

**LOS ANGELES POLICE COMMISSION**

***SUPPLEMENTAL REVIEW OF  
BIASED POLICING COMPLAINT  
INVESTIGATIONS***



Conducted by the

**OFFICE OF THE INSPECTOR GENERAL**

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SUPPLEMENTAL REVIEW OF BIASED POLICING COMPLAINT  
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**I. BACKGROUND**

Consistent with Paragraph III.B.3.a. of the Transition Agreement (TA), dated July 17, 2009, between the United States of America, through the Department of Justice (DOJ) and the Board of Police Commissioners (BOPC or Commission) for the Los Angeles Police Department (LAPD or Department), the Office of the Inspector General (OIG) was charged with conducting two reviews of the Department's policies and procedures pertaining to the prohibition of Biased Policing.<sup>1</sup>

The OIG completed the second report (Second Report), which was considered by the BOPC at its May 11, 2010, meeting. In connection with the Second Report, the OIG reviewed 11 cases that were closed during the Fourth Quarter of 2009 (October 1 to December 31, 2009) that contained at least one allegation of Biased Policing.

After the Second Report was provided to DOJ, DOJ conducted a document review pursuant to the terms of the TA and alerted the Commission and Inspector General to issues relevant to that report. Consequently, the OIG conducted a supplemental review of Biased Policing complaint investigations (Supplemental Review), reporting on the first ten cases completed by the Department's Constitutional Policing Unit (CPU), which was created in February of 2010. Operating under the Department's Internal Affairs Group (IAG), CPU is dedicated solely to investigating complaints containing allegations of Biased Policing.

The timing of the OIG's Supplemental Review was set in such a way so as to honor the time frame established by the parties to the TA as it relates to Biased Policing. Specifically, Paragraph III.B.3.c. of the TA provides as follows:

The period of review relating to the continuation of measures in place to prohibit Biased Policing shall terminate 18 months from the effective<sup>2</sup> date of this Transition Agreement, or forty-five days after the United States receives the last OIG review, whichever is later. However, in the event that an objection is filed by the United States at a time which would not permit the time line set forth in Section IV.A [which sets out the time table for the filing of and efforts to resolve any objections by DOJ] to be satisfied, the relevant period of review shall not terminate until and unless such objection is resolved by the Parties or the Court.

Accordingly, absent objections by DOJ that cannot be resolved by the parties or the Court, the review period by DOJ of the Department's measures to prohibit Biased Policing is currently set to expire on January 17, 2011, 18 months from the effective date of the TA.

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

<sup>2</sup> July 17, 2009.

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As will be discussed below, in the course of its ongoing review of the ten CPU investigations, there were several cases<sup>3</sup> where the OIG identified areas which we believed merited investigative follow up, whether in the form of additional interviews, gathering relevant documents, or other investigative efforts. The CPU promptly addressed our concerns, endeavoring to complete the requested investigative follow up<sup>4</sup> in time to allow us to evaluate their subsequent investigative efforts and include them in this Supplemental Review.

Moreover, with respect to two of the cases described herein, Case Nos. 3 and 8, the OIG has spoken to the Area and Bureau command regarding concerns with the initial adjudications of these complaints. In both cases, the Area and Bureau command have indicated that they will re-consider the adjudication of these complaints after further investigation has been conducted.<sup>5</sup>

We believe that these efforts on both the investigative and adjudicative level demonstrate that the process of effective civilian oversight by the Commission through the OIG as it relates to the Department's investigation of Biased Policing complaints is working. More importantly, we believe that the greater level of attention devoted to these matters by both IAG and the OIG, and the discourse between them with the common goal of enhancing the overall quality of these investigations, is consistent with a system contemplated by the Consent Decree and now the Transition Agreement.

## **II. CASE REVIEW METHODOLOGY**

DOJ requested that the OIG review the first eleven cases completed by the CPU. The OIG completed reviews of ten investigations completed by CPU<sup>6</sup>, as well as the Letters of Transmittal containing the recommended adjudication and rationale of the involved officer(s)' Commanding Officer (CO).

Unlike previous reports in which the OIG only included those cases in which we identified notable concerns with either the investigation or the adjudication, for purposes of this Supplemental Review, the OIG has included analyses of all ten of the CPU cases we evaluated. Our analysis and any concerns we identified in either the investigation or adjudication, as well as during the complaint intake process, are attached hereto in Addendum A.

In conducting this review, a matrix was utilized by first- and second-level reviewers. This matrix contained 60 questions designed to evaluate whether the investigators utilized the

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<sup>3</sup> Case Nos. 2, 5, 6, and 8.

<sup>4</sup> This occurred in three of the four cases. The CPU's supplemental investigation in Case No. 8 is still ongoing as of this writing.

<sup>5</sup> It is our understanding that, as it relates to Case No. 3, the Bureau will be making a request that further investigation be conducted in this case.

<sup>6</sup> We deselected one of the original ten cases we were provided because it was initiated almost two years before the formation of CPU and in response to litigation filed by the complainant in which it was alleged that an officer-involved shooting was racially motivated. However, that claim was subsequently dismissed by the plaintiff's attorney and the case was closed out by CPU. The OIG deselected this case because it significantly pre-dated the formation of the CPU and it did not involve substantial investigative efforts on the part of the CPU.

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appropriate Department Biased Policing Protocols, whether the investigation and adjudication properly addressed the complainant's allegation of Biased Policing, and whether the discipline imposed was justified and appropriate in light of the surrounding circumstances, the employee's disciplinary history, and applicable Department standards.

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

Since the majority<sup>7</sup> of the interviews in these ten cases were also transcribed, OIG staff also reviewed any transcripts of interviews that were included in all ten investigations.

### **III. FINDINGS**

#### A. Overview

As an introductory matter, we believe it is important to recognize that no investigation is "perfect" and that it is easier to judge than to perform the work to be judged. We make this observation both as it relates to the ten CPU investigations, as well as to the challenges LAPD officers face when they don their uniforms and go out into the field every day.

It should be noted that, based on the Department's numbers, the large majority of LAPD officers are not generating Biased Policing complaints. For example, Biased Policing/Racial Profiling<sup>8</sup> complaints represented four percent of all complaints closed by the Department in 2009, in a year in which Department employees made 194,674 arrests, issued 581,307 citations, and in which the Department's Communication Division responded to 789,366 calls. We believe that such numbers demonstrate that the large majority of the almost 10,000 sworn LAPD officers are performing their job in a professional manner.

We recognize, however, that police officers are human beings who come from varied backgrounds and life experiences, and there may be individual instances of Biased Policing within the Department. The Commission has indicated its commitment, through rigorous

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<sup>7</sup> Given the time constraints surrounding the completion of these cases, and specifically, the supplemental interviews conducted by the CPU either at the request of the OIG or on their own accord, some of these interviews were not transcribed in time for this Supplemental Review. However, the OIG listened to all tape recordings of supplemental interviews which were provided to the OIG as of the time of this writing.

<sup>8</sup> In 2009, the Commission approved the elimination of the "Racial Profiling" classification in favor of "Biased Policing" to cover Racial Profiling as well as a larger universe of prohibited activities.

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investigations by IAG and with strong oversight by the OIG, to identify such instances and ensure that they are dealt with swiftly and effectively. We also recognize that despite the relatively low numbers of these complaints, one complaint is too many, especially for those who believe they have been the victim of Biased Policing.

It should also be noted that the cases we reviewed herein represent the very first efforts of a brand new unit, which was created by the Department, on its own initiative, to address the need to enhance the quality of these investigations. We believe the initiative demonstrated by the Department in creating the CPU, and the resources and time they have devoted to the creation of and the investigations conducted by this unit, is indicative of their commitment to addressing Biased Policing complaints in a meaningful way.

Along those lines, we offer our observations herein as constructive criticism, in the hope that our comments will assist the Department as it strives to enhance its complaint intake, investigation, and adjudication process in this very important area. To paraphrase one of the DOJ monitors, if we strive for excellence, hopefully we can achieve greatness.

Overall we found these ten CPU investigations to represent a noticeable improvement from the Department's previous investigations of Biased Policing complaints. Among other things, most investigations contained a detailed listing of the facts in dispute as well as the facts not in dispute. In addition, the CPU investigating officer (I/O) in each case included a timeline of relevant events, with reference to related Department documents, such as Mobile Digital Computer (MDC) printouts, Daily Field Activity Reports (DFARs), or Incident Recall histories that were gathered and included as addenda to the investigation. Furthermore, each investigation included a "Standards of Review" section outlining the various Department policies and procedures, as well as relevant state, local, or federal statutes or case law authority relevant to the adjudication of the complaint and included as addenda in each investigation.

Further, the I/Os' questions had more depth and were more expansive than merely following the checklist of required questions. The questions asked demonstrated that the CPU I/Os understand the need to elicit detailed descriptions of the incidents from all parties interviewed, and their efforts were obvious from the interviews. Also, attempts were made to verify "facts" that were presented by the officers rather than accepting them at face value.

Moreover, the interviews of the complainant, the officer, and witnesses were recorded and transcribed, with the transcripts included in the investigation (with the exception of several supplemental interviews of the same witnesses). Finally, in the majority of cases, the CO of IAG included a recommended adjudication which was transmitted to the accused officer(s)' CO(s) for their consideration along with the completed investigation. In several cases described in Addendum A, the OIG believed the reasoning provided by the CO of IAG was instructive and referenced it in our analysis of the adjudication of the complaint.

Finally, the progression in the quality of the ten CPU investigations demonstrates that the CPU is on the right path. Accordingly, we have high hopes for future CPU investigations as they

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continue to learn from their previous investigations as well as the observations and input provided by the OIG as well as the Commission.

#### B. Specific Findings

Our review of these investigations revealed some common concerns, which we have divided into four major areas and which we believe merit discussion in this Supplemental Review. Our concerns are divided as follows:

- 1) Complaint Intake/Actions of the Responding Supervisor;
- 2) CPU Investigations;
- 3) Complaint Adjudications; and
- 4) The tone and tenor of the interaction between the complainant and the involved officers.

We discuss each area in greater detail below:

#### 1. Complaint Intake

The area supervisor/sergeant is often the first point of contact a complainant has with the Department's disciplinary system. This critical first contact can impact the complainant's impression of how seriously the Department will take their Biased Policing complaint. In that regard, we found the actions of the responding supervisor and/or the supervisor who initially took the complainant's Biased Policing complaint in six<sup>9</sup> of the ten cases we reviewed to merit further mention as part of our Supplemental Review.

##### a. Improper Comments By Intake Sergeant or Initial Responding Sergeant

In four cases, we believe that the complaint intake sergeant (or the sergeant with whom the complainant first had contact after the incident) made statements to the complainant which could have given the complainant the impression that the sergeant was less than objective in evaluating the complainant's concerns.

In Case No. 3, during the initial interview, the complaint intake sergeant asked the complainant if he was making a Biased Policing complaint because he wanted to get out of paying for the citation. This question did not come in response to anything the complainant said but rather unsolicited from the intake sergeant. It is unclear to us whether this question may have influenced the complainant's subsequent decision not to present his vehicle to the CPU I/O to inspect his windows, which the officers claimed were illegally tinted.

In Case No. 5, our review of the tape-recorded interview by the intake sergeant revealed that the complainant complained that he was racially profiled and that the officers had run him and his passenger because they were driving a nice car and were African-American. According to the

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<sup>9</sup> Case Nos. 1, 3, 5, 8, 9, and 10.

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face sheet of the complaint, the intake sergeant went with the complainant to look at the complainant's car and that the sergeant explained to the complainant that his windows were illegally tinted and, therefore, the traffic stop was justified. Further, from our review of the tape recording interview and the complaint face sheet, the sergeant told the complainant that the officers did not do anything wrong, that they were just following policy. However, the investigation subsequently revealed that there were some questions about the sequence of events in this case, including what actually brought the complainant to the officers' attention and, thus, this complaint was ultimately adjudicated as Not Revolved.

In Case No. 1, the complainant called the station to discuss the incident and asked the sergeant about the Department's normal procedure is when someone does not have a driver's license. The complainant said she was searched, handcuffed, and her car was searched. The sergeant informed her he would speak with the officers and call her back, but he also indicated that he knew the officer to be "a nice person." The complainant indicated that she thought, "I'm talking to the person [the officer] does lunch with . . . how is he going to see it like through another light?" The sergeant indicated he informed the complainant that he knew one of the accused officers for years, to which the complainant responded, "well, you've known them for years, you're likely --- would you like, be you know . . . protecting her?" The sergeant then also indicated he would speak with the officers.

According to the sergeant, he subsequently spoke with the officers who told him the complainant was belligerent, verbally challenging, and aggressive. The sergeant called the complainant back and, after answering some open ended questions about her demeanor, she responded that she did not give the officers an indication that she was a threat or was angry. The sergeant then informed her that "I think the officers followed proper protocol." The sergeant told the I/O he offered to take a formal complaint from the complainant, as well as referring her to IAG. The sergeant also said he indicated that "she seemed satisfied with the explanation I gave her," but there was also "certain hesitation in her voice." The sergeant's log attached to the investigation indicated that the complainant "seemed satisfied with my explanation [sic] had no further issues, concerns or complaints." However, the complainant wrote a formal letter of complaint to IAG two days later.

In Case No. 10, among other things, we believe that certain comments made by the sergeant, while not discourteous per se, were unnecessary and could have impacted the complainant's impression as to how his complaint would be treated. For example, at the end of his version of the events, the complainant told the sergeant, "Well . . . Officer [A] he basically . . . talked down to me, man." The sergeant responded, "You've already said that." Later, when the sergeant asked the complainant why he believed that the officers ran his license plate when they got behind his vehicle, the complainant said, "I mean its [sic] common sense." The sergeant responded, "No, I – we don't speculate good common sense."

#### b. Failure to Recognize that Biased Policing Complaint Was Being Made

In Case No. 9, the responding supervisor spoke to the complainant who said she believed she was singled out for citation among a group of people. Indeed, at one point she said, "The other

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people in that group are not my color.” She also stated, “I’m not an American, but this is just in [sic] race here.” Despite these comments, no complaint was taken at the scene. A notation from the sergeant on the face sheet, which was generated after the complainant called the station later and “voiced a complaint,” referenced the sergeant’s conversation in the field with the complainant as follows: “No further action and no alleged misconduct was brought to the attention of [Sergeant A] at that time.”

#### c. Discrediting Complainant within Complaint Face Sheet

In Case No. 8, we were concerned by what we believed to be an effort by the intake sergeant to challenge the complainant’s credibility in statements contained within the complaint face sheet. We believed the face sheet statements were not supported by the transcribed statements of the complainant’s conversation with the sergeant.

The complainant alleged that the officers noticed his race before they noticed that he was missing a front license plate. On the complaint face sheet, the intake sergeant indicated that when he and the complainant went to the intersection where the officers had initially seen the complainant, the complainant “acknowledged that he could see every front bumper/license plate at the intersection.” However, in the transcribed statement of the complainant’s tape-recorded interview with the sergeant, the complainant stated he could not say for sure whether the officers were able to see his front plate because he did not know what angle the officers were at when they initially observed him. Moreover, it appeared to us that the adjudicator apparently relied upon this initial mischaracterization when the adjudicator stated that the complainant “conceded that the accused officer may have seen the missing plate prior to the stop.”

## 2. CPU Investigations

### a. General Findings

Overall, we believe that the CPU investigations were more in-depth as compared to previous Biased Policing investigations conducted by the Department. We believe reasonable efforts were made to identify and interview relevant witnesses and to gather pertinent evidence.<sup>10</sup> Among other things, we found CPU’s inclusion of various Department documents (e.g., MDC printouts, DFARs, or Incident Recall histories) to be of great assistance to us in our review and assessment of the officers’ timeline of the events leading up to, and proffered justification for, the stop of the complainant, especially in Case Nos. 5 and 8.

We also found the inclusion of transcribed interviews of the complainant, accused, and civilian and sworn witnesses to be helpful in our review of these investigations. Moreover, the summaries of these investigations were comprehensive and easy to follow, despite the large and often conflicting volume of information included in these investigations. In several cases, the investigation included a map or a diagram denoting each witness’s version of their relative positioning when the officers first noticed and/or encountered the complainant or his/her vehicle.

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<sup>10</sup> We have been informed by CPU that there was no in-car camera video footage of any of the incidents underlying the ten investigations we reviewed.

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We believe these diagrams can provide the adjudicator with an additional tool to assess the justification for the stop, as well as any statement by an involved officer that he/she did not know the race of the complainant prior to the stop. We would strongly recommend that such diagrams be included in every Biased Policing investigation.

As a general matter, the CPU I/Os treated the complainants fairly and with respect, with a few exceptions described below and in Addendum A. Moreover, the CPU investigators asked the accused officers difficult questions and did not avoid pressing them to explain their answers.

Accordingly, we believe overall that the efforts expended by the CPU in connection with these ten cases demonstrate that they are not simply “going through the motions” when it comes to investigating allegations of Biased Policing. In fact, four out of the ten (40%) investigations conducted by CPU resulted in a Not Resolved finding of some or all of the Biased Policing allegations. We believe these results represent a shift from the previous concentration of Unfounded adjudications by Department COs.

However, we denoted several issues of concern which existed across several cases and were worthy of discussion in this report. They are described in more detail below.

#### b. Evaluating the Credibility of the Officers’ Non-Race-Based Justification for the Traffic/Pedestrian Stop

The one area we believe posed the biggest challenge for the CPU investigations was providing the adjudicator with sufficient information to adequately assess the officers’ proffered non-race-based justification for the initial traffic or pedestrian stop. We believe much of the challenge lay in not identifying and/or insufficient efforts to resolve inconsistencies in this area, both as between witness/officer statements, or as between the officers’ proffered timeline of events and that contained in the relevant Department documents and printouts.

For example, in Case No. 9, the complainant alleged that she was the victim of selective enforcement when the officer cited her for crossing against a flashing “don’t walk” signal. The CPU I/O chose to rely upon the complainant’s interview by the intake sergeant, in which she gave varying descriptions of whether she crossed with a group or after them. The complainant also gave inconsistent statements regarding the condition of the light when she stepped off the curb. An independent witness indicated that the complainant crossed the street legally and that she had a “green” light. However, the officer’s testimony was that the “walk” sign was white and the “don’t walk” sign was amber. Again, the investigation did not endeavor to reconcile this witness’s description of the condition of the light with that provided by the officer, as CPU did not conduct a follow-up interview with this witness. Moreover, though the witness indicated that the officer was not picking people to be cited that day based on either gender or race, this witness also stated, in describing the officer’s citing of the complainant, “[a]nd then another group went and the African-American lady was cited,” which we believe, without further elaboration and/or clarification by CPU, could support the complainant’s selective enforcement claim.

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In Case No. 4, the officer claimed he stopped the complainant because he had turned left against a “No Left Turn” sign and that he had backed up the wrong way on the street (“unsafe backing”). The complainant claimed the officer may have selected him because the officers did not see too many people in the area of the complainant’s race (Caucasian) and that the officer may have thought he was there to buy drugs. The I/O never asked the accused about this claim nor did the I/O ask the accused why he did not also cite the complainant for “unsafe backing.”

In Case No. 2, there is a reference in the complainant’s summarized statement to the complainant’s claim (which apparently occurred off-tape during an inspection by the I/O of the complainant’s vehicle) that the officer “cited him for the wrong section.” The I/O went on to reference the Vehicle Code (VC) section referencing the functioning of a vehicle’s lighting equipment and lamps, in contrast to the section listed on the complainant’s citation which references vehicle *reflectors*.

However, during their initial interviews, the I/O did not ask the officers further clarifying questions regarding what they meant when they stated they stopped the complainant for his “BO”<sup>11</sup> tail light. The officers were subsequently re-interviewed at the request of the OIG. However, neither officer could remember if the rear tail light had a burnt out bulb or cracked reflector lens.

In Case No. 7, the accused officers stated that they stopped the complainant because they observed him talking on his cellular telephone; the cellular telephone was in his right hand, and the complainant had no blue tooth device. The complainant, in his interview, stated he had a headset on his left side. When the I/O attempted to clarify, he asked, “Just one, on your *right* side?” to which the complainant responded, “Yes.” Moreover, the complainant indicated that, after one of the officers told him he was on the cell phone, “I put my phone down.” The I/O never clarified what the complainant meant by this nor the complainant’s seemingly inconsistent response of “no” to the I/O’s question that “the cell phone wasn’t in your hands?”

Further, the complainant alleged that the driver officer stated, after he approached the complainant’s vehicle, “I thought I saw you on your phone.” The driver officer denied saying that or that he heard the passenger officer make any comment of that nature. However, the I/O did not ask the passenger officer if he or the driver officer made any such comment.

Moreover, as discussed in more detail below, we did not believe the investigation effectively resolved where the officers were relative to the complainant’s vehicle when they first observed the violation and whether they would have been in a position to observe his race prior to or at the time they observed the violation.

In Case No. 10, the complainant was stopped waiting for traffic to clear so that he could make a left turn out of the parking lot. Specifically, the complainant stated that he was waiting for a bus to drive away that was across the street loading and unloading passengers. Also there was a large truck with its turn signal on, trying to make a right turn into the parking lot, and waiting at

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<sup>11</sup> It is our understanding that “BO” refers to “Bad Order.”

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the driveway for the complainant to turn because the truck was unable to enter the parking lot until the complainant left. Though the officers indicated they stopped the complainant because he was speeding through the parking lot and failed to yield and impeded traffic as he was coming out of the driveway, neither officer was asked about the bus and the truck described by the complainant nor to provide a description of any vehicles that were impeded by the complainant's vehicle.

Finally, in Case No. 8, the complainant was insistent that he was stopped by the officers because of his race and not because of the fact that he had no front license plate. Despite his adamancy, during the questioning of the complainant by the CPU I/O, the I/O persisted in attempting to get the complainant to acknowledge that he had no front license plate. The I/O asserted that, as such, it would have given the accused officer a legal reason to stop the complainant, regardless of when during the encounter the accused officer observed this violation. The I/O's posture was of concern in light of an apparent inconsistency between the officers' version of the sequence of events leading up to the stop, as compared with what was indicated on the MDC and Incident Recall printout for their unit for the time period in question. We did not believe the investigation fully developed the sequence of events in terms of the encounter with the complainant, especially in light of these documents, though the Department is currently conducting investigative follow-up in an attempt to clarify these issues.

#### c. Assessing the Credibility of the Officers' Claims that they Did Not Know the Race of the Complainant Before Conducting the Traffic Stop

We believe an important component in evaluating an officer's non-race-based justification for a particular stop is the credibility of the officer's claim that he/she did not know the race of the complainant prior to the stop. In several cases, we did not believe the investigation went far enough in exploring the officer's claim that he/she did not know the race of the complainant prior to the stop. Three such cases are described below.

In Case No. 7, although both officers denied knowing the race of the complainant prior to conducting the traffic stop, we believe that the investigation did not fully resolve potential inconsistencies regarding the officers' claims. According to the investigation, the complainant's windows were not tinted, it was daytime and sunny at the time of the stop, and the investigation revealed the officers had encountered the complainant previously, though neither indicated that they recalled the prior stop. We do not believe the investigation sufficiently clarified where the officers were relative to the complainant when they first observed the violation.

In Case No. 4, after the accused said he did not know the driver's race before making the stop, the I/O did not further question as to why the officer was unable to discern the race of the driver before initiating the traffic stop at issue. The officer indicated he was facing northbound, the complainant's vehicle was travelling southbound, and it was morning when the complainant was stopped (though the investigation did not reveal whether the complainant's windows were up or down at the time of the stop). The complainant stated that he believed the officer may have stopped him because he was a White man getting off the freeway and the officer thought that the

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complainant was there to buy drugs. We believe the I/O should have asked further questions of the accused about his professed inability to observe the race of the complainant prior to the stop.

