, and pushed her against a wall. The husband then grabbed his box of personal items and left the room. Concerned for her safety, the wife went outside and called 911.

⁴ Section 13700.

According to the husband, he entered the wife's bedroom and observed her going through a box of his personal items. The husband said that when he grabbed the box, the wife grabbed his arm. The husband said he "shrugged her away" and proceeded to leave the room.

The Department framed two allegations, with adjudications and rationales as follows:

- 1) that the husband unnecessarily pushed the wife against a wall during a domestic dispute which resulted in the husband's arrest; Not Resolved, due to the lack of injuries, conflicting scenarios depicted by the husband and wife, and the wife did not observe how she was pushed and it is possible that the contact by the husband was incidental when he reached for the box of his belongings;
- 2) that the wife unnecessarily grabbed the arm of the husband during a domestic dispute which resulted in the wife's arrest; Not Resolved, same rationale as above.

DISPUTED FACTS

The wife denied that she grabbed the husband by his arm, and the husband denied that he pushed the wife against a bedroom wall.

UNDISPUTED FACTS

Agency officers responded to the residence for a domestic violence call as a result of a 911 call from the wife. The Agency officers did not observe any injuries on either the husband or wife and neither claimed to have sustained injury. As a result of the investigation, it could not be determined who was the dominant aggressor, so both were arrested for domestic battery.⁵ Neither the husband nor the wife desired prosecution of the other for battery. The jurisdiction's city attorney's office declined to prosecute either due to insufficient evidence.

INVESTIGATIVE ANALYSIS

This incident resulted in a response of an outside law enforcement agency. This allegation was not addressed or framed in the Complaint Investigation Report.

ADJUDICATIVE ANALYSIS

As to the adjudication of the allegations, the OIG believes that there was enough information presented during the investigation to allow the adjudicator to make an informed decision on both allegations; and we agree that based on the available evidence that this was the proper adjudication for this complaint. However, the OIG believes that allegations of misconduct should have been framed against both the husband and wife due to the response of an outside law enforcement agency to their residence.

Case B

SUMMARY

In September 2009, the accused employee (employee) and his spouse (spouse) were involved in a verbal dispute, and the spouse called for the response of an outside law enforcement agency (Agency) to the residence. The subsequent investigation revealed that no crime had been committed by either party. The employee did not notify his commanding officer of this contact. After this incident, the employee moved out of his house.

⁵ Cal. Penal Code § 243(e)(1).

In November 2009, the employee returned to the house to visit with his three minor children and converse with the spouse. A close friend of the spouse was also at the residence. The employee and the spouse began arguing, and the spouse again called for Agency response. Two uniformed Agency deputies responded to the residence and their investigation revealed that no crime had occurred and an incident report was not taken.

Later on the same day, the spouse and the employee became involved in another verbal dispute. The friend interceded and attempted to calm the employee, however, that led to an argument between the employee and the friend, who alleged that the employee then chest-bumped and tripped the friend. The spouse then called 911.

Several uniformed Agency deputies responded to the 911 call. The friend subsequently placed the employee under Private Person's Arrest for battery. Due to the spouse's fear of the employee's past behavior toward herself and her children, as well as the current situation that involved the friend, the spouse requested and was granted an Emergency Protective Order (EPO). The Agency deputies seized several firearms including the employee's on-duty weapon pursuant to the domestic violence statutory requirements.⁶ After his release from custody, the employee notified his commanding officer of his arrest, then left the residence.

The following day, the employee went to the Agency's local office to obtain information on retrieving his confiscated firearms. Due to the law regarding weapons seized during a domestic violence incident, the firearms were not returned to the employee.

During her interview by IAG, the spouse said that she and the employee also had arguments during or prior to September 2009. The spouse said that during three such arguments, the spouse attempted to call 911 but the employee grabbed the phone from her hands. The spouse said in a separate incident the employee grabbed her arms, and she sustained bruising or redness. The spouse said she did not report the incidents.

Seven allegations were framed against the employee, with adjudications and rationales as follows:

- 1) that the employee battered the friend; Sustained, based upon the record of the employee's arrest for battery, the statements of the employee's son who witnessed the incident, a deputy's observations of the friend trembling, and the inability of the employee to recollect the events of the incident due to his admitted intoxication;
- 2) that on two occasions (September 2009 and November 2009) while off-duty, the employee became involved in a domestic violence incident that resulted in the response of the an outside law enforcement agency; Sustained, based upon the records of the law enforcement agency's response to a domestic violence incident in September 2009 and a family dispute incident in November 2009;
- 3) that the employee failed to notify the Department after the initial response of an outside law enforcement agency investigating a domestic violence incident at his residence in November 2009; Sustained, based upon the employee's statement that he did not notify his commanding officer of the response by law enforcement personnel to his residence as a result of a family disturbance incident in November 2009;

⁶ The firearm seizure is required under Cal. Penal Code § 12028.5.

- 4) that the employee was named in an EPO, resulting in seizure of his weapons; Sustained, based upon the record of the EPO which listed the spouse and her children as “persons to be protected” and the employee as “the restrained person;”
- 5) that sometime in or prior to 2009, the employee became involved in a domestic violence battery causing visible injuries to the spouse’s arms; Not Resolved, as there was no corroborating evidence to prove or disprove the incident, and the employee disputed the claim;
- 6) that sometime in or prior to 2009, the employee on three separate occasions prevented the spouse from calling 911 when he grabbed the phone from her hands; Not Resolved, as there was no corroborating evidence to prove or disprove the incident, and the employee disputed the claim; and,
- 7) that in September 2009, the employee while off duty failed to notify the Department of the response of an outside law enforcement agency investigating a domestic violence incident; Sustained, based upon the employee’s statement that he did not notify his commanding officer of the response by law enforcement personnel to his residence as a result of a domestic violence incident in September 2009.

The employee received a Conditional Official Reprimand for the Sustained allegations. The condition is that if the employee commits the same or similar misconduct again within five years, he will receive a minimum of a 22-day suspension and/or possible demotion.

During the investigation, the employee admitted that he was an alcoholic and was currently seeking treatment.

UNDISPUTED FACTS

On three occasions (once in September 2009 and twice in one day in November 2009), Agency deputies responded to the employee’s residence to investigate alleged domestic violence-related incidents.

When deputies responded to the employee’s home for the second time in November 2009, the employee was arrested for battery and was cited and released at the scene. Agency deputies seized the employee’s three firearms as a statutory requirement for a domestic violence incident.

DISPUTED FACTS

The employee denied that he battered the friend. The employee claimed that the friend bumped into the employee while trying to get past him in a narrow space in the house and that the employee tripped over the friend. The employee said that none of the contact was intentional. Further, the employee disputed that he was detained by the Agency deputies when they came to the house in September 2009 and during the first response to the house in November 2009. Finally, the employee denied ever having prevented the spouse from calling 911 by grabbing the phone from her hands and denied causing injury to the spouse during other domestic violence incidents during or prior to 2009.

INVESTIGATIVE ANALYSIS

The OIG identified no issues in the investigation.

ADJUDICATIVE ANALYSIS

The OIG believes that a preponderance of the evidence supported the findings for Allegations 1 and 2 and 4 through 6. However, the OIG does not agree with the adjudication of Allegations 3 and 7.

As to Allegation 3 that the employee failed to notify the Department after the initial response of an outside law enforcement agency in November 2009, the OIG believes that a preponderance of the evidence does not support the Sustained adjudication.

Department Policy states:

A Department employee detained/arrested, or transported to any jail or police facility for any offense committed inside or outside the City, excluding traffic infractions, shall:

- Advise the detaining/arresting officer of his/her Department employee status; and,
- Notify the watch commander from his/her Area/division of assignment without delay, or the Department Command Post when the employee's location of assignment is closed.⁷

The Department's policy regarding consensual encounters (which was included in the investigation) states in relevant part, that a “detention may result from physical restraint, unequivocal verbal commands, or words or conduct by the officer which clearly relate to the investigation of specific criminal acts.” Further, the policy states that a consensual encounter occurs when an “individual voluntarily agrees to stop and speak with the officer . . . These encounters can take place in homes.” These encounters are unique because “[officers] have neither reasonable suspicion to detain nor probable cause to arrest, [and] cannot legally prevent the individual from walking away.”⁸

Regarding the first radio call response in November 2009, the deputies stated that they did not take a crime report because there was only a civil dispute/verbal argument between the employee and the spouse. During their individual interviews, each deputy gave contradictory statements as to whether the employee had been detained. Also, the I/O did not inquire as to what the deputies said or did to the employee to let him know that he had been detained. The employee said he did not remember being patted down and he did not feel detained, and he believed he was free to leave at any time. Therefore, the OIG believes a preponderance of the evidence does not support a finding of Sustained.

Similarly, Allegation 7 was that in September 2009, while off duty, the employee failed to notify the Department after the response of an outside law enforcement agency investigating a domestic violence incident. The employee stated that the response by the Agency personnel did not require him to notify the Department as he was not detained. The OIG does not believe that a preponderance of the evidence supported a finding of Sustained. The adjudicator said that the responding deputies indicated that the employee was detained and that he should have known he

⁷ Department Manual Vol. 3 § 837.10.

⁸ Department Training Bulletin, Vol. XXXVIII, Issue 1, April 2006.

was detained. However, the employee said that he felt that those encounters were consensual and that he was free to leave.

Two deputies responded to the employee's house. The deputies both said the employee was not free to leave. However, one deputy said that the employee was not physically detained. During their individual interviews, each deputy gave contradictory statements as to whether the employee had been handcuffed and neither was sure if a pat down search had been conducted.⁹ Each said that if a pat down had been done, it was by the other deputy. The I/O did not elicit further information from the deputies to clarify what other actions may have been taken to effect the detention. Also, neither deputy remembered specifically advising the employee that he was being detained and the deputies agreed that there were no elements of domestic violence or other crime present. No domestic violence report was completed. Lastly, the accused said he felt free to leave if he had desired and believed that the deputies would have allowed him to leave. He also said that he was not handcuffed and could not remember if he was patted down. The OIG does not believe that a preponderance of the evidence demonstrated that the employee was detained during the incident and because the policy requires an employee to report the incidents in which he is detained or arrested, the OIG believes a finding of Sustained for Allegation 7 is not supported.

Case C

SUMMARY

The Department initiated this complaint based on a call for service from a residence for a domestic violence incident. The spouse and two adult children were victims of the accused officer's (officer) angry violent verbal and physical behavior. The officer and spouse had been married for seven years and they had two adult children that lived in the house, one daughter and one son from the spouse's prior relationship. This incident began one morning when the officer arrived home and started an argument with his spouse regarding her allegedly having an affair. The daughter called 911 and deputies responded to the scene.

The spouse was interviewed by the Internal Affairs I/O on the date of occurrence. According to the spouse's interview, she was lying in bed when the officer jumped on top of her, grabbed her by the neck for approximately five seconds, and held her arms down.¹⁰ The spouse said she could not accept the officer's badgering and threats and she was going to leave. The officer then got up from the bed, walked to the closet, and began removing the spouse's clothes from the closet. The spouse started screaming which prompted the son to knock loudly on the bedroom door. The spouse told the son to, "Go back to your room, it is ok." The officer stated it was not ok and to go call the spouse's friend and tell him to help them move out. The spouse thought that the officer was going to put his hands on her son, so she held down the officer's arms and told her son to go back to his room, which he did.

⁹ The paraphrased statement of one deputy indicated that either he or his partner did a pat down search; however, the tape revealed that he said he did not think he did a pat down search and that maybe his partner did. The paraphrased statement of the other deputy stated that his partner did a pat down search. The tape recorded interview revealed that he believed his partner did a pat down search, but he could not be positive.

¹⁰ The spouse told deputies that the officer suddenly pushed her against the bedroom wall and held her there by keeping his hands on her neck.

The spouse stated that the officer then walked to the daughter's room and told her to leave also. The daughter told the officer to leave her room and she shut the door behind him. According to the spouse, the officer responded by kicking in the door, grabbing the daughter, and throwing her on the bed.¹¹ The officer returned to their bedroom and held his spouse up against a shelf which is approximately four feet above the ground and asked her again to confess to the affair.¹² The officer then grabbed the spouse's purse, dumped out the contents, and took her cell phone. He unlocked the phone, searched through names, called her friend, and shouted, "Come get your bitch and her kids." At various points during the incident, the officer threatened the spouse saying, "I should bash your head in, I should just f**k you up, I should just kill you." The spouse alleged that these threats were also made during past arguments.

The son was interviewed by the I/O on the date of occurrence. According to the son, he was in his room when he heard a loud noise and his mother scream. He ran to his mother's room and knocked on the door. His mother opened the door and he noticed clothes thrown about the room. His mother told him to return to his room. The son went outside and then he heard an even louder scream, so he reentered the house. He saw the officer in the doorway of his sister's room as the officer was being restrained by his mother holding on to the sleeves of the officer's sweatshirt. The son had never seen the officer that angry before and he told the officer that he needed to calm down. The son heard his mother being told by the officer, "If you want to talk to [your friend], then go live with him." During the interviews with deputies, the son overheard his mother tell one of the deputies that the officer had pinned her against the wall in the closet with his hands around her throat. The son stated that he did not hear the officer threaten his mother.

The daughter was interviewed by the I/O on the date of occurrence. According to the daughter's interview, she was awakened by a loud argument coming from her mother's bedroom. The daughter heard the officer asking her mother a question but could only hear her mother saying, "Get away from me." The daughter then heard a door slam, which she believed was the closet door and then the sound of hangers falling on to the ground. When her brother came to her mother's bedroom, she joined him. Her brother told the officer that he would not allow the officer to put his hands on the mother. The daughter believed that the incident was going to escalate into violence, so she stepped between her brother and the officer and used her forearms to push against her brother's chest to direct him away from the officer. Her mother used her hands to press against the officer's chest to hold him against the wall in an effort to keep the officer and her brother apart. Her mother told her and her brother that everything was alright and to return to their rooms. The argument continued with the officer telling her mother that she needed to leave the house. The officer approached the daughter in her room and told her to gather her belongings and get out as well.

The daughter responded by telling the officer to get out of her room and she closed the door.¹³ The officer kicked the door open causing the hinge to break away from the frame. The mother

¹¹ The daughter stated that the officer "got in [her] face" but did not touch her.

¹² The I/O's paraphrased statement does not indicate the officer held his spouse against the shelf four feet above the ground but the deputy's arrest report states the spouse told deputies that the officer did this after he left the daughter's room.

¹³ According to the arrest report, the daughter told the officer that she was not going to move as she pushed the officer out of her bedroom and closed the door; then he kicked the door so hard it came out of the hinge.

instructed the daughter to call the police, and the mother started to gather her clothes from the floor. The officer went into the living room where he remained until the deputies arrived. In the daughter's interview with the I/O, she stated the relationship between her and the officer had not been good.

The officer was interviewed by the I/O almost two months later. According to the officer, he asked his spouse if she was involved in a relationship with another person. She answered that the person he referred to was a long-time friend. As the conversation continued, she raised her voice. She denied the allegation and stated that she was going to leave. The officer told her, "Okay leave." His spouse walked into the closet and began removing her clothing while they continued to discuss the issue. He offered to help and took her clothes from the closet and placed them on the floor of the bathroom, but he did not throw her clothing around.¹⁴ The spouse's daughter responded to the room and the officer told her that she could leave with her mother. The daughter said, "Good! I don't like you anyway." The daughter returned to her bedroom. The officer followed the daughter and before he reached her room, his spouse grabbed him from behind to prevent him from walking forward. The spouse told her daughter to shut up, calm down, and go back into her room.¹⁵ The officer told the deputy that he never touched his spouse.