In Case No. 8, the driver officer indicated he did not know the race of the complainant prior to stopping him. However, it was early afternoon, the complainant's windows were not tinted, his window was down, the partner officer indicated he believed he knew the race of the driver prior to the stop, and, by all parties' acknowledgement, the officers' car was perpendicular to the complainant's when they first noticed the car. The I/O did not probe the officer's claim that he did not know the race of the complainant prior to the traffic stop.

#### d. Questions of Uncertain Probative Value

Overall we believe the CPU I/Os treated the complainants with dignity and respect and that the range and tone of the CPU I/O's questioning should have provided the complainant with the impression that the CPU was taking their complaint seriously. We also recognize that the I/Os assigned to the relatively new CPU seem to be experimenting with new questions to pose to both complainants and officers in an effort to obtain relevant information to assist the adjudicator in evaluating these complaints. However, with the benefit of 20/20 hindsight, we believe the questions described below were of uncertain probative value, especially in light of the potential negative impact such questions could have had on the complainant's perception of how his/her complaint would be treated by the Department.

In two cases, Case Nos. 2 and 8, the I/O asked the complainant whether he would have similarly felt profiled if the officers were the same race as the complainant. The OIG informed IAG of our concerns about asking this unsolicited question. IAG responded that they believed this was an appropriate question so long as it was asked in a respectful, nonthreatening manner because complainants raise the issue of race and question the motivation of the officers for their enforcement action and that it was important to understand the complainant's state of mind. It remains the OIG's belief that the possible negative impact on the complainant by asking this unsolicited question, rather than in response to a specific comment by the complainant, outweighs any potential probative value of asking the question.

In Case No. 8, we believe that the I/O was overly persistent in trying to get the complainant to admit that he violated the law by having no front license plate, despite the complainant's claim that the officers did not see his missing plate prior to seeing his race. However, we have learned that CPU has since gone back and re-interviewed the complainant and may be conducting follow-up interviews with the officers. We are awaiting the results of those subsequent investigative efforts.

Additionally, in Case No. 7, the I/O asked the complainant if he had ever been stopped by an officer who was of the same race as the complainant. The I/O asked the complainant if he were in a "Hispanic" or "Asian" neighborhood, whether he would have thought he was "being stopped the same way" (though the I/O did not clarify what was meant by "the same way."). Again, we question the probative value of these questions.

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#### e. Leading Questions

In several investigations, we noted the use of leading questions by the investigators during their interviews of the accused officers or the complainant. Though we cannot speculate what impact, if any, the use of such questions had on the ultimate adjudication, we are concerned when they are utilized to gather information regarding what we believe to be material areas of the complaint. In two of the cases, leading questions were also framed by the employee representative. We recognize that employees have the right to have questions clarified by their representatives and that the Department allows the representative, as a matter of practice, an opportunity to ask questions at the end of an interview. However, we are concerned that in the scenarios below the representative asked a leading question in material areas which we believe should have more appropriately been asked by the I/O in the form of an open-ended question.

In Case No. 7, according to the complainant, one of the officers would not close the complainant's car door and would not let him leave. During questioning on this issue, the I/O asked the passenger officer, "So you were just advising him he should stay?" After he responded, "Yes," the I/O asked, "So at no time you denied him or stopped him from leaving? So you never stopped him from leaving?" The passenger officer answered, "No."

Moreover, toward the end of the first interview of the passenger officer, the I/O asked, "So there was no pretext stop involving [the complainant]?" When the officer asked for clarification, the I/O asked, "meaning maybe he could be a gang member?" When the passenger officer responded, "no," the I/O then asked, "[s]o his traffic stop was based solely on the violation?" to which the passenger responded, "yes, sir."

In Case No. 8, the complainant's claim was that the officers stopped him solely because of his race and not because he had no front license plate. When questioning the accused officer on this issue, we believe the I/O should have asked more open ended questions as opposed to the following exchange:

I/O:	Is stopping a person for no front license plate common for you?
Officer:	Yes.
I/O:	And you've written citations for no front license plates in the past?
Officer:	I have.
I/O:	And also for expired registration?
Officer:	Numerous.

In Case No. 10, during questioning by the I/O as to the accused officer's understanding of the authority which allowed him to order the complainant out of his car, the I/O's leading questions, interspersed with those from the attorney representative,<sup>12</sup> raised the question of whether the officer would have provided the same answers if asked more open-ended questions:

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<sup>12</sup> It is our understanding from IAG that they are establishing guidelines for their investigators as to how to prevent disruptions or improper interference by employee representatives in the course of officer interviews.

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I/O #1: [W]hat right do you have to have him step out of the car, order him out of the car?  
Officer: To maintain control or obtain control of the driver's action, the driver, before escalating or - -  
I/O #1: His actions brought concern to you?  
Officer: Yes. That's - - that's why I asked him to step out of the vehicle.  
I/O #2: Do you consider traffic stops dangerous?  
Officer: Yes.  
I/O #2: How - - do you and your partner discuss tactics on traffic stops.  
Officer: Yes, on several occasions concerning traffic stops.  
I/O #2: Do you sometimes feel that it's in a position of advantage for you to order an occupant or a driver out of a vehicle?  
Officer: Yes. When it requires us to do so. Yes.  
Representative: To your knowledge, have the courts held that traffic stops are inherently dangerous?  
Officer: Yes.  
Representative: And because they are inherently dangerous, the courts have allowed officers to order occupants out of the vehicle?  
Officer: Yes.

In Case No. 2, the issue of whether the complainant had tinted windows was relevant to the accused officer's claim that he could not see the race of the complainant prior to the stop. However, some of the questioning in this important area was conducted by the employee representative in a leading fashion. The relevant portion of the questioning is as follows:

I/O: Why were you unable to see who was in the vehicle?  
Officer: . . .  
I mean the windows are very tinted . . . .  
Attorney: . . .  
You said very tinted. You mean very dark?  
Officer: Yes . . . .  
Attorney: The windows are tinted in - in—very dark, too.  
Officer: Correct.  
Attorney: Based on the copies of the photos [the I/O] provided you?  
Officer: Uh-huh.  
Attorney: Okay.  
I/O: Now, is that based on what your thought process is right now or at the time of making the stop?  
Officer: A little bit of both, sir.

### 3. Adjudications

In addition to reviewing and assessing the quality of Biased Policing investigations, the TA requires the OIG to assess “whether the adjudication results were supported by the evidence” and “whether the preponderance of the evidence standard” was applied in these cases. We believe

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the adjudications of complaints to be an area of concern, at least as it relates to the ten cases we reviewed.

In six<sup>13</sup> of the cases we reviewed, the Biased Policing allegations were ultimately adjudicated as Unfounded (though in Case No. 1 some of the allegations were Exonerated). In two<sup>14</sup> other cases, the Biased Policing allegations were initially adjudicated by the Area as Unfounded but were “Militarily Endorsed”<sup>15</sup> by the Bureau to Not Resolved. In one case, Case No. 10, the Biased Policing allegations were adjudicated as Not Resolved by the Area; and in one case, Case No. 6, the Biased Policing allegation was adjudicated as Insufficient Evidence to Adjudicate.

Department Manual Section 3/820.25 defines these classifications as follows:

- **Unfounded:** When the investigation indicates the act complained of did not occur;
- **Exonerated:** When the investigation indicates the act occurred but that the act was justified, lawful, and proper;
- **Not Resolved:** When the investigation discloses insufficient evidence to prove or disprove clearly the allegations made.
- **Insufficient Evidence to Adjudicate** – The investigation could not be thoroughly or properly investigated.<sup>16</sup>

To Unfound a complaint means that the adjudicator has determined that the investigation reveals by a preponderance of the evidence that the allegations *did not occur*. We believe that is a difficult standard to meet, even under a preponderance of the evidence standard, and that it was not met in five of the six<sup>17</sup> cases we reviewed in which the Biased Policing allegations were Unfounded. Our conclusions as to the adjudication of each complaint are delineated in more detail in Addendum A.

As detailed above, to properly Unfound a complaint means that the adjudicator has determined that the investigation reveals by a preponderance of the evidence that the allegations *did not occur*. We believe that is a difficult standard to meet and that it was not met in the six cases we reviewed in which the Biased Policing allegations were Unfounded. Our conclusions as to the adjudication of each complaint are delineated in more detail in Addendum A.

As a general matter, our disagreements can be grouped into several common areas. First, in two cases, Case Nos. 7 and 9, one of which was ultimately Militarily Endorsed to Not Resolved, we do not believe that the Area’s reliance on generalized references to the demographics of the area

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<sup>13</sup> Case Nos. 1, 2, 3, 4, 8, and 9. However, it is our understanding that Case Nos. 8 and, possibly, 3, are being re-investigated and, thus, may be re-adjudicated at some later point.

<sup>14</sup> Case Nos. 5 and 7.

<sup>15</sup> When Bureau or Group commanding officers have insights or recommendations that differ from the first-level reviewer, any comments or recommendations are included in a separate Intradepartmental Correspondence which becomes a Military Endorsement.

<sup>16</sup> This may be caused by a lack of cooperation by the complainant and/or witnesses, or the absence of a critical interview which was necessary to proceed with the investigation, and/or the available physical evidence or witnesses’ statements are insufficient to adjudicate the complaint.

<sup>17</sup> We ultimately agreed with the adjudication of the Biased Policing allegations in Case No. 4.

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in which the complainant was stopped is a generally accepted method of evaluating whether an officer is engaging in racial profiling without also considering, for example, the racial demographics of the people who actually drive in and/or who visit the area.

In two<sup>18</sup> Unfounded cases, we believe discrepancies regarding the position of the complainant's vehicle or of the complainant relative to others when the officer first observed the alleged violation were not definitively resolved by the investigation.

In two other cases,<sup>19</sup> we did not think that the investigation definitively resolved questions raised by the complainant as to whether he/she was in violation of the specific VC section for which the complainant was cited. In one of these cases, we also believed that the investigation did not definitively resolve whether any officer "threatened" to cite the complainant for an additional infraction as a result of asking for a supervisor.

Finally, in two cases,<sup>20</sup> the allegations relied in part on related alleged improper remarks which led the complainant to believe that he/she might be the victim of Biased Policing. In both cases, there was either a video or audio recording of the accused officer's interaction with the complainant. The I/O in one case and the adjudicator in another concluded that the recordings demonstrated that the officer never made the comments alleged. However, in both cases, our review of the related recordings demonstrated possible gaps in the recordings and/or significant background noise which we believe did not support a definitive conclusion that these statements were not made. Accordingly, we caution investigators and adjudicators about relying on recordings to eliminate the possibility that a comment was made without considering the quality or completeness of the recordings.

#### 4. Tone/Tenor of Officer(s)' Interaction with Complainant

We believe that the tenor and tone of the interaction between the complainant and the accused officer(s) may have contributed to the complainant's perception that he or she was the victim of Biased Policing.<sup>21</sup>

In two cases, the driver of the vehicle who was stopped and cited for a VC violation was asked if he was either on parole or probation. In Case No. 7, the officers indicated they stopped the complainant for speaking on his cell phone in violation of the Vehicle Code. According to the complainant, the first question the contact officer asked the complainant, prior to asking him for his license, registration, or proof of insurance, was whether he was on parole or probation. The officer admitted asking the question but could not remember at what point he asked it. Moreover, the complainant alleged that the officers asked if they could search his vehicle and that after he said no, the officers requested his information so that they could give him a ticket.

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<sup>18</sup> Case Nos. 9 and 8.

<sup>19</sup> Case Nos. 2 and 9.

<sup>20</sup> Case Nos. 4 and 9.

<sup>21</sup> Regardless of the adjudication of the particular Biased Policing allegation(s), we believe such cases provide an opportunity for the adjudicator to explore the accused officer's communication skills. Such reviews can provide an opportunity for the Department to enhance the level of community service its employees are providing.

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Finally, the complainant indicated that one of the officers would not give the complainant his name, which presupposes that such a request was made by the complainant, though this question was not posed to the complainant by the I/O.<sup>22</sup>

In Case No. 5, one of the accused officers indicated that he “tried and ask[ed] [drivers] all the time” whether they were on probation.

In Case No. 1 after one officer asked the complainant twice if she could search her car, the complainant claimed the officer said, “Then I’ll just say I’m looking for your license.” The officer acknowledged asking her if the complainant had anything “illegal” in her car and that the complainant responded, “No, but you don’t need to go in there.” The officer then indicated that she was going to go into the vehicle and look for the complainant’s driver’s license.

In Case No. 4, after the complainant has become visibly upset that his car was being impounded, the accused officer appeared to become frustrated with the complainant. The complainant at one point stated, “I want to see your staff sergeant.” The officer responded, “No, No, No. You do not have that option” even though a supervisor was already en route. The complaint then responds, “I always have that right.” Another voice then said, “The sergeant is on his way.”

In Case No. 10, the complainant alleged he was asked about his possible gang affiliation after he was stopped for allegedly failing to yield and impeding traffic. The complainant said that the first question by the contact officer was whether the complainant was a member of a local gang. The complainant told the I/O “I’m not a gang member, have never been a gang member, and I’m not in any gang . . . so I didn’t appreciate that.” Both officers acknowledged asking the complainant about his possible gang affiliation at some unknown point during the encounter, though they claimed the decision to stop the complainant was because of the traffic violations they observed him commit not because of his appearance or possible gang affiliation.

In Case No. 3, the complainant, who was stopped for a tinted windows violation, indicated that the officers asked if they could search his car. The officers denied searching the car but were not asked if they asked the complainant if they could search his car.

In Case No. 9, the tape-recorded exchange between the complainant and the accused officer revealed that the officer initially asked the complainant three times for her name, without success. However, the recording also revealed that the complainant sounded quite upset about being cited when another lady, with whom the complainant described herself as “walking together” was not. Rather than first requesting a supervisor (which the officer eventually did) and/or recognizing that the complainant was upset and allowing her to calm down, the officer rather quickly informed her that “If you refuse to give me any information, then I’ll just take you . . . and book you into jail.” Even after the officer later requested a supervisor to respond to the location (to whom the complainant eventually provided the information), the officer again informed the complainant “what’s going to happen is if you refuse to give us any information, then you’re going to jail.” Though we are not disputing the validity of the officer’s statement,

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<sup>22</sup> Neither officer was asked a similar line of questioning.

we question the manner and timing of the officer's explanation, especially in light of the complainant's highly emotional response to being stopped and her expressed belief that she was the victim of selective enforcement. While we recognize that this officer may routinely encounter individuals who dispute the validity of their citations and/or want to argue with the officer, we believe there was a better way to interact with someone as upset as the complainant sounded on tape.

#### **IV. CONCLUSIONS**

We commend the Department for expending much time and significant resources in attempting to address Biased Policing concerns. First and foremost, we believe the Department's CPU is likely one of the only units of its kind dedicated solely to investigating these types of concerns. As discussed above and throughout the cases described in the Addendum, we believe the CPU understands the role and need for effective civilian oversight in this area and has demonstrated this understanding by its commitment to working cooperatively with the OIG to enhance the quality of these investigations on a real-time basis. They have been extremely receptive to our input and have demonstrated an openness to continuing to improve the quality of these investigations.

Moreover, we recognize that since the formation of CPU, substantial progress has been made in the quality of these investigations. However, we believe the issues outlined herein demonstrate that there is work remaining to be done. We look forward to continuing to work with the CPU in this regard.

At the invitation of the Director, Office of Operations, the Inspector General is in the process of addressing every Bureau Command staff meeting to inform Department COs (and the adjudicators of these complaints) about the Department's and the Commission's expectations relating to the investigation and adjudication of these complaints. In addition, the Inspector General has spoken on this topic at the Department's Command Development School, as well as divisional training days.

Recently, the Chief of Police has issued a notice to all employees reiterating his commitment to Constitutional Policing, the Department's anti-bias policy, and communicating his expectations of Department employees in this important area.

Further, in the course of our review, we noted two issues which we believe raise larger policy questions, and merit further discussion at some later juncture between the Commission and the Department.

First, we noted some confusion among officers, supervisors, and adjudicators regarding the current Department policy on impounding vehicles of unlicensed drivers. The most current Department Notice we located (included by CPU in Case No. 10) appeared to allow for exceptions to the mandatory impound rule in cases where, for example, the traffic stop occurred in the driver's driveway, or near a legal parking space in the vicinity of the driver's residence, or where a validly licensed driver was available to and given permission by the registered owner to

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operate the vehicle. Despite that, we saw evidence that various Department personnel were either unaware of, or not entirely familiar with, the exceptions provided in this Notice. We believe further clarification as to the current state of the Department's policy regarding the impounding of vehicles of drivers with suspended or expired licenses is merited, including any applicable exceptions to mandatory impounds.

Additionally, we noted that in several investigations the CPU I/O provided various documents relevant to the investigation (e.g., DFARs, MDC and Incident Recall printouts, and traffic citations) to the accused and witness officers prior to their interviews. We are concerned that providing such information before or at the beginning of such interviews, as opposed to at the point when the officers indicate a need to refresh their recollection, may lead to a situation where an officer relies too heavily on the documents, as opposed to his/her independent recall, to answer the I/O's questions. We believe this to have been the case in Case No. 7, where one accused officer repeatedly referred to such documents prior to answering the I/O's questions. In another case, the CPU I/O provided the videotape of the incident taken by the accused officer to the accused and witness officers' attorney as well as to the witness supervisor prior to their interviews. As it relates to the showing of video-tape<sup>23</sup> of an incident prior to an officer's interview, the OIG has been informed that IAG exercises its discretion as to whether to show any related video of a particular incident under investigation to the involved officers, according to IAG's best judgment and the needs of the investigation.<sup>24</sup>

We believe that there needs to be further discussion on this issue between the Commission, the OIG, and the Department as it continues to enhance its process for investigating Biased Policing complaints. Though we recognize that it may be difficult for an officer to remember, months after the fact, the one traffic or pedestrian stop among many that officer made on a weekly/monthly/yearly basis, we are concerned that providing the documents (including any video or audio tape of the incident) up front has the potential to color the officer's independent recollection of the incident. Accordingly, we believe the Department may want to consider coming up with a standardized policy and/or written guidelines regarding when and what documents to show the involved officers in connection with their interviews in these cases.

Finally, based on our review of the ten CPU cases and our general findings described above, we have made several recommendations for the Commission to consider, as follows. We look forward to working with the Department to implement any subsequent recommendations adopted by the Commission as a result of this Supplemental Review.

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<sup>23</sup> Department Special Order No. 45, currently under revision, addresses the issue of when Department generated digital in-car camera video footage can be shown to employees being interviewed in connection with a categorical use of force (CUOF) investigation, but its application appears to be limited to the video that is produced by the Department's digital in-car cameras.

<sup>24</sup> An example provided to us as to when such video might not be shown to an employee in advance of a complaint interview would be when IAG had reason to believe that the employee might not be truthful in the interview.

## **V. RECOMMENDATIONS**

We recommend that the Commission direct the Department to report back on the following:

- The training provided to field sergeants/supervisors regarding the intake of Biased Policing complaints, including identifying when such complaints are being made;
- The training provided to field sergeants/supervisors regarding interacting with the public/providing effective customer service;
- The training provided to all officers in field assignments in the area of interacting with the public/providing effective customer service;
- Any “lessons learned”/debriefing/follow-up training conducted by IAG/CPU as a result of the findings in this Supplemental Review;
- The training provided to Department Command Staff regarding the adjudication of complaints, and, specifically, Biased Policing complaints;
- Current Department policy on impounding vehicles of drivers with suspended/expired licenses, including any applicable exceptions to mandatory impounds;
- The training provided to all field officers and supervisors regarding this policy; and
- The Department’s proposal to address the question raised by the OIG regarding the practice in some CPU investigations of showing various documents (including videotape of the incident) to the accused and witness officers prior to their interviews.

## ADDENDUM A

### Case No. 1

#### SUMMARY

Two officers were on routine patrol one evening when they observed the complainant's vehicle with expired tags. The officers pulled the complainant over and determined that she did not have her driver's license with her. The complainant was removed from her vehicle, handcuffed, pat-down searched, placed in a police vehicle, and cited for expired registration.

The complainant subsequently mailed a letter to IAG, which led to eight allegations being framed. Specifically, the complainant alleged that she was unlawfully removed from her vehicle, unlawfully handcuffed and searched based on her race, unnecessarily placed in a police vehicle and unlawfully detained, and her vehicle was unlawfully searched. The allegations in regards to the unlawful handcuffing and pat-down search of the complainant based on her race were adjudicated as Unfounded. The remaining allegations related to the complainant being unlawfully ordered out of her vehicle, unnecessarily being placed in a police vehicle and unlawfully detained, and her vehicle being unlawfully searched were adjudicated as Exonerated.

The adjudicator reasoned as follows:

“[The complainant] was observed by [the accused officers] driving a vehicle with expired registration tabs. They initiated a traffic stop and discovered [that the complainant] did not have her California Driver's License (CDL) in her possession. The officers asked her to exit her vehicle to conduct further investigation and determine whether she had a valid CDL.”

“The officers had lawfully stopped [the complainant's] vehicle for a traffic violation and as a matter of routine may order her to exit the vehicle while they are conducting their investigation. This is permissible because of the potential for danger that results when an officer is unable to observe the movements of a detainee while seated in a vehicle. The U.S. Supreme Court in *Mimms vs. Pennsylvania*, 433 U.S. 54 L. Ed. 2d 331, 98 S. CT. 330 (1977), stated the officer actions were justified. ‘Establishing a face-to-face confrontation diminishes the possibility that the officer will be the victim of assault.’ The Court elaborated further and stated, ‘The hazard of accidental injury from passing traffic to an officer standing on the driver's side of the vehicle may also be appreciable in some situations. Rather than converse while standing exposed to moving traffic, the officer prudently may prefer to ask the driver to step out of the car and off onto the shoulder of the road where inquiry may be pursued with greater safety to both.’ Additionally, the Court weighed the safety issue and the intrusion into the driver's personal liberty and found the intrusion to be de minimus, since the driver is only being asked to expose to view only little more of her person than is already exposed. ‘What is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety (*Terry V. Ohio*).’

“The officer’s [sic] actions in this case were based on sound legal principles and sufficiently supported by case law. Therefore [the allegations in regards to the officers unlawfully ordering the complainant out of her vehicle] are properly classified as Exonerated.”

“Upon exiting her vehicle, the complainant became argumentative, uncooperative and confrontational. [The complainant] was directed to the sidewalk where one of the officers conducted a pat-down search. [The complainant] continued to ask why she had to exit her vehicle and questioned the reason for being detained. She abruptly stopped, threw her hands in the air, and asked if she was being arrested. When restraining an individual, officers must be cognizant of the possibility of the incident escalating to a potential threat to the officers. [The officer] decided to handcuff the complainant to de-escalate the situation and prevent the complainant from physically assaulting the officers. The principal reason for handcuffing a detainee is to maintain control of the individual to minimize the possibility of the situation escalating to the point that would necessitate using a higher level of force or restraint. This issue is thoroughly discussed in a Department Training Bulletin, November 2008, Volume XL, Issue 3. The complainant was not handcuffed because of her race. Her race or ethnicity never factored into [the officer’s] decision to handcuff [the complainant]. It was [the complainant’s] own hostility and uncooperative demeanor that led her to being handcuffed.”