During both her interviews with the I/O and with deputies, the spouse also alleged two prior domestic violence incidents in which no force was used against her. In one incident, the spouse believed the officer may have been able to listen to her conversations with a recording device. During the argument, the officer told her, "I should just take this lamp and bash your head in." In the other incident, after an argument, the officer took her cell phone and a gun case, although no gun was seen, then left the house and told her he was going to confront the man he believed she was having an affair with. However, the officer returned home and apparently did not confront the man.

The spouse also alleged that approximately a year prior to this incident she and the officer had a verbal argument and she wanted to get in her car and leave, but the officer positioned his car in the driveway so that she could not pull out. She kicked over some of his equipment and he picked up a metal air hose and threw it at her car. The hose struck the windshield, shattering it. The air hose ricocheted off of the windshield and struck the spouse on the head causing a laceration to her scalp. She did not seek medical attention because she did not want to jeopardize his employment.¹⁶ The spouse provided the I/O with pictures of the windshield, the injury to her scalp, and blood on her clothes. The officer denied that he threw the air hose at his spouse and said the hose fell from storage and struck the wife after she accidentally knocked over a ladder in the garage.

Additionally the spouse alleged that there were 10 to 20 other domestic violence incidents during their relationship where she was hurt by the officer's use of police or wrestling restraint holds.

¹⁴ The arresting deputy stated that the accused officer stated that he threw her clothing on the bed and the deputy observed clothes on the bed.

¹⁵ This statement contradicts the spouse and daughter's statement.

¹⁶ According to the arrest report, the spouse stated "There is a history of domestic violence in their relationship;" however, the incidents were never reported to law enforcement.

The officer would pin her arms behind her back or place joint locks on her wrist. He would place the restraint holds on her to prevent her from leaving or cussing at him. There were no witnesses to any of the incidents and the spouse was unable to provide any other details.

The deputies subsequently arrested the officer for domestic battery and also seized the officer's firearms. Also, the deputies obtained an EPO for the spouse because she said she was afraid that the officer would return to the home and harm her sometime after being booked.

Nineteen days after the incident, the spouse signed a declaration¹⁷ stating that she only wanted the deputies to make the officer leave their home during the argument so that she and the officer could work out the issues later in private. She was afraid that the officer was going to make her and her children leave their home. The spouse also stated that she did not want the EPO because she was not in fear for their safety.¹⁸ Furthermore, she stated that the officer never attacked, kicked, struck, or inappropriately touched her.

The son signed a declaration 19 days later stating that he did not see the officer hit his mother during the incident, and he had never seen the officer hit his mother. The daughter also signed a declaration 19 days later stating that she never saw the officer strike her mother.¹⁹ Additionally, the daughter stated that she called 911 because the officer was arguing with her mother and trying to make them leave their home. However, the daughter's statement did not mention that the officer did not touch her, but in her interview she indicated that, "He got in my face like he was going to hit me, but he didn't."

The Department framed five allegations, with adjudications and rationales as follows:

- 1) that while off duty, the officer unnecessarily broke the windshield of the spouse's vehicle and caused an object to fall on her head resulting in injury; Not Resolved, based on "the absence of an independent witness or additional information that could shed more light on what occurred;"
- 2) that while off duty on several occasions, the accused unnecessarily became involved in domestic violence against his spouse; Not Resolved, based on "the absence of an independent witness to corroborate or refute [the spouse's] allegation;"
- 3) that while off duty, the accused became engaged in a verbal argument with his spouse during which he got on top of her and grabbed her by the neck; Unfounded and changed by military endorsement to Not Resolved because, "Although [the spouse] denied the abuse we cannot ignore the affects [sic] of domestic violence upon its victims. [The spouse's] recant of the abuse is simply not enough to negate the allegations;"
- 4) that the accused threatened his spouse when he stated, "I should bash your head in, I should just f**k you up, I should just kill you;" Unfounded and changed by military endorsement to Not Resolved because, "Although [the spouse] denied the abuse we cannot ignore the affects of domestic violence upon its victims. [The spouse's] recant of the abuse is simply not enough to negate the allegations;"

¹⁷ The declaration was provided to the I/O from the officer's attorney.

¹⁸ During her Internal Affairs interview, the spouse stated that she was in fear for her safety and the safety of her children.

¹⁹ The daughter stated in her interview that the officer did not touch her during the incident which contradicts her mother's interview statement.

- 5) that the officer became involved in a domestic violence incident, which resulted in his arrest by on-duty officers from an outside agency; Non-Disciplinary Policy and Procedure and changed by military endorsement to Sustained because, “The investigation clearly demonstrated that a domestic violence incident occurred involving [the officer] when he became involved in the verbal dispute with [his spouse], and caused the [daughter’s] bedroom door to be damaged, which caused the response of an outside agency to his residence.”

UNDISPUTED FACTS

The accused officer was arrested for Domestic Battery.²⁰ There were 29 firearms seized for safekeeping. An EPO was issued against the officer to stay away at least 100 yards for 7 days from the date of arrest. The Deputy District Attorney moved to dismiss the charges against the officer,²¹ and the judge granted the motion. There were no prior reported incidents of domestic violence between the accused officer and his spouse.

DISPUTED FACTS

During this incident, the spouse stated that the officer grabbed the daughter and threw her on the bed; however, the daughter did not say that the officer touched her. The accused officer was allegedly involved in prior unreported domestic violence incidents with his spouse.

During this incident, the spouse stated in her I/O interview that she was lying in bed when the officer jumped on top of her, grabbed her by the neck for approximately five seconds, and held her arms down. She also stated to both the I/O and to deputies that the officer held her up against the shelf in their bedroom, which is approximately four feet above the ground. Nineteen days after the incident, the spouse recanted and denied the officer touched her.

The officer stated in his I/O interview that he never restrained his spouse, placed his hands on her neck, or choked her.

INVESTIGATIVE ANALYSIS

The OIG believed that the interviews were thorough. The I/O applied objective questioning and asked follow-up questions. However, we identified other investigative issues which we believe merit further comment.

The I/O did not include in the paraphrased statement from the spouse’s interview that she thought the officer was going to kill her. She also said she feared the officer being released from custody because he had full access to the house and she feared for her and her children’s lives.

Also, the I/O did not paraphrase a second recording with the spouse later the same day. This recording addressed the officer’s actions on a prior occasion when he left the house with a gun case and possibly a gun to go to the spouse’s friend’s house to confront him about having an

²⁰ According to the arrest report, the deputy decided, “Based on the statements made by the [spouse] and her children, coupled with my observations, we arrested the [officer] for domestic battery (Cal. Penal Code § 243(e)(1)).” The probable cause determination states, “The [spouse] said the [officer] pushed her and placed his hand around her neck as if he were going to choke her.” They were married seven years and the daughter “over heard the [spouse] screaming, ‘get off of me.’”

²¹ Per Cal. Penal Code § 1385, Dismissal in the Furtherance of Justice.

affair. The spouse called the officer and told him to come back home and he did without contacting the friend. The spouse also revealed that the officer had several guns in the house in a safe.

In the daughter's interview, she said she was scared during the incident. The officer had kicked her door in, he was angry, and he "got in [her] face." The fact that the daughter was scared was not mentioned in the paraphrased statement.

The I/O also did not include in the son's paraphrased statement that he was concerned, based on the officer's facial expression, that the officer would commit violence against the son because he had never seen the officer that angry before. The son also stated that during the incident he heard screaming and sounds like there was something being thrown against a wall. Additionally, the son mentioned an incident from two months prior where the officer threw potato chips at his spouse.

The son also stated that there had been a lot of yelling over the last few months by the officer and another incident happened approximately a month prior where the officer threw bars of soap in the laundry room.

ADJUDICATIVE ANALYSIS

The officer received a penalty of an Admonishment for the one sustained allegation. The OIG believes that the penalty of an Admonishment may have been too lenient, and that counseling with Behavior Science Services may have been preferable as well.

Case D

SUMMARY

An accused employee's ex-wife (complainant) made this complaint. The complainant and the accused employee (employee) were married for 18 years and had 2 children in common. Since the summer of 2008, the complainant and the employee had ongoing marital problems. In January 2009, the couple verbally agreed to separate; however, after approximately three days, the employee returned home and continued to live with the complainant at their joint residence. In June 2009, the employee filed for a divorce from the complainant. In November 2009, the employee moved from the residence. In March 2010, the complainant filed a complaint via letter to the Department.

This complaint led to seven framed allegations, with adjudications as follows:

- 1) that the employee on six unknown dates in 2008 while on-duty unnecessarily drove his city issued vehicle outside the city limits to conduct personal business, Exonerated;
- 2) that on unknown dates in or after the summer 2008, the employee while on-duty followed the complainant while driving his city issued vehicle, Insufficient Evidence to Adjudicate;
- 3) that on unknown dates in or after the summer 2008, the employee while on-duty followed the complainant while driving his city issued vehicle, Not Resolved;
- 4) that on unknown dates in or after the summer 2008, the employee while on-duty followed the complainant while driving his city issued vehicle, Insufficient Evidence to Adjudicate;
- 5) that on numerous occasions on unknown dates in 2008 and 2009, the employee while off-duty grabbed the complainant by the arms and shook her during domestic incidents, Not Resolved;

- 6) that in January 2009, the employee while off-duty pushed the complainant during a domestic violence incident, Unfounded; and
- 7) that on numerous occasions on unknown dates over a period of seven months, the employee while off-duty violated a temporary court order when he entered the complainant's residence without her permission, Non-Disciplinary – Employee's Actions Could Have Been Different – Training.

UNDISPUTED FACTS

At the time of the filing of this complaint, the complainant and the employee were in the process of divorce proceedings. They had been married for 18 years and had 2 children in common.

DISPUTED FACTS

As indicated in the summary, there were several statements between the complainant and the employee that were in dispute.

INVESTIGATIVE ANALYSIS

The OIG believed that the interviews were thorough. The I/O applied objective questioning and did not ask any leading questions. Additionally, the OIG noted that the investigation contained a descriptive timeline containing the progression of events. However, we identified other investigative issues which we believe merit further comment.

Additional Allegations

The OIG noted that during the complainant's interview she stated that on an unknown date in the spring of 2009 while she was still sleeping in the same bed as the employee, she woke up as he was having sexual intercourse with her. The complainant said that she did not have time to tell the employee to stop because he completed the act as she woke up. During the employee's interview, he was not asked about this specific incident.

Additionally, the complainant stated that on at least four occasions she would wake up in the middle of the night and the employee would be fondling her sexually. The complainant indicated that she told him that this was not okay. During the employee's interview, he indicated that he did fondle the complainant while she was sleeping. However, the employee stated that whenever he would make sexual advances towards the complainant and she declined those advances, he would stop.

Overall, the OIG would have preferred that the I/O attempt to obtain more detail and clarity from both the complainant and the employee about what happened during these alleged incidents. Specifically, the I/O might have determined when the alleged fondling acts occurred relative to the alleged intercourse that took place while the complainant was sleeping. Also, the I/O might have sought details about the complainant's reported notice to the employee about her objections to his actions, as well as detail regarding the employee's understanding of both her objections, and his knowledge that she was sleeping on occasions when he physically contacted her. The investigation stated that "[the complainant's] allegations of sexual abuse did not rise to the level of misconduct; therefore, no allegation was framed." The OIG is unclear as to how it was determined that these possibly serious and potentially criminal allegations did not rise to the

level of misconduct and believes that an allegation(s) should have been framed, investigated, adjudicated, and, if warranted, submitted to the District Attorney's office.

Paraphrased Statements

In an investigation interview, a female witness stated that the complainant disclosed instances where she did not want to have sex with the employee, but the employee forced the complainant. This was not paraphrased.

Additionally, in the same interview with this witness who described herself as a mutual friend of the complainant and the employee, the witness said she was at a location where she saw the complainant and her boss having lunch. Upon greeting the witness at the lunch location, without apparent prompting, the complainant said that she had a feeling that the employee was following her. The witness stated that as she was leaving shortly thereafter, she saw the employee at a stop light just outside the parking lot of the lunch location. This information was not paraphrased in the investigating officer's report.

The OIG believes that by these statements not being paraphrased, the adjudication for some of the allegations might have been impacted.

Tape recorded statements

The OIG noted that during one of the witness' tape-recorded interviews, the I/O suddenly stopped the recording at the apparent end of the interview just as the witness was going to say something else. The OIG was unable to determine if what the witness was about to say was related to the investigation. The OIG would have preferred the I/O to formally end the interview after allowing the witness to complete the additional statement.

Undocumented Training

The OIG noted that the accused employee received training regarding the use of Department vehicles, conducting personal business while on duty, and his obligation to comply with the word and spirit of the temporary order involving the dissolution of his marriage. It is not clear in the investigation whether this training was formal or informal as there was no documentation on the employee's TEAMS report indicating that the employee received the training. The I/O did not indicate how he was able to confirm that the employee did in fact attend this training.

ADJUDICATIVE ANALYSIS

The OIG believes that the adjudication of Insufficient Evidence to Adjudicate is not supported for Allegation 2, that on unknown dates in or after the summer 2008, the employee while on-duty driving his city issued vehicle followed the complainant. The OIG believes that this allegation should have been adjudicated as Not Resolved since there was no other evidence provided other than the complainant's statement versus the employee's statement. Although the rationale in the Letter of Transmittal mentions that log books that were inadvertently lost that [might] potentially Unfound the allegation, the OIG believes that even though the Department would have preferred to have that additional evidence available, a finding could have been derived.

Similarly, the OIG questions adjudication of Insufficient Evidence to Adjudicate for Allegation 4, that on unknown dates in or after the summer 2008, the accused employee while on-duty while driving his city issued vehicle followed the complainant. The rationale states that one of the

witnesses was “an advocate for [the complainant] and displayed a somewhat jaded opinion of [the employee].” Based on the OIG’s review of the witness’ tape-recorded statement, we could find no evidence to substantiate the adjudicator’s conclusion that the witness had a jaded opinion. The OIG agrees with the assessment that the complainant was a best friend of the complainant but also noted that the witness and her husband were also good friends with the employee as well. Moreover, the witness was concerned that her statements to the I/O would be discovered by her husband and could potentially create conflict between her husband and the employee. The witness’ concern about such discovery suggests she might be measured in her responses. The OIG believes that this witness’ statements could have been used towards the adjudication of this allegation.

The rationale also states a concern in regards to this witness’ identification of the employee at a certain location because she could only provide a general description of the vehicle that the employee was in. This witness was interviewed approximately two years later, and it would not be unusual that her recollection of the vehicle description would be vague. The witness described that she recognized the employee not his vehicle, and she corroborated the complainant’s version of having observed the employee at this location.

As with Allegation 2, the adjudicator stated that the inability of the complainant or witness to identify the exact date of the alleged act prevented the Department from accessing vehicle log books. Although such log books would be of evidentiary value, the OIG suggests that the available statements of the complainant, witness, and employee could have been sufficient to adjudicate the allegation.

Lastly, for Allegation 3, that on unknown dates in or after the summer 2008, the employee while on-duty followed the complainant while driving his city issued vehicle, the OIG does not agree with the adjudicator’s assessment in regards to the investigation being unable to locate an “independent witness.” As noted above in the Paraphrased Statements section, the witness referred to a second instance where she saw the employee in a location where the complainant was present. The witness saw the complainant as she and her boss were having lunch. The complainant stated to the witness that she had a feeling that the employee was following her. The witness stated that after she left the location, the witness saw the employee at a stop light just outside the parking lot. This was not paraphrased. As discussed above, the OIG questions whether there is evidence to support a bias on the part of this witness, based upon her self-characterization as friend to both the complainant and the employee.