“[The officer] also conducted a pat-down search [of the complainant]. This search was not motivated by [the complainant’s] race or ethnicity and was performed because [the complainant] displayed an aggressive and hostile attitude. An officer is justified in conducting a pat-down search to protect the officer and others from unexpected assault. A pat-down search is a search of the outer garments for weapons only, and is designed to balance alleviating the justifiable fear of violence to officers against the suspect’s legitimate expectation of privacy. The pat-down search is not performed as a matter of routine, but based on specific and articulable facts that cause an officer to reasonably suspect a detainee might be armed. Reasonable suspicion can arise from a variety of sources, such as the officer’s observations of the suspect’s demeanor during the stop. The totality of the circumstances must be considered when establishing reasonable suspicion. The factors that led to the [officer’s] “reasonable suspicion” were [the complainant’s] overt hostility to the officer, highly agitated state regarding the detention, sudden movements when exiting the vehicle and failure to comply with lawful directions.”

“Interestingly, when [the searching officer] was interviewed regarding the pat-down search, she was asked if she considered a pat-down a search. She replied, ‘No, I consider it a pat-down.’ When asked what she considered a search, she answered, ‘going inside [the complainant’s] pockets.’ [The partner officer] also responded similarly when asked if the complainant was searched. [The partner officer] did not believe a pat-down was a search. Although both officers did not believe the pat-down of [the complainant] was a search, it was nonetheless justified under the circumstance. This topic will be addressed with both officers as a training issue.”

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“[The complainant] alleged that the handcuffing and search were motivated by her race and ethnicity. However, the facts and evidence support that these allegations were not racially motivated and the allegations are properly classified as Unfounded.”

“[The complainant] was unable to produce a valid driver’s license during the traffic stop. [The accused officer] returned to [the complainant’s] vehicle and searched the seats, floorboard and center console for evidence of registration, proof of insurance or paperwork that could possibly identify [the complainant]. There is ample case law that allows officers to conduct such a search. ‘If a driver stopped for a traffic violation denies having a driver’s license or vehicle registration, officers may, prior to issuing a citation, enter the vehicle and conduct a limited search of the areas where such documentation reasonably may be expected to be found.’ (*Arturo D.* [2002] 27 Cal. 4th 60). Also, officers may conduct a search incident to arrest when it is ‘reasonable to believe’ that evidence related to the crime might be found in the vehicle, (*Gant* (2009) 129 S. Ct 1710, 1719, 1723). Although consent is always a valid basis for searching a vehicle, it was not required in this circumstance, and [the accused officer] had a legal justifiable right to conduct a limited search of the vehicle for identification and registration. Therefore, the allegation [regarding the complainant’s vehicle being unlawfully searched without the complainant’s consent] is classified as Exonerated.”

“[The accused officers] observed the complainant’s vehicle on a public roadway, displaying expired vehicle registration tabs. [The accused officers] conducted a lawful traffic stop based on their observations and detained [the complainant] when she stated she was not in possession of a driver’s license. [The complainant] became argumentative and hostile upon exiting her vehicle and she was handcuffed to de-escalate the incident. She was briefly moved to the police vehicle and placed in the back seat while a computer query was conducted to determine the status of her driver’s license and vehicle registration. A physical arrest may be made for a traffic infraction or misdemeanor under the authority of 40302 VC; however, officers are encouraged to use the authority only when absolutely necessary. The officers were able to establish [the complainant’s] identity through computer databases and she was subsequently released. [The accused officers’] actions were legal and proper under the circumstances and [the allegation regarding the complainant being unnecessarily placed in a police vehicle] is correctly classified as Exonerated.”

“Similarly, based on [the complainant’s] statement that she did not have a driver’s license in her possession and was unable to produce valid registration, the officers were justified in detaining her for further investigation to determine if she was a licensed driver. Fortunately, the officers were able to make the determination that the complainant was a licensed driver and they promptly released her with a citation only. The officers did not unnecessarily detain [the complainant]. The officers had ample probable cause to do so and their actions were justified and legal. Therefore, the preponderance of evidence supports the finding that [the allegations regarding the complainant being unlawfully detained by both officers] are best classified as Exonerated.”

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### UNDISPUTED FACTS

The complainant was ordered out of her vehicle and subjected to a pat-down search. The complainant was handcuffed and placed in a police vehicle, and her vehicle was searched. The complainant did not have her driver's license with her at the time of the encounter, and her registration had been expired for several months. During her CPU interview, the complainant claimed she did not believe she was stopped because of her race but rather because of her "tags."

The complainant indicated that one officer asked her whether she had any drugs or weapons in the car, to which the complainant stated she did not. The complainant alleged the officer asked if she could search her car, to which the complainant stated, "No." According to the complainant, the officer said, "Well . . . I can always just say I'm looking for your driver's license."

That same officer acknowledged asking her if she had anything "illegal" in her car to which the complainant responded, "No, but you don't need to go in there." The officer then indicated that she was going to go into the vehicle and look for the complainant's driver's license.

### DISPUTED FACTS

The complainant stated that the officers told her that she was given a pat-down search because they did not know who she was. However, the officer who conducted the pat-down search stated that the pat-down search was conducted on the complainant to search for weapons because the complainant's demeanor was aggressive, argumentative, uncooperative, and belligerent. The partner officer stated that the pat-down search was conducted because the complainant was not doing what she was requested to do, and the officers felt that there was a possibility that the complainant might have something on her that she could arm herself with. Both officers indicated that she did not immediately exit the vehicle after being asked to do so. The officers also claimed that after exiting the vehicle, the complainant stopped, suddenly turned around, threw her hands up in an "aggressive" manner, and asked "Why am I being arrested?"

The complainant denied being aggressive, argumentative, or uncooperative. Specifically, the complainant denied ever turning around. Though she acknowledged asking why she was being searched and handcuffed and admitted to once saying "this is bullsh\*t," she indicated that she followed the officers' directions. The complainant admitted to being upset but claimed she was mostly embarrassed and humiliated. The complainant also indicated she had been pulled over a few years previously by the California Highway Patrol for not having a front license plate. She indicated at that time she also did not have her license with her but she was not asked to exit the vehicle during that encounter.

### INVESTIGATIVE ANALYSIS

#### *Complaint Intake*

The OIG noted concerns regarding the intake sergeant's initial interaction with the complainant which we forwarded to the Department for their review and response as follows:

During the complainant's interview, she stated that the complaint intake sergeant said that he did not know one of the accused officers to act as the complainant described

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during the traffic stop. Moreover, the complainant said the sergeant told the complainant to “sleep on it” and, if she still wanted to file a complaint, to let him know. The OIG felt that this interaction might raise a training concern as the sergeant’s statement could be interpreted that he was less than objective in evaluating the complainant’s concerns. Accordingly, we believed this could have had the unintended effect of dissuading the complainant from making a complaint, if she believed it would not be evaluated fairly.

#### Area Response

The Area responded by saying that, “A ... concern was noted by the OIG regarding t[he complaint intake sergeant’s] conversation with the complainant when she called the station to inquire about Department policy and procedure during traffic stops. [The sergeant] provided an explanation to the complainant after speaking with the concerned officers and the complainant indicated she did not wish to make a complaint at that time. [The sergeant] told her to call him back if she had any other questions or concerns regarding the traffic stop. He never tried to dissuade her from making a complaint and offered to take a formal complaint from her, which she declined. However, the issue of the possible appearance of non-objectivity in evaluating [the complainant’s concern] was discussed with [the sergeant] . . . as a training issue relative to complaint initiation and discipline.”<sup>25</sup>

#### *CPU Investigation*

It should be noted that this was the first major investigation conducted by the then newly formed CPU. From the outset, the leadership of the CPU indicated that they welcomed and encouraged the input of the OIG in enhancing the quality of their investigations. Toward that end, even before it was conclusively determined that the OIG would conduct a review of ten CPU investigations, the CPU had provided the OIG with a copy of this, their first completed investigation, to solicit our input.

Initially, we identified some concerns which we forwarded to the Department and to which they responded. Those issues and Department responses which we believe merit inclusion in this Supplemental Review are delineated below. However, overall, the OIG believed that this was a commendable first effort by the CPU and, in particular, that the CPU questioning was thorough (with the exceptions noted below), relevant documents were gathered, including the various applicable Vehicle Code sections and Department policies, and that the I/Os applied the same level of objectivity to the questioning of the complainant as they did to that of the accused and witness officers. Indeed, we believe the I/Os made notable attempts to solicit relevant information from the accused officers to assist in a proper assessment of the legality and propriety of the officers’ actions. As the investigation noted, the officers had difficulty at times in articulation, which both the CO of IAG and the adjudicator properly recognized as requiring additional training.

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<sup>25</sup> The OIG has verified that documentation of this discussion with the employee appears on his TEAMS II report.

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#### 1. First Concern Forwarded to IAG

The officers were not asked during their interviews if either of them told the complainant that the reason a pat-down search was conducted was because they did not know who the complainant was. The OIG would have preferred the I/O to have asked this question of the involved officers to further explore this discrepancy.

##### IAG Response

Internal Affairs Group asserted that the complainant's opinion concerning the reason for the search was immaterial to the allegation. The searching officer articulated objective reasons why she decided to search the complainant. Even the partner officer's articulation for the reason to search is not as crucial as the officer deciding to do a pat-down search. In this case, the state of mind of the searching officer was key to understanding the search decision. The searching officer stated that the complainant had no identification. The partner officer asked the complainant to exit the vehicle. The complainant did not do as requested, requiring the searching officer to intervene as the covering officer and order the complainant to get out of the vehicle. When the complainant finally did exit the vehicle, the searching officer opined that the complainant was acting aggressively by turning around quickly, throwing her hands in the air. The searching officer stated that the complainant looked upset. The searching officer decided that it was reasonable to believe that the complainant might assault her and decided to place the complainant in handcuffs. The searching officer had to tell the complainant several times to not turn around and to not move. It was after the complainant was handcuffed that she was searched. The searching officer stated that she searched the complainant for weapons.

Similarly, the partner officer stated the complainant was searched because the complainant "was not doing what was being requested for her to do. We felt that there was a possibility that she might have something on her that she could arm herself with something. So we did the pat-down just to make sure – or my partner did."

Internal Affairs Group believed the articulation for the search was sufficient and concurs with the adjudication of the pat-down search allegation. There were several 'warning signs' that were present in this case. The complainant was driving a vehicle with expired tabs. She had no identification with her. When repeatedly asked to get out of the vehicle, she did not do so until the cover officer ordered her out of the vehicle. After that, she became angry. As stated in the Peace Officers' Legal Sourcebook,<sup>26</sup> "the courts are 'very supportive' of officers conducting pat-down searches for weapons." Internal Affairs Group believed there were sufficient salient and articulated reasons for the search.

#### 2. Second Concern Forwarded to IAG

The searching officer was not asked if she told the complainant that if she did not consent to a vehicle search that the searching officer could just say that she was looking for the complainant's identification. The partner officer indicated that she did not hear the searching officer state this to the complainant.

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<sup>26</sup> Hereinafter, this will be referred to as the "Sourcebook." It is available to all Department employees online.

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#### IAG Response

This concern was addressed in the investigation. In the searching officer's formal interview, she stated, "after I asked her the second time and she had told me that I didn't need to go into the vehicle, I told her that I was going to go into her vehicle to look for her driver's license."

"There is ample case law that allows officer to conduct such a search. If a driver stopped for a traffic violation denies having a driver's license or vehicle registration, officers may, prior to issuing a citation enter the vehicle and conduct a limited search of the areas where such documentation reasonably maybe expected to be found."

#### ADJUDICATIVE ANALYSIS

Much of the adjudicator's rationale is premised on one version of the events – that of the officers. However, the complainant denied committing the acts or engaging in some of the behavior which formed the cornerstone of much of the adjudicator's rationale: that the complainant was hostile, aggressive, and uncooperative. Though the complainant acknowledged asking why she was being searched and handcuffed, she indicated she was more embarrassed than anything and denied being aggressive. She also denied failing to comply with the officers' request to exit the vehicle and denied abruptly stopping, throwing her hands in the air and asking if she was being arrested upon exiting the vehicle nor did she ever indicate in her interview that she engaged in any sudden movements when exiting the vehicle.

Moreover, questions remain for us as to the officer's true motivation in searching the vehicle. The complainant and one of the accused officers indicated that the officer asked the complainant to consent to a vehicle search and when the complainant said no, the officer said she was going to search the car for the complainant's license.

Also, as noted by the CO of IAG, the investigation revealed that the officers had difficulty at times articulating the justifications for their actions subsequent to stopping the complainant, including being unclear as to whether a pat down search is a search. These collective concerns make it difficult for us to support the adjudicators' decision to Unfound or Exonerate the majority of the allegations in this case, though we do commend the command for recognizing the need to provide the officers with additional training regarding pat down searches.

As it relates to the allegations that the officers unlawfully ordered her out of her vehicle, given the low legal threshold to do so, coupled with the fact that the complainant's registration was expired and she did not have her license in her possession at the time of the stop, we do not disagree with the decision to Exonerate these allegations.

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### Case No. 2

#### SUMMARY

In the early evening, Officers A, B, C, D, and Sergeant A were driving to the station after making an arrest. Officers A and B were in one car with the arrestee. Officers C and D were in a second car, and Sergeant A was in a third car. The complainant was driving in front of one of the police cars. The complainant was pulled over and cited by Officers C and D for a violation of VC section 24252(a), which provides that, “All lighting equipment of a required type installed on a vehicle shall at all times be maintained in good working order. Lamps shall be equipped with bulbs of the correct voltage rating corresponding to the nominal voltage at the lamp socket.” The complainant was also cited for driving without proof of insurance.

Officers A and B drove to the station to book the arrestee. Officers C and D conducted the traffic stop, and Sergeant A pulled his car into a nearby parking lot to observe the stop.

The complainant believed he was the victim of Biased Policing and requested a supervisor. Sergeant A responded. The complainant told Sergeant A that he was stopped because of his ethnicity and that although he did not want to make a formal complaint, he wanted the sergeant to talk to the officers who had stopped him. A short time later, the complainant went to the police station to make a formal complaint, which was taken by Sergeant A.

Two allegations were framed, one each against Officers C and D, that they “unnecessarily profiled [the complainant] prior to writing him a traffic citation.” Both allegations were adjudicated as Unfounded based on the rationale that: 1) Although the complainant alleged that Officers C and D were next to him and could not have seen the violation, the investigation describes a set of circumstances where Officers A and B were next to the complainant and Officers C and D were directly behind the complainant and were in the proper position to observe that the complainant’s car had a “non-operating tail light;” 2) The complainant did not see Officers C and D behind him and assumed their vehicle was the same vehicle that had pulled alongside him; the investigation proved that that was not the case; and 3) Sergeant A saw Officers C and D conduct the traffic stop and witnessed the entire contact with the complainant.

#### UNDISPUTED FACTS

Officers C and D initiated the traffic stop and cited the complainant for a violation of VC sections 24252(a) and 16028. Some of the car’s windows including the rear were tinted, but the complainant was not cited for having illegally tinted windows. The complainant was not asked to get out of his car nor was he searched by Officer C or D.

#### DISPUTED FACTS

The complainant claimed that while he was driving in the number one lane, he saw several police cars. He stated that Officers C and D were driving in the number two lane and that when they passed the complainant on his right side he saluted them as a sign of respect, through his open window. The officer who was driving responded by making a “frowned face” toward the complainant, indicating a dislike of the complainant. As a result of this encounter, the complainant believed that the officers saw the complainant’s face and, therefore, knew his race.

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The complainant claimed that Officers C and D then slowed, pulled into the number one lane behind the complainant's car, followed him for approximately four blocks, and then initiated a traffic stop. The complainant believed he was stopped because of his race.

The complainant alleged that when he asked to speak to a supervisor, Officer D suggested that they cite the complainant for an additional violation of having tinted windows. The complainant believed this was to try to "intimidate" him.

Officers A, B, C, D, and Sergeant A all agreed that it was Officers A and B who were in front of the others, traveling in the number one lane to the left of the complainant, not Officers C and D. They all agreed that Officers C and D initiated the traffic stop.<sup>27</sup> Further, they agreed that Officers A and B did not stop but rather continued to the station to book the arrestee.<sup>28</sup> Officers C and D stated they did not drive alongside the complainant or make eye contact with him. Officers A and B remembered stopping at a traffic light next to a car and that Officers C and D were behind that car. Officer A remembered the color of the car and that the driver was a light-skinned male with a ponytail.<sup>29</sup> Officer B did not remember the car or the driver. Officers C and D indicated that they were unable to discern the race/ethnicity of the driver until they had stopped him and walked up to his car.<sup>30</sup> They maintained that the reason for the traffic stop was the complainant's "BO tail light" and not his race/ethnicity.

Both Officers C and D and Sergeant A indicated that the officers' mission that day was to maintain a highly visible presence by conducting traffic stops and other enforcement actions to deter illegal vending in the area.

### INVESTIGATIVE ANALYSIS

#### *CPU Investigation*

The CPU gathered relevant documents including the various applicable VC sections and Department policies. The I/O applied the same level of objectivity to the questioning of the complainant (with one exception noted below) as to that of the accused and witness officers.

However, we noted several investigative concerns described below.

#### a. Condition of the Complainant's Tail Light at the Time of the Traffic Stop

The condition of the complainant's rear light at the time of the traffic stop was central to evaluating the propriety of the officers' actions in stopping him. However, during his interview, the complainant's description of what was actually wrong with his tail light was not adequately clarified by the I/O. Initially, the complainant stated the officers told him that he was stopped "because of the broken lens on my . . . brake light." When asked by the CPU I/O whether his car

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<sup>27</sup> This was corroborated by the actual citation as well as the officers' Daily Field Activity Report.

<sup>28</sup> Documents included in the investigation showed that the arrestee was booked by Officers A and B.

<sup>29</sup> The complainant indicated he had a ponytail.

<sup>30</sup> The photos of the complainant's car included in the investigation show the car's back window to be dark.

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“has”<sup>31</sup> a broken lens, the complainant said that it did on the right side. Later, when asked by the I/O what he got a citation for, the complainant responded, “for the broken light.” Later, the complainant stated that when Sergeant A arrived, the complainant asked whether he could “take a look on the – on the -- see the light?” After looking, the complainant said he told Sergeant A, “But it’s broken light [sic].”<sup>32</sup>

This distinction is important because of the complainant’s claim in the complainant’s summarized statement contained in the investigation that the officer “cited him for the wrong section.”<sup>33</sup> Within the I/O’s summary of the complainant’s statement, the I/O references VC Section 24607(a), which provides in relevant part: “Every vehicle shall be equipped with at least one reflector so maintained as to be plainly visible at night from all distances within 350 to 100 feet from the vehicle when directly in front of the lawful upper headlamp beams.”<sup>34</sup> However, the complainant was cited for VC section 24252(a). The citing officer’s notes in the complainant’s citation included in the investigation indicate “B/O rt. [sic] rear tail light.”

Moreover, the photographs of the complainant’s car included in the investigation depict a light on the right rear side of the car as well as a long oval at the back of the car (directly beneath the trunk and spanning the length of the trunk) with lights surrounding the circumference of the oval, as well as two separate lights on either end of and within the oval. Although it appears from the photos that the I/O had the complainant demonstrate the operation of all of these lights, it remains unclear which specific light was at issue on the night of the traffic stop.

Furthermore, in their initial interviews, Officers C and D indicated that they stopped the complainant because his car had a “BO tail light.” No further information was solicited from the officers to describe the actual condition of the complainant’s tail light on the date of the stop. When we expressed these concerns to CPU, they re-interviewed Officers C and D to clarify this issue, as well as other issues brought to their attention by the OIG<sup>35</sup> (See below). According to CPU’s supplemental investigation, neither officer could recall “if the rear tail light had a burnt out bulb or cracked reflector lens.”

Sergeant A was similarly not asked to clarify his statement to the CPU I/O that the complainant was cited in part for the “BL [sic] tail light.”

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<sup>31</sup> According to the summarized statement of the complainant, the complainant stated he had replaced “the cracked rear reflector cover.” However, this claim is not contained within his transcribed interview. It is our understanding that this statement may have occurred during an un-recorded conversation between the I/O and the complainant when the I/O inspected the complainant’s car. See footnote below.

<sup>32</sup> English was not the complainant’s first language. Though the I/O noted that prior to the interview he asked the complainant if he wanted to be interviewed by a Spanish speaker, the complainant declined. We would have preferred if that declination had been on tape.

<sup>33</sup> This statement was not contained in his transcribed interview. Again, we believe this statement may have occurred during the I/O’s un-recorded conversation with the complainant during the inspection of the vehicle.

<sup>34</sup> VC section 24607(b) provides in relevant part that: “(b) Every vehicle, other than a motorcycle or a low-speed vehicle, manufactured and first registered on or after January 1, 1965, shall be equipped with at least two reflectors meeting the visibility requirements of subdivision (a).”

<sup>35</sup> It should be noted that the officers were re-interviewed by CPU quickly and with sufficient time remaining on the statute of limitations.

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#### b. Whether the Officers Threatened to Cite Complainant for Tinted Windows

The I/O did not pursue the complainant's claim that when he indicated he wanted to speak with a supervisor, Officer D suggested the complainant be cited for an additional violation for having illegally tinted windows. The complainant believed this statement was made to "intimidate" him. During their first interviews, the I/O did not ask either Officer C or D or Sergeant A about this allegation. However, during their second interviews, the I/O addressed this issue with both Officer C and D. Each denied that this statement was made.

#### c. Whether Officers A and B May Have Communicated with Officers C and D

To explore the possibility that Officer A or B in some way may have influenced Officer C and D's decision to stop the complainant, the I/O appropriately asked Officer A if he had any communication with Officers C and D regarding the person he had seen in the car next to him at the tri-light. However, during their first interviews, none of the other officers were asked about possible communications with each other regarding the complainant prior to the traffic stop. When the OIG brought this matter to the attention of the Department, the CPU agreed to explore this issue in second interviews with Officers C and D during which they both stated that there was no type of communication between the units regarding the complainant prior to the traffic stop. Moreover, at the OIG's request, the CPU conducted a supplemental investigation to determine whether there were any MDC messages between the involved units during the time in question. The CPU indicated that their search results confirmed that there were no "*to messages*" transmitted between the involved units around the time in question.

#### d. Hypothetical Question Regarding the Race of the Officers

Our final concern was that the I/O asked the complainant if he would have felt the stop was based on his race if the officers had been Hispanic.<sup>36</sup> When the OIG raised the same concern to the command of IAG in connection with another case referenced in this report, they responded that they believed this was an appropriate question so long as it is asked in a respectful, nonthreatening manner because complainants are raising the issue of race and the motivation of the officers for their enforcement actions. The IAG command also indicated that the officers are asked about their actions and if they acted the way they did due the complainant's race. Further, the IAG command indicated that it is important to understand the complainant's state of mind. If the complainant believed that actions were taken against him/her because of the officers' race, then that may go to the complainant's state of mind. Finally, the IAG command claimed that complainants have said some very racist things about officers of different races during the interview process or have insisted that someone of the same race as the complainant should conduct the investigation. The IAG command stated, "It is our duty to understand the entire dynamic of the incident . . . whatever that might be, on both sides of the complaint process . . . the officer and the complainant. Be polite and respectful . . . but ask the question."

Finally, IAG command indicated that "[I]f we sustain an allegation of Biased Policing it may result in a Board of Rights. [We] believe the defense would ask the question of the complainant

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<sup>36</sup> The complainant was Hispanic.

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party. [We] do not want to hear the answer to that question for the first time sitting in a Board of Rights (BOR). We prefer to ask questions we already know the answers to and prefer no surprises. Investigations also require looking towards dealing with issues during the adjudicative process . . . which is what BORs are.”