IV. REVIEW OF ETHNIC REMARK CASES

A. Methodology

The OIG reviewed all nine cases closed during the Quarter that contained at least one allegation of Ethnic Remark. A first and second-level review was conducted and both reviewers listened to all of the available tape-recorded interviews. The OIG Staff evaluated the cases utilizing the same matrices as were used for the Domestic Violence cases.

B. Definition

The Department defines an Ethnic Remark as an “Improper Remark which shows ethnic/culture bias.”²²

C. Case Reviews

Case E

SUMMARY

This complaint was received at a police station from a public complainant who was arrested for “Criminal Threats.”²³ Two uniformed officers, one male and one female, responded to a “415 fight”²⁴ radio call. The description in the radio call was two male and one female suspects and no identifying information. When the officers arrived, the witnesses directed the officers to the female complainant by pointing her out. The officers issued commands to the complainant, but she did not comply. The officers placed a firm grip on the complainant’s hands in an attempt to handcuff her and she pulled away. A second attempt to apply a firm grip and put the complainant’s arms behind her back was successful; however, the male officer also had to press against the complainant’s back and use the police vehicle as a controlling agent. The complainant was handcuffed and the handcuffs were double locked.

The complainant allegedly asked why she was being arrested and the officers responded by telling her she was arrested for criminal threats but would not tell her in detail what the threat was. The officers took the complainant to the police station and allowed her to use the restroom with the female officer inside the room and the male officer outside the room in the lobby near the door. During the complainant’s time in the restroom, the male officer opened the outer door and asked if everything was alright. It is unknown if the complainant responded to the door being opened,²⁵ but the complainant alleged that the male officer told her that he did not “Do Black,” which the complainant took to mean that he did not have sex with African Americans. Lastly, the male officer allegedly told the complainant that she looked like a criminal.

The Department framed 11 allegations, with adjudications and rationales as follows:

- 1) that the male officer unnecessarily placed handcuffs too tightly on the complainant’s wrist; Unfounded, as “there appears to be a slight redness and the supervisor said he observed redness in the narrative intake form. There is no swelling, bruising, or indentations that would be indicative of tight handcuffs. Nothing in the investigation suggests the handcuffs were used improperly;”
- 2) same as above, for the female officer;

²² Management Guide to Discipline, Internal Affairs Group January 2002.

²³ Cal. Penal Code § 422.

²⁴ Refers to Cal. Penal Code § 415, Disturbing the Peace.

²⁵ The context of the complainant’s description appears to suggest that the male officer was responding to unconfirmed comments by the complainant. The intake interview did not clarify whether the complainant spoke in response to the restroom door being opened, and the complainant who is transient was not located for a follow-up interview.

- 3) that the male officer unnecessarily twisted the complainant's arms and wrists while she was handcuffed; Unfounded, as "both officers were able to describe behavior [the complainant] engaged in that would make the use of a twist lock to control her appropriate. The evidence suggests that a twist lock was employed, however, not by [the male officer];"
- 4) that the female officer unnecessarily twisted the complainant's arms and wrists while she was handcuffed; Exonerated, as "both officers were able to describe behavior [the complainant] engaged in that would make the use of a twist lock to control her appropriate;"
- 5) that the male officer inappropriately touched the middle of the complainant's back when he pushed and held her against a police vehicle; Exonerated, as "It was not inappropriate for the officers to place their hands against [the complainant's] back to control her. The fact that [the male officer] is a male does not alter that fact; he was not searching her or touching her inappropriately by merely placing a hand in the middle of [the complainant's] back;"
- 6) that the female officer unnecessarily pushed and held the complainant against a police vehicle; Exonerated, as "It was not inappropriate for the officers to place their hands against [the complainant's] back to control her;"
- 7) that the male officer was discourteous when he told the complainant that she "looked like a criminal;" Non-Disciplinary, Actions Did Not Rise to the Level of Misconduct, "If [the male officer] made a comment that [the complainant] interpreted as his opinion that [the complainant] looked like a criminal, it does not rise to the level of misconduct. The fact that [the officer] arrested the complainant indicated that he believed [the complainant] had committed a crime;"
- 8) that the male officer unnecessarily made an ethnic remark when he said, "I don't do Black;" Insufficient Evidence to Adjudicate, "The investigation does not contain sufficient information to declare a preponderance of evidence exists;"
- 9) that the male officer unnecessarily opened the restroom door while the complainant was using the restroom; Non-Disciplinary, Actions Did Not Rise to the Level of Misconduct, "The officers propped open the restroom door while [the complainant] and [the female officer] were inside. That is appropriate in most circumstances to allow the officer to work safely. Doors inside the restroom provide privacy and preserve the dignity of the arrestee using the facility;"
- 10) that the male officer refused to explain to the complainant why she was arrested; Unfounded, "the officers told [the complainant] that she was under arrest for criminal threats. Once the officers advised her of the charges, they are not required to explain in detail the elements of the crime or evidence they used to develop probable cause for her arrest;"
- 11) same as above for the female officer.

UNDISPUTED FACTS

The complainant was arrested for criminal threats. The complainant's case was reviewed by a court official who determined that there was probable cause for the arrest and continued detention. The District Attorney's Office reviewed the case and referred the case to the City Attorney's Office for filing consideration. The City Attorney declined to prosecute based on the victim being transient and no available witnesses to this case.

DISPUTED FACTS

Both of the accused officers denied making and/or hearing the comments framed in Allegations 7 and 8. Allegation 7 is that the male officer was discourteous when he told the complainant that

she “looked like a criminal.” Allegation 8 is that the male officer unnecessarily made an ethnic remark when he said, “I don’t do Black.”

INVESTIGATIVE ANALYSIS

The OIG believed that the interviews were thorough. The I/O applied objective questioning and asked follow-up questions. However, we noted that during the accused officer’s interviews, the I/O allowed the employee representative to ask numerous leading questions.²⁶ The OIG believes that the I/O should have maintained control during the interview and prevented the representative from asking leading questions.

Examples of leading questions include:

- 1) Question: “In this case you described a wrist lock twist lock type of action on her wrist to try to gain compliance to keep her from moving around and spinning around and that kind of thing so you can keep control of her, correct?” Answer: “Correct.”
- 2) Question: “So at that point with the twist lock and wrist lock, do you feel that it rose to something above what we are allowed to in Special Order 13 of 2004 which would constitute a use of force report?” Answer: “No, I don’t.”
- 3) Question: “That action of holding her against the car, per Special Order 13, 2004, do you feel that rises to the level of a reportable use of force?” Answer: “No.”
- 4) Question: “Your partner assisted and we already talked about the cuffs, and at no time did she say that the cuffs were too tight or you are breaking my wrist or anything like that?” Answer: “No.”
- 5) Question: “Do we have a female jail here at Pacific?” Answer: “No.” Question: “And is it our procedure here at Pacific Station to take the arrestees to the restroom in the lobby when it is clear of all others in the lobby, you can bring her out of there correct?” Answer: “Yeah.”

ADJUDICATIVE ANALYSIS

The OIG does not agree with the adjudication of Allegations 7 and 8. In Allegation 7, the complainant alleged that the officer said, “You look like a criminal,” and in Allegation 8, the officer allegedly said, “I don’t do Black.” The officer denies having made either comment. Because there is an absence of any other evidence for these allegations, the OIG believes the appropriate adjudication should be Not Resolved for Allegations 7 and 8.

The OIG also does not agree with the adjudicator’s rationale for Allegation 7, that the officer’s comment stating “you look like a criminal” would not rise to the level of misconduct. The officer’s expression of his subjective and negative opinion about the appearance of the complainant bears no relevance on the officer’s duties and appears to serve only to demean the complainant. As such, the remark could well be considered discourteous.

Case F

SUMMARY

An unknown male Hispanic walked into a Community Police Station (CPS) and asked to speak with a supervisor to make a personnel complaint. A supervisor spoke with the complainant who

²⁶ Cal. Gov’t. Code § 3303(i) provides that officers accused of misconduct are permitted to have an employee representative present during an internal investigation interview.

said that he had been selling compact discs across the street from the station when an officer (employee) told the complainant to leave the area and called him a “b****r.” The complainant identified the employee by pointing to the employee’s picture on the wall of the station. The supervisor, intending to record an interview with the complainant, left to get a recorder. When the supervisor returned, the complainant was gone. The officer working at the front desk (who was not identified in the investigation) told the supervisor that the complainant said he was leaving because making a complaint was a waste of time.

One allegation was framed against the employee, with adjudication and rationale:

- 1) that the employee made an ethnic remark when he called the complainant a “b****r;”
Unfounded, as, “[The employee] denied detaining or speaking to a male Hispanic for selling CD’s across the street from [the CPS]. A security guard that was on duty at the shopping center on the date of the alleged incident, denied seeing any police officer or person selling CD’s on the premises.”

INVESTIGATIVE ANALYSIS

The accused officer’s paraphrased statement did not accurately reflect his statements during his recorded interview.

The summary of the employee’s interview states in relevant part, “[The employee] saw no illegal vending being conducted on [the date of the alleged incident]. [The employee] never made contact, spoke or detained anyone for illegal vending. [The employee] did not speak with a male Hispanic and did not call anyone a “b****r.” Had [the employee] detained, cited or warned anyone regarding illegal vending, he would have logged it and completed a Field Interview card.”

After listening to the recorded interview, OIG staff determined that the relevant part of the employee’s interview was as follows:

Q. Now normally if you were to stop somebody and detain them, or even more, detain them, would you log their names down in your log?

A. If I detain someone I will log it.

Q. And would an FI be completed?

A. Yes.

Q. OK. On this date and time or any time on August 20th did you ever stop or do you recall ever stopping a male Hispanic?

A. I don’t, based on my, my log I don’t, it seems like I just went through there and there wasn’t any activity.

Q. Ok.

A. But, um, I don’t remember that particular incident.

Q. Ok.

A. On that day.

Q. So you don’t recall warning anybody for illegal compact disc sales.

A. Not on that day.

Q. Ok.

A. I mean I go in there every day. So on that particular day, based on my log I don’t recall actually stopping anybody.

Q. OK. So basically you're telling me that uh you have no idea what I am talking about, that day what happened?

Q. On that particular day right there, just based on my log it doesn't jar my memory as far as if I spoke to anybody, but it's it's not on there so I know I didn't detain anybody so...

Q. OK. Did you ever uh, did you ever call anybody a b****r, a male Hispanic a b****r?

A. Definitely not.

Q. OK. Did you do you recall ever having a conversation with a specific male Hispanic that date?

A. No.

It appears that the employee would not have logged a conversation or a warning that did not result in a detention nor would he have completed an FI card for this. Further, it seems that the employee may not have had an independent recollection of any activities that day, outside of those reflected on his log, and there are no incidents on his log for August 20, 2010, at that location. The OIG would have preferred if the I/O had noted the employee's inability to remember what happened that day in the paraphrased statement and had more accurately reflected what the employee had said. The I/O's paraphrased statement is that, "[The employee] never made contact [or] spoke [with] . . . anyone for illegal vending." An accurate paraphrase would be that "[The employee] could not recall whether he spoke or had contact with anyone for illegal vending." The existing inaccurate paraphrase may have influenced an adjudicator to conclude that the alleged incident did not occur rather than concluding that there was no clear evidence of whether a contact did or did not take place.

ADJUDICATIVE ANALYSIS

The OIG does not believe that a preponderance of the evidence supported a finding of Unfounded. The absence of a detailed statement from the complainant and the officer's inability to recall whether he spoke with or contacted anyone about illegal vending on that date, coupled with the fact that the exact location of the incident is in question suggests there is not enough evidence to support the adjudicator's finding.

Case G

SUMMARY

The complainant and the accused officer (employee) were in court because the complainant was challenging a traffic citation he had received from the employee several months prior. The judge found the complainant guilty of a lesser traffic offense than the one for which he was cited.

After the court hearing, as the complainant was driving out of the parking lot he saw the employee walking in the lot. The complainant stopped, rolled down his window, and asked if he could ask a question, and the employee agreed. The complainant asked something akin to "Now that the proceedings are over, tell me, did you just give me a ticket because I had an attitude?"

The complainant alleged that the employee said, "Yep. I was just going to say you have a bitchin' car and keep going, but you a stupid n****r." The complainant replied, "I knew you had something against Blacks. You're a racist," to which the employee allegedly said, "Nope, my wife is Black. I just have something against stupid n****rs like you."

After the alleged interaction, the complainant drove to a police station to make a complaint. During the intake interview, the complainant alleged that during the original traffic stop, the employee said, “I don’t give a f**k” to the complainant. The complainant also told the supervisor who was interviewing the complainant that the interaction in the courthouse parking lot had been his third with this employee. The first was when the complainant received the traffic citation. The second was when the complainant accompanied his brother and another man to the police station to make a complaint of misconduct regarding a separate incident involving different officers. The employee in this case was the one at the station who was prepared to take the complaint from the complainant’s brother. The third time was in the parking lot of the courthouse.

The Department framed three allegations, with adjudications and rationales as follows:

- 1) that the employee was discourteous when he said, “I don’t give a f**k;” Not Resolved, as “there was no overwhelming proof to support or rebut [the complainant’s] allegations,” and there were no independent witnesses and nothing to show that the complainant was unreliable or not credible and therefore no way to determine if the allegations occurred or not;
- 2) that the employee made an ethnic remark when he said, “Yep. I was just going to say you have a bitchin’ car and keep going, but you a stupid n****r;” Not Resolved, using the same rationale as above; and,
- 3) that the employee made an ethnic remark when he said, “I just have something against stupid n****rs like you;” Not Resolved, using the same rationale as above.

UNDISPUTED FACTS

During the traffic stop, the complainant had “an attitude” with the employee. The employee called for an additional unit, handcuffed the complainant, and put him in the back of the police car.²⁷ Ultimately, the complainant received a traffic citation and was released at the scene.

The complainant and the employee had three separate encounters with each other within approximately six months.

DISPUTED FACTS

The employee said he was stopped at a red traffic light facing south with a car stopped in front of him. There was a dry cleaning business on the southeast corner of the intersection. The employee saw the complainant driving northbound, approaching the red light. Instead of waiting for the light to change to make a right turn to go eastbound, the complainant turned right into the parking lot of the cleaners and came out of the parking lot by way of a second driveway, into the eastbound traffic, cutting off the car that had initially been in front of the complainant that had turned right at the traffic light. The employee turned left to go eastbound on the same street as the complainant. The employee said the complainant then stopped, cutting off the employee and

²⁷ During the employee’s interview, he was articulating his reasons for handcuffing the complainant. He said the complainant was “real agitated,” bigger than the employee and had “big guns” (referring to the complainant’s biceps), was “posing,” and was “way over the edge for a traffic citation.” The employee also said the complainant threatened to “kick [the employee’s] ass.” The OIG noted that during the employee’s explanation, the I/O seemingly ended the employee’s statement for him by asking the following conclusory, somewhat leading question: “and to de-escalate the situation?” The OIG would have preferred if the I/O had allowed the employee to finish articulating his reasons for handcuffing the complainant on his own.

blocking the number two lane.^{28,29} The complainant said that he had stopped in the parking lot of the cleaners because his business is across the street and the owner of the cleaners allowed the complainant to park in the cleaners' parking lot. Also, the complainant believed that he was detained for an unreasonable length of time.

The employee denied all of the complainant's allegations.

INVESTIGATIVE ANALYSIS

The intake sergeant made a questionable statement.

While the intake sergeant was interviewing the complainant, the following exchange took place:

Sergeant: I know this question sounds crazy but is everything you've written on the Complaint of Employee Misconduct true?

Complainant: Yes.

Sergeant: Do you understand that making allegations against a police officer could be used against ya' later?

Complainant: Okay

Department Special Order 14, dated April 21, 2006 (Order), was issued in response to a November 3, 2005, Ninth Circuit Court of Appeals decision holding California Penal Code Section 148.6 unconstitutional.³⁰ The Order states in relevant part, "Effective immediately, Department personnel shall not advise complainants, either in writing or verbally, that it is a crime to make false complaints against police officers."

Although the intake sergeant did not advise the complainant that it would be a crime to make a false statement against an officer, the sergeant's comment could reasonably be interpreted as such. The OIG believes that the statement made by the intake sergeant could have been perceived by the complainant as dissuading him from making his complaint. The OIG contacted the sergeant's commanding officer who immediately addressed the situation. The CO told the OIG that a review of the sergeant's log of complaint intakes is underway, that this issue has been discussed with the intake sergeant, and that meetings have been held with relevant personnel to review complaint intake and Special Order 14.

It appears the complaint made additional allegations that were not framed.

The complainant told the I/O that after the employee made the ethnic remark in the parking lot of the courthouse, the complainant knew the employee "had something against Blacks." The complainant said he believed this because of the way the employee treated the complainant at the scene of the traffic stop, calling for additional units and detaining the complainant for an unreasonable amount of time. The complainant said the employee was "way over the top" and the complainant knew he was not being treated as if he had merely committed a traffic violation. The complainant also stated that even though he had "an attitude" with the employee, he

²⁸ In this case, the number two lane is the lane closest to the sidewalk.

²⁹ The employee cited the complainant for a violation of Cal.Veh. Code § 22100 which states in relevant part, "Right Turns. Both the approach for a right-hand turn and a right-hand turn shall be made as close as practicable to the right-hand curb or edge of the roadway."

³⁰ Cal. Penal Code § 148.6(a)(2) reads, "Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory," which advises in relevant part that, "It is against the law to make a complaint that you know to be false."

believed the employee's actions were a result of the complainant's race. Although the I/O asked the employee the correct Biased Policing interview questions, the Department did not frame an allegation of Biased Policing.³¹ The OIG would have preferred that the Department frame an allegation of Biased Policing.

The complainant indicated that the second of his three encounters with the employee was at a local police station on a date after the complainant received the traffic citation,³² when the complainant accompanied his brother and another person to make a complaint about an unrelated incident that did not involve the employee.³³ Upon arrival at the station, the three were met by the employee who was the Watch Commander that day. They had a Complaint of Employee Misconduct form which they wanted to file with the Department. However, because the employee had given the complainant the citation, the complainant did not want the employee to take the complaint. The complainant alleged that the employee said that he was the only person at the station available to take the complaint and that if the complainant did not want to file his complaint with the employee, the complainant could return on a different day. The complainant further alleged that as he was about to leave the station, the officer working the front desk offered to find someone who would take the complaint, and he did so. The complainant was not only able to file his complaint that day, but another Department supervisor conducted a recorded interview of the complainant.³⁴

The Department did not frame an allegation against the employee for not facilitating the complaint process for the complainant. Additionally, the I/O did not interview the complainant's brother, the other person who was with them, or the desk officer about the complainant's claim. Further, although the I/O asked the employee about his encounter with the complainant that day, the I/O did not specifically ask the employee about the complainant's allegation that the employee refused to find someone who could facilitate the complaint process for the complainant. Finally, the I/O did not include the complainant's allegation or the employee's comments about the encounter in paraphrased statements in the investigative file. Including this information in the paraphrased statement could have given the adjudicator another tool to use in judging the employee's conduct.

The I/O did not ask and the employee did not articulate how the complainant's driving had violated the code section for which he was cited.

The I/O did not ask the employee how the complainant had violated Vehicle Code Section 22100 nor did the employee offer an explanation as to why the complainant's action violated the section. The OIG would have preferred if the I/O had elicited from the employee more information about the legal justification for the traffic stop. Further, from the employee's description of the complainant's actions, it was difficult to envision exactly what the employee saw the complainant do. This may have been apparent to the employee since he drew a diagram

³¹ The I/O interviewed the employee before the complainant and apparently asked the Biased Policing questions in an exercise of caution.

³² The investigative file does not contain any documentation that would provide the date of that incident, although the complainant indicated that he filed a Complaint of Employee Misconduct and a police report on that date. The OIG reviewed the Complaint Form associated with that complaint and determined that it was filed by the complainant approximately five weeks after the complainant received the traffic citation.

³³ It appears that this meeting between the complainant and the employee officer was coincidental.

³⁴ The OIG learned of the recorded interview from the face sheet of the above-referenced Complaint Form.

of his account for the I/O during his interview. However, the I/O did not include the drawing in the investigation.³⁵ The diagram could have provided the adjudicator with an additional tool with which to assess the employee's actions.

The I/O appears to have tried to justify the actions of the employee.

While interviewing the complainant, the I/O told the complainant that she needed "clarification"³⁶ and asked the complainant whether he would have called for additional units if he were in the shoes of the (White) employee, since officers are trained to call for additional units when someone has "an attitude." The I/O also elicited from the complainant that there are Black gangs in the area where he was stopped. The I/O persisted with this line of questions until the complainant agreed that he may have called for additional units under the circumstances described by the I/O. The I/O then asked the complainant if the employee's actions were a result of the complainant's attitude rather than his race. However, the complainant maintained that it was because of his race. While engaging in this line of questioning, the I/O interrupted the complainant on a number of occasions and spoke with a condescending tone. The I/O's questions and tone of voice sounded as if the I/O was justifying the officer's actions. The OIG brought this issue to the attention of the Officer in Charge (OIC) of IAG's Constitutional Policing Unit who in turn reviewed the interview and contacted the I/O's OIC to express concern about this line of questioning.³⁷ The I/O's OIC agreed that he will review the interview with the I/O and have an appropriate conversation with her.

General Investigative Issues.

The complainant alleged that during the traffic stop he was detained for an excessive amount of time. However, the I/O did not investigate this claim.

In his first interview, the complainant said he was detained 30 to 40 minutes and in his second interview he said he was detained for more than 90 minutes. The I/O did not question the complainant about this inconsistency. Further, the I/O did not include documentation³⁸ such as the Incident Recall, Unit Log, or radio frequency to attempt to determine the length of the accused officer's interaction with the complainant. The OIG obtained the Incident Recall, Unit Log, and radio frequency. The Incident Recall and Unit Log show that the accused officer went code six³⁹ at 20:46 hours and cleared the incident 22 minutes later at 21:08 hours. Further, the MDC printout shows the complainant's information was queried by the employee at 20:52:57. While this does shed some light on the situation, it is inconclusive because the employee said in his interview that he did not go code six until he called for an additional unit and the I/O did not ask the employee how long he was at the scene before he requested an additional unit and went code six. The OIG listened to the radio frequency, but the employee's call for an additional unit is not on the frequency. The Incident Recall shows that the additional unit arrived at the scene at

³⁵ In the OIG's Supplemental Review of Biased Policing Complaint Investigations, December 1, 2010, the OIG recommended that diagrams drawn by witnesses be included in all Biased Policing investigations. We would extend that recommendation to all investigations.

³⁶ The I/O did not say what she needed to clarify.

³⁷ The OIC of CPU also agreed that a Biased Policing allegation should have been framed.

³⁸ The investigation did include the Mobile Digital Computer (MDC) printout which shows the time at which the employee "ran" the complainant's information. The investigation also contained an I/O note indicating that the I/O was unable to locate the employee's log for the date in question.

³⁹ Per Department Manual Vol. 4 § 120.40, code six means conducting field investigation, no assistance required.

20:58 hours. The OIG would have preferred that the I/O further explore the complainant's claim that he was detained for an unreasonable length of time.

Additionally, the employee indicated that he patted down the complainant for weapons but did not search him. The I/O did not ask the employee to articulate the reason for the pat down search nor did she ask the complainant if he was searched. Further, the OIG is concerned that the employee, a supervisor, did not know that a pat down is a search. The Department has several bulletins that provide training and legal guidance for officers regarding pat down searches.⁴⁰ The OIG recommends that the Department direct the employee to training in this regard.

ADJUDICATIVE ANALYSIS

The OIG agreed with the adjudicator's findings of Not Resolved for all three allegations. However, the OIG felt that one of the adjudicator's statements in the rationale was not supported by the evidence in the investigation. The adjudicator wrote, "Even though there was a very strong likely hood [sic] [the complainant] made the allegations against [the employee] because he was angry about receiving a citation and being found guilty of a related offense, there was no overwhelming proof⁴¹ to support or rebut [the complainant's] allegations." There was no evidence that the complainant made his allegations because he was angry. In fact, the complainant said he was angry that he had been detained for so long, but specifically stated that he was not angry that he had to go to court or that he was found guilty of a different traffic violation. The OIG would have preferred if the adjudicator had not made inferences about the complainant's state of mind that were not supported in the investigation.

Case H

SUMMARY

Officers A and B were observing a residence that was allegedly involved in narcotics transactions and from which a narcotics arrest had been made the day before. Officers A and B observed at the residence what they perceived to be a narcotics transaction between Subjects 1 and 2. The officers detained Subjects 1 and 2 inside the residence's garage. As the officers were conducting their investigation, a friend of Subjects 1 and 2, Subject 3, arrived and stood on the sidewalk with his juvenile daughter and observed the activity. (Subject 3's daughter lived at the residence where the incident occurred.)

According to Subject 3, Officer A said to him, "What the f**k are you standing there for?" Officer A then turned to Officer B and said, "Would I be wrong if I went out there and knocked him out in front of his daughter?" Officer A then answered himself and said, "No it won't be wrong because I'm a police officer."

Subject 1 said he heard Officer A state that he was going to "kick [Subject 3's] a**." Subject 1 did not hear Officer B say anything inappropriate.

⁴⁰ Among these bulletins are Training Bulletin, Volume XXXVI, Issue 1, Personal Searches – Part I, The Pat Down Search, February 2004; Training Bulletin, Volume XXXVIII, Issue 1, Legal Contacts with the Public, April 2006; and Legal Bulletin, Volume 20, Issue 2, 1996.

⁴¹ The standard of proof for adjudicating complaint investigations is a preponderance of the evidence; therefore, overwhelming proof was not necessary.

Subject 2 said as Subject 3 stood outside, Subject 2 heard Officer A ask Subject 3 what he was doing standing there. Subject 3 explained that he was there with his daughter. According to Subject 2, Officer A stated, "I should knock that n****r out. Would that be wrong?" Subject 2 replied to Officer A that it would be wrong. Officer A said, "No it won't, I'm an officer. I'm the law. I could do whatever I want to."

At the conclusion of the investigation, Officer B walked past Subject 3 to leave and according to Subject 3, Officer B mumbled something. Subject 3 asked Officer B what he said, to which he replied, "Don't raise your f**king voice to me." Subject 3 replied that he was not raising his voice and was just responding to Officer B. Officer B then allegedly told Subject 3 to "Shut the f**k up." Subject 3 believed that he was being harassed because he was present while the officers detained Subjects 1 and 2.

Subject 4 was the owner of the residence where the incident occurred. According to the I/O, Subject 4 was not present when the alleged inappropriate comments were made by the officers.⁴² However, Subject 4 said Officer A stated that he would be wrong if he knocked Subject 1's, "punk a** out." Subject 4 said when she questioned Officer A as to why the officers were on her property, Officer A responded that they were just doing their job. Subject 4 said she felt harassed because the officers did not have probable cause to enter her property and they asked for her identification.

The Department framed eight allegations, with adjudications and rationales as follows:

- 1) that Officer A was discourteous when he said, "What the f**k are you standing there for?," and for stating, "Would I be wrong if I went out there and knocked [Subject 3] out in front of his daughter;" Not Resolved, as Subject 2 did not hear the profanity, and "Subjects 1 and 2 heard Officer A make a statement in regards to assaulting Subject 3; however, each heard something different;"
- 2) that Officer B was discourteous when he told Subject 3 to, "Shut the f**k up;" Unfounded, as Subjects 1 and 2 who were present near the officer did not hear this statement.
- 3) that Officer A harassed Subject 3 due to his presence while the officers detained Subjects 1 and 2; Unfounded, as Subject 3 offered no other information to support these allegations.
- 4) same as above for Officer B;
- 5) that Officer A harassed Subject 4 by asking for her identification; Unfounded, as Subject 4 did not provide any additional information in the form of statements or observations which would support this allegation;
- 6) that Officer A did not have probable cause to enter Subject 4's garage; Unfounded, as based on the officers' knowledge that narcotics activity was prevalent in the area and their own observations of Subject 1 and 2's possible narcotics transaction, the officers lawfully entered the garage and had reasonable suspicion to detain both subjects;
- 7) same as above for Officer B;
- 8) that Officer A made an ethnic remark when he said, "I should go knock that n****r out. Would that be wrong?;" Not Resolved, as Subject 1 who was standing in the garage did not hear Officer A make this statement nor did Subject 3 who was standing approximately 25 feet away.

⁴² The I/O did not ask Subject 4 if she was present when the inappropriate comments allegedly were made. See "Investigative Analysis" on page 35.

UNDISPUTED FACTS

Officers A and B detained Subjects 1 and 2 inside a garage while the officers conducted a narcotics investigation. The officers determined that no crime had been committed and left the residence.

DISPUTED FACTS

The disputed facts are in regards to the exact words spoken to Subject 3. While Officer A's threat to harm Subject 3 is consistent among Subject 1, 2, and 3's statements, the exact wording of the threat is not. Both officers denied making any inappropriate comments to any of the subjects.

INVESTIGATIVE ANALYSIS

In the rationale for adjudication, the adjudicator stated that his investigation established that Subject 4 was not present when the statement regarding knocking out Subject 3 was allegedly made by Officer A. As a result, the I/O dismissed Subject 4's statements as untruthful. While it is a reasonable inference that Subject 4 probably was not present, the I/O never specifically asked Subject 4 if she was present when this statement was made. It is possible that between the time the incident occurred and the time that Subject 4 was interviewed, that she had spoken to Subjects 1, 2, and 3 as to what had transpired and merely repeated to the I/O what the subjects had related to her. However, this was never explored or clarified by the I/O.

ADJUDICATIVE ANALYSIS

As to the ultimate adjudication of the allegations, the OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision on all eight allegations, and we agree with seven of the eight adjudications.

The adjudicator recommended an Unfounded classification for Allegation 2, based in part on the statements of Subjects 1 and 2, both of whom were present when the alleged discourteous remarks were made, and both of whom did not hear any such statements. The rationale indicates that the adjudicator found Subjects 1 and 2 to be credible.

For Allegation 1, the adjudicator noted that both Subjects 1 and 2 "heard [Officer A] make a discourteous remark." Considering the credibility of Subjects 1 and 2, their supporting affirmation of Subject 3's discourtesy allegation would seem to infer that the proper recommended classification would be Sustained. However, the adjudicator stated that Subjects 1 and 2 "each had a different version of the accounting of the [remark]."

The investigation summary states that Subject 1 heard Officer A say that he was "going to go kick [Subject 3's] a**." The summary states that Subject 2 heard Officer A say, "I should go knock that n****r out." The OIG suggests that the versions recounted by both Subjects 1 and 2 are sufficiently similar as to describe the same statement by Officer A and that either version would seem to support an allegation of discourtesy rather than supporting a Not Resolved classification.

Officer A's TEAMS report listed five prior discourteous complaints which were adjudicated as Not Resolved. Officer A also had two discourtesy complaints, both adjudicated as Insufficient Evidence to Adjudicate/Non-disciplinary, Employee's Action Could be Different. The OIG

noted that as result of the numerous discourtesy complaints, a recommendation was made in the Administrative Insight section of the Letter Of Transmittal for this incident that in the future when Officer A is assigned to field duties he must carry a personal recording device at all times.