However, the OIG believes that the potential negative impression asking this question, unsolicited, rather than in response to a specific comment made by the complainant, may have on the complainant outweighs any potential probative value of asking the question.

#### *Complaint Intake*

The OIG noted that when Officers C and D requested a supervisor to respond, Sergeant A, who had witnessed their interaction with the complainant, was the one who responded to take the complaint. The OIG would have preferred if a supervisor who had not witnessed the traffic stop had responded to the scene and had taken the complaint later that evening.

#### ADJUDICATIVE ANALYSIS

Based on the issues noted above, we believe that questions remain unresolved about the precise condition of the tail light which the officers claimed led to their decision to stop the complainant’s vehicle. That, coupled with the unresolved issue of whether either officer “threatened” to also cite the complainant for having tinted windows as a result of him asking for a supervisor, raises questions about the officers’ motivation behind stopping the complainant. Accordingly, the OIG does not believe that a preponderance of the available evidence supports Unfounding the allegations in this case.

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#### Case No. 3

##### SUMMARY

At approximately midnight, two officers were on patrol when they observed the complainant's vehicle approaching from the opposite direction. As they passed one another, the officers noticed that the complainant's windows were tinted. The officers negotiated a u-turn and conducted a traffic stop on the complainant. The driver contacted the complainant and sole occupant of the vehicle and issued him a citation for tinted windows (in violation of VC Section 26708(a)(1)). The complainant stated that when the officer approached the window, he stated to the complainant, "I couldn't see you . . . your windows are too dark." Subsequent to the traffic stop, the complainant contacted Communications Division (CD) to make a complaint regarding the reason he was stopped. In turn, CD contacted an Area supervisor who interviewed the complainant during which the complainant alleged that because he was driving a nice car and is African American the officer racially profiled him and issued a traffic citation for a violation he did not commit. The CPU re-interviewed the complainant as part of the investigation.

This complaint led to three allegations being framed. Specifically, the complainant alleged an unlawful detention, a traffic stop based solely on the complainant's race, and that the officer failed to release the complainant from the traffic stop in a timely manner. All three of the allegations were adjudicated by the Department as Unfounded.

Specifically, the adjudicator reasoned:

"Nothing in [the complainant's] statement suggests that anything [the officer] did during the traffic stop was racially biased. [The complainant] initially believed that the stop was due to expired tabs. However, [the complainant] and [the accused officer] agree that [the accused officer] immediately informed [the complainant] that the stop was related to tinted windows. [The complainant] emphatically said that nothing [the accused officer] said indicated a racial bias. Both of the officers and [the complainant] remember that [the complainant] had to roll the windows down and keep them down so the officers could see into the vehicle. [The complainant] made conflicting statements related to when the windows were rolled down, but he agreed that they were down during the stop itself."

"The officers clearly articulated the reason for the stop. [The accused officer's] citation is consistent with the reason for the stop. There was no intrusion to the vehicle, and [the complainant] was not asked to step out nor was he searched. Finally, [the complainant] never presented his vehicle to a supervisor for inspection of the windows, although he agreed to do so. Ultimately, he allowed the court to handle the issue of the equipment violation, which is the proper venue for a contested ticket."

...  
"[The complainant] claimed that he was detained for 45 minutes during the citation, which if true most likely would be too long. However, according to Department records, the traffic stop was initiated at 6 minutes past midnight and lasted only 18 minutes, with the officers arriving at [the Area police] station 12 minutes after that. Communications Division contacted the watch commander at 0110 hours. The PSR (Police Service

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Representative) had already spoken with [the complainant] at length and had a lot of information including detailed concerns, citation numbers, and telephone numbers. There is a preponderance of evidence that [the complainant] was not detained as long as he alleged and that the traffic stop was of reasonable duration.”

#### UNDISPUTED FACTS

The complainant was issued a traffic citation for tinted windows. The complainant was immediately informed that the stop was related to tinted windows. Neither the complainant nor his vehicle was searched by the officers during the traffic stop.

#### DISPUTED FACTS

The complainant stated that neither his front driver nor passenger side window was tinted whereas the passenger officer said that the complainant’s “front driver window,” was tinted and the accused officer said the complainant’s front windshield was “very tinted” and the driver’s side window was tinted. The complainant believed that the traffic stop lasted 45 minutes; however, the officers stated that it lasted approximately 15 minutes. The I/O obtained an Incident Recall printout of the traffic stop which reflected that the total elapsed time of the stop was 18 minutes.

#### INVESTIGATIVE ANALYSIS

The Area sergeant conducted the intake interview with the complainant. The CPU conducted a subsequent interview with the complainant, as well as interviews with the involved officers, gathered documents, and completed the investigation.

##### *Intake Sergeant*

The OIG noted that during the intake interview with the complainant, the Sergeant, unsolicited, asked the complainant if he was making this allegation because he wanted to get out of paying for the citation. It is unclear whether this question may have influenced the complainant’s decision not to present his vehicle to the CPU I/O for inspection of the tinted windows or to further cooperate with the investigation. (See discussion below).

##### *CPU Investigation*

Overall, the OIG noted that relevant documents were gathered, including the various applicable VC Sections and Department policies and that the I/O applied the same level of objectivity to the questioning of the complainant as he did to that of the involved officers. Further, the I/O canvassed businesses at the location of the incident to determine if surveillance camera images from the date of the incident were available. Additionally, the OIG noted that the CPU I/O endeavored to inspect the complainant’s vehicle for tinted windows.

However, the OIG noted that the complainant stated that the accused officer asked the complainant if the accused officer could search his vehicle. The complainant did not give consent to the accused officer to search his vehicle, and the officer did not search the vehicle. Though the CPU I/O asked both officers if they searched the complainant’s vehicle, the I/O did not inquire whether either officer initially requested to search the complainant’s vehicle. We

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believe this is an important distinction and a question which should have been asked. Depending upon the officers' answers, there could have been further analysis regarding the officers' motivation and/or explanation for requesting to search the vehicle of someone who was stopped initially for a tinted window violation.

After the interview with the complainant, the CPU I/O made an appointment to meet with the complainant to take pictures of his vehicle, including his windows. The complainant did not keep his appointment nor attempt to reschedule the meeting. Subsequently, the complainant contacted the I/O and indicated that he wanted no further police contact regarding his complaint.

#### ADJUDICATIVE ANALYSIS

The inability of the I/O to assess the condition of the complainant's windows makes an analysis of the circumstances surrounding the stop difficult. Though the accused officer indicated that the condition of the complainant's windows precluded him from observing the race of the complainant prior to his approaching the complainant, again such an assessment is difficult without an analysis of the condition of the complainant's windows. As a basic premise, we would agree that the failure of the complainant to make his windows available for inspection by the I/O should be considered by the adjudicator in assessing the complainant's credibility.

However, the adjudicator may not have considered another possible explanation for the complainant's failure to make the car available for inspection – that the supervisor's unsolicited question regarding whether the complainant was making this complainant solely to get out of a ticket gave the complainant the impression that the Department was not taking his complaint seriously and that after two interviews there was no further point in providing his car for inspection. Accordingly, given this possibility, and the fact that the CPU I/O did not ask either officer whether they asked the complainant if they could search his car, we do not believe that a preponderance of the evidence supports Unfounding the two allegations of Biased Policing.

We have discussed our concerns with the Area and Bureau command who indicated that they will request further investigative follow up, and, depending upon the results thereof, may reconsider the initial adjudication of these allegations.

We do believe that a preponderance of the available evidence – e.g., the Incident Recall printout of the traffic stop – supports Unfounding the allegation that the accused officer failed to release the complainant from the traffic stop in a timely manner. However, if a supplemental investigation is conducted, the OIG would recommend that the investigator determine if there is any evidence that would indicate that the officers interacted with the complainant prior to going Code-Six, as noted on the Incident Recall.

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### Case No. 4

#### SUMMARY

Officer A, assigned to traffic enforcement, observed the complainant's car stop suddenly in the middle of the street, then back up northbound in the southbound lane.<sup>37</sup> The car then made a left-hand turn where a "No Left Turn" sign was posted. Officer A cited the complainant for a violation of VC section 22101(d) which states, "when official traffic control devices are placed as required in subdivisions (b) or (c), it shall be unlawful for any driver of a vehicle to disobey the directions of such official traffic control devices."<sup>38</sup> During the stop, Officer A determined that the complainant's license had been expired (according to the DMV printout included in the investigation, for over eight years). Officer A also cited the complainant for a violation of VC section 12500(a) which provides, "A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver's license issued under this code, except those persons who are expressly exempted under this code." Officer A impounded the complainant's car.

The complainant told Sergeant A that Officer A stopped him and impounded his car based on his race.<sup>39</sup> Further, when interviewed by the CPU I/O, the complainant alleged that Officer A stated,<sup>40</sup> "a White Boy shouldn't be living in this neighborhood." Officer A denied the allegations. Officer A was wearing a personal audio-video recording device and recorded the incident from the time he approached the complainant's car after initiating the traffic stop through Sergeant A's interaction with the complainant.<sup>41</sup>

Three allegations were framed: 1) Officer A initiated the traffic stop solely because of the complainant's race, 2) Officer A impounded the complainant's car solely because of his race, and 3) Officer A was discourteous when he called the complainant a "White boy."

The first allegation was adjudicated as Unfounded based on the following rationale: 1) the investigation determined that Officer A legally stopped the complainant for the traffic violations and not because of the complainant's race or ethnicity; 2) Officer A did not know the complainant's race prior to the traffic stop; and 3) though the investigation determined that Officer A did not know the race of the complainant prior to the stop, probable cause existed for the stop regardless of the complainant's race because the complainant admitted making the left turn and said he did not see the "No Left Turn" sign.

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<sup>37</sup> This was according to Officer A. The complainant never acknowledged this nor was he asked.

<sup>38</sup> Vehicle Code section 22101(c) provides, "When right- or left-hand turns are prohibited at an intersection notice of such prohibition shall be given by erection of a sign."

<sup>39</sup> The complainant was a White male. Officers A and B were African-American males.

<sup>40</sup> Though not fully clarified, the complainant at one point infers that someone else was present when this comment was made, indicating that "they were laughing," and "they were joking around with me."

<sup>41</sup> The audio-video tape recording was provided to the OIG as four separate audio-video files saved on two CD ROMs. Two of the audio-video files were on each CD ROM. There appeared to be a gap in the recording from the time each audio-video file ended until the next audio-video file began, including that segment which began with the complainant asking the officers what their badge numbers are after which he first appeared to make claims of racism by them. Finally, there are portions of the recording during which it is difficult to hear clearly what is actually being said, as well as significant background noise from the tow truck as the complainant's car is being attached to it.

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The second allegation was adjudicated as Unfounded based on the following rationale:

1) Officer A legally impounded the complainant's car because the complainant was driving without a valid driver's license, and Department policy requires that a vehicle be impounded when the driver does not have a valid license; and 2) nothing that Officer A did during the traffic stop would indicate that he impounded the complainant's car based on the complainant's race.

The third allegation was adjudicated as Unfounded based on the following rationale: 1) Officers A and B denied that Officer A referred to the complainant as a "White boy;" 2) the complainant was angry that he was stopped, cited, and that his car was impounded; 3) the two tow-truck drivers at the scene said that the officers were calm, courteous, and professional with the complainant, and they indicated that the complainant was upset and continuously asking the officers why they were impounding his car; 4) the complainant refused to accept the officers' explanation about why they were impounding his car; 5) a traffic supervisor went to the scene and attempted to explain to the complainant why the complainant's car was being impounded, but the complainant refused to believe his car was being legally impounded and resorted to making a complaint against Officer A; 6) the video clearly shows the complainant cajoling and pleading with the officers not to impound his car; and 7) the video shows the officers were patient, professional, and courteous.<sup>42</sup>

Moreover, that the complainant told the I/O that he no longer wanted to go through with his complaint and wanted to rescind his statements was also considered by the adjudicator.<sup>43</sup>

#### UNDISPUTED FACTS

Officer A<sup>44</sup> cited the complainant for a violation of VC sections 22101(d) and 12500(a). The complainant indicated on the videotape in response to Officer A telling him that there was a "No Left Turn" sign, "Oh gee, they blocked the road." During the complainant's interview with CPU, he stated, "I guess the sign says, 'no left turn' [between certain hours], at least that's what [the officer] said to me." The complainant's driver's license had been expired for over eight years. Finally, the complainant was neither handcuffed nor personally searched.

#### DISPUTED FACTS

While the complainant was retrieving items from his car, the complainant stated (as heard on the audio-video recording) that he tried to be nice about the situation, and in return, the officers

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<sup>42</sup> Based on our review of the video of the incident, the OIG disagrees that Officer A was patient, professional, and courteous. For example, at one point after the tow truck has arrived, Officer A appears to become frustrated with the complainant. The complainant states, "I want to see your staff sergeant." Officer A responds, "No, No, No. You do not have that option" even though a supervisor was already en route. The complainant then responds, "I always have that right." Another voice says, "The sergeant is on his way."

<sup>43</sup> Our review of the complainant's interview with CPU revealed that the complainant said upon reflection that he did not believe the officers' actions were racist and that he was upset they were going to impound his vehicle so he "just exaggerated the point." However, later in his interview, he also indicated that he still "kind of think[s] that" he was pulled over because he was White, "because I pulled off the freeway and they don't see any White people down here . . . and they probably think they're down here to buy dope or something . . ."

<sup>44</sup> Officers A and B were partners that day, although at the time of the stop, they had been working independently. Officer B did not witness the traffic stop nor did he initiate the process to impound the complainant's car.

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responded with “Black on White” racism. The complainant claimed on the video tape that he had seen officers “let Black people go,” that the officers impounded his car to make money for the City and pay the officers’ salary, and that they were picking on lower class people. The complainant said he had been stopped a month previously during a police checkpoint and that was when he had been informed that his license was expired.

During his interview with the CPU I/O for this investigation, the complainant indicated that he did not believe there was any reason to impound his vehicle because at the time of the traffic stop, the vehicle was parked legally in front of his building.<sup>45</sup> The complainant also claimed that Officer A stated, a “White Boy shouldn’t be living in this neighborhood.” The complainant indicated that initially he thought “they were joking around with me” but that he got upset when “they said `we’re going to impound your vehicle.” (It was not definitively established by the investigation as to who the “they” included). The tow truck driver denied hearing the officers make any inappropriate comments to the complainant, but the driver also confirmed that he “wasn’t really focusing on what they were saying.”

Officer A disputed the complainant’s allegations, including referring to the complainant as a “White boy.” The other witnesses claimed they never heard Officer A make such statements.

Officer A also indicated that the complainant backed up on the street before making the prohibited left turn at issue, which was “unsafe backing.” The complainant was never asked about this (he was interviewed first), nor was he cited for it.

### INVESTIGATIVE ANALYSIS

Overall, the OIG believed that the CPU gathered relevant documents, including the various applicable VC sections and Department policies,<sup>46</sup> interviewed relevant witnesses, and that the I/O applied the same level of objectivity to the questioning of the complainant as he did to that of the accused and witness officers, and that the CPU treated the complainant with respect. Additionally, the OIG noted that the CPU interviewed two employees from the tow truck company in an attempt to determine if Officer A referred to the complainant as a “White boy.”

However, we identified several investigative issues which we believe merit further comment.

First, while interviewing Officer A, the I/O asked if Officer A was able to see the race or gender of the driver before making the traffic stop. Officer A said he did not know the driver’s race before making the stop. The I/O did not further question Officer A as to why he was unable to discern the race of the driver of the car before initiating the stop. The OIG would have preferred

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<sup>45</sup> On the video tape the complainant asks the officer if the complainant could park “right there” and he points to an apartment building which is visible in the video and which he references as his address (though he also indicates that he is moving out into a friend’s house). Throughout the video the complainant asks several times if he could just park the car and at one point says, “All I have to do is pull up two feet.” The complainant then asks if he could get somebody to come and get the vehicle. He also asks if he could have his girlfriend come and pick up his things. The complainant also asks Officer A if Officer A could pull the vehicle up and park it in a legal spot. According to one of the tow truck drivers at the scene, the complainant’s car was in a loading zone and blocking a driveway.

<sup>46</sup> In a subsequent investigation, Case No. 10, the CPU included an additional Department notice, dated September 12, 2007, which we believe is relevant to the impound issue, discussed in more detail below.

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if the I/O had explored this issue further, especially since Officer A indicated he was facing northbound and the complainant's vehicle was traveling southbound. The OIG also would have preferred if the I/O had explored with Officer A the complainant's claim that he may have been stopped because he was a White man getting off the freeway and thought that the complainant was there to buy drugs.

Further, Officer A indicated that the complainant reversed, backing on the street before making the prohibited left turn at issue, which was "unsafe backing." The complainant was never asked about this claim (presumably because he was interviewed first), and the complainant was not cited for this. We believe Officer A should have been asked why the complainant was not cited for this additional observation.<sup>47</sup>

Finally, pursuant to the complainant's allegation that Officer A referred to him as a "White boy," the Department framed an allegation of Discourtesy. The OIG believes this allegation would have been more appropriately framed as an Ethnic Remark allegation.

### ADJUDICATIVE ANALYSIS

#### *The Decision to Stop the Complainant*

The OIG struggled with the adjudication of this allegation, in light of the investigative concerns noted above. First, we do not believe that Officer A was adequately probed as to why he could not notice the race of the complainant prior to the stop, especially given that they were facing in opposite directions and it was mid-morning. Moreover, though Officer A indicated he saw the complainant improperly back up on the roadway before making the illegal left turn, the complainant was not cited for "unsafe backing," and the complainant was not asked about this additional possible violation. Furthermore, Officer A was never asked about the complainant's claim that Officer A may have stopped him because "they don't see many White people down here," and the officer may have believed the complainant was there to buy drugs. Along those same lines, gaps in the video as well as our belief that the two independent witnesses were not in a position to hear the entire conversation between the complainant and Officer A make it difficult for us to conclude, by a preponderance of the evidence, that Officer A never referred to the complainant as a "White boy."

However, our review of the videotape also revealed that the accused officer immediately informs the complainant upon approaching him that "the sign back there said `no left turn.'" The complainant does not deny making a left turn, but instead says, "Gee, they blocked the road." (Later he says, "I didn't see no sign.")<sup>48</sup> During his initial contact with the complainant, Officer A asks no questions of the complainant regarding what he is doing in the neighborhood or, more specifically, whether he is there to buy drugs. Similarly, Officer A does not ask the complainant

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<sup>47</sup> California VC section 22106 provides in relevant part: "[n]or shall any person back a vehicle on a highway until such movement can be made with reasonable safety."

<sup>48</sup> The I/O noted in his Investigator's Chronological Record that he returned to the scene of the incident to confirm the existence of the "No Left Turn" sign.

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whether he is on parole or probation, nor does he initially order the complainant out of the car.<sup>49</sup> Officer A never searches the complainant nor does he handcuff the complainant. Finally, though Officer A in his interview claimed that he did an “inventory of the vehicle” “for valuables,” from our review of the video it appears that Officer A first offers the complainant the opportunity to “remove [his] personal belongings” before Officer A conducts any “inventory” of the vehicle.

Accordingly, we do not believe that any of Officer A’s actions upon his initial contact with the complainant are consistent with a suspicion that the complainant was in the area to buy drugs. Further, given that a preponderance of the evidence supports Officer A’s claim that he observed the complainant commit at least one moving violation, and, in light of the fact that Officer A’s primary assignment was traffic enforcement, the OIG does not believe that the adjudicator’s decision to Unfound the allegation that Officer A initiated a traffic stop on the complainant *solely* based on his race was unreasonable.

#### *The Decision to Impound the Vehicle*

During his interview with CPU, the complainant indicated that he began to get mad when his car was “hooked up.” Further, though the complainant in his CPU interview did say that, “as soon as my car was hooked up, yeah, that’s when I started to get mad,” he also stated, “I really don’t think it was a racial issue. I think I was more upset about my car being impounded, and I just exaggerated the point.” The complainant informed CPU that he had filed the complaint in part because he wanted to talk to a watch commander to see if the impound was legal.

As detailed earlier in this Review, we believe there may be some confusion among Department personnel regarding impounding the vehicle of an unlicensed driver. Our analysis included the review of a 2005 Department Order and a 2007 Notice, a Department Traffic Manual section, and the Vehicle Code. The 2005 Notice and the Vehicle Code provide that the impound is mandatory. The Traffic Manual and the 2007 Notice appear to allow for some discretion.

The adjudicator’s rationale referenced the 2005 Order as follows:

“California Vehicle Code section 14607.6(c)(1) makes the impoundment of a vehicle operated by an unlicensed driver **mandatory**. When an officer **observes** the operation of a motor vehicle by a driver and the driver is unable to produce a valid driver’s license when requested by the officer, the vehicle **shall** be impounded . . . .”

In contrast, the Department’s Traffic Manual currently available on the Department’s website, though dated June of 2004, provides in pertinent part that “[v]ehicles being operated by an unlicensed driver *may* be impounded when an officer has observed the operation of the vehicle in question.” (Section 3/1504; emphasis added).

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<sup>49</sup> Ultimately, when Officer A returns to the complainant’s vehicle after learning that his license is expired, Officer A asks him “to come on back here by my bike. I need to have you do a thumbprint.” Officer A also indicates in his CPU interview that he ordered the complainant out of the car for purposes of “impounding the vehicle.”

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The 2007 Notice indicates that it revises the 2005 Order and provides in pertinent part that: “[t]he decision to impound any vehicle must be reasonable and in furtherance of public safety.” It goes on to provide the following example:

“If the unlicensed driver is the sole occupant of the vehicle, it is both reasonable and in furtherance of public safety to prevent that driver from continuing the immediate and unlawful operation of the vehicle from the location of the traffic stop. If the traffic stop is conducted at a location other than the driver’s residential driveway or a legal parking space in the vicinity of the driver’s residence, impoundment would be warranted.”

Further, the Notice provides, in part, “[i]f both the registered owner and a validly licensed driver are present in the vehicle and the registered owner gives permission for the licensed driver to operate the vehicle, impounding of the vehicle is not appropriate.”

According to the 2007 Notice, it was drafted in response to the Ninth Circuit ruling in the case of *Miranda v. Cornelius*, 429 F.3d 858 (2005), which held that an officer cannot reasonably order an impoundment when the location of the vehicle does not create any need for the police to protect the vehicle or to avoid a hazard to other drivers.

According to the Legal Sourcebook, factors to consider can include: “Would the car be stolen, broken into, or vandalized where it was parked? Was it blocking a driveway or crosswalk? Did it pose a hazard or impediment to other traffic? Would leaving it there result in its immediate and continued unlawful operation by an unlicensed driver?” The Sourcebook indicates, however, that, “[o]ther courts have also noted the legitimate concern that an unlicensed driver could merely return to the vehicle and drive away.”

The Sourcebook concludes by stating, “the safest course of action would be to have an articulable reason why impounding a vehicle was necessary in addition to the statutory basis authorizing the impound.”

We would have preferred if the necessity of impounding the complainant’s car was explored in more detail by the I/O with Officer A. The address listed on the complainant’s citation was a half a block away from where the vehicle was being impounded (according to the impound report). On the video, the complainant is seen pointing to a building just up the street, indicating that is where he wants to park the car.

We recognize, however, that a preponderance of the evidence indicated that the complainant’s vehicle was not in a legal parking spot at the time of the stop, including the statement of one of the tow truck drivers and the complainant’s request on video to be allowed to park the vehicle in a legal spot and/or his reference to “pull[ing] [the car] up two feet.” Accordingly, it would not satisfy one of the relevant exceptions to impound referenced in the 2007 -- being in a legal parking spot in the vicinity of the driver’s residence. Indeed, the complainant indicates to Officer A on the video tape that he was living at the location “until a week ago” and that he was “moving his stuff out” and into a friend’s house.

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Further, allowing the vehicle to be parked near the complainant's former residence could create a legitimate concern that he would return and drive it, especially since he had not possessed a valid license for over eight years, and the complainant had already shown a willingness to drive the vehicle after being warned previously that his license was expired.

Finally, a "validly licensed driver" was not "present in the vehicle." Thus, the second relevant exception to impound outlined in the 2007 Notice would similarly not apply.

It seemed to the OIG that everyone involved with this investigation was been unaware of the 2007 Notice. During his CPU interview, Officer A indicated that he had no discretion not to impound the complainant's vehicle according to the Department's policy regarding unlicensed drivers and that was why Officer A refused the complainant's request that Officer A park the vehicle. Similarly, Officer B told the CPU I/O that he told the complainant that impound was mandatory when they stopped someone for "no license, suspended license or withheld license." In addition, Sergeant A in his interview indicated that he told the complainant "that [D]epartment policy said that the vehicle shall be impounded," because he was an unlicensed driver. Our review of the video tape reveals that all three police personnel can be heard at various points telling the complainant, in essence, that they had no discretion not to impound the vehicle in these circumstances. Finally, Officer A's CO, in adjudicating the complaint, referenced only the 2005 Order, which does not allow for any discretion to impounding a vehicle operated by an unlicensed driver.

Accordingly, we believe that a preponderance of the evidence indicates that Officer A likely *believed* that he had no discretion not to impound the complainant's vehicle. Moreover, the facts of this case do not appear to meet any of the relevant exceptions to impound outlined in the 2007 Notice. Accordingly, for these reasons, we agree with the decision to Unfound the second allegation that the accused impounded the complainant's vehicle solely based on the his race.

#### *Discourtesy Allegation*

Finally, we do not believe that a preponderance of the evidence supports Unfounding the third allegation. Officers A and B both deny the "White boy" comment having been said. The only independent witnesses, the tow truck employees, indicate that they either did not hear it or do not recall it being said. However, on the video, the officers and the complainant appear to be at varying distances from the tow truck employees during the impound process, and it is unclear to us whether these employees would have been in a position to hear the entire conversation between the complainant and Officer A (and possibly Officer B), especially given the background noise from the towing process .

Moreover, though this comment does not appear on the officer's video of the incident, gaps in the recording make it difficult for us to state by a preponderance of the evidence that Officer A did not make this remark.

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### Case No. 5

#### SUMMARY

According to Officers A and B, they were on patrol at approximately three in the afternoon. They were driving northbound and passed the complainant's car which was going southbound on the same street. Officer A observed that the complainant's car windows were tinted. California VC section 26708(a)(1) provides: "A person shall not drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied upon the windshield or side or rear windows."<sup>50</sup> Officer A asked Officer B to "run" the car's license plate. The query revealed that the car had outstanding warrants associated with it. Officer A initiated a traffic stop. The registered owner was a friend of the complainant, who was not in the car. The complainant was given a citation for tinted windows. The passenger was ordered out and ultimately arrested for the traffic warrants.<sup>51</sup> The complainant drove to the local station and complained to a sergeant that the windows were not tinted and that he had been stopped because of his race. According to the complaint face sheet, the complainant also indicated that it was not appropriate for the officers to conduct a warrant check on the passenger when he was not driving.

Four allegations were framed: 1) Officer A stopped the complainant based solely on his race; 2) Officer B stopped the complainant based solely on his race;<sup>52</sup> 3) Officer A arrested the passenger based solely on his race; and 4) Officer B arrested the passenger based solely on his race.

#### *Initial Adjudication by the Area*

The four allegations were adjudicated by the Area as Unfounded based on the following:

"The complainant and Officer's [sic] statements, and facts that are not in dispute in this matter provide far more than a preponderance of evidence to support a classification of Unfounded. Officer [A] observed a vehicle with front side tinted windows, in violation of the Vehicle Code and caused his partner, Officer [B] to run the vehicle for wants and warrants prior to conducting a traffic stop. The vehicle license query revealed two outstanding warrants associated with the vehicle in the name of [the passenger]. Officers [A and B], armed with sufficient probable cause, conducted a traffic stop and identified the two vehicle occupants. Complainant . . . was advised of the nature of the traffic stop and cited for the illegally tinted windows. By all accounts Complainant . . . was detained and cited without incident and in a legal manner. Likewise, the vehicle passenger . . . was advised of his outstanding warrants and arrested without incident as is expected of the officers absent exigent circumstances."

"Complainant['s] . . . assertion that his traffic stop and [the passenger's] arrest were based solely on his race is not supported by the evidence in this investigation. [The

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<sup>50</sup> VC section 26708(b)(1)(4) provides that it does not apply to "[s]ide windows which are to the rear of the driver."

<sup>51</sup> Per the printout included in the investigation, the warrants involved prior charges of failure to appear for driving with an illegal sound amplification device and driving with a suspended or revoked license.

<sup>52</sup> Although the officers stated that Officer A was the driver of the police car and that he observed the violation of VC section 26708(a)(1), the complainant made his allegations against both officers.

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complainant] explained during his interview, sometime later after the incident, that he thought he was being profiled because he was driving an Infinity G35. This assertion is perplexing as he does not explain the correlation between the type of vehicle being driven and the officers' motive for profiling such vehicles. Furthermore, it's clear that [the complainant's] motivation for making these allegations was his frustration or lack of understanding as to why his passenger was queried for warrants, given that the reason given for the stop was the tinted windows. Of course, we know what he didn't at the time, which is that the car had warrants associated with it and the officers did what officers are expected to do and try to identify the person associated with those warrants is [sic]."

"Complainant . . . stated he observed the officers in the . . . parking lot; made eye contact with one officer and it appeared that Officer [B] . . . ran the Complainant's vehicle license plate via the police in-car computer (MDC) as he was driving by his car. Neither officer recalled driving through the parking lot but did not discount the possibility; however, both officers denied observing the complainant, [the passenger], or the complainant's vehicle in the parking lot, and Department records confirm that Officer [B] did not run the complainant's vehicle license via the MDC. Another discrepancy in assessing [the complainant's] true motivation for filing this complaint and his credibility is the fact that when he first made the complaint at [the Area], he told the intake supervisor that his windows were not tinted. When the supervisor . . . asked to see his vehicle, he discovered that his windows were indeed tinted. [The complainant's] intake interview has to be given appropriate weight, in that it occurred the night of the incident, when [the complainant's] frustration with the incident and the motivation for complaining were fresh and untainted. Most importantly, other than the type of car he was driving, [the complainant] never explained or provided any evidence as to why he thought the officers were profiling him."

"The officers' conduct in this matter was reasonable and consistent with unbiased enforcement activities based on legitimate, articulable facts, supported by reasonable suspicion or probable cause, as delineated in Department Manual Section 1/345. Officer [A] observed a traffic violation and conducted a routine vehicle check revealing two warrants associated with the vehicle prior to the traffic stop. The officers' [sic] conducted the traffic stop with sufficient probable cause, detained and cited the complainant and arrested [the passenger] in the least intrusive manner, and did so expeditiously meeting the standards set forth in *Whren v. United States*, 517 U.S. 806 (1996), *Florida v. Royer*, 460 U.S. 491, *U.S. v. Sokolow*, 490 U.S. 1 (1989), Special Order No. 15,<sup>53</sup> March 31, 2009, and Training Bulletin, Volume XXXVIII, issue 1, April 2006<sup>54</sup> (Addendum 6, 8, 7 and 11, respectively)."

"Although complainant . . . believes that the officer's questioning and arrest of [the passenger] had nothing to do with the traffic stop and should not have occurred, his perception is contrary to normal police procedures and does not constitute Biased

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<sup>53</sup> This refers to the Department's policy prohibiting Biased Policing.

<sup>54</sup> This bulletin is entitled, "Legal Contacts with the Public."

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Policing. The preponderance of the evidence clearly supports the [Unfounded] classification.”

#### *Bureau Military Endorsement*

However, in a Military Endorsement, the Bureau recommended that the two allegations that each of the two officers initiated a traffic stop of the complainant based solely on his race be classified as Not Resolved based on the following rationale:

“The Letter of Transmittal indicated that both officers denied observing the complainant [the passenger] or the complainant’s vehicle in the . . . parking lot. During their interviews, neither officer could recall driving through the parking lot prior to the traffic stop. The evidence provided does not resolve the question if the officers observed [the complainant] prior to the traffic stop. The facts of the case do not support an Unfounded classification. [The Bureau] recommend[s] that Allegations No. 1 and 2 be classified as **Not Resolved**. Allegations No. 3 and 4 shall remain Unfounded.”

#### UNDISPUTED FACTS

The complainant was cited for a violation of VC section 26708(a). The passenger in the complainant’s car had outstanding warrants and was arrested. A picture of the complainant’s car included in the investigation depicted a tint on the front windows.<sup>55</sup>

#### DISPUTED FACTS

The complainant alleged that the first time he and the passenger<sup>56</sup> saw the officers was when he and the passenger were in a shopping center parking lot returning to their car. The complainant stated that the officers drove through the shopping center parking lot and observed him and the passenger as they were about to enter their car. The complainant claimed that at that time, the officers “ran the plates [on his car]. They looked at us. Watched us get in the car, and then they left out the parking lot.” The complainant indicated that he drove his car out of the parking lot and encountered the same officers again at a traffic stop sign a short distance away from the shopping center. The complainant was driving southbound and was stopped at a two-way stop sign waiting for the traffic to clear so that he could proceed. The complainant claimed that the same officers he had seen in the shopping center parking lot drove up to the same intersection as the complainant, and although the officers had the right-of-way driving eastbound, the complainant claimed that the officers stopped at the intersection and waived the complainant through the intersection after which they stopped him. The officers refuted the complainant’s statements regarding the direction they were travelling when they first saw the complainant. The officers said that they were driving northbound on the same street as the complainant when they first saw the complainant. Officer A stated that he saw the complainant’s tinted windows as he passed the complainant and that is when he had his partner run the complainant’s license plate.

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<sup>55</sup>Although the complainant initially said in his interview that he told one of the officers that he thought you could have light tint on the front windows, he later indicated, without prompting from the I/O, that “I probably made a mistake and we’re not allowed to have tint on the windows.”

<sup>56</sup>The I/O made several attempts to contact the passenger for an interview. The passenger never responded.

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The complainant alleged that one of the officers asked him if he was part of a gang. That officer indicated that he asked the complainant if he was on parole or probation, which question the officer indicated was “pretty common for [him] to ask,” especially since “the passenger appeared to be a little nervous, and a lot of times there is [sic] reasons why they’re nervous.”

The passenger was searched when he was ordered out of the car. Officer A indicated that he or Officer B ordered the passenger out of the car because the warrants belonged to the passenger and he was to be arrested and that once the passenger was arrested Officer B searched him.<sup>57</sup> The complainant corroborated Officer A’s version of the events indicating that, “they found out [the passenger] had a warrant . . . so [Officer A] tells his partner . . . the partner asked [the passenger] to step out. Turn around . . . searched him . . . and then [Officer B] put [the passenger] in handcuffs. . . .” However, Officer B indicated that when Officer A was at the police car checking for warrants, the passenger “was making furtive movements, moving around and appearing nervous.” Officer B also said that the passenger was “looking up and down around the vehicle, moving his hands and I couldn’t – I could just see his shoulders moving. I didn’t see his hands so I was, you know, at that point, it became a concern.” As a result, Officer B claimed he ordered the passenger out of the car. Officer B indicated that he then conducted a pat down search of the passenger, “To check for weapons” and “[b]ased on [the passenger’s] movements, he appeared nervous, and just for – to control the situation.”

### INVESTIGATIVE ANALYSIS

#### *CPU Investigation*

Overall, the OIG noted that the CPU questioning was thorough (with the exceptions noted below), relevant documents were gathered, including the various applicable VC sections and Department policies, as well as various Department records, such as MDC printouts from the officer’s unit, their DFAR, and the Incident Recall. Moreover, CPU made a commendable effort, via review of the various Department documents described above as well as going to the scene of the incident, and comparing the complainant’s version of the events to that of the officers, to attempt to establish an accurate timeline of events.

As a result of these efforts, IAG determined that the officers queried the complainant’s license plate number at “14:53:40, and broadcast their traffic stop at 14:56:00.” The stop occurred less than one half block away from where the officers stated they first observed the complainant’s vehicle. However, the amount of time which passed from the officers’ initial inquiry of the complainant’s vehicle to when they made the stop is two minutes. Accordingly, this raises the possibility that the officers observed the complainant’s vehicle earlier than when they claimed. We think the investigation notably identified this possible discrepancy.

We did, however, note a few issues with CPU’s investigation.

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<sup>57</sup> The OIG believed that Officer A articulated a lawful search incident to arrest.

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First, Officer A indicated that he first saw the complainant's tinted windows as they passed each other when the officers were driving northbound and the complainant was driving southbound. Additionally, Officer A said that he was not able to tell the race of the driver or if there was a passenger in the car prior to the stop. However, the I/O did not ask Officer A follow-up questions to explain exactly why he was unable to observe the race of the driver or the passenger.<sup>58</sup> Although Officer A indicated that the tinted windows prevented him from seeing the number of people in the car, it was unclear from the questions if this was the reason he could not initially see the race of the driver. Additionally, the officers stated that they were travelling northbound and the complainant was travelling southbound when they were both at the intersection. This suggested that the officers were facing the complainant when they first saw his car. There was no indication that the front windshield was tinted.

After observing the complainant's tinted windows, Officer A asked his partner to run the complainant's license plate. The query showed that there were two warrants associated with the car. However, when asked the reason for the stop, Officer A indicated that the officers initiated the traffic stop "for the initial violation involved with the warrant." The I/O did not ask Officer A to clarify what this meant.

Finally, the complainant believed that he had seen Officers A and B in the shopping center parking lot just before the officers stopped the complainant. The complainant said, "When the police car came through [the shopping center] they seen [sic] us going to the car and they stopped and they start typing in the computer."<sup>59</sup>

The officers stated that they could not remember if they had driven through the shopping center parking lot that day. They indicated that they patrol that parking lot often and that they may have driven through the shopping center parking lot on that day. The I/O probed this issue with the officers, but they maintained that they could not remember definitively. However, the OIG noted that the officers, particularly Officer A, appeared to remember many of the details that occurred during the traffic stop but were unable to remember if they had driven through the shopping center parking lot. The OIG would have preferred if the I/O had asked additional questions to evaluate the reasonableness of the officers' inability to remember if they had been in the shopping center parking lot that day, in light of all the other information they were able to recall about the encounter with the complainant.

### ADJUDICATIVE ANALYSIS

We agree with the Bureau's decision to adjudicate the allegations that the officers initiated the traffic stop solely based on the complainant's race as Not Resolved. We base our conclusion in part on the Bureau's rationale. In addition to the officers' professed failure to recall having driven through the parking lot prior to the traffic stop, we believe that the rationale utilized by the CO of IAG, in recommending that these allegations be Not Resolved, is instructive:

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<sup>58</sup> According to the complainant, it was raining off and on that day.

<sup>59</sup> However, the MDC request by the I/O was limited to locating any query by the officers' unit of the *complainant's* license plate. In order to eliminate the possibility that the officers could have been running someone else's plate on their MDC while in the shopping center, the OIG believes the I/O's MDC request should have been broader.

“The facts of the case, including the timeline and [the complainant’s] assertion that the officers first saw him and [the passenger] in the [shopping center] parking lot, leave questions about when and where the officers first made their observation.”

“This investigation was compounded by several factors; namely time, location [the complainant’s] account, Officer [A’s] account, Officer [B’s] inability to recall, and [the passenger’s] refusal to cooperate. These factors can be analyzed by examining two possible scenarios:

1. The officers ran the vehicle prior to the complainant entering it and then followed the complainant as asserted by the complainant; or
2. The officers ran the vehicle after they stopped the vehicle. They did not go “code 6” until they had already approached the complainant and obtained his license. Considering the fact that the traffic stop occurred one minute prior to the complainant’s name being run, this scenario is most likely.”

**“Scenario 1:** According to [the complainant], he and [the passenger] were in the [shopping center] parking lot . . . about to enter their vehicle. . . . Officers [A] and [B] entered the parking lot . . . and drove slowly by [the complainant] and [the passenger] as they stood outside of the parked [car]. As the black and white passed [the complainant] and [the passenger], Officer B appeared to be typing. The black and white exited the driveway . . . and turned right . . . out of sight.”

“[The complainant] and [the passenger] entered their vehicle and exited the shopping center . . . . They turned right . . . and stopped at the limit line of [a stop sign]. [The complainant] saw Officers [A and B] stopped [at the same intersection]. Officer A motioned with his hand for [the complainant] to proceed . . . where [Officer A] conducted a traffic stop . . . .”

“[The complainant] asserted that he was racially ‘profiled’ when the officers drove through the shopping center and saw two young male Blacks getting into [the car].”

**Scenario 2:** According to Officer A, he and [Officer B] were traveling on [the street] when they first saw [the complainant and the passenger] . . . . As the two vehicles passed each other, [Officer A] observed the tinted windows. Officer A negotiated a U-turn, followed [the complainant and the passenger] . . . and conducted the traffic stop . . . . Initially Officer[A] was adamant that he first saw the violation when the two vehicles passed each other in opposite directions.”

“By Officer [A’s] own admission, he and his partner failed to broadcast their Code-six location immediately. [Officer A] activated the emergency lights, pulled [the complainant] over, approached him, collected his identification, and returned to the black and white to query [the complainant’s] status. It was then that [Officer A] realized his Code-Six status reminded [Officer B] to broadcast their traffic stop location. When [Officer A] was re-interviewed, he stated that although he did not recall driving through

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the [shopping mall], he could have driven through the parking lot because he patrols it frequently.”

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“The fact that [Officers A and B] queried [the complainant’s] vehicle license plate at 14:53:40 and broadcast their traffic stop location at 14:56:00, 2 minutes and 20 seconds later, begs the question did the officers drive through the shopping center and see [the complainant] and [the passenger] before they entered their vehicle? The evidence provided in this investigation does not resolve that question. Because there is insufficient evidence to clearly prove or disprove the allegations, I recommend that Allegations 1 & 2 be classified as *Not Resolved*.”

Despite the notable efforts by the CPU I/O to establish the true sequence of events, the investigation was ultimately unable to do. Accordingly, the OIG believes that Allegations Nos. 1 and 2 should be adjudicated as Not Resolved.

We believe that a preponderance of the evidence supports Unfounding the allegations that the officers arrested the complainant’s passenger based solely on his race. The passenger did not respond to the CPU’s efforts to contact him for an interview. Moreover, there is no information in the investigation to indicate that the complainant was aware that at the time the officers made contact with the his vehicle, they had already received information that the vehicle had two outstanding warrants associated with it, in the name of a male Black (the passenger’s race and gender), and in a different name than that of the registered owner. Finally, both officers indicated that the passenger was cooperative during their encounter with them; it was the complainant who appeared upset.

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### Case No. 6

#### SUMMARY

This complaint was first brought to the Department's attention from a third party complainant who was the boss of the person involved in the encounter with the officers.<sup>60</sup>

The complainant was working the night shift at his job.<sup>61</sup> Upon returning from his break, the complainant stated that he was stopped by two unknown LAPD officers. The complainant alleged that the officers ordered him to drop his cellular telephone onto the ground and place his hands in the air and that he was handcuffed and given a pat-down search. The complainant also stated that one of the officers removed the complainant's wallet from the complainant's pocket to get his identification. The complainant stated that one of the officers took the complainant's keys and entered the complainant's vehicle. The complainant stated that after this occurred one of the officers returned the complainant's property, un-handcuffed and released the complainant. The complainant stated that one of the officers told the complainant that the reason he was detained was due to the complainant standing outside his vehicle and looking through the window as if he were going to break into the vehicle. The complainant stated that the officers said that there were a lot of car break-in's in that area. However, the complainant believed that the enforcement actions were based solely on his race.

This complaint led to four allegations being framed. Specifically, the complainant alleged an unlawful detention based solely on his race, unlawful handcuffing, unlawful search, and unlawful entry into his vehicle. All four of the allegations were adjudicated as Insufficient Evidence to Adjudicate against unknown officers.

Specifically, the adjudicator reasoned that:

“The complainant was unable to provide sufficient information that would have assisted in the identification of the accused officers to ascertain that the officers were in fact members of the Department. There were no Department records that supported the fact that the complainant was stopped or detained in the area as alleged.”

#### UNDISPUTED FACTS

The complainant reported his contact with the unknown police officers to the complainant's supervisor who sent a letter to the Department regarding this incident. The Department was unable to identify the involved officers.

#### DISPUTED FACTS

Because the officers involved in the incident were not located, there was no one interviewed who could dispute the complainant's version of events.

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<sup>60</sup> However, as CPU referred to the employee as the complainant in its investigation, the OIG will similarly refer to him as the complainant below.

<sup>61</sup> According to the boss, when the complainant arrived at work the day following the alleged incident, he asked the complainant why he did not complete the work assigned to him. The complainant indicated that the reason he did not complete his assignment was due to being stopped by the police.

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### INVESTIGATIVE ANALYSIS

The CPU interviewed the complainant and the complainant's boss. Overall, the I/O's questioning during the course of these interviews was thorough and objective.

However, the I/O was unable to identify and, as a result, interview the involved officers. Initially, the I/O canvassed the area of the incident, without success, for witnesses who might be able to identify the involved officers. The I/O also reviewed the DFARs for the patrol and foot beat watches for the Area in an attempt to identify officers who were directly or indirectly associated with the complainant, which yielded no match to any officers. In addition, the I/O made inquiries from computer system databases, such as the Computer Aided Dispatch (CAD) and the Automated Field Interview System in order to identify LAPD officers who could have been possibly involved in the alleged incident. Lastly, the I/O also contacted the Los Angeles County Sheriff's Department (LASD) to determine if there were any LASD patrol units, near the incident location, with negative results.<sup>62</sup>

After its unsuccessful efforts to identify the officers, the CPU sent the OIG its investigation. The OIG reviewed the investigation and informed the Department that we believed that additional investigative efforts could have been made to identify the involved officers. In response to our input, the I/O undertook additional efforts to identify the involved officers.

Based upon the descriptors of the involved officers provided by the complainant, the I/O obtained and reviewed the Daily Work Sheets and DFARs of officers assigned to patrol and specialized units in the Area on the night of the incident who could have matched the physical descriptions provided by the complainant. As a result, the I/O was able to assemble various photographic six-packs of officers who could have matched the general physical descriptions provided by the complainant and who were assigned to the Area on the date and time in question.

However, after multiple attempts by the CPU, including phone calls and visits to the complainant's residence, the I/O was unable to get in contact with the complainant in order for him to view the photographic lineups created by the CPU.

### ADJUDICATIVE ANALYSIS

Based on the contents of the investigation, the OIG is satisfied with the I/O's ultimate attempts to identify the involved officers. Moreover, the OIG believes that the interactive investigative process in this case demonstrates that the Department, and in particular the CPU, is committed to working with the OIG to enhance the quality of the Department's Biased Policing investigations.

Accordingly, the OIG believes that, given the Department's inability to identify the officers, despite reasonable efforts, the decision to adjudicate the complaint as Insufficient Evidence to Adjudicate against unknown officers was appropriate.

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<sup>62</sup> The city of the incident borders an area that is LASD patrolled territory.