Case I

SUMMARY

This complaint arose from an arrest for pimping and prostitution and resulted in 11 allegations of misconduct against 3 officers. Subject 1, the complainant, alleged that officers used unnecessary force, destroyed personal property, made an ethnic remark, pointed a revolver at his head, caused damage to the interior of his vehicle, struck his Pit Bull dog with a baton and a revolver, choked the dog with its leash, failed to provide the necessary information to retrieve his dog, forced a witness to make false statements against him, and made false statements in a police report.

Officer A, Supervisors B and C, and other uniformed and undercover officers were working a prostitution detail when they observed Subject 2 loitering on a public sidewalk. The officers observed Subject 1 drive by Subject 2 several times, and sometimes Subject 1 stopped and talked to Subject 2. Subject 1 eventually picked up Subject 2 and drove her to another location where she resumed loitering on the sidewalk. The officers formed the opinion that due to her behavior Subject 2 was a prostitute and Subject 1 was a pimp for Subject 2.

Officer A, who was working as an undercover officer, drove up to Subject 2 and obtained a violation for prostitution from her. Subject 2 entered the undercover vehicle and they drove to a pre-determined location where Subject 2 was taken into custody for solicitation for prostitution. As Officer A drove away, he was followed by Subject 1. Supervisor B, who was in uniform, along with other uniformed officers conducted a traffic stop of Subject 1 at a different location and took him into custody.

According to Subject 1, he alleged that after being stopped, an unknown undercover officer said that if Subject 1 reached for something or if his Pit Bull dog (which was inside his vehicle) attempted to bite the officer or his partners, that the officer was going to, "Put a bullet in [your] Black a**, n***a." Subject 1 interpreted this as a racist remark. Subject 1 alleged that after he was handcuffed, Supervisor B pointed a revolver at Subject 1's head. Subject 1 also alleged that Supervisor B shoved Subject 1 against the police vehicle, breaking his glasses as he was placed inside the vehicle.

According to Subject 1, an unknown officer choked the dog with its leash as the officer took the dog out of the vehicle. Supervisor B then struck the dog with his revolver and baton. Subject 1 said that when the officers took his dog out of his vehicle, the car seats and interior were damaged.

Subject 1 alleged that Officer A falsified a police report when he documented that Subject 1 was a pimp for Subject 2 and that Officer A forced Subject 2 to make a false statement which indicated that Subject 1 was her pimp. According to Subject 1, Supervisor B made false statements in the police report in regards to his observations of Subjects 1 and 2.

The Department framed 11 allegations, with adjudications and rationales as follows:

- 1) that Supervisor B used excessive force; Unfounded, as there were no independent witnesses at the scene, no physical evidence or injuries to support the allegations of abusive conduct, the officers' statements were consistent with the facts of the case;
- 2) that Supervisor B broke Subject 1's eyeglasses; Unfounded, same rationale as above;
- 3) that Supervisor B unnecessarily pointed a handgun at Subject 1's head; Unfounded, same rationale as above;
- 4) that Supervisor B unnecessarily hit Subject 1's dog with a handgun and baton; Unfounded, as the Pit Bull was transported to the station and given to Animal Services without incident and the dog did not attack or bite the officers;
- 5) that an unknown officer made a racial remark; Unfounded, as "[Subject 1] was adamant that a plainclothes 'undercover officer'" made the racial remark; however, the investigation revealed that only uniformed officers and a uniformed supervisor were present when Subject 1 was arrested, and all officers at the scene "vehemently denied making any racial statements;"
- 6) that an unknown officer choked Subject 1's dog with a leash; Unfounded, same rationale as Allegation 4;
- 7) that an unknown officer caused damage to the interior of Subject 1's vehicle; Unfounded, same rationale as Allegation 4;
- 8) that Officer A filed a false police report for pimping; Unfounded, as Subject 2, after being given a Miranda Admonishment, provided a recorded interview in which she voluntarily told the officers that Subject 1 was her pimp. Subject 2 was arrested for and booked for prostitution and "had ample motive to disparage the arresting officers . . . her statement completely supported the officer's statements and observations;"
- 9) that Officer A did not provide Subject 1 with the information necessary to retrieve his dog; Unfounded, as Supervisor B said he gave Subject 1 the information to retrieve his dog, an Animal Control Officer stated that Subject 1's wife called and obtained information about the dog, and Officer A was not present during the arrest of Subject 1;
- 10) that Officer A forced Subject 2 to make a false statement against Subject 1 for pimping; Unfounded, same rationale as Allegation 8; and
- 11) that Supervisor C made a false statement in the arrest report; Unfounded, same rationale as Allegation 8.

The findings for all allegations considered Subject 1's lack of credibility due to numerous unsubstantiated claims and claims that directly contradicted available facts.

UNDISPUTED FACTS

Subject 1 was arrested for pimping,⁴³ and he was on parole for pimping. Subject 2 was arrested for prostitution.⁴⁴ Subject 1's dog was transported to the police station where Animal Control responded and took possession of it. The District Attorney's Office declined to prosecute Subject 1 for pimping.

DISPUTED FACTS

All of the allegations are disputed. The involved officers denied all of the allegations.

⁴³ Cal. Penal Code § 266h(A).

⁴⁴ Cal. Penal Code § 647(b).

ADJUDICATIVE ANALYSIS

The OIG believes that there was enough information obtained during the investigation to allow the adjudicator to make a decision on all 11 allegations, and we agree with the outcome.

Case J

SUMMARY

This complaint was filed after the arrest of complainant's son, an 18-year-old African American male, for "Unlawful Possession of a Residence after Eviction."⁴⁵ The complainant and her son were previously evicted from the residence by the lender and physically removed by deputies of the Los Angeles County Sheriff's Department. However, the complainant filed a Notice of Stay of Proceedings with the court which she believed allowed her to move back into the residence. The complainant informed the lender of the filing by sending a fax and calling to speak with someone she believed was authorized to tell her she was permitted to reoccupy the residence. The lender did not show up when expected to provide the keys to the locks. Therefore, the complainant had a locksmith change the locks in order to gain entry and possession. On a date afterwards, the lender's inspector came to the property for a routine check and noticed that the son and a friend, another African American male, were inside the house. The lender called the police and two officers initially responded to the call for trespassing. Two more officers responded later after a request for additional units.

When the officers arrived, the son was walking outside the house down the driveway on his way to work. The friend was inside the house on the computer. Officers questioned the son and allegedly treated him like a "hardened criminal." The son obeyed officers' commands and was arrested without incident. The son tried to explain why his mother moved back into the house and requested the opportunity to provide paperwork to the officers to prove the legal right to move back in to the residence. However, the officers would not allow the son to re-enter the residence to obtain the paperwork. The son's friend was allegedly detained without shoes and not allowed to obtain his shoes before being transported to the station with the son. The complainant said that the neighbors told her that they witnessed the incident while the police were at the scene and the police had the son and friend on the ground.

During the booking process of the son at the station, the complainant walked in to the front desk. The complainant was upset and loud when talking to the front desk officer. The complainant asked to speak to the watch commander. The officer allegedly responded, "I'm not getting anybody." The complainant insisted that the officer look at her paperwork and release her son because he should not have been arrested. The officer allegedly dismissed her paperwork by saying, "It does not really mean anything." During this disagreement, the complainant stated she believed her son had been arrested because the officers thought he had no rights and he was "just a little Black kid." In response, the officer allegedly stated angrily, "Why do you have to use the race card? I never mentioned his race!"

The supervisor eventually came to the front desk after reportedly being relieved by another watch commander who returned from the field. The supervisor told the complainant that he could not release her son and that she needed to go downstairs and talk to the jailers because they

⁴⁵ Cal. Penal Code § 419.

decide who would be released. The complainant went downstairs and talked to the jailers who told her that they do not decide who gets released, and instead the police upstairs have to tell the jailers whom to release. The jailers also explained that the son could be released if the complainant posted bail, but it would take a while for the son to be released due to the paperwork processing time needed. When the complainant returned back upstairs, the supervisor gave her his business card and the arresting officer's card. The complainant was surprised to find out that the arresting officer was the same officer that she had the disagreement with at the front desk.

During the Internal Affairs interview, the complainant was asked why she waited approximately four weeks to make a complaint. The complainant replied that she came to the station "the next day" and made the complaint with one officer who gave her an appointment for four weeks later.

The Department framed seven allegations, with adjudications and rationales as follows:

- 1) that the accused officer arrested the son without cause; Exonerated, as the officers had probable cause to arrest the complainant's son. "The paperwork shown to the [supervisor at the] station did not bear any seal or authentication from a Los Angeles County court, was not a court order, and there was no stay order in effect at the time [the son] was arrested;"
- 2) same as above for the other involved officer;
- 3) that the accused officer at the front desk was rude when he dismissed the complainant's paperwork by saying, "It doesn't really mean anything;" Unfounded, as "the totality of the circumstances showed [the accused officer] reviewed [the complainant's] paperwork and attempted to discuss the court order with her but she responded in an irrational manner;"
- 4) that the accused officer made a discourteous remark when he stated, "I'm not getting anybody!" in response to the complainant's demand to see a supervisor; Unfounded, as "the totality of the circumstances showed [the accused officer] reviewed [the complainant's] paperwork and attempted to discuss the court order with her but she responded in an irrational manner;"
- 5) that the accused officer made a discourteous remark when he angrily stated, "Why do you want to use the race card?;" Unfounded, "There is no evidence to show that racial bias was the motive for the arrest other than [the complainant's] opinion;"
- 6) that the accused officers arrested the son because he was, "Just a little Black kid;" Unfounded, as "There is no evidence to show that racial bias was the motive for the arrest other than [the complainant's] opinion;"
- 7) same as above for the other involved officer.

UNDISPUTED FACTS

Approximately one month prior to arrest, the complainant and her son were served with a Notice to Vacate by the Los Angeles County Sheriff's Department Deputies. The complainant had a locksmith change the locks on the residence to regain entry after eviction. The complainant's son was arrested for violating Penal Code Section 419.

DISPUTED FACTS

On the date of occurrence, the accused officer was discourteous during the conversation at the front desk in the station lobby. The complainant made the complaint approximately four weeks after the date of occurrence. According to the complainant, she went to the station the next day

to make a complaint, but the desk officer gave her an appointment to return four weeks later to make the complaint.

Two weeks prior to the date of the son's arrest, the complainant allegedly filed a Notice of Stay of Proceedings with a request to move the matter to federal court pursuant to federal statute.⁴⁶

INVESTIGATIVE ANALYSIS

The OIG believes that the interviews were not thorough enough, all witnesses were not interviewed, and all interviews were not paraphrased or relevant facts were not included in the paraphrased statements. Therefore, we identified investigative issues which we believe merit further comment.

Clarification of "Witness" Status

The OIG noted that the police report referred to the son's friend as a "witness" and stated he was transported to the station from the house pending an investigation. However, the report does not make clear whether the friend was voluntarily transported as a witness or detained. If he was a witness, there would be no cause for detention. If the friend was a suspect, then the detention could be warranted, but it would be inconsistent to refer to the friend as "witness." Additionally, the friend was allegedly transported to the station without shoes, despite a request by the friend to obtain his shoes prior to transport. The friend was later released from the station and apparently left to walk home shoeless. The police report is also not consistent with the Sergeant's log, which states that the friend was released at scene. The OIG believes that I/O should have clarified with the accused officers whether the friend was considered a suspect or witness and, if the friend was transported, determine whether he was denied a request for shoes.

Unframed Allegations

The OIG would have preferred that the I/O had explored during the interview the son's comment about being treated "like a hardened criminal" even though he obeyed the officers' commands and did not resist arrest. Also, the I/O could have determined why the officers allegedly were not willing to look at the paperwork that the son indicated was in the house and whether the son and friend were put "on the ground."

The biased policing allegations were framed for each accused officer; however, the investigation was not conducted in accordance with Department-mandated protocols dated January 18, 2010; Special Order No. 15, dated March 31, 2009; and Department Manual Section 1/345. The I/O included the Racial Profiling Checklist dated July 1, 2008, in the investigation; however, he answered most of the questions stating, "N/A." Additionally, the Biased Policing allegation should be reflected on the accused officers TEAMS reports.

Missing Paraphrased Statements

The complainant's son was interviewed and recorded, but his statement was not paraphrased in the investigation.

⁴⁶ The I/O requested copies of the complainant's documents; however, she could not locate them, and therefore the documents are not in the investigation file.

Witnesses Not Interviewed or Questions Not Asked

During the interview of the accused officer, the I/O did not ask if he made the alleged statement, “Why do you want to use the race card?”

During the disagreement with the accused officer, the complainant was speaking on the phone with a Department Sergeant who was also a friend. The I/O identified the officer but did not interview him as a witness for the Discourtesy allegation. Additionally, the complainant was accompanied into the station by a friend who stated that the accused officer was rude and unprofessional, which made the situation harder to resolve. The I/O did not include in the paraphrased statement that the complainant’s friend stated that the accused officer was rude.

The investigation did not reveal who the Department employee was that the complainant talked to the day after the occurrence in the station when she made her complaint. The unknown officer allegedly gave the complainant an appointment for four weeks later, which is not in compliance with Special Order No. 1, dated January 1, 2003. The I/O could have asked the officer who took the complaint on the date indicated on the 1.28 form, if he was the same officer that the complainant spoke with the day after the arrest.

ADJUDICATIVE ANALYSIS

Allegations 4 and 5 regarding discourteous remarks lacked a preponderance of evidence to support an Unfounded adjudication. During the interview, the I/O did not ask the accused officer if he made the discourteous statements to the complainant.

Department Policy

This complaint was completed by the Area complaint unit. However, since Biased Policing was alleged, IAG should have conducted this investigation.

Case K

SUMMARY

Officers A and B responded to a “screaming woman” radio call indicating a male and female were fighting with, “Female now screaming for help. Loud banging noises.”⁴⁷ Upon arrival at the location (an apartment building), Officers A and B met the person reporting (P/R) who directed them to the apartment from where the screaming had emanated. The officers knocked on the door several times before the complainant answered. The officers said the complainant was intoxicated. Officer A said the complainant was irate and yelling; Officer B said the complainant was in a drunken rage. Both officers and the complainant said the complainant used profanity. The officers handcuffed the complainant and led him outside the apartment where he was put on the ground and hobbled. The complainant said that Officer B grabbed him, threw him to the ground, dragged him outside, hobbled him, and kept hitting the complainant’s head on the floor. The complainant said also that he was kned in the back by an officer. Officer B called for backup and at least one supervisor and several officers arrived at the scene, including a female officer who was one of the officers that later interviewed the complainant’s girlfriend (victim).⁴⁸

⁴⁷ This is how the call is reflected in the Incident Recall.

⁴⁸ The female officer was not clearly identified, nor was she interviewed. This is discussed below.

Officer A conducted a protective sweep⁴⁹ of the apartment and located the victim in the bedroom. She was crying and had an apparent contusion below her left eye. The victim said the complainant did not cause the injury. The complainant and the victim alleged that one officer said that he knew “Middle Eastern men beat their [wives/women]”⁵⁰ and that the officers were going to “deport [the complainant’s] a**.”⁵¹ The complainant was arrested for domestic violence and booked at the local police station.