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### Case No. 7

#### SUMMARY

At approximately three in the afternoon, two officers were on patrol when they claimed they observed the complainant in his vehicle talking on his cellular telephone. The officers conducted a traffic stop and issued him a traffic citation for using a hand-held wireless telephone in violation of VC section 23123(a). During the traffic stop, one of the officers asked the complainant if he was on parole or probation. Once the traffic citation was completed, the complainant initially refused to sign it. The officers requested a supervisor to respond to the location to speak with the complainant. After the complainant signed the traffic citation, a supervisor responded to the location who generated a complaint face sheet based on information that he received from the complainant at the scene of the incident.

Subsequently, the complainant was interviewed by CPU, which led to one allegation against each officer that the officers initiated a traffic stop based solely on the complainant's race.

#### *Initial Adjudication by the Area*

The two allegations were adjudicated by the Area as Unfounded based on the following rationale:

“This complaint stems from a traffic stop which ultimately resulted in the complainant being issued a citation for 23123(a) VC (Prohibited Use of Hand Held Wireless Telephone). The complainant denied that he held the telephone to his ear. The complainant . . . alleged that the involved officers stopped him solely based on his race, African American, and because he was driving a certain kind of car. There were no independent witnesses to the allegation. The accused officers contend that the complainant was stopped for the vehicle code violation. Both officers stated that they were not aware of the complainant's race prior to making contact with him. The issue as to whether he was using his cellular telephone is irrelevant to his allegation and is an issue that will be decided by the court. The real issue is whether the complainant was stopped solely based on his race.”

“**Note:** It is Department policy to not take complaints solely on disagreements of traffic citations. Generally such disagreements are resolved in Traffic Court and as such, the violation for which the complainant was cited in this case will be treated in the same manner in the adjudication of this complaint.”

“Inherent in the definition of profiling is that an officer's conduct or enforcement action is different with people of one race versus that of another race. One of the factors in determining whether this disparate treatment is occurring . . . is the demographics of the community in which the stop occurred. The investigation did not take this very important factor into consideration; however, this adjudicator is familiar with the community in which this stop occurred, which is almost exclusively African American. In that regard, [the complainant's] claim that he was singled out because of his race is puzzling. If his

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claim had any merit, then one could presume that nearly every contact made by these officers, or for that fact any other officers assigned to this community, would be a biased contact because the majority of these contacts would be with African American citizens. Obviously this is faulty logic, but in essence [the complainant's] claim amounts to this conclusion.”

“Taking the demographics of the community into account, and given that the investigation did not contain any evidence whatsoever that the stop by [the officers] was based solely on race, or that [the officers] engaged in disparate treatment or enforcement action of [the complainant], based solely on his race, the only conclusion one can come to is that these allegations are UNFOUNDED.”<sup>63</sup>

#### *Bureau Military Endorsement*

However, in a Military Endorsement, the Bureau recommended that the allegations that each of the two officers initiated a traffic stop of the complainant based on his race be classified as Not Resolved based on the following rationale:

“The officers cited [the complainant] appropriately on the date of the alleged incident. However, they had previously cited him before . . . . It is possible that the officers remembered the vehicle that [the complainant] was driving, because of the color and model. In addition, the officers claim that they could not tell the ethnicity of [the complainant] despite the fact he was stopped in day time hours and they could see him appear to be talking on a cellular telephone. Due to the possibility that the officers may have remembered [the complainant] and their inability to recall the complainant's race, both allegations are best adjudicated as *Not Resolved*.”

#### UNDISPUTED FACTS

The accused officers conducted a traffic stop on the complainant. The complainant did not exit his vehicle during the traffic stop. Neither the complainant nor his vehicle was searched by the officers nor was the complainant handcuffed. A supervisor was requested and responded to the scene. The complainant received a citation in violation of VC section 23123(a) – Hand Held Wireless Telephone: Prohibited Use. The officers did not broadcast their location to CD until after they had made the request for a supervisor. Both officers were working together on a previous occasion when one of them issued a citation to the complainant for expired registration.

#### DISPUTED FACTS

The accused officers both stated that they observed the complainant to have a hand-held cellular telephone in his right hand while he was driving. However, the complainant denied that he was holding a hand-held cellular telephone, and instead indicated that he had a headset on and was not using the telephone to text or talk to anyone. The complainant stated that the first question the contact officer asked the complainant after stopping him but prior to asking him for his

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<sup>63</sup> It should be noted that one of the accused officers has since received one additional complaint which has been classified as Biased Policing, as well as another complaint which, though currently classified as Discourtesy, also appears to involve claims of Biased Policing.

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license, registration, or proof of insurance was whether the complainant was on parole or probation. The contact officer admitted to asking this question of the complainant but was not sure at what point the question was asked.<sup>64</sup> The complainant also alleged that the officers asked if they could search his vehicle “or is there anything in my vehicle that they need me to tell them about before . . . they searched it.” The complainant indicated he told the officers they could not search his vehicle. Both officers denied asking to search the vehicle. The complainant later implied that when he informed the officers that they could not search the vehicle, they then wanted his identification information so that they could give him a citation. When asked if his partner ever stated to the complainant “if you’re not going to let me search your car, then I guess I’ll have to write you a ticket,” the driver officer stated “that was never said.”<sup>65</sup>

The complainant believed that his race was the sole factor for the traffic stop. The officers claimed that they did not stop the complainant based on his race. Once the complainant refused to sign the traffic citation, the officers requested a supervisor. The complainant stated that once he signed the traffic citation, he did not feel that he was free to leave the location. The officers claimed the complainant was free to leave the location prior to the supervisor arriving.

Neither officer recalled having stopped the complainant previously, though the I/O located the previous citation as part of the investigation.

#### INVESTIGATIVE ANALYSIS

Overall, the OIG noted that relevant documents were gathered, including the various applicable VC sections and Department policies, as well as various Department records such as MDC printouts from the officer’s unit, their DFARs, and their unit’s Incident Recall.<sup>66</sup> Moreover, it should be noted that the I/O did a commendable job of trying to establish a chronology of events surrounding the incident in question, which was made challenging by the complainant’s interposing of references to prior incidents when asked questions about the underlying incident. Further, the complaint made a new allegation during his interview and the I/O generated a new complaint number based on that information. Also, the I/O’s canvassing efforts yielded an independent witness with whom they spoke briefly but that person did not want to be formally interviewed.

However, we noted several investigative concerns which are detailed below.

#### a. When the Officers First Observed the Complainant Talking on the Phone

The OIG noted that although both officers denied knowing the race of the complainant prior to conducting the traffic stop, the investigation did not sufficiently clarify where the officers were

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<sup>64</sup> The I/O attempted without success to clarify with the contact officer at what point he asked the complainant if he was on probation or parole. The officer indicated it was standard practice for him to ask this question.

<sup>65</sup> The passenger officer was not asked this or a similar question.

<sup>66</sup> However, we are concerned that providing this information to the accused officers at the beginning of their interviews as opposed to at the point the officers need to refresh their recollection may lead to a situation where an officer relies too heavily on the documents, as opposed to independent recall to answer the I/O’s questions. We believe this may have occurred during the driver officer’s interview.

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in relation to the complainant when they first observed the violation. Such clarification would have been helpful in assessing the credibility of the officers' responses regarding their inability to determine the race of the complainant prior to the stop. The complainant claimed (unrefuted by the officers) that his windows were not tinted, and one officer described that it was daytime and sunny at the time of the stop. Additionally, there was evidence that the officers had encountered the complainant six months previously.

The passenger officer denied being able to tell the race of the complainant before the stop. However, the officer did describe the complainant as having skin of a "dark complex, but more of a shadow," but "not [that] his skin was dark, but the silhouette is what I saw." The passenger officer stated they were northbound when he saw the complainant through the passenger window as the complainant travelled westbound<sup>67</sup> (it was unclear whether referring to the front or rear passenger windows). The passenger officer described his initial observation of the complainant as "the silhouette of a person leaning to the right speaking on their phone." The passenger officer stated his observations about the complainant talking on the phone to the driver officer and that was when the officers got behind the complainant's vehicle and conducted a traffic stop. The passenger officer stated that the first time he discovered the complainant's race was when he made contact on the passenger side window after the traffic stop.

Similarly, the driver officer denied being able to determine the race or gender of the complainant when he first observed the violation. The driver officer initially indicated that he was directly behind the complainant when he observed the complainant talking on the phone. The driver indicated that the complainant's "elbow [was] kind of elevated" and that he was "leaned back in the vehicle" so that the officer had "a clear and obstructed [sic] view" of the complainant "using his right hand to hold his phone up against his right ear." A few questions later, the I/O asked the driver, "where were you when you first observed the *violation*?" to which the driver indicated that he was "facing northbound" when he saw the complainant "drive by." The I/O did not clarify the complainant's direction with the driver officer.

The I/O then attempted to clarify where the driver was in relation to the complainant when he first observed the actual VC violation. However, the I/O proceeded to a different line of questioning after the driver officer asked him to repeat the question. Later, after the second I/O asked the driver if he had any knowledge of the passenger officer observing the violation, the driver officer indicated that after he had seen the violation, he mentioned to the passenger officer that he had observed the complainant on the phone. According to the driver officer, they continued to drive, and "my partner did observe that as well."<sup>68</sup>

Finally, the driver officer indicated that he first observed the violation when the officers were behind the complainant. Later, the second I/O asked the driver whether the complainant "look[ed] in your direction when you observed him with a cell phone," which on the surface

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<sup>67</sup> It should be noted that the complainant in his interview indicated that he was proceeding southbound when the police pulled him over.

<sup>68</sup> This description would appear to be inconsistent with the passenger officer's claim that he observed the complainant talking on the phone when their vehicle was, in essence, perpendicular to the complainant's, that he then informed the driver officer of his observations, and that was when they got behind the complainant's car.

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would seem inconsistent with the complainant being in front of the officers, unless the driver officer also indicated that the complainant turned his head completely around. The driver officer responded, “I don’t remember.”

#### b. Whether the Complainant Was Wearing an Earpiece

The OIG would have preferred if the I/O had attempted to further clarify the issue of whether the complainant was wearing an earpiece when he was stopped and whether the complainant had his cellular telephone in his hand. The accused officers stated that the complainant was on his cellular telephone, the cellular telephone was in his right hand, and that he did not have a Bluetooth device. The complainant stated he had a headset on his left side. However, the I/O attempted to clarify and asked, “Just one, on your *right* side?” to which the complainant responded, “Yes.” Moreover, the complainant indicated that after one of the officers told him he was on the cell phone, “I put my phone down.” However, the I/O never clarified what the complainant meant by this nor the complainant’s seemingly inconsistent response of “no” to the I/O’s question that “the cell phone wasn’t in your hands?”

Further, the complainant alleged that the driver officer stated, after he approached the complainant’s vehicle, “I thought I saw you on your phone.” The driver officer denied saying that or that he heard the passenger officer make any comment of that nature. However, the I/O did not ask the passenger officer if he or the driver officer made any such comment.

#### c. Possible Prolonged Detention of Complainant

The OIG noted that an additional allegation was not framed for the possible unlawful detention of the complainant. The complainant claimed that he was not free to go after he signed the citation but while he was waiting for a supervisor to respond. According to the complainant, “I had to keep asking him [one of the officers], like, can you close my door cause you’re leaning on my door, like I don’t want you to drive off. You’re so upset. And I’m like, close my door man. Just close my door, go to your car.”<sup>69</sup> The driver officer indicated that the complainant was free to leave after he signed the ticket. The passenger officer indicated that the complainant was disputing the ticket and went back and forth regarding whether he wanted a supervisor to respond. After about 15 minutes, the complainant signed the citation and then asked to leave before the supervisor arrived.

According to the passenger officer, he informed the complainant that the supervisor was “en route” and “should be here any minute” and that “anybody that requests a supervisor and a supervisor is en route, if that person is not here, they kind of get upset. So it would be better preference [sic] that he stayed.” The passenger officer also said that he believed that he and his partner told the complainant, “You’re free to leave whenever you’d like, but we’d prefer you to stay due to our supervisor en route.” Another ten minutes passed before the supervisor arrived.

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<sup>69</sup> The complainant initially had to open his driver door to speak with the officers, since his driver’s side window was not working.

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During this line of questioning, the OIG noted that the I/O asked the passenger officer some questions which could be viewed as leading. Specifically, the I/O asked, “So you were just advising him he should stay?” After the passenger officer responded, “Yes,” the I/O asked, “So at no time you denied or stopped him from leaving? So you never stopped him from leaving?” The passenger officer answered, “No.”

Though neither officer was asked specifically by the I/O if he refused to close the complainant’s car door, based on the passenger’s acknowledged statements to the complainant about the “preference” to have the complainant remain until the supervisor arrived, the complainant may not have felt that he was free to leave. Since the investigation did not resolve whether the complainant was free to leave once he signed the citation, the OIG would have preferred that the Department had framed an unlawful detention allegation as part of the investigation.

#### d. Additional Leading Questions

In addition to those referenced above, the OIG noted some additional questions by the I/O which could be construed as leading.

During a subsequent interview of the driver officer to clarify his earlier statement that, “It’s not uncommon for me to run a particular style of car,” the I/O asked the officer, “This has nothing to do with who’s driving the vehicle?” The officer answered, “Nothing to do with that whatsoever.” Then the I/O stated, apparently in an effort to summarize – “When you run a particular car, it’s not who’s driving the vehicle, it’s the vehicle involved in some type of crime.” The officer answered, “Correct.”<sup>70</sup>

Moreover, toward the end of the first interview of the passenger officer, the I/O asked, “So there was no pretext stop involving [the complainant]?” When the officer asked for clarification, the I/O asked, “meaning maybe he could be a gang member?” When the passenger responded, “No,” the I/O then asked, “[s]o his traffic stop was solely on the violation?” to which the passenger responded, “Yes, sir.”

#### e. Questions of Uncertain Probative Value

The OIG also noted that the I/O asked the complainant if he believed that the officers were stopping him because they believed the complainant to be a gang member or criminal. This question was asked after the complainant had explained in some detail how he was neither a gang member nor a drug dealer. The I/O then proceeded to ask a similar question again, saying “what I’m trying to find out is, is this a racial issue or is this more like maybe the officers think that you’re a criminal . . . .” Additionally, the I/O asked the complainant if he had ever been stopped in that neighborhood by an officer who was of the same race as the complainant. Moreover, the I/O asked the complainant if he were in a “Hispanic” or “Asian” neighborhood, whether he would have thought he was “being stopped the same way” (though the I/O did not

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<sup>70</sup> These subsequent interviews, though tape-recorded, were not transcribed due to time constraints, according to the investigation.

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clarify what was meant by “the same way”). The OIG questions the probative value of such questions.

#### f. Training Issue Identified by CPU

Lastly, the OIG noted that CPU correctly noted that the officers did not broadcast their traffic stop until a supervisor was needed and properly followed up with the commanding officer of the Area. The investigation revealed that training was provided to both officers. The officers’ TEAMS histories indicate that training on tactics was later provided due to this complaint.

### ADJUDICATIVE ANALYSIS

The fact that the officers did not broadcast their location until the complainant refused to sign the citation raises the question as to whether the officers would have broadcast their stop if a supervisor had not been needed. Also, the complainant indicated that he was harassed because the officers asked the complainant if he was on parole or probation and if they could search his vehicle. However, according to the complainant, once he refused the search, one officer stated that he was going to cite the complainant for talking on the cell phone, though we do not believe the investigation resolved whether both officers saw the complainant illegally talking on the cell phone prior to determining the complainant’s race. Moreover, the investigation revealed that the complainant had also been stopped by these officers on previous occasions, which raises the possibility that they knew his race.

The OIG did not agree with the Area’s rationale in recommending that the allegations be Unfounded. Among other things, we noted that the Area relied on references to the general racial demographics of the area in which the complainant was stopped, without considering other factors such as the racial demographics of the people who drive through the area. It is our understanding that comparisons to the general racial demographics of the involved area is not a recognized method of evaluating whether an officer is engaging in racial profiling.

Moreover, the OIG disagrees that there was no evidence that the officers stopped the complainant solely because of his race. The officers had prior contact with the complainant resulting in a stop and citation, although both officers denied recall of that contact. Also, the officers gave conflicting statements regarding the complainant’s position when they first saw him on his cellular telephone. We disagree with the Area adjudicator’s conclusion that “[t]he issue as to whether [the complainant] was using his cell phone is irrelevant to his allegation.” Instead, whether the complainant was using his cell phone directly implicates the credibility of the officers’ claim that they stopped the complainant because he was using his cell phone, as opposed to an illegitimate reason such as his race.

We commend the Bureau for Militarily Endorsing the Area’s findings, suggesting that the allegations be Not Resolved, and agree with their recommendation. We base our conclusion in part on the Bureau’s rationale. In addition to the officers’ professed failure to recall having stopped the complainant previously, we believe that the rationale utilized by the CO of IAG in recommending that these allegations be Not Resolved is also instructive:

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“The investigation was unable to definitively determine whether or not the complainant had the cellular telephone to his ear or if the officers had any other motivation for the stop. Because there is insufficient evidence to clearly prove or disprove the allegations, I recommend they be adjudicated as *Not Resolved*.”

Case No. 8

SUMMARY

At approximately 11:30 in the morning, two LAPD officers were on patrol traveling eastbound when they observed the complainant's vehicle stopped at a tri-light facing northbound. The complainant's vehicle did not have a front license plate, in violation of VC section 5200(a). The officers turned southbound onto the same street as the complainant and then negotiated a u-turn and followed the complainant northbound. An MDC inquiry revealed that the complainant's vehicle registration was expired in violation of VC section 4000(a). The officers conducted a stop on the complainant in the parking lot of the complainant's residence. The complainant was cited for expired registration and warned for the missing front license plate. The complainant signed the citation; however, he alleged that the citing officer's actions were motivated by race.

The complainant alleged he was stopped based solely on his race, and a single allegation was framed. The allegation was adjudicated by the Department as Unfounded.

Specifically, the adjudicator reasoned as follows:

“[The complainant's] assertion that the [accused officer] stopped him based on his race stands on three legs. The first is that the [accused officer] looked at the complainant as they passed, the complainant characterized the look as ‘mad dogging’ him, which the complainant defined as, ‘staring me down . . . just kind of like a threatening demeanor.’ The second is that, although he [the complainant] indeed was driving without a front plate as required, many other people do too and they are not all stopped. And the final one is that, although he [the complainant] had no proof, he knows, he can feel it when it occurs to him. [The complainant] commented that it is hard to prove profiling, but he knows it when it occurs. [The complainant] believed that because the [accused officer] was looking at him and not the car and that there was other traffic in the area, the officer could not see that the front plate was missing prior to the stop; however, he [the complainant] conceded that he [the accused officer] may have seen the missing plate prior to the stop. To sum it up, [the complainant] said that by the officer using emergency equipment, following him into his own driveway and citing him for such a minor violation demonstrated that they [the officers] overreacted to the matter at hand and that overreaction was based on his race.”

“[The accused officer] immediately told [the complainant] that the reason the officers stopped him was that he was missing his front plate. [The accused officer] actually cited [the complainant] for expired registration and warned him for the missing front plate. Both officers are emphatic as they were perpendicular to [the complainant] at the intersection they could see there was no front plate affixed to the vehicle and before they initiated the stop they learned the registration was expired.”

“The officers clearly articulated the reason for the stop. [The complainant] admitted to the violation. [The accused officer's] citation is consistent with the reason for the stop. There was no intrusion to the vehicle, and although [the complainant] got out of the

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vehicle, he did so on his own volition and not at the direction of the officers. [The complainant] was not searched nor was his vehicle. [The complainant] did not hear any comments or observe any gestures, facial expressions, or other non-verbal actions on the part of the officers to suggest bias. On balance, there is a preponderance of evidence to support a recommended adjudication of Unfounded.”

#### UNDISPUTED FACTS

The complainant was issued a citation for expired registration. The complainant did not have a front license plate, which he admitted and for which he was warned. The complainant was not ordered out of his vehicle. Neither he nor his vehicle was searched. The citing officer was wearing sunglasses.

#### DISPUTED FACTS

The complainant stated that the accused officer could not have seen the missing front plate until after he was stopped. Both officers indicated they observed the missing plate prior to the traffic stop. The complainant’s belief that the officers may not have seen his missing plate,<sup>71</sup> coupled with his position that the citing officer “mad dogged” (stared) at him for a prolonged period time, and that the citing officer “lit” him up and followed him into the parking lot of his residence for a missing front plate, led the complainant to believe that race was the sole factor for the stop. The passenger officer indicated he thought he saw that the complainant was Black before he stopped him. The driver officer initially indicated that though he did not know the race of the complainant before he stopped him, he thought that maybe the complainant was “dark complected.” Later, in the CPU interview, the driver officer indicated that he did not know the race of the complainant prior to stopping him.

The complainant also stated that there was a vehicle stopped in front of the officer’s vehicle when they were facing eastbound, which caused the accused officer to activate his siren in order to maneuver around the vehicle in order to turn southbound down the street on which the complainant’s car was located. One officer stated that there was no vehicle in front of the police vehicle around which to maneuver. The other did not recall there being a vehicle in front of them. The complainant also stated that the officers made a comment about the complainant’s age when they stopped him to the effect that he was a lot older than they initially thought he was.<sup>72</sup> Both officers stated that they did not recall making any comments regarding the complainant’s age.

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<sup>71</sup> The complainant made several statements in regard to his belief about the officer’s ability to have seen his missing front license plate. The complainant said, “I don’t believe he was able to see it [the front license plate].” He said, “I don’t believe he actually noticed my front license plate. He might have. I - - I don’t know.” The I/O asked the complainant, “You - - you’re just not sure because he was looking at you?” The complainant answered, “Right. Right. Exactly.”

<sup>72</sup> The complainant interpreted this comment as the officers indicating that they “pulled over someone who’s not a young kid or doing something wrong. We pulled over an older gentleman and probably not the person we should have pulled over.”

## INVESTIGATIVE ANALYSIS

### *CPU Investigation*

Overall, the OIG believes that CPU appropriately gathered relevant documents, including the various applicable VC Sections and Department policies. Moreover, the OIG noted that the I/O attempted to resolve the following discrepancies but was ultimately unable to do so:<sup>73</sup>

- Whether the officers made comments regarding the complainant's age.
  - Whether the officers turned on their lights and sirens to get another car to move that was in front of them and then pulled the CP over.
  - Whether the accused officer "mad dogged" the complainant.
- a. CPU's Interview with the Complainant

The complainant appeared to be adamant that he was stopped by the officers because of the complainant's race and not because of the fact that he had no front license plate. It appeared to the OIG that during questioning, despite the complainant's adamancy, the I/O was overly persistent in attempting to get the complainant to acknowledge that he had no front license plate. The I/O appeared to infer that it would have given the accused officer a legal reason to stop the complainant, regardless of the complainant's claim that he was stopped because of his race. Among other things, the I/O asked the complainant if he could "articulate further on why your race was the issue and not the front . . . plate." Later, the I/O asked, "But can we agree upon that no front license plate gives an officer a reason to stop?" The I/O then asked "how could [the traffic stop] not be based on no front license plate then?"

After reviewing the transcribed interview of the complainant, we informed the Department of our concern about the tone and the nature of the questioning of the complainant by the I/O.<sup>74</sup>

b. Accused Officer's Claim That He Did Not Initially Know the Complainant's Race

The OIG would have preferred if the I/O had clarified why the accused officer indicated he did not know the race of the complainant prior to stopping him. The stop was made in the early afternoon, the driver's windows were not tinted, the partner officer indicated he believed he knew the race of the driver prior to the stop. Further, all parties agreed that the officers' car was perpendicular to the complainant's. Moreover, the accused officer stated he was stopped at the limit line and that the complainant was stopped at the limit line and that he saw the front bumper in the middle of his turn when he had a clear view of the whole left side of the complainant's car.

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<sup>73</sup> The investigation also revealed that the officers initially requested a supervisor, then cancelled the request and then re-requested the supervisor. It is not clear as to why the initial request was cancelled. This issue was not probed during the officer interviews; therefore, the OIG cannot assess its significance. However, we do not believe that this apparent discrepancy would have impacted the ultimate adjudication.

<sup>74</sup> We have been informed that this issue has since been discussed with the I/O.

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#### c. Possible Additional Biased Policing Allegation

Additionally, the OIG noted that during the complainant's interview with the CPU, the complainant made allegations of racial profiling in regards to a separate traffic stop with LAPD officers. However, the I/O did not probe these allegations further to determine if the complainant was providing additional background information to support his belief that he has been the victim of racial profiling or whether he was making a new complaint. The OIG would have preferred the I/O to follow-up with the complainant to determine if a separate complaint should have been generated.

#### d. Hypothetical Question Regarding the Race of the Officers

The OIG also noted that the I/O asked the complainant if he would have felt that the officers had profiled him if the officers were the same race as the complainant. When the OIG raised this concern to IAG, they responded that this was an appropriate question so long as it is asked in a respectful, nonthreatening manner because complainants are raising the issue of race and the motivation of the officers for their enforcement actions. Internal Affairs Group also indicated that the officers are asked about their actions and if they acted the way they did due to the complainant's race. Further, IAG indicated that it is important to understand the complainant's state of mind. If the complainant believed that actions were taken against them because of the officers' race, then that may go to the state of mind. Moreover, IAG claimed that during the interview process, some complainants have said racist comments about officers of different races or have insisted that an officer of the same race conduct the investigation.

The CO of IAG also stated, "It is our duty to understand the entire dynamic of the incident . . . whatever that might be, on both sides of the complaint process . . . the officer and the complainant. Be polite and respectful . . . but ask the question." Finally, IAG indicated that [i]f we sustain an allegation of Biased Policing it may result in a Board of Rights [BOR]. We believe the defense would ask the question of the complainant party. We do not want to hear the answer to that question for the first time sitting in a BOR. We prefer to ask questions we already know the answers to and prefer no surprises. Investigations also require looking towards dealing with issues during the adjudicative process . . . which is what BORs are."

It is the OIG's belief that the potential negative impression on the complainant from asking hypothetical questions regarding race, rather than in response to specific comments by the complainant, outweighs any probative value of such question(s).

#### e. Discrepancies in Officers' Timeline of Events

Another concern the OIG raised to the Department involved an apparent inconsistency in the officers' version of the sequence of events as compared with the MDC printout for the officers' unit for the time period in question. We do not believe that the investigation adequately attempted to resolve this inconsistency.

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Both officers stated that they ran the complainant's license plate and determined his registration to be expired before they initiated the traffic stop. However, the first reference in the investigation to the complainant or his vehicle in the officers' MDC printout<sup>75</sup> came at 11:37:05, which was an entry querying the complainant's driver's license number (which information, presumably, they could have only gotten from the complainant after stopping him). Then, at 11:37:18, there is what appears to be a response message to the officers unit which includes the complainant's license plate number and information showing that his registration had expired two months earlier.

However, the passenger officer indicated that "I ran his license plate and observed that he had expired registration." From this statement, it is unclear whether he determined that the registration was expired based on seeing the complainant's rear license plate tags or from information they received from Communications Division. The driver officer indicated, "I ran his plate for wants and warrants and it came back expired registration."

Further documentation included in the investigation (the Incident Recall) indicated that the officers requested to be shown out for investigation ("Code 6") at the rear parking lot of the complainant's home address at 11:35, which is approximately two minutes before the MDC first reveals that the officers were provided with information (at least over the MDC) about the condition of the complainant's expired registration.

In discussions with the OIG, the CO of IAG was responsive to the issues outlined above and, after reviewing this case, indicated that there remained some unanswered questions. Among other things, the CO of IAG indicated his belief that the investigation should have endeavored to more fully develop the sequence of events in terms of the encounter with the complainant, especially in light of the MDC and Incident Recall printouts. Accordingly, it is our understanding that the CPU has since conducted a follow up interview with the complainant and is endeavoring to conduct follow up interviews with the accused officers, though copies of any of these interviews have not yet been provided to the OIG at the time of this writing.

#### *Intake Sergeant*

The OIG identified concerns with the intake sergeant's initial handling of the complaint. On the complaint face sheet, the sergeant (who also responded to the incident) indicated that when he and the complainant went to the intersection where the officers had initially seen the complainant, the complainant "acknowledged that he could see every front bumper/license plate at the intersection." However, in the transcribed statement of the complainant's tape-recorded interview with the sergeant, the complainant stated he could not say for sure whether the officers were able to see his front plate because he did not know what angle the officers were at when they initially observed him. It appeared to us that the adjudicator apparently relied upon this initial mischaracterization when the adjudicator stated that the complainant "conceded that the accused officer may have seen the missing plate prior to the stop."

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<sup>75</sup> The investigation did not include radio frequency for the time in question to explore whether the officers may have run the complainant's license plate over the air.

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### ADJUDICATIVE ANALYSIS

Based on the initial investigation, the OIG believes that questions remain about the sequence of events surrounding the detention and citing of the complainant. These unanswered questions are germane to an assessment of the officers' motivation behind their to stop and cite the complainant. Moreover, we believe the complainant's statement to the intake sergeant regarding the accused officer's ability to observe the complainant's missing front plate was mischaracterized. We disagree with the adjudicator's conclusion that the complainant "conceded that the accused officer may have seen the missing plate prior to the stop." Finally, despite reasonable efforts by the CPU I/O, the investigation could not resolve whether the officers commented about the complainant's age, which we believe is also germane to an assessment of the officers' intention in pulling the complainant over. Accordingly, we do not believe that a preponderance of the evidence supports Unfounding the allegation of Biased Policing. We have since discussed this issue with the involved Area and Bureau command. They have indicated that, upon receipt from IAG of any supplemental investigation, they will review the previous adjudication.

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### Case No. 9

#### SUMMARY

At approximately noon, the complainant was out exercising during her lunch break when she crossed the street at a controlled intersection. Officer A stopped the complainant and subsequently issued her a citation for VC section 21456 (b) which provides in relevant part, “No pedestrian shall start to cross the roadway in the direction of the signal . . . while the ‘WAIT’ or ‘DON’T WALK’ or approved ‘Upraised Hand’ symbol is showing.” The complainant believed the citation was unjustified and therefore refused to provide Officer A with the requested identification information. As a result, Officer A called for a supervisor to respond to the scene. When Sergeant A arrived, the complainant made a somewhat vague reference to her race as the reason for the stop and said that the officer made a discourteous remark (“Thank God they taught you how to count”) to her during their interaction. An independent witness contacted the complainant and the Department to support the complainant’s claim that the complainant had crossed the street legally.

One allegation of Biased Policing and one allegation of Discourtesy were framed. The first allegation was adjudicated as Unfounded based on the following rationale: 1) Officer A had a legal and proper cause to stop and cite the complainant; 2) the complainant essentially admitted she violated the law when she said she entered the crosswalk when the number “22” was flashing and that she was slightly behind a group of pedestrians in the cross walk; 3) there was no evidence to support the complainant’s allegation that she was cited because of her race; and 4) an in-depth analysis of Officer A’s total citations for the first six months of 2010 showed that statistically he did not engage in Biased Policing and the numerical breakdown closely resembled the racial composition of the area.<sup>76</sup>

The second allegation was adjudicated as Unfounded based on the following: 1) a review of the audio tape and the transcripts revealed that Officer A did not make the alleged statement; and 2) “any statements referring to ‘counting’ are attributed to [the complainant] only.”

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<sup>76</sup>The I/O included in the investigation a breakdown of the race of the individuals cited by Officer A for the first six months of 2010 which showed, according to the I/O, that 4.5% of the citations issued by Officer A during that time period were to people of the same race as that of the complainant. On the other hand, Officer A issued 51.4% of his citations during that time period to Caucasians, and 35.6% of his citations to Hispanics. However, the citation breakdown included in the investigation also seemed to indicate that during that six-month period Officer A had issued citations in at least eight different LAPD divisions, covering all four geographic bureaus.

It is unclear what data the adjudicator relied upon in concluding that Officer A’s stops “closely resembled the racial composition of the area,” especially given that the citations included in the investigation covered all four geographic bureaus within LAPD. Moreover, it is our understanding that simply comparing the racial breakdown of an officer’s traffic stops to the relevant census data, for example, without controlling for other factors such as the demographics of those who visit, as opposed to reside, in the area is not a generally recognized method of analyzing stop data. *See., e.g.*, “United States Department of Justice: A Resource Guide on Racial Profiling Data Collection Systems – Promising Practices and Lessons Learned,” by Deborah Ramirez, Jack McDevitt, and Amy Farrell of Northeastern University (November 2000), at p. 64; “Racial Profiling: What Does the Data Mean? A Practitioner’s Guide to Understanding Data Collection & Analysis,” by Captain Ronald L. Davis, Region Vice President, National Organization of Black Law Enforcement Executives (NOBLE), December, 2001 (found at [www.aele.org](http://www.aele.org)).

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#### UNDISPUTED FACTS

Officer A indicated he was working that intersection due to a high rate of pedestrian and vehicle traffic collisions in that area. The accused officer cited the complainant for a violation of VC section 21456 (b). Initially, the complainant refused to give Officer A sufficient information to complete the citation. A supervisor was requested, and Sergeant A responded to the scene.

#### DISPUTED FACTS

The complainant claimed that she was singled out to receive a citation by the officer because of her race. In addition, the complainant claimed that the officer stated, “Thank God they taught you how to count.” She also claimed that when she asked him why he selected her to cite, he said “because I chose to.”

Officer A claimed that the complainant did not have the legal right to enter the intersection when she did. The complainant and an independent witness disputed this. This witness indicated that Officer A was randomly selecting people to cite, without discriminating by race or gender.

Officer A stated that he did not stop the complainant because of her race but rather because she began crossing the street when the “Don’t Walk” light had already begun flashing. Officer A described the “Walk” signal as a “white pedestrian illuminated for five seconds” and the “Don’t Walk” signal as an “amber pedestrian that’s flashing,” accompanied by a “number countdown [that] . . . starts at 23 and it works its way down to 0.” Officer A indicated that it was a violation of the VC section 24156(b) to enter a crosswalk when the light is flashing numbers. According to Officer A, the complainant entered the crosswalk when the count was down at 17. Officer A indicated that he had noted the count on the citation he issued.<sup>77</sup>

The complainant also alleged that while she and Officer A were waiting for a supervisor to arrive, the complainant was counting the number of people who began crossing the intersection when the “Don’t Walk” signal was flashing who were not cited by Officer A. The complainant alleged that Officer A was discourteous because when Officer A heard her counting he said “Thank God they taught you how to count.” Officer A denied making this statement<sup>78</sup> and indicated that his tape-recorded conversation with the complainant would show that he did not make the statement. The witness indicated that he did not hear Officer A make this comment or anything inappropriate.

#### INVESTIGATIVE ANALYSIS

The CPU gathered relevant documents including the applicable VC Section and various Department policies. Sergeant A conducted the interviews with the complainant and the independent witness. The CPU interviewed the accused officer and completed the investigation.

Officer A used his personal tape-recorder to record his interaction with the complainant. Sergeant A recorded his interaction with the complainant at the scene and the second, subsequent

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<sup>77</sup> On the complainant’s citation attached to the investigation was denoted in parentheses, next to the description of the violation, “17/23.”

<sup>78</sup> However, Officer A was not asked if he made the statement, “because I chose to.”

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conversation he had with the complainant later that day when the sergeant took a formal complaint from her.

#### *Complaint Intake*

During the incident, the complainant complained to Officer A that she was with a group of people who were crossing at the same time; however, he chose to stop only her. When Sergeant A arrived at the scene approximately 30 minutes later, the complainant told Sergeant A that she said to Officer A, “There were about four people. The distance between them and I, it’s not this. Why did you choose me? I said, I don’t think this is right.” Then she said to Sergeant A, “I’m not an American, but this is just in [sic] race here.” The complainant further told Sergeant A that she said to Officer A, “why didn’t you stop all of us that stepped before when the light was flashing?” During the same conversation, the complainant said to Sergeant A, “I asked him [Officer A] are you doing selective enforcement? . . . . I feel strongly that you’re [Officer A] doing you’re not enforcing the law. You’re just selecting.”

The OIG was concerned that Sergeant A did not ask the complainant any additional questions to solicit more information from her regarding the apparent Biased Policing allegation. Specifically, there was no clarification of the complainant’s assertion that, “I’m not an American, but this is just in race here.” The sergeant’s notation on the Complaint Form face sheet, referring to his first conversation with the complainant, stated “No further action and no alleged misconduct was brought to the attention of [Sergeant A] at that time.”<sup>79</sup>

Finally, the OIG was concerned that Sergeant A appeared to be less than neutral during his conversations with the complainant. When he first spoke with the complainant, he told her that Officer A saw her violate the law. Later, in the same conversation, Sergeant A asked the complainant why Officer A should not cite her if he believed that she violated the law. The OIG would have preferred if the sergeant had taken a more objective posture during his initial contact with the complainant.

#### *CPU Investigation*

As outlined below, we believe that there were several issues which suggested the need for further clarification after the sergeant’s interviews and that should have been clarified by the CPU I/O through further interviews and/or additional questioning.

##### a. The Complainant’s Selective Enforcement Claim

The complainant’s claim that she was singled out for citation, based on her race, from a group of people who were all crossing the street illegally appeared to be the cornerstone of her belief that Officer A engaged in Biased Policing. The OIG would have preferred that the CPU I/O attempt

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<sup>79</sup> Similarly, in the CPU I/O’s Investigator’s Notes, he indicated that the complainant in her initial interview with Sergeant A “made no mention of racial profiling.”

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to clarify with the complainant<sup>80</sup> where she was in relation to the other people crossing the street when she crossed.

The complainant made several comments to Officer A during the stop describing her belief that she crossed the street with others who had violated the law but that he chose to stop only the complainant. She said, "What about this lady? We were walking together." She further said to Officer A, "No. (Inaudible) lady walking at the same time that I'm walking." Later, during their interaction, the complainant stated, "Four people came out the same time, with me." Lastly, the complainant said, "And even this lady that was right in front of me (inaudible)." She described this several different ways, creating an ambiguity as to whether she was claiming that she stepped off of the curb behind the group or at the same time.

Then, during her first conversation with Sergeant A at the scene of the stop, Sergeant A asked the complainant, "So when you, when you came into the intersection and you cut across here, this would be eastbound. Okay? And those other – that other group was in front of you; correct?" The complainant replied "Yeah." The sergeant continued, "So, basically you saw that the – they were in front of your and this, this, this – it had a 23. Is that what you're saying?" The complainant responded, "Correct."

In another instance, during her first conversation with Sergeant A, the complainant, while describing for Sergeant A her conversation with Officer A, stated, "I said, but look at the people right in front of me. Why didn't you stop them?" Later, when the sergeant took the complainant's formal complaint, approximately two hours after the stop,<sup>81</sup> she described the incident as a group crossing and said (in regard to her complaint about Officer A), "And if I did anything if it was group crossing, then we all should be violating the same whatever they called or whatever he said I violated. We all should be doing that." The complainant further stated, "If we -- if this is a group crossing and the, the pedestrian sign was still there, I, I think everybody should have been stopped, okay?" On several occasions during her second conversation with Sergeant A, the complainant said she had crossed the street with a group of people or referred to it as a "group crossing."

Officer A, during his interview with CPU, stated that he did not stop the complainant because of her race but rather because of the violation. Officer A said, in reference to the complainant, "she entered the crosswalk when the countdown was at 17 so she was approximately six seconds late when she stepped into the street."

When asked if there was anybody behind her in the crosswalk, instead of providing a specific answer, Officer A indicated that if others had crossed behind the complainant, they would have been cited as well. He was asked one more question as to whether there were pedestrians in front of the complainant, to which he responded "there were other pedestrians in front of the

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<sup>80</sup> Although we recognize that the complainant had already been interviewed twice, we believe it would have been prudent for the CPU I/O to have attempted to definitively resolve this issue.

<sup>81</sup> The complainant called the Area police station sometime after the stop to make a complaint. She was referred to Sergeant A who met the complainant at another location approximately two hours after the initial stop and interviewed her about her complaint.

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complainant but those pedestrians entered the crosswalk legally.” He was not asked any further questions by the CPU I/O as to how far in front of her they were or their physical descriptions and/or races. Given that selective enforcement was the gravamen of the complainant’s claim, it would have been helpful for the I/O to have attempted to ask further clarifying questions of Officer A on this issue.

Moreover, we believe that the witness made some statements during his second interview with Sergeant A which, without further clarification, could support the complainant’s claim that she crossed with a group from which she was selected by Officer A to cite. At one point, the witness described Officer A as “just at random select[ing] people out of groups” to cite. He also described the complainant as “waiting with other people to walk” at the light. Later he said, in describing the complainant, “then another group went and the African-American lady was cited.”

Though we recognize that the witness also told Sergeant A that Officer A was not selecting people to cite based on their gender or race, the witness’s statements, without further clarification, could seem to support the complainant’s claim that Officer A selected her out of a group of people who crossed at the same time be cited.

Finally, the I/O copied the citations Officer A issued that day and showed them to Officer A during his interview. As Officer A was reviewing them, he noted the races of some of the 20 pedestrian stops he initiated that day. According to him, the people he stopped included a male Hispanic, female White, male White, male White, male Other, and female Hispanic. We believe copies of the actual citations could have been helpful in assessing the complainant’s Biased Policing allegation, but they were not included in the investigation.

#### b. The Condition of the Light When the Complainant Stepped off the Curb

We believe that additional interviews by CPU should have been conducted with both the complainant and the independent witness to clarify their perceptions of the condition of the pedestrian crossing light when the complainant stepped off the curb. The complainant made several different statements regarding when she started across the street. Initially, the complainant stated to Officer A that the signal was flashing the number “22” when she began crossing the street. Toward the end of her recorded conversation with him, she stated it was at “23” when she “crossed.” To Sergeant A at the scene, the complainant stated that the signal was at “23” when she stepped off the curb. In the complainant’s subsequent interview with Sergeant A, she indicated “the pedestrian crossing was still there. And even by the time I was in the middle, it was 23. By the time I got over to you [Sergeant A], I had even more than 10 . . . to go.” Sergeant A did not clarify with the complainant what she meant by “the middle.” According to the witness, during his second interview with Sergeant A, Officer A gave five or six tickets that day that were all unjustified because the people he cited had begun crossing the street when the *green* “Walk” sign was illuminated. Additionally, during his first interview with Sergeant A, the witness described these people as stepping “off the pavement on [sic] a timely manner when the light was *green*” and that they “had seconds left according to the, the flashing meter.” During his first interview with Sergeant A, the witness indicated that these people had “stepped off when it was green” and also indicated that the complainant had stepped off the curb

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when the light was “green.” Given the apparent inconsistency between the witnesses’ description of the color of the light and that of Officer A, we believe it would be prudent for the CPU I/O to have attempted to clarify what the witness was referring to as the “green” light.<sup>82</sup> When the witness was interviewed a second time by Sergeant A, he indicated that he did not “take notice” of whether anyone had stepped off the curb after the number countdown began on the light. Instead, he said, “I saw that they had stepped off the curb on [sic] a timely manner.” He also indicated that he was not “paying as close attention to stragglers that, that were leaving the crosswalk after the signal started flashing.” Rather, he stated, that he was “paying attention to the ones that I saw him cite, and they appeared to be walking, you know, at the time that was designated.” When the Sergeant attempted to clarify what he meant by that, the witness responded, “they got across the street before the, the, the signal changed,” though he was unable to say definitively what it changed to.

The witness also said that the complainant stepped off the curb when the sign said “walk” and that he did not see any numbers flashing. However, he also said that he “wasn’t taking that much interest in every specific tiny --- [detail].” The witness attempted to clarify by saying, “the woman in question [presumably the complainant] stepped off when it said walk, and then she got across the street before the time had, had gone down to zero, and then she was summoned . . . by the officer.”

#### ADJUDICATIVE ANALYSIS

We do not believe that the condition of the light when the complainant stepped off the curb or the question of whether the complainant was crossing as part of or behind a group of people when she was selected to be cited by Officer A was definitively resolved by the investigation. Accordingly, we do not believe that a preponderance of the evidence supported a finding of Unfounded for Allegation No. 1.

The OIG also believes that the adjudicator’s decision to Unfound Allegation No. 2 – that Officer A said “Thank God they taught you how to count” -- was not supported by a preponderance of the evidence. The OIG was unable to hear that remark on the tape-recording of the conversation between Officer A and the complainant. However, there were portions of the recording during which we could hear people talking but could not decipher what exactly was being said. Furthermore, we also noted that it appears that the officer stopped tape-recording his conversation with the complainant when the officer indicated that a supervisor “has arrived.” (It is unclear whether “arrived” meant actually joined the complainant and Officer A or drove up to the location in his vehicle. However, Officer A told the CPU I/O that he left the “detention area” to go talk to the supervisor.). Accordingly, it is unclear whether any conversation with the complainant continued off-tape. Officer A appeared to go back “on tape” after the Sergeant had concluded speaking with the complainant. Officer A denied making the statement.

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<sup>82</sup> We also believe that it would have been helpful for the I/O, when he went out to canvass the scene for witnesses, to have observed at least one complete cycle of the traffic light and document that in an I/O note to verify Officer A’s description of the condition of the “walk” and “don’t walk” signals as well as to provide insight as to what the witness may have been referring to as the “green” light at the intersection.

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Further, the witness stated that he did not hear Officer A say to the complainant “I’m glad they taught you how to count” or “because I picked you” and that the officer was courteous to him. However, the witness indicated he was watching the officer cite those crossing the intersection from atop some stairs of a shopping mall on one corner of the intersection, and it is unclear from the investigation how much of Officer A’s conversation with the complainant the witness overheard or was in a position to overhear how much of Officer A’s conversation with the complainant the witness overheard or was in a position to overhear.

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#### Case No 10

#### SUMMARY

In the early afternoon, the complainant was driving out of a shopping mall parking lot. Officers A and B were driving in the parking lot in the opposite direction of the complainant and made eye contact with him. The officers saw that the complainant was African-American and was wearing a red baseball cap. When the complainant drove out of the parking lot, the officers initiated a traffic stop for the complainant's failure to yield (they claimed he almost caused a collision between other cars) and for impeding traffic<sup>83</sup> and, at some point, determined that the complainant was driving with a suspended driver's license in violation of VC section 14601.1(a) which provides in relevant part, "No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked." During the traffic stop, the officers asked the complainant about his possible gang affiliation.<sup>84</sup> The complainant was ordered out of his car and was handcuffed. One of the officers conducted a pat down search of the complainant, and the complainant's car was searched. A friend of the complainant came by during the traffic stop and offered to take the complainant home. The officers did not impound the complainant's vehicle, and it was left parked at the scene of the traffic stop. The complainant was cited for driving with a suspended license and given a warning for failure to yield. Soon after the traffic stop was over, the complainant called the area police station and complained to an intake sergeant that he was unlawfully stopped based on his race, because the officers thought he was a gang member, and because he did not commit the traffic violation for which he was stopped.