Six allegations were framed, with adjudications and rationales as follows:

- 1) Officer A conducted a warrantless search of the complainant’s home; Unfounded, as the radio call, the P/R’s report, the complainant’s intoxication and verbal abuse toward the officers, and the victim’s crying and visible injury led the officers to form the opinion that “there was an imminent danger to life or welfare . . . [and] a compelling need to take immediate action to search the apartment for possible victim(s) in need of medical treatment. Clearly, the circumstances of this incident rose to the level of exigent circumstance and no warrant was required to search for potential victims.”
- 2) Same as above for Officer B;
- 3) Officer A unlawfully arrested the complainant; Unfounded, as probable cause to arrest the complainant was established by the victim’s statements and the visible injury;
- 4) Same as above for Officer B;
- 5) Officer B used excessive force when he threw the complainant to the ground and slammed his head down; Unfounded, (see rationale below); and,
- 6) an unknown officer made an ethnic remark when he said “[We] know Middle Eastern men abuse their wives” and that the officers were going to “deport [the complainant’s] a**,” Not Resolved, as none of the officers at the scene heard the comment, none recorded the incident, and there were no independent witnesses or evidence or testimony “to reach a clear resolution.”

The involved officers denied all allegations.

Allegation 5, regarding excessive force was classified as Unfounded based on the following rationale. When the officers entered the complainant’s apartment, he became belligerent and uncooperative. He was clearly intoxicated. The complainant was handcuffed and asked to sit down. The complainant later got up from the chair and began to kick and thrust his legs. He attempted to pull away from Officer B who led him outside and assisted the complainant to a prone position on the ground. A hobble restraint was applied because the complainant, while on the ground, continued to kick and thrash his body. In addition to back up units, the watch commander and two sergeants were at the scene who monitored the incident and provided supervisory oversight. The watch commander said in his log that no force was used. The adjudicator stated, “Had the described allegation actually occurred, [the complainant] would have undoubtedly pursued the complaint process. However, at no time did he allege misconduct at the scene.” Further, the adjudicator noted that the complainant said he had photographed his injury and would provide the photo to the I/O but failed to do so. “[The complainant’s] failure to

⁴⁹ A protective sweep is a warrantless search of a home for the limited purpose of searching for other persons who might pose a threat to officers. *See Maryland vs. Buie*, 494 U.S. 325 (1990).

⁵⁰ The complainant said “women” and the victim said “wives.”

⁵¹ The I/O did not ask the complainant about this comment.

provide the photograph severely detracts from his credibility and leads this adjudicator to believe the incident did not occur.” Additionally, the adjudicator noted that it is significant that the complainant was convicted of resisting arrest and sentenced to one day in jail and 36 months’ probation. The adjudicator ended by saying, “based on the facts discovered through the investigation, it is this Adjudicator’s belief that the allegation did not occur and can only be classified as Unfounded.”

UNDISPUTED FACTS

The officers responded to a radio call and encountered the complainant and the victim at the complainant’s apartment. The victim was crying and had an injury below her left eye. A female officer interviewed the victim at the scene. The complainant was handcuffed, hobbled, and arrested for domestic violence.

DISPUTED FACTS

The complainant indicated that he and the P/R had been fighting for almost a year and the P/R frequently complained and called security about the complainant for creating too much noise. The complainant said that when the police came, he and his girlfriend had just gone to bed after arriving home from a party where he had consumed a few drinks.⁵² As the police were searching the apartment, the complainant asked them to knock on the bedroom door where the victim was because she was “half naked.” The complainant alleged that an officer said, “Shut the hell up;” and in response, the complainant in a loud voice said, “Get the f**k out of my house.” The complainant said the officer then grabbed the complainant’s hand and twisted it behind his back, pushed him, and he fell to floor. One officer had his knee in the complainant’s back. The other officer kept hitting the complainant’s head on the floor. The complainant could not breathe. At some point, the complainant was handcuffed;⁵³ and once outside the apartment, he was hobbled. The complainant said he was not fighting or resisting. The complainant and the victim denied that the complainant injured the victim. The complainant said he saw an officer go through the complainant’s wallet in the living room and the officer saw the complainant’s Jordanian identification. After seeing the complainant’s identification, an officer was walking the victim from the bedroom to the living room and the officer said to the victim, “Middle Eastern men beat their women so tell me why he hit you.”

The officers alleged that at the scene the complainant was trying to dissuade the victim from talking to the officers about the events of that night.

The complainant said that at the apartment he requested to speak to a sergeant because he wanted to make a complaint against the officers. He was told that he would be able to speak to a sergeant at the station. Once at the station, the complainant saw a sergeant who he realized had been at his apartment. He told the sergeant he wanted to complain about the officers, but the sergeant told him he could do that later. The complainant was never given the opportunity to make a complaint against the officers. The complainant gave the I/O a physical description of the sergeant. Further, the complainant said that when he was asked if he knew why he was arrested he said it was because he is an Arab.

⁵² The I/O did not ask the complainant if he was intoxicated.

⁵³ The I/O did not clarify with the officers or the complainant when the complainant was handcuffed.

INVESTIGATIVE ANALYSIS

Allegations Not Framed

The OIG believed that two additional allegations could have been framed in this case. First, the complainant indicated that when he was asked if he knew why he was arrested he indicated it was because he was an Arab. The OIG believes that a Biased Policing allegation should have been framed and would have preferred if the I/O had followed the appropriate interview protocols and investigative procedures for Biased Policing claims once the complainant indicated he thought he was arrested based on his ethnicity.⁵⁴

Second, the complainant indicated that he attempted to make a complaint against the officers but was not given the opportunity. The OIG would have preferred if the I/O had framed a related allegation and explored this issue further. Additionally, the I/O did not include this portion of the complainant's statement in the paraphrased statement in the investigation. This is particularly significant because the adjudicator used this to classify Allegation 5 as Unfounded stating, "Had the described allegation actually occurred, [the complainant] would have undoubtedly pursued the complaint process. However, at no time did he allege misconduct at the scene."

The I/O's Demeanor

While listening to the recordings of the interviews, OIG staff believed the I/O seemingly adopted a tone that conveyed her belief that the complainant and the victim lacked credibility. For example, when the complainant told the I/O he was not resisting the officers, she asked him, "So you did nothing to get that behavior out of them?" "Nothing?" "You were just standing there?" "That's an awful lot of work to go through to hobble tie you and all that stuff if you are fully cooperative."

Also, while the I/O was discussing the alleged excessive force allegation with the victim, the I/O said to the victim, "Alright, alright, we can go around the block forever, you know, I don't want you to cover up for your boyfriend. You told me you saw it and now you're telling me that, 'No no maybe I didn't see it 'cause I wasn't there the whole time.'"

Additionally, the arrest report contained information that the victim told the officers that the victim and the complainant had a verbal argument that night. During her interview with the I/O, the victim denied telling the arresting officers that she had a verbal argument with her boyfriend. The I/O appeared to use the ruse of telling the victim that the officers may have recorded the conversation to attempt to get a consistent story from the victim. The I/O said, "I just want to make sure because a lot of times when they talk to you it's recorded, it's recorded. I just want to make sure because if I hear this on the recording that your story's different it's not gonna really make sense, ya know." "Cause if the interview's recorded, ya know, cause a lot of these officers they wear recorders, so I'll probably hear everything that went on." "Cause I have it down here in the report and then you're telling me now that never happened, so" However, the victim remained confident about her statements to the I/O.

⁵⁴ During his recorded interview, when the complainant made the allegation that an officer said "We know Middle Eastern men beat their wives," the I/O told the complainant that the Department takes Biased Policing claims very seriously but did not pursue this issue.

The victim then began to get upset as she re-told the incident from that night, including the ethnic remark. The I/O challenged the victim when she said that she was crying and upset when the police officers came. The I/O asked “Why [were you crying], they are there to help you.” The victim said the officers scared her. The I/O said, “Why, they are there for you, why are you scared?” The victim insisted the officers were not there for her and the I/O persisted. “They were there for you. They got a call that somebody was being beaten up.” The victim said that nothing had happened to warrant the police response and the I/O argued with her saying, “Well, you don’t understand then that when officers get a cry for help, it’s in their duty to respond to that cry for help, that’s their job , that’s why they’re there. They’re there because they care about you. They think you’re getting beaten up.”

Finally, at another point in the interview, the I/O was questioning the victim about the alleged ethnic remark and the allegation that an officer said, “[We] are going to deport his ass.” The I/O said to the victim, “But we don’t even do that. Why would they say that?” Then the I/O said, “That doesn’t even make sense.” The victim surmised that it was because the officers learned that the complainant was Middle Eastern. The I/O replied, “But there’s Middle Eastern people all over the place out here. Why would?”

The I/O’s tone appeared to convey that she doubted the complainant’s and victim’s credibility. The OIG would have preferred if the I/O had adopted a more objective demeanor while interviewing those witnesses.

Documentary Evidence Not Included

The complainant alleged that he was injured during the incident. The investigation did not include a booking photo or an Adult Detention Log,⁵⁵ both of which may have contained information relevant to the complainant’s claim. Further, the arrest report indicated that pictures were taken of the victim. The I/O did not include those photos in the investigation. The OIG would have preferred if this information had been included in the investigative package, as it could have provided the adjudicator with evidence that could have been an additional tool with which to classify the allegations.

The I/O Used Leading Questions

During the investigation, Officer B was interviewed immediately before Officer A. During Officer B’s interview, he indicated that when the officers first made contact with the complainant at his apartment, the officers told the complainant that they were responding to a 9-1-1 call and that they were going to do a “welfare check” of the apartment because they had to make sure no one in the apartment was injured. Officer B characterized this as a “protective sweep.”

Later, during Officer A’s interview, he indicated that he proceeded inside the apartment to make sure there was no one who was the victim of a crime or needing immediate medical assistance.

⁵⁵ Department Special Order 42, Detention Logs - Revised, December 13, 2001, provides that an Adult Detention Log is to be completed when an adult in custody is transported to an Area station. The Adult Detention Log requires a supervisor to ask an arrestee if he understands why he was detained, if he is sick, ill, or injured, and if he has any questions or concerns.

After Officer A described his reasons for entering the apartment, the following exchange took place:

I/O: When you said you went in there looking for the, the victim of a crime was it like, like a protective sweep? Would you call it—
Officer A: Yes. A protective sweep.
I/O: A quick search?
Officer A: Yes.
I/O: Looking for someone?

Both officers articulated their reasons for entering the apartment. The I/O's leading question about the protective sweep appeared unnecessary and the term "protective sweep" was not used appropriately in this context.

ADJUDICATIVE ISSUES

The OIG agreed that a preponderance of the evidence supported the findings for Allegations 1-4 and Allegation 6.

The OIG believes a preponderance of the evidence did not support a finding of Unfounded for Allegation 5. The complainant claimed that Officer B threw him to the ground and slammed his head down. Both the complainant and the victim said that the officer pushed the complainant and the complaint hit his head when he went to the ground. The complainant said the officer then slammed his head down after he was already on the ground. The victim gave inconsistent accounts about whether she saw this. Of the officers who were at the scene who were interviewed, they either were not asked if they saw excessive force used or they said they did not see excessive force used. However, it was unclear from the questions if the officers were present during the time the complainant said the force was used or if they were in a position to see if force was used.

Additionally, not only did the adjudicator appear to state an erroneous belief that the complainant did not complain about the incident, but also the OIG believes that this rationale for sustaining the allegation is flawed. If a complainant did not complain about alleged misconduct at or close to the time of an incident, his complaint should not be automatically viewed as meritless without an evaluation of the substance of his claim. Also, the OIG believes that the adjudicator's rationale that "[The complainant's] failure to provide the photograph severely detracts from his credibility," overstated the impact of the complainant's inaction, especially in light of the fact that the I/O did not include a booking photo or Adult Detention log in the investigation. Finally, there were no independent witnesses to the incident. Without clarification of these issues, the OIG believes this may have been better classified as Not Resolved.

V. OUT OF STATUTE CASES

This section contains the OIG's review of two complaints which the Department closed during the Quarter and determined to be out of statute. The summaries include the Department's explanation as to why the cases lapsed and what remedial action, if any, was taken to avoid similar recurrences.

Case L

Prior to a polygraph examination, the accused employee (Employee A) completed a "Background Worksheet" (worksheet) for a new position within a specialized unit. On that worksheet, she indicated that she had on several occasions been present when other persons used marijuana. During Employee A's polygraph examination, she doubled the number of times she had originally indicated on the worksheet and also indicated that after her date of hire she had ingested a small amount of marijuana. Additionally, Employee A stated that she babysat for her cousin, who might have been an associate or a member of a street gang.

As the admission had been made to a Department supervisor, a personnel complaint was initiated. The complaint was sent to the Division responsible for investigatory assignment. However, Employee B, responsible for assigning incoming complaints, became ill during the time the complaint would have been processed. Employee B later passed away, and during a subsequent search of her desk, the personnel complaint was found attached to an unrelated complaint. By the time the complaint was assigned, it was out of statute.

In a memorandum, the CO of PSB told the COP that since this incident, the Commanding Officer of the Division responsible for the investigatory assignment instituted a large dry-erase board in a common area of the office. One officer is assigned to constantly update all assigned cases as well as the assigned investigators. The investigators have been directed to monitor the board for accuracy and to record any and all changes.

Case M

In December 2004, Sergeant A directed Sergeant B to the residence of married Officers A and B to investigate possible misuse of sick time by Officer A. While at the residence, Sergeant B ascertained that neither Officer A nor Officer B was home. Sergeant B contacted Officer B and then Officer A via cell phone. During both contacts, Sergeant B recorded her side of the conversation with Officer A and Officer B, without the knowledge or permission of either officer. Sergeant B believed that Officers A and B both made a false and misleading statement during the conversations, and therefore, a personnel complaint was initiated. Officers A and B retained private legal counsel.

During the complaint interview with IAG in August 2005, Officer A's private counsel stated that Sergeants A and B had violated Officer A and B's rights as indicated in the Public Safety Officers Procedural Bill of Rights because Officers A and B were not informed they were subjects of a personnel complaint investigation when Sergeant B contacted them and Sergeant B

recorded the conversation without the knowledge of Officers A and B.⁵⁶ While the investigator made note of this, no personnel complaint was initiated against Sergeants A and B. Additionally, Officers A and B were directed to a Board of Rights.

During Officer A and B's Board of Rights in January 2006, it was determined that the final complaint submitted to the Board did not contain the complaint information regarding Sergeants A and B. Additionally, the Board did not initiate a personnel complaint against Sergeants A and B, and found Officers A and B, "Not Guilty."

In June 2006, a personnel complaint was filed against Sergeants A and B for alleged violation of the Public Safety Officers Procedural Bill of Rights. However, a subsequent review of the file by IAG determined that Officer A and B's attorney had discussed the violation of his clients' rights in August 2005, and that is the date that the applicable statutory time constraints began to run.⁵⁷

In late July 2007, the Captain III of IAG met with the assigned investigator and determined that the case against Sergeants A and B was out of statute.

A review of the investigative file did not reveal any measures enacted to prevent a similar incident from occurring in the future.

VI. ALCOHOL-RELATED CASES

There were 14 cases closed this Quarter which contained at least one allegation related to misconduct involving alcohol. The OIG reviewed the nature of the allegations and the discipline imposed and provided a summary in the table below, including the penalties recommended in each case by the Area, the Bureau, and the Chief of Police. Also, each case is summarized below the table (*see* next page).

⁵⁶ Officer A and B's counsel claimed that Cal. Gov't. Code §§ 3303(c), (g), and (i) were violated. They state in relevant part, "When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer . . . that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation. (g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation."

⁵⁷ Cal. Gov't. Code § 3304(d) states in relevant part that "no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct."