Nine allegations were framed: 1) Officer B stopped the complainant based on his race; 2) Officer A stopped the complainant based on his race; 3) Officer B stopped the complainant without probable cause; 4) Officer A stopped the complainant without probable cause; 5) Officer B initiated an unlawful traffic stop based on the belief that the complainant was a criminal gang member; 6) Officer A initiated an unlawful traffic stop based on the belief that the complainant was a criminal gang member; 7) Officer A made discourteous statements to the complainant when he said "shut the f\*ck up" and "shut the f\*ck up and face the wall;" 8) Officer B neglected to impound the complainant's vehicle as required by law and Department policy; 9) Officer A neglected to impound the complainant's vehicle as required by law and Department policy.

Allegations one, two, five and six were adjudicated as Not Resolved based on the following rationale:

"The officers proclaim that that [sic] they based their enforcement action on a traffic violation they observed committed by [the complainant]. As is explained later in Allegations 3 and 4, there is sufficient evidence, to include [the complainant's] description of what transpired, to suggest that the violation did in fact occur. [The complainant] proclaimed that he was stopped because of his race, African American,

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<sup>83</sup> California Vehicle Code section 21804(a) – "Entry Onto Highway"—provides in pertinent part: "The driver of any vehicle about to enter or cross a highway from any public or private property, or from an alley, shall yield the right-of-way to all traffic."

<sup>84</sup> The complainant and both officers said the complainant was asked about his possible gang affiliation; however, each party's version differs as to what was said to the complainant and when.

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but was unable to articulate in the investigation how he was treated differently than non-African American citizens, or other African American citizens that make up more than 50% of the residents in this particular community. It is also his contention that he was stopped because the officers believed he was a gang member; however, he could not articulate his thought process as to why he thinks he was singled out in this regard as well. It should also be noted that [the complainant's] friends that are also African American, and present with him during the latter part of his encounter with Officers [B] and [A] were not the subject of disparate treatment even though they were attired similarly..”.

“It is this adjudicator’s belief that the officers in this case acted without malice and had sufficient reason to conduct enforcement action regardless of [the complainant’s] race. Furthermore, there is no concrete evidence to suggest that the officers’ actions were anything other than appropriate enforcement action that is the standard for good police work. Given the apparent appropriateness of the action on its surface, the issue becomes whether there is independent and objective evidence to support this assertion. Unfortunately, because there is no way of obtaining independent evidence as to what the officers were thinking at the time the stop was conducted, and short of being able to get into the officers’ mind, this investigation was unable to sufficiently resolve the questions as to the officers’ motives for taking enforcement action. Conversely, there is no way of really knowing the true motives for [the complainant] to make these allegations since we can't get in his mind either and his articulation for his assertions is inadequate; therefore, it is with disappointment that these allegations weren’t able to be properly resolved in this investigation and short of reading the officers' mind and [the complainant’s] mind they can only be classified as NOT RESOLVED.”

Allegations three and four were adjudicated as Unfounded based on the following rationale:

“[Officers B] and [A] drove past [the complainant] who was driving in the opposite direction through the [store] parking lot. The officers stated [the complainant] was driving rapidly through the parking lot, which attracted their attention and prompted them to make a u-turn and follow him. This is consistent with what [the complainant] stated, in that he was cutting through the [store] parking lot from [one street to another]...This illegal maneuver is often used by motorists who are in a hurry and want to avoid waiting for the left turn lane [onto the other street]. Once behind [the complainant], the officers observed [the complainant] impede traffic as he made a southbound turn from the parking lot onto [the street].”

“[The complainant] stated while he was waiting to exit the driveway of the parking lot, his vehicle was extended into [the street] one inch. There was a pick-up truck waiting in the northbound lane to turn into the parking lot. The pick-up truck was unable to pull in the driveway because of where [the complainant’s] vehicle was positioned...[The complainant] drove out onto [the street], giving the pick-up truck room to enter the parking lot. Once [the complainant’s] vehicle was westbound across [the street], [the

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complainant] observed a bus parked in the southbound lanes of [the street]. [The complainant] had to stop his vehicle, across lanes of [the street], and wait until the bus completed unloading/ loading passengers and proceeded southbound on [the street].” “This incident occurred at approximately 1230 hours, which is an extremely busy traffic time. The . . . store is a very active and highly trafficked shopping area. [The street] is a major thoroughfare and is highly congested. It would be next to impossible to stop a vehicle across the lanes of [the street], for even the briefest period of time, and not impede oncoming traffic. Although the officers depicted vehicles braking suddenly and [the complainant] did not, [the complainant] still described himself impeding.”

Allegation seven was adjudicated as Not Resolved based on the following rationale:

“Even though there was a likelihood [sic] [the complainant] made the allegation against Officer A because he was angry about receiving a citation, there was no overwhelming proof to support or rebut [the complainant’s] allegations. According to [the complainant], his friends who got to the incident toward its conclusion were present during some of these inappropriate remarks, but [the complainant] refused to provide their information so that they could be contacted. Nothing was demonstrated to show [the complainant] was unreliable and he was not proved to be noncredible. Without any other evidence, there was no way to determine if this allegation occurred as alleged or did not occur. Therefore, it is recommended this allegation be classified as NOT RESOLVED.”

Allegations eight and nine were adjudicated as Non-Disciplinary, Employees’ Actions Could Have Been Different/Training based on the following rationale:

“Intradepartmental Correspondence dated September 12, 2007, revised the vehicle impound policy and rescinded the moratorium on certain vehicle impounds. At that time, the Department made minor modifications . . . in order to allow officers to enforce the provisions set forth in the California Vehicle Code, while also being guided by the ‘Community Caretaking Doctrine,’ which allowed the officers to take action based on public safety. The decision to impound a vehicle must be reasonable and in furtherance of public safety.”

“Because of this, officers were able to take different courses of action when encountering a driver without a valid license rather than automatically impounding the vehicle. In the correspondence several scenarios were described where the driver was unlicensed and officers would not have to impound the vehicle. Unless an officer was very familiar with the revised policy, it could be confusing when it was justified to impound or not impound a vehicle.”

“For example, if an unlicensed driver was the sole occupant of the vehicle it would be reasonable and in the interest of public safety to impound it. However, if the traffic stop was in the driver’s residential driveway or a legal parking space in the vicinity or the driver’s residence, impoundment would not be warranted.

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Another circumstance would be if there were unlicensed passengers in a vehicle driven by an unlicensed driver, impounding would be justified based upon public safety. Even if there were licensed passengers in the vehicle and the registered owner could not be contacted the vehicle should be impounded. However, if the registered owner was to give permission for one of the licensed drivers to drive the vehicle, impounding of the vehicle would not be appropriate.”

“I believe, based on the [Officer B] and [A’s] actions, they thought they were acting in the best interest of [the complainant] by not impounding his vehicle, which was what the modification of the policy was striving for. [Officer B] recalled being informed during a roll call training that if possible a vehicle should be legally parked. According to the policy, this was true if a driver was arrested and as discussed prior, if an unlicensed driver was near his residence.”

“Unfortunately, the officers’ lack of familiarity with the policy led them to take an action which was not appropriate. Had [Officer A] and [B] known the policy, they would have been able to differentiate between allowing the vehicle to be parked near the driver’s residence vs. parked at scene. They also would have been aware the licensed driver who arrived at scene and was a friend of [the complainant’s] could have taken the vehicle. [Officer B] and [A’s] actions clearly did not rise to the level of misconduct. It is this adjudicator’s preference that the officers had impounded [the complainant’s] vehicle, which would have been the appropriate thing to do and could have avoided some of the issues in this investigation; however, the officers’ confusion about the Department’s impound policy could easily be remedied through training. It is therefore recommended these allegations be classified as the EMPLOYEE’S ACTIONS COULD HAVE BEEN DIFFERENT/TRAINING.”

#### UNDISPUTED FACTS

The officers initiated a U-turn and followed the complainant as he exited the parking lot, after which the officers conducted a traffic stop. The complainant was driving with a suspended license, was cited for violating VC § 14601.1(a), and was warned for impeding traffic. The complainant had tattoos (though the officers did not describe them in detail) and was wearing a red hat with a “W” on it. The officers asked the complainant about his possible gang affiliation. The complainant was handcuffed and searched and his car was searched. The complainant’s car was left parked at the scene of the traffic stop.

The complainant was interviewed once by the Area intake sergeant on the day of the incident and later by the CPU I/O. The CPU conducted the interviews with the accused officers and completed the investigation.

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### DISPUTED FACTS

The complainant denied that he impeded traffic.<sup>85</sup> He said that he was waiting for traffic to clear so that he could make a left-hand turn out of the parking lot. The complainant said that when he was stopped waiting for traffic to clear, his car was “maybe less than an inch” out of the driveway and in the lane of traffic. The complainant said that upon being stopped, he told Officer B that his driver’s license was suspended.<sup>86</sup> Neither officer was able to cite the precise VC section for which they initially stopped the complainant.

Officer B claimed he ordered the complainant out of the car because he said the complainant was disruptive and argumentative. The complainant claimed he was handcuffed “immediately after exiting the vehicle.”

The complainant admitted to “get[ting] beside myself” because there was no reason for Officer A to handcuff him and “everything else.”

The complainant said that when he was out of the car, Officer A told him to “put my f\*cking hands behind my f\*cking back and turn around and face the f\*cking wall.” Officer A threatened to impound the complainant’s car and take him to jail if he would not “shut the f\*ck up.” Both officers denied using profanities or hearing the other using profanities.

The complainant stated that whenever he had been pulled over by LAPD, he was “automatically pulled out of the . . . car and handcuffed and asked to face the wall while they search the car . . . even if it’s a routine traffic stop.”

The complainant stated that the officers did not have a reason to pull him over and this was evidenced because: 1) the officer stopped him for obstructing traffic but only warned him for this; 2) the officers did not impound his car; 3) the officers did not arrest him for misdemeanor driving on a suspended license;<sup>87</sup> 4) they pulled him over because the officers knew “he’s dirty” but searched him and found nothing, including that he did not have any contraband nor was he on probation or parole; and 5) he was not obstructing traffic.

### INVESTIGATIVE ANALYSIS

#### *Intake Sergeant*

The OIG had concerns about the way the intake sergeant interacted with the complainant when he called the Area station to file his complaint. Among other things, we believe that certain comments made by the sergeant, while not discourteous per se, were unnecessary and could have

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<sup>85</sup> The complainant was not asked by the I/O if he had been speeding.

<sup>86</sup> Officer A said that the complainant did not say this to him and that he did not hear the complainant say this to Officer B. Officer B did not recall if the complainant said this to him. Officer A said that after Officer B wrote the citation Officer B told Officer A that Officer B was going to cite the complainant for driving with a suspended license. Officer A did not specifically indicate when he found out the complainant’s license was suspended. Officer B said he ran the complainant’s driver’s license and it came back as suspended. Further, Officer B said that after he ran the complainant’s license, he told Officer A that the complainant had a suspended license.

<sup>87</sup> The complainant stated he knew Officer B gave him a break because they did not arrest him or impound his car.

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impacted the complainant's impression as to how his complaint would be treated. For example, at the end of his version of the events, the complainant told the sergeant, "Well . . . Officer [A] he basically . . . talked down to me, man." The sergeant responded, "You've already said that." Later, when the sergeant asked the complainant why he believed that the officers ran his license plate when they got behind his vehicle, the complainant said, "I mean its [sic] common sense." The sergeant responded, "No, I – we don't speculate good common sense." When the intake sergeant asked for the name of the complainant's friend who responded to the scene, the complainant said "[h]is name is irrelevant," to which the sergeant responded, "[inaudible] relevant if you brought him up."

#### *CPU analysis*

The CPU interviewed all available<sup>88</sup> witnesses and gathered all relevant documents including the various applicable VC Sections, Department policies, and the officers' history of citations they issued for a period of six months prior to this incident. The CPU conducted an extensive re-interview of the complainant. We believe the I/O applied the same level of objectivity to the questioning of the complainant as he did to that of the accused officers. We also commend CPU for their efforts to attempt to secure any surveillance tapes from the business located where the traffic stop occurred. Further, the CPU investigator also followed up on Officer B's claim about the roll call training he said he attended regarding impounding vehicles. Additionally, the I/O's summary of the investigation was comprehensive and informative, especially in light of the inconsistencies between the complainant's and officers' interviews. Finally, we believe the I/O endeavored to explore the officers' justification for every post-stop activity (e.g., ordering complainant out of car, searching him and his car) during their encounter with the complainant.

We had several concerns regarding the investigation outlined below.

#### a. Questioning of the Complainant

As an overall observation, we believe the questioning of the complainant by the CPU I/O was comprehensive and that the complainant was treated respectfully. However, toward the end of the CPU interview, there were several questions posed to the complainant asking if he knew why the officers searched him, his vehicle, and handcuffed him, which we believe were inartfully phrased and which could have had the unintended impact of giving the complainant the impression that the I/O believed that the officers' actions were justified. For example, after the complainant had spent a great deal of time explaining that he had not impeded traffic, the I/O asked him "were you aware that you were in violation of the Vehicle Code or the code that – that they used to stop you?" The complainant clarified that he was only cited for driving on a suspended license. The I/O also asked the complainant "What is your expectation of law enforcement when they observe a violation of the law?" The complainant stated that he expected that they would not abuse their authority as they did in this case.

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<sup>88</sup> The complainant's friends who arrived at the scene were not identified by name in the investigation, and, thus, they were not contacted. However, during the intake interview, when the intake sergeant asked the complainant for the name of his friend at the scene, the complainant said the friend's identity was "irrelevant." It does not appear from the complainant's CPU interview that the I/O again tried to solicit this information from the complainant.

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#### b. The Traffic Stop

The officers indicated that they stopped the complainant because he was speeding in the parking lot and almost caused a collision and that the complainant came to a stop beyond the parking lot driveway impeding traffic in the street. The OIG believed additional details in the investigation could have shed light on the officers' legal justification for stopping the complainant.

First, while questioning both officers about their observations of the violation and the complainant, the I/O had the officers each draw a map of their location when they first saw the violation and where they were located when they first saw the complainant. The OIG commends the I/O for having the officers do this; however, those maps were not included in the investigation provided to the OIG.

Second, the complainant stated that as he was leaving the shopping mall a bus was across the street loading and unloading passengers, as well as a large truck that was unable to enter the parking lot until the complainant left. Neither officer was asked by the I/O about the possible presence of a bus and/or a truck or to describe any vehicles which were impeded by the position of the complainant's vehicle.

Third, both officers said that the complainant was speeding in the parking lot. Neither officer was asked if the complainant was warned for speeding.

Finally, the complainant said that Officers A and B knew they were in the wrong because they told the complainant that if he felt he was treated unjustly, they would take him to jail and there he could talk to their watch commander. The OIG would have preferred if the I/O had asked questions of Officers A and B in this regard.

#### c. The Detention and Handcuffing of the Complainant During the Traffic Stop

The I/O asked a number of questions of both the officers and the complainant surrounding the ordering out, handcuffing, and search of the complainant's person. In order to better assess the credibility of the officers' descriptions of the complainant as verbally "belligerent," "argumentative," "disruptive" and repeatedly cursing, we believe it would have been helpful if the I/O asked further clarifying questions of the complainant to determine whether his description of his behavior was consistent with that of the officers.

The complainant stated that he was handcuffed "immediately after when I exited the vehicle." The complainant stated in his interview, "And, I - - I'm not going to lie, yeah, I did get beside myself and (inaudible) cause I was talking to Officer [B]. I was not talking to Officer [A] and for Officer [A] to arrest me. You know. Was no reason for him to handcuff me and everything else. Then Officer [B] was like look, man, you're driving around with a suspended license. We had every right to arrest you and take you to jail. I said Okay cool. I'm being cool." The complainant later described himself as being "upset" and "a bit rude."

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However, we would have preferred if the I/O had asked the complainant to elaborate on what he meant by “beside himself,” “rude,” and “upset” and whether the complainant had engaged in any physical actions which could have assisted in assessing the officer’s decision to handcuff him and pat him down, especially in light of Officer A’s claim that the complainant “rais[ed] his arms to shoulder level,” which caused Officer A to handcuff the complainant because of his belief that the complainant’s actions “might lead to aggressive behavior in which he might want to . . . attempt or try to become violent, you know, become an impossible fight with us. So that’s why to prevent any further confrontation, I placed him in handcuffs.”

#### d. The Search of Complainant’s Car

The CO of IAG in his recommended adjudication indicated his belief that “Officer [A] searched [the complainant’s vehicle] as though he were going to impound it, yet did not do so nor did he have an impound sheet to conduct the search and document the vehicle’s condition and contents. This may indicate Officer [A] used the ‘impound’ as a pretext to conduct the search and then not impound the vehicle.”

We agree with this recommendation based in large part on the probative questions of the CPU I/O which led to some of the inconsistencies outlined below. We believe that the investigation raised questions regarding the precise timing of, and justification for, searching the complainant’s car. Therefore, we believe that either the investigator or the adjudicator should have considered framing additional allegations regarding what could have been a pretext search.

Officer B indicated that he searched the complainant’s car, the passenger compartment, under the seat, the trunk, and “parts of the engine.” Officer B said that he did an inventory search<sup>89</sup> of the complainant’s car because he was going to impound the car and that the complainant had given him consent to search his car. Officer A indicated that Officer B did a visual search of the complainant’s car. Officer A said that Officer B, “with the door open like he just looked a quick visual [sic] within arms’ reach of [the complainant].”

The officers indicated they allowed the complainant to park the car and leave with his friends, which would be inconsistent with the need to conduct an inventory search pursuant to an impound. Moreover, Officer A indicated that Officer B told him, “I’m going to cite him for a suspended driver’s license and I’m going to warn him for impeding traffic. I said, ‘That’s okay with me.’ He says, ‘did you want to impound the vehicle?’ I say, ‘His friends said that they will take him . . . and I suggested that he can park his vehicle at the scene. Instead of having it impounded. And he says, ‘okay. That’s fine with me.’ [sic]”

The complainant said that Officer A said, “No I don’t want to impound a piece of sh\*t. I don’t feel like doing the paperwork.”

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<sup>89</sup> According to the Sourcebook, an inventory search is supported by three rationales: to ensure the safety and security of the vehicle owner’s property, protection of police against claims of lost, stolen, or vandalized property, and for officer safety (Bertine [1987] 479 U.S. 367, 372; Opperman [1976] 428 U.S. 364, 369; Needham [2000] 79 Cal.App.4th 260, 266)

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Officer B said that he told his partner that the complainant had a suspended license and Officer A said “Do what you got to do.” Moreover, Officer B said he told Officer A “that [the complainant] had no warrants, that he did come back with a suspended license. That we’ll have to impound his vehicle and I was going to start a vehicle impound as to maintain cover and to keep an eye on [the complainant’s] friend,” which implied that the friend was already present when Officer B ‘decided’ to impound the vehicle. When asked by the I/O why he ultimately decided not to impound the vehicle, Officer B stated, [h]is friend arrived at the scene and I believe the [complainant] admitted that he had a child, also.” Further, Officer B said he fully searched the complainant’s car, inside the passenger compartment, under the seat, the trunk, and “parts of the engine.” However, in response to probing questioning by the I/O, Officer B said he did not have a vehicle impound sheet with him at the time, but he had one in his car.

Officer B said he knew that the Department Manual states that officers shall impound the car, but he remembered a roll call training in which he learned that “if we can have the vehicle legally parked, we should make every attempt to do so[,] so we do not impound the vehicle.” He continued, “And I don’t know if that was updated manual for us; but as far as I know, we should impound for suspended licenses. But due to that fact and the information and the economics not what it is, I don’t like impounding people’s vehicles unless it’s absolutely necessary.”

Moreover, Officer B stated that when he was going to do the inventory search of his car, he asked the complainant for permission to search the car, and the complainant agreed that he could search the car. (It should be noted that the complainant was apparently in handcuffs at this point). Officer B said he did this because before he does any sort of search he asks for consent to search “out of habit.” Further, the complainant was never asked if he gave Officer B consent to search the vehicle, and Officer A did not mention it in his interview.

#### e. The Complainant’s Alleged Gang Affiliation

The complainant alleged that the officers stopped him because they thought he was a gang member. The complainant said that both officers asked him questions about his possible gang affiliation. Both officers acknowledged doing this. However, the I/O did not ask either officer why he asked the complainant about his possible gang affiliation, especially since both officers said that the reason they stopped the complainant was because of the traffic violations, not because of his appearance or possible gang affiliation.<sup>90</sup> Moreover, the officers provided reasons other than possible gang affiliation as justification for the handcuffing and search of the complainant and his car. Accordingly, we believe information regarding the officers’ reasoning for asking the complainant about his possible gang affiliation could have provided further insight to the adjudicator about the officers’ motivation for stopping the complainant, as well as searching him and his vehicle.

### ADJUDICATIVE ANALYSIS

The OIG agreed that a preponderance of the evidence supports adjudicating Allegations Nos. 1, 2, 5, and 6 as Not Resolved.

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<sup>90</sup> Officer A stated that Department policy would not allow him to stop someone solely based on gang membership.

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There is no dispute that the officers saw the complainant's race before initiating the traffic stop. What we believe is in dispute is whether the initial stop of the complainant was legally justified. Though there is no independent information to corroborate the complainant's allegation that he was stopped because the officers thought he was a gang member, the officers acknowledge asking him questions about his possible gang affiliation. Further, the officers' actions following the stop, particularly their questions regarding his possible gang membership, raised questions regarding Officer B's motivation for searching the complainant's car, which, in turn, could raise questions about their justification for the traffic stop.

Although we agree with the decision to Not Resolve these allegations, we question some of the bases upon which the Department relied in their rationale. Among other things, the adjudicator referenced the general racial demographics of the area in which the complainant was stopped without considering other factors such as the racial demographics of the people who drive through the area and/or who visit the area, as compared with those who reside in the area.

Also, the adjudicator stated that the complainant could not articulate his thought process as to why he thought he was stopped because the officers believed he was a gang member. We believe the complainant's intake and CPU interviews demonstrate otherwise.

Among other things, the complainant stated the following to the intake sergeant:

“Officer [A] then tried to engage me in conversation. He was like, well, you know why we pulled you over? Cause you're wearing a red hat, you have visible, what could have been gang tattoos and you're in a 40 Crip neighborhood. So I asked him, I said, so every young gang - - young - - every young African American man wearing a hat has to fit the description?” He said well, in this case, yes, you do. He was like you are in known gang territory. These 40 gang members are known to wear red hats. I said man, that's not even fair; you know what I mean?”

Later in this interview, the complainant asks, “why are they picking random men out who fit the description [of a gang member]? So that tells me every Black man that walks down the street with a red hat or a blue hat or a green hat, you know, has to fit a description of a gang member.”

In his CPU interview, the complainant said that one of the officers told him, “I had visible gang tattoos. I'm in a gang neighborhood.”

Further, the OIG believed that a preponderance of the evidence did not support a finding of Unfounded for Allegations three and four because the investigation did not elicit sufficient detail from the officers regarding the facts and circumstances surrounding the alleged traffic violation.

As to Allegation seven, the OIG agrees with the Department that a preponderance of the evidence supported a finding of Not Resolved. Again, there is no independent evidence to support either the officers' or the complaint's recollection of the incident.

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The OIG noted that the adjudicator, in his rationale, said, “Even though there was a likely hood [sic] [the complainant] made the allegation against [Officer A] because he was angry about receiving a citation . . . .” We do not believe this conclusion is supported by the evidence and unfairly discredits the complainant.

Finally, the OIG agreed with the Department that Allegations eight and nine be adjudicated as Non-Disciplinary; Employee’s Actions Could Have Been Different/Training. As discussed in our review of Case No. 4, the OIG believed that there may be some confusion among Department employees in this area which may require further training.