Case	Nature of Complaint	Bureau Discipline	COP Discipline	OR Condition
Case AA Civilian	Drunk in Public.	7 Day Suspension, & 3 Day Suspension	10 Day Suspension & Settlement Agreement	*Settlement Agreement: See details of conditions in summary below.
Case FF Sworn	Drunk in Public	OR	OR	
Case JJ Civilian	Drunk in public, Disturbed the peace, Failed to report incident to Commanding Officer	5 Day Suspension	5 Day Suspension and Settlement Agreement	Settlement Agreement: See details of conditions in case summary below.
Case GG Sworn	Brandished weapon. Maintained social relationship with gang member. Possessed alcohol in a moving vehicle.	Terminated on Probation	Terminated on Probation	
Case BB Sworn	On-duty intoxication & use of city vehicle while under the influence.	Board of Rights	Board of Rights	
Case DD Sworn	DUI		COR	If officer has another sustained DUI, send to BOR with recommendation for termination.
Case II Sworn	DUI		Allegations were Sustained with No Penalty due to employee's death prior to investigation completion.	
Case CC Civilian	DUI, Discourtesy during DUI arrest.	6 Day Suspension	6 Day Suspension	
Case HH Sworn	DUI, Drove with expired registration.	COR	COR	If another sustained DUI, go to BOR with recommendation for termination.
Case KK Sworn	DUI, Failed to report incident timely, Drove on/off duty with a suspended license.	10 Day Suspension	10 Day Suspension	
Case NN Sworn	DUI, Excessive consumption of alcohol. Left restaurant without paying.	COR	COR	Participate in alcohol sobriety program; any future same/ similar sustained allegations, recommendation of termination if found guilty.
Case LL Sworn	DUI collision	COR	COR	Any same / similar act during career may result in penalty up to termination.
Case MM Sworn	DUI Collision	COR	COR	If any same / similar conduct, penalty from a 22 day suspension to termination.
Case EE Sworn	DUI with injury	BOR	BOR Termination	

The following are brief summaries of each case listed in the table.

Case AA

(This case combined two separate incidents.) In the first incident, officers responded to a neighbor dispute to find the accused employee's (employee) truck blocking a neighbor's driveway and sidewalk. The employee emerged from his home and claimed ownership of the truck. The employee appeared to be intoxicated and refused to have someone sober move his truck. When officers attempted to have the truck towed, the employee attempted to confront the tow-truck driver, and resisted officers when they tried to contain him. The employee was arrested for drunk in public and unlawful obstruction of a police officer.

In the second incident, at approximately 1900 hours, officers responded to a call from an employee at a fast food establishment who reported that a patron seemed intoxicated and might attempt to drive home. Upon arrival at the scene, officers asked the employee to step outside. The employee appeared intoxicated and smelled strongly of alcohol, but insisted that he walked there and had no intention of driving home. Officers asked him to call a friend to drive him home. The employee called a friend and tried to get the officers to speak with his friend but the officers refused. Because the employee appeared drunk and unable to take care of himself, he was arrested for being drunk in public. The discipline imposed in this case was a ten day suspension and a settlement agreement with the terms that should the employee fail to comply with the terms and conditions of this agreement, he will be guilty of Insubordination and recommended for discharge from his position with the Department. Additional terms of the settlement agreement include that the he abstain from use of all alcoholic beverages while employed by the Department and while off duty, he is not to enter any establishment whose primary business is selling alcoholic beverages, he must submit to substance testing up to five times a month, and seek professional evaluation and treatment through Behavioral Science Services (BSS).

Case BB

The employee, while off-duty, was spotted by outside agency officers passed out on the sidewalk and being cared for by his girlfriend. The officers took him to a detox center to allow him to recover without further police involvement, but shortly after he was dropped off, the employee was ejected for being uncooperative with the staff. He was then arrested for public intoxication. The discipline imposed in this case was an Official Reprimand.

Case CC

The employee, while off-duty, was ejected from a concert venue for refusing to stay in her seat. While being ejected, the employee was rude to security staff and caused a scene causing security staff to request aid from outside agency law enforcement. The employee appeared to be under the influence of alcohol due to her slurred speech, bloodshot eyes, and belligerent behavior. Outside agency personnel determined she was intoxicated and unable to take care of herself, so she was arrested for Drunk in Public and Disturbing the Peace. The employee claims she was not ejected or discourteous, but was simply accompanying friends who had been ejected. The employee did not report the arrest to her commanding officer. The discipline imposed in this case was a five day suspension and disciplinary settlement agreement with the term that if the employee fails to comply with the agreement, it will constitute Insubordination and will be

subject to a new charge and investigation. If the charge is sustained, it would be recommended that she be discharged from her position with the Department. Additionally, for a period of five years if the employee receives any future complaint of conduct where she is alleged to have committed acts that are the same and/or similar in nature to the allegations in this complaint, and the complaint is sustained, it would be recommended that she be discharged from her position with the Department. Lastly, for a year upon signing the agreement the employee agrees to abstain from the use of all alcoholic beverages while employed by the Department, submit to substance testing up to five times a month, and seek professional evaluation and treatment through BSS.

Case DD

The probationary employee while off-duty and several friends were kicked out of a night club. As the group was leaving, one of the employee's friends brandished the employee's weapon at the club's security guard and at an outside agency police officer, and as a result the group was detained and ultimately arrested. The investigation revealed that some of the employee's friends were known gang members, and the employee had open alcohol in his car. The employee claimed he did not know his friends were gang members, he was not sure how the alcohol got in his car, and that his weapon was not intentionally brandished. The discipline imposed in this case was termination.

Case EE

The employee appeared at a Computer Statistics meeting displaying symptoms of being under the influence of alcohol. His eyes were bloodshot and watery, and the odor of alcohol was on his breath. The employee claimed that he had five shots of alcohol the night before, had only four hours sleep, and had not taken his medicine for a medical condition. He claimed he had not had anything to drink since the previous night. A breathalyzer test revealed his Blood Alcohol Content (BAC) was 0.068/0.069, which would put his BAC at the time he drove that morning at 0.13. The employee was charged with on-duty intoxication and on-duty use of city vehicle under the influence. The employee was ordered to appear before a Board of Rights to determine what discipline if any should be imposed.

Case FF

The employee was off-duty and drinking with friends at a bar. He estimated he had consumed six beers. He then attempted to drive home and collided with a tree. Officers from an outside agency arrived on the scene and performed a field sobriety test, which the employee failed, in addition to displaying slurred speech, an unsteady gait, and red, bloodshot eyes. The employee was arrested for driving under the influence of an alcoholic beverage (DUI). The discipline imposed in this case was a Conditional OR with the condition that if he has another sustained DUI case he will be ordered to appear before a Board of Rights with a recommendation of termination.

Case GG

The employee while off-duty, was arrested for DUI. He passed away before a full investigation occurred; however, the allegations were Sustained with No Penalty due to his death.

Case HH

The employee was off duty when she met a friend for drinks at a bar. While driving home, a sergeant from an outside agency pulled her over for an expired registration. The sergeant asked the employee if she had been drinking, and she confirmed that she had two drinks that night. The employee's eyes were bloodshot and watery, and the sergeant smelled alcohol. After employee failed a field sobriety test, and registered a 0.164 BAC on a Pre-Alcohol Screening Test, she was arrested. The employee became very angry with the arresting officers and though she complied with their requests she was rude and demanding with the officers and flipped off one of the officers during the booking process. The discipline imposed in this case was a six day suspension.

Case II

The employee while off-duty was pulled over due to an expired registration, swaying between lanes, and travelling approximately 60 miles per hour in a 50 miles per hour zone. The employee claimed she only had one beer, and her driving had been erratic because she was using her cellular telephone. The employee failed a field sobriety test and was arrested for DUI. A breath test revealed her BAC was 0.18. The discipline imposed in this case was a COR with the condition that in the event that the employee has another sustained DUI case, she will be directed to a BOR with a recommendation of termination.

Case JJ

The employee, while off-duty, left his residence after having approximately three alcoholic beverages. While driving, the employee became ill and pulled his car over into an emergency lane, where outside agency officers spotted him and instructed him to pull off the highway. While investigating, officers determined that the employee was intoxicated and arrested him for DUI. As a result his license was suspended. The employee did not notify his commanding officer of his arrest in a timely manner, and continued to drive both on and off duty despite his suspended license. The employee claims he believed his license was still valid. The discipline imposed in this case was a ten day suspension.

Case KK

The employee, while off-duty, went to a restaurant, consumed several shots of alcohol over a three hour time period, left without paying the bill and drove home. A restaurant employee became concerned and called 911. The employee claims he lost his wallet and left the restaurant to go home to get money, but fell asleep when he got home. The next day he returned and paid his bill. He admits that he drank excessively and should not have driven home. The discipline imposed in this case was a COR with the conditions being that the employee shall participate in an alcohol sobriety program and any future sustained allegations of the same or similar nature will result in a recommendation of termination if found guilty.

Case LL

The employee, while off-duty, consumed a "couple of beers" and then took a nap and woke up and decided he felt well enough to drive home. While driving home, he lost control of the car and collided with three parked cars. When LAPD officers arrived on scene, the employee was arrested for DUI. The discipline imposed in this case was Conditional OR with the condition

“that if an act of similar nature to reoccur within his career, (if the allegation were sustained) it may result in a penalty of a suspension, up to being removed from his position as a police officer.”

Case MM

The employee while off-duty left a friend’s house after consuming alcohol and collided with a wall while driving home. When outside agency law enforcement officers arrived at the scene they noticed a strong smell of alcohol. The employee confirmed that she had been drinking, failed a field sobriety test, and was arrested for DUI. A blood test confirmed she had a BAC of .10. The discipline imposed in this case was a Conditional OR with the condition that if she engages in similar conduct she will be given a penalty from a 22 day suspension to termination.

Case NN

The employee was involved in an off-duty collision with another vehicle containing one person inside. When questioned by outside agency investigators on scene, the employee insisted that another unknown individual was driving his car (because he was too drunk) and that he was seated in the passenger seat. The civilian involved in the crash insisted that the employee had been driving. The employee failed a field sobriety test and was transferred to a hospital for treatment of his injuries. At the hospital, he admitted that earlier in the day he had five mixed drinks and five to seven beers at a friend’s house, and that he was in fact driving. He denied claiming that someone else had been driving, and admitted he did not recall many of the events that occurred between leaving his friend’s house and his arrest. A blood test performed two hours after the collision (the employee refused a blood or breath test earlier) showed his BAC was 0.26. The discipline imposed in this case was the employee was ordered to appear before a Board of Rights with a recommendation for termination due to the fact that this was the employee’s third alcohol-related complaint in eight years.

VII. REVIEW OF ADDITIONAL CASES

The OIG believed that the following cases may be of interest to the Commission, specifically concerning the use of the Conditional Official Reprimand (COR). OIG staff reviewed the investigation in each case, but did not listen to the tape recorded interviews.

Case OO

SUMMARY

In response to observed actions of a detention officer (employee) the Department initiated four allegations of misconduct, with adjudications as follows:

- 1) that while on duty, the employee was neglectful in his duty when he failed to properly secure unattended cell doors, Sustained;
- 2) that while on duty, the employee was in violation of Jail Division policies when he utilized his personal cell phone, Sustained;
- 3) that while on duty, the employee was inattentive to his duties when he was sitting back in a chair with his feet up on a desk and wearing headphones, Not Resolved; and
- 4) that while on duty, the employee was neglectful in his duties when he electronically closed a cell door on another employee, Not Resolved.

UNDISPUTED FACTS

While on duty and recorded by camera, the employee could be seen texting on his personal cell phone and failing to properly secure cell doors.

DISPUTED FACTS

The employee denied wearing headphones and placing his feet upon the desk. The employee also contends that another employee requested to have the cell door electronically closed.

ADJUDICATIVE ANALYSIS

The OIG believes that there was enough information obtained during the investigation to make a decision on all four allegations and we agree with the outcome; however, we disagree with the discipline imposed.

In addition to the Sustained allegations in this complaint, the employee has a prior history of inattention to duty consisting of 11 Comment Cards (CC) and 2 Notices To Correct Deficiencies, (NTCD) all of which were of a similar nature related to the current complaint. The employee also previously received a sustained complaint for an unsecured inmate and a cell door left open for which the employee received a 2 day suspension. As a result of the current sustained complaint, the employee received a 10 day suspension.

According to the investigation, the employee has been provided remedial training, and consultation by several superior and peer employees regarding the employee's lack of attention to duty and officer safety issues. Also, the employee has a history of workplace issues with the most serious issues related to officer safety, and a history of poor job performance related to attention to duty. Despite the counseling, additional training, CC's, NTCD's, and sustained complaints, the employee has failed to correct his job performance. The OIG questions whether the 10 day suspension is adequate, particularly in light of the Department's use of the COR.

Case PP

SUMMARY

This was a Department generated complaint consisting of nine allegations of misconduct on different dates. All of the allegations stated that Officer A, while on duty, submitted a Traffic Daily Field Activity Report (TDFAR) that he knew or should have known contained false information.

Officer A was assigned to a motorcycle traffic unit and assigned to a particular area of the city. Officer A documented on his TDFAR that he was monitoring traffic, or engaged in a different activity during certain times of the day. However, an audit of Officer A's identification card activations showed that Officer A was present at a station that he was not assigned to during the time period that he documented he was involved with other activity. An audit of the Kit room records at the unassigned station documented that Officer A also checked out a marked police vehicle on the days he was at the unassigned station during the same time period that he documented that he was at a different location on an activity. On each occasion he checked out a marked vehicle, Officer A used the marked vehicle to take a civilian employee to lunch.

UNDISPUTED FACTS

Officer A's TDFAR documented activity times that were in conflict with the activity registered with his identification card at the unassigned station. Officer A checked out a marked vehicle at the unassigned station on several different days. Witness A, a civilian employee who worked at the unassigned station verified that Officer A drove a marked police vehicle on several occasions when Officer A took her to lunch.

DISPUTED FACTS

Officer A denied the allegations. Officer A's explanation was that he frequently completed his TDFAR a day or two later and the times were estimations. Officer A said the times on the TDFAR were not false, they were inaccurate.

INVESTIGATIVE ANALYSIS

The I/O reviewed Officer A's TDFAR's for an entire year and noted that Officer A failed to submit a TDFAR on four dates during the time period reviewed. There was no allegation raised in regards to the TDFAR's not turned in.

ADJUDICATIVE ANALYSIS

The OIG believes that there was enough information obtained during the investigation to make a decision on all nine allegations and we agree with the outcome.

All of the allegations except for Allegation 5 were sustained. Allegation 5 was classified as Non-Disciplinary; Employee's Conduct Did Not Rise To The Level Of Misconduct. Officer A received a COR which stated that if the same misconduct occurred again, Officer A would receive a 22 day suspension, the loss of his motorcycle and downgrade to a Police Officer II.

Case QQ

SUMMARY

This complaint was made via correspondence from another city's Department of Public Safety. While on routine patrol an Animal Control Officer observed a stray dog without a collar or leash. The Animal Control Officer recovered the dog; however, the dog bit his hand, escaped, and ran towards a vehicle being driven by the accused employee (employee). The employee recovered the dog. The Animal Control Officer attempted to identify the employee as the dog's owner; however, the employee drove away with the dog. The Animal Control Officer summoned a co-worker and requested assistance locating the employee. The two Animal Control Officers located the employee's residence; the employee came out of his residence and denied that the stray dog was his. One of the Animal Control officers requested the assistance of an outside law enforcement agency. As a result, the employee was cited for required license and registration of an animal and verbally warned for interference with the duty of an animal control officer.

The Department framed four allegations, with adjudications as follows:

- 1) that the employee while off duty, unnecessarily interfered with the duties of an Animal Control Officer, Sustained;
- 2) that the employee unnecessarily interfered with the duties of an Animal Control Officer when he failed to stop, Sustained;

- 3) that the employee was discourteous when he stated, “All this for a f**king dog? This is crazy; I can’t believe this, this is bulls**t; you bastards,” Not Resolved; and
- 4) that the employee unnecessarily became involved in an incident with Animal Control Officers, which caused the response of an outside law enforcement agency, Sustained.

The employee received a COR with the condition that if he engages in any similar misconduct while off duty within the next five years, he will receive a penalty of at least 22 days suspended.

INVESTIGATIVE ANALYSIS

The OIG noted that the investigation stated that the employee admitted that he initially lied to the Animal Control officers about his ownership of the dog and about the dog’s whereabouts. The OIG believes that an additional allegation in regards to making false statements should have been framed, investigated, and adjudicated.⁵⁸

ADJUDICATIVE ANALYSIS

The OIG believes that Allegation 3 should have been Sustained. The employee has a clear pattern of Discourtesy complaints while on duty and one other Discourtesy complaint while off duty, and questions why this pattern was not weighed more heavily during the adjudication. Additionally, this employee was identified in one of the OIG’s prior reports where it was noted that this employee was going to be evaluated by a sub-committee of the Department’s Risk Management Executive Committee (RMEC). As of the date of this report, this employee is currently being monitored by RMEC and will be evaluated again in December 2011.

The OIG suggests that the COR could be clarified by defining “similar misconduct,” and also suggests that future misconduct not be limited to off-duty only.

Case RR

SUMMARY

The Department was contacted by the California Department of Justice (DOJ) which was conducting an audit of queries of the state’s Criminal Offender Records Information system. Based on an investigation of the information provided by DOJ, the Department alleged that the accused officer had accessed the database without authorization on one occasion. The accused officer admitted to accessing the system without authorization. Based on the officer’s interview, the adjudicator indicated that the officer conducted the unauthorized access for unique personal reasons and not for personal gain; therefore the penalty was an Official Reprimand. The OIG felt that the investigation and adjudication were sufficient.

⁵⁸ Additionally, the OIG noted that both of the Animal Control Officers stated that they smelled alcohol on the employee’s breath; however, even though the employee had been driving, the responding agency officers took no enforcement action.

Case SS

SUMMARY

This complaint was made by a front desk officer after a telephone conversation with the accused employee, a supervisor at another Area. During this conversation the accused employee allegedly told the front desk officer, “next time shut up and take the f***ing report.” The front desk officer reported the telephone conversation to his supervisor, who initiated the complaint.

This complaint led to one allegation, that the employee while on duty made an improper remark telephonically to a subordinate when she said, “next time shut up and take the f***ing report.” Based on the evidence collected in the investigation, the allegation was Sustained and the employee received a COR with the condition that if she commits the same or substantially similar misconduct within the next five years, she will receive at least a ten day suspension.⁵⁹

Case TT

SUMMARY

In May 2009, the accused employee (employee) was certified “Off-Duty” for medical reasons. The following day, the employee called Supervisor A (the OIC of the section) to advise that the employee would be coming to work to retrieve items from his locker. Supervisor A was not in the office so the employee spoke with Supervisor B who told the employee that when he came in, he would have to speak with Supervisor A. Supervisor B informed Supervisor A of his conversation with the employee. The employee then came to the office.

When Supervisor B saw the employee at the office accessing a Department computer, Supervisor B again instructed the employee to speak with Supervisor A. Supervisor B said the employee asked how to forward his work email to his home email. Supervisor B told the employee that he was not allowed to do this as it would be a violation of the Fair Labor Standards Act (FLSA).⁶⁰ Supervisor B left a message for Supervisor A about his contact with the employee. Supervisor C also saw the employee at work (after the employee’s regular End Of Watch), on his computer, on the Department email system. Supervisor C said the accused employee told Supervisor C that the employee “wasn’t officially working but he had gotten permission to do so” and had permission to “tie up a few loose ends.” Supervisor C notified Supervisor A of his encounter with the employee.

Supervisor A did not know if returning to work while off-duty was ever discussed with the employee. Further, Supervisor A did not see the employee the day he came to work after he was certified off-duty. When Supervisor A initially learned the employee was going to come to work Supervisor A felt he needed to seek advice from the Medical Liaison and Employee Relations Unit about giving the employee permission to come to work. Supervisor A intended to follow up with the employee the following day in this regard. According to Supervisor A, the employee

⁵⁹ This penalty was in part based on another complaint in 2010, in which the employee received a Sustained adjudication for an Improper Remark allegation. The employee received a penalty of an admonishment for that complaint.

⁶⁰ The investigation revealed that the employee’s work email was being forwarded to a secondary non-work email account since October 2008.

did not contact Supervisor A for permission to be at work, nor did Supervisor A give the employee permission to be at work.⁶¹

The Department framed six allegations against the employee, with adjudications as follows:

- 1) the employee refused to cooperate with multiple directives from Supervisor B to speak with Supervisor A about access to his work area; Sustained, as the employee “did not remember what he was told or who he spoke with;”
- 2) the employee refused to cooperate with management by reporting to work without authorization from Supervisor A; Sustained , same rationale as above, and employee agreed it was possible he did not speak with Supervisor A on the date in question;
- 3) the employee used his computer to access the Department Local Area Network (LAN) without authorization from Supervisor A; Sustained , same rationale as above, and employee did admit that he logged onto his computer on that date;
- 4) the employee provided false information to Supervisor C when the employee said he had permission to be at work; Sustained, supported by the documentation and, “The statements provided by [the employee] regarding his knowledge of the FLSA rules, or his right to be [at work] while on [off duty] status has no bearing on the validity of the allegations. The allegations do not speak to his right to be present in the facility or to be on a Department LAN computer. The allegations speak to his failure to follow instructions of a supervisor and then providing false information to a supervisor;”
- 5) the employee violated Department timekeeping policies by forwarding work emails to his personal email account; Sustained, see rationale below; and
- 6) the employee made false statements to complaint investigators when the employee said that FLSA rules had never been discussed with him or related to him in any way other than overtime issues; Sustained, see rationale below.

Allegations 5 and 6 were generated during the complaint investigation and were sustained based on the rationale that the employee said during his interview that prior to the date in question he had set his work email account to forward his work email to his personal email account. The adjudicator noted that the employee is an hourly employee and must be compensated for all time spent working. “Hourly employees are not allowed to forward work emails to personal accounts.” The adjudicator also said that the employee was “specifically asked about how the Department interprets FLSA rules. In response, [the employee] answered that it had never been discussed with him or related to him any way other than regarding overtime issues. In contradiction [the employee] has had numerous instances where he has been informed of FLSA rules beyond just the overtime compensation issues.” The adjudicator mentioned a policy the employee received and signed regarding FLSA and a previous complaint investigation in which the adjudicator said the complainant admitted to attending roll call meetings where the importance of Departmental timekeeping policies, established in reference to FLSA, were discussed. In that investigation, an allegation was Sustained against the employee for failure to follow FLSA rules. Finally, the adjudicator stated that “it is obvious [the employee’s] statements regarding FLSA rules were meant to mislead investigators regarding his knowledge of the topic.”

⁶¹ On the date the employee came to work, Supervisors A, B, and C each wrote an Employee Report (15.7) documenting the incident.

The adjudicator recommended discharging the employee. For Allegations 1 through 3 the adjudicator said that the employee did not contact Supervisor A, as instructed, regarding the employee's desire to come to work and access Department property and equipment while off-duty, and "[h]is failure to keep his supervisors properly informed could have resulted in additional City liability had he further injured himself while performing unapproved activities."

As to Allegation 4, the adjudicator said that the employee provided false information when he said he had permission to be at work when he did not. The adjudicator stated that the employee "shows he recognized permission to work was needed when he told Supervisor C that he 'wasn't officially working but he had gotten permission to do so,' knowing he had not received permission he provided false information to explain his presence."

As to Allegation 5, the adjudicator indicated that the employee ignored FLSA rules by forwarding his work email to his personal account thereby accessing "work related activities while off duty."

Finally, as to Allegation 6, the adjudicator said that the employee provided false information to the investigator regarding his knowledge of FLSA rules. Specifically, the adjudicator recognized that during the investigation the employee stated "he is a shop steward, represents employees in work place issues, gives advice to other employees regarding grievances and is personally familiar with workplace rules. However when dealing with questions regarding his own failure to follow Department rules and regulations he consistently claims ignorance. His responses to interview questions are untruthful; and self serving [sic]. [The employee's] pattern of unacceptable behavior continues even after many attempts at progressive discipline. His failure to take responsibility for his actions and change his behavior leaves no other choice but recommendation of discharge as the penalty. He has shown that his values and standards of personal conduct are incompatible with those of established by the department and the City of Los Angeles." The employee was subsequently discharged.⁶²

UNDISPUTED FACTS

The employee was placed off-duty in May 2009 and he was off duty during the time indicated on his Duty Certificate. The day after he was placed off-duty, he accessed the Department LAN/email. The employee had forwarded his work email to his personal email account "long before" and "a couple years prior" to the date in question and, at the time of his interview, was forwarding his Department email to his personal email account.⁶³ The employee was the shop steward and had given employees advice on grievances and had represented employees. Further, the employee acknowledged that he was required to get permission to work overtime and report any overtime worked.

⁶² The employee was discharged in a previous case; however the adjudicator indicated that the penalty recommendation in this case is discharge as well.

⁶³ In an I/O note, the I/O said that the Internet Technology Department confirmed that the employee was forwarding his email to a secondary account; however the I/O did not include documentation of the confirmation in the investigation. The OIG would have preferred if this information had been included in the investigation.

DISPUTED FACTS

The employee stated the following: he was not aware of his responsibilities when placed on Injured on Duty status; he did not remember having a conversation with Supervisor B on the date in question; he may have called the office to speak with Supervisor A, but didn't remember if Supervisor A was in; he did not recall talking with Supervisor B, including Supervisor B telling the employee to speak with Supervisor A upon arrival at work; he did not recall speaking with Supervisor A on the date in question; he did go to work, but could not remember on which date; he did speak with Supervisor B at work, but could not recall the topic of conversation, including the issue of forwarding emails to his personal account; he may have accessed the computer on the date in question to set his "out of office" auto-reply, but could not figure out how to do it; he denied asking Supervisor B how to forward emails to the employee's home and said he did not think Supervisor B told the employee he was not allowed to do this; he would have remembered if Supervisor B told him to speak with Supervisor A before forwarding the employee's email to his home; he did not recall a memo that said this was an FLSA issue; the employee recalled speaking with Supervisor C on the date in question, but did not remember telling Supervisor C that the employee had permission to be at work;⁶⁴ he did not think he was banned from coming to work as he was picking up personal items (information requested by his doctor, an extra cell phone battery from his locker, and to lock his locker); he did not think he needed permission to come to work, but remembered calling to speak with Supervisor A, although the employee did not remember with whom he spoke. When the I/O asked the employee if he obtained permission to access the LAN, he said he had never been restricted from using the LAN and did not know his off-duty status presented an issue in this regard. The employee said he went to work to get items from his locker and checked his email while he was there. Finally, the employee indicated that he did not have a work restriction which prevented him from walking into work and logging onto the computer.

INVESTIGATIVE ISSUES

The I/O did not follow up on a possible claim of retaliation by the accused employee.

During his interview, the employee's representative asked the employee questions which resembled the basis for a retaliation claim. In response to his representative's questions, the employee indicated that "several times" he had filed complaints against Supervisor B with Internal Affairs and that he had filed complaints against Supervisor B with the OIG and BOPC.⁶⁵ The Department's retaliation policy states in relevant part that:

Retaliation is defined as an adverse employment action taken against an employee for engaging in protected activity . . . Adverse employment actions may include, but are not limited to . . . the imposition of discipline . . . Protected activities include . . . [r]eporting misconduct of another

⁶⁴ According to the paraphrased statement, the employee later said he did not remember speaking to Supervisor C on the date in question. This issue was never resolved by the I/O.

⁶⁵ OIG staff searched TEAMS II and determined that the accused employee filed a complaint against Supervisor B in January of 2009, approximately five months before this complaint was initiated. Further, TEAMS II showed the employee filed a complaint against the adjudicator in this case approximately one month before this complaint investigation was initiated. Further, the employee indicated he had a worker's compensation claim against LAPD.

Department or City employee to the Office of the Inspector General, or any Department or governmental entity.⁶⁶

Although the employee did not make a claim of retaliation, the OIG believes that the line of questioning by the employee's representative and the employee's answers to those questions should have been enough to prompt the I/O into realizing that additional questions should have been asked to determine if a possible claim of retaliation was being described. The OIG would have preferred if the I/O had further probed the employee about his comments regarding filing complaints against Supervisor B and perhaps done some further investigation, such as exploring whether complaints had indeed been filed to determine if an allegation of retaliation was appropriate in this matter.

The investigation did not include evidence of the Department's policies governing an employee's ability to be in the workplace while off duty or that the employee knew that permission was required to be at work while off-duty.

The adjudicator knew that the employee had a previous investigation which implicated the Department's policies regarding FLSA overtime and off duty personnel in the workplace and appropriately identified this information in the adjudication. However, the I/O did not provide similar evidence as part of the investigation. The OIG believes that it may have been difficult for an adjudicator who did not have the same knowledge as the one in this case to sustain the allegations without evidence of Department policies regarding FLSA overtime and off duty personnel in the workplace and the complainant's knowledge of these policies.⁶⁷ The OIG would have preferred if that information had been included as evidence in this investigation.

ADJUDICATIVE ISSUES

The OIG agrees that the allegations are supported by a preponderance of the evidence. Regarding Allegations 1, 2, and 4, Supervisors A, B, and C documented their interactions with the accused employee and that documentation was done on the date in question (in contrast to the accused employee's statement which was given approximately three and one half months after the date in question). The three supervisors corroborated that they were informed of the employee's words and actions on that date, demonstrating that the employee did not follow the supervisors' orders and made a false statement to Supervisor C. For Allegation 3, the employee admitted that he accessed the LAN on that date. Finally, as to Allegation 6, the evidence and policies and procedures documented in the previous investigation demonstrated that the accused employee had knowledge of Department policies regarding overtime and was not forthcoming about this in his interview in this case.

Penalty

The OIG agrees that discharging the employee was appropriate. First, in a prior case, the employee was given a COR which stated in relevant part, "Another failure to comply with Department policies in regards to FLSA within the next five years of LAPD employment will result in no less than a 22 day suspension." The penalty in this case was consistent with the

⁶⁶ Department Manual Volume 1, Section 272.

⁶⁷ The OIG is not suggesting that the I/O should have sought the prior investigation, but rather provided the evidence independently.

COR.⁶⁸ Second, the OIG believes that discharge is an appropriate penalty for an employee with a Sustained allegation for making false or misleading statements because the employee's credibility as a witness could forever be questioned in any case that may go to court in which the employee may be have to testify.

VIII. RECOMMENDATIONS

The OIG developed two recommendations as a result of our review of the Department's investigations which were closed during the Quarter:

1. The OIG recommends that the Department again implement standards or guidelines for discipline to return a sense of objectivity, equality, consistency, and predictability to the discipline process. This would also provide the BOPC and the OIG with a yardstick with which to measure whether any imposed discipline was consistent with a Department standard.
2. The OIG recommends the Department, in its Report, differentiate between ORs and CORs so the public and BOPC will understand the actual nature of discipline imposed.

⁶⁸ Although the COR was not mentioned as a rationale for the penalty. Further, another case of misconduct was Sustained against the employee after he received the COR but before this case was initiated in which the COR was not followed. In that case, the CO recommended Discharge, however the COP imposed a nine day suspension. The COP who imposed the COR as well as the nine-day suspension was William Bratton.