

LOS ANGELES POLICE COMMISSION

***NON-CATEGORICAL USE OF FORCE
INVESTIGATIONS AUDIT
(Fiscal Year 2007/2008)***



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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Inspector General

April 30, 2008

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EXECUTIVE SUMMARY
OFFICE OF THE INSPECTOR GENERAL
NON-CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT
FISCAL YEAR 2007/2008

PURPOSE

The Office of the Inspector General (OIG), pursuant to Consent Decree Paragraph 136(i), completed its annual Non-Categorical Use of Force (NCUOF) Investigations Audit (Audit). Paragraph 136(i) requires the OIG to assess areas of concern identified by the Inspector General and at least one area related to the quality and/or outcome of NCUOF investigations. For this Audit, the OIG assessed the overall quality of the NCUOF investigations.

This Audit is not intended to provide an assessment of Department-wide adherence to mandates specified in the Consent Decree. The Los Angeles Police Department's (LAPD or Department) Audit Division performs that type of assessment annually. Instead, this Audit focused on NCUOF Level I investigations, as they are generally higher risk than NCUOF Level II investigations.

SCOPE AND METHODOLOGY

To identify our population, the OIG requested Use of Force Review Division (UOFRD) to provide a listing of all NCUOF Level I investigations closed during the months of September and October, 2007. Thirty-four NCUOF investigations were identified and 26 were randomly selected for review. To evaluate the 26 NCUOF investigations, the OIG reviewed documentation within the NCUOF investigations and listened to all public witness and subject recorded interviews associated with the investigations.

Two detailed matrices were used as a guide to evaluate the NCUOF investigations and recorded statements. The Audit Report includes concerns that the OIG believed to be significant because they could have impacted the adjudication of an NCUOF investigation, the subject's criminal case, and/or any related complaint investigation (or lack thereof) of "excessive force" allegations. Less significant concerns were separately communicated to the Commanding Officer of UOFRD for consideration and appropriate action.

SUMMARY OF RESULTS

The Audit revealed that, overall, the NCUOF investigations were completed in a quality manner. The OIG believes, in large part, this was due to UOFRD conducting thoughtful and standardized reviews of the Area NCUOF investigations prior to their final adjudication and closure. In fact, 25 of the 26 NCUOF investigations reviewed contained "kickback" notifications from UOFRD to the Areas/Divisions. Most of the "kickback" notifications indicated that NCUOF investigative shortcomings needed to be corrected and/or ambiguities needed to be clarified.¹ It was evident throughout our Audit that the approach utilized by UOFRD improved the overall quality of the investigations and facilitated on-going training to Area investigators who are responsible for conducting the NCUOF investigations.

¹ A "kickback" notification could be in the form of intradepartmental correspondence, fax, email, or electronic communication sent from UOFRD to the Areas/Divisions.

Executive Summary

Non-Categorical Use of Force Investigations Audit (Fiscal Year 2006/2007)

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The OIG did, however, identify four types of concerns related to investigative quality that were noted in multiple investigations and warranted a detailed discussion within the Audit Report. The table below delineates the four types of investigative quality concerns as well as the number and percentage of NCUOF investigations in which the type of concern was present.

TYPES OF CONCERNS IDENTIFIED BY THE OIG

TYPE OF CONCERN	APPLICABLE NCUOF INVESTIGATIONS WITH THE CONCERN	
	NUMBER	PERCENTAGE
Handling of Excessive Force Allegations	3 of 12 ²	25%
Miranda Admonition of Subjects ³	7 of 25 ⁴	28%
Collection of Photographic Evidence	6 of 26	23%
Documentation of Witness Vantage Points and Portions of a Use of Force Observed	6 of 26	23%

Other noteworthy concerns, some of which related to investigative quality, as well as others which did not relate to investigative quality (i.e., the timeliness of NCUOF investigation closure and notifications to the Mental Evaluation Unit), were also identified and can be found in the Additional Matters section of the Audit Report.

² For 12 of the 26 NCUOF investigations, the OIG determined that a witness and/or the subject alleged excessive force.

³ Certain investigations contained arrest reports that referenced a subject's statement and/or the associated tape number that were obtained during an NCUOF interview; however, since the interviews were conducted outside of a Miranda Admonition or after the subject's Miranda Rights were invoked, the OIG viewed them as having a potential concern. As the Department is working on providing clarification on this area to NCUOF investigators, the OIG believes it is important to provide details on these instances.

⁴ For 25 of the 26 NCUOF incidents, a subject was arrested.

**OFFICE OF THE INSPECTOR GENERAL
NON-CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT
FISCAL YEAR 2007/2008**

PURPOSE

The Office of the Inspector General (OIG), pursuant to Consent Decree Paragraph 136(i), completed its annual Non-Categorical Use of Force (NCUOF) Investigations Audit (Audit). Paragraph 136(i) requires the OIG to assess areas of concern identified by the Inspector General and at least one area related to the quality and/or outcome of NCUOF investigations. For this Audit, the OIG assessed the overall quality of the NCUOF investigations.

This Audit is not intended to provide an assessment of Department-wide adherence to mandates specified in the Consent Decree. The Los Angeles Police Department's (LAPD or Department) Audit Division performs that type of assessment annually. Instead, this Audit focused on NCUOF Level I investigations, as they are generally higher risk than NCUOF Level II investigations.

BACKGROUND

Per Department policy (Special Order No. 13, 2004), a NCUOF is defined as an incident in which a Department employee uses a less-lethal control device or physical force to:

- Compel a person to comply with the employee's direction; or,
- Overcome resistance of a person during an arrest or a detention; or,
- Defend any individual from an aggressive action by another person.

The Department excludes the following types of incident from the requirement to complete a NCUOF investigation:

- Use of general grips and joint locks to compel a person to comply with an employee's direction (if the force does not result in an injury or complained of injury);
- Force used to reasonably overcome passive resistance due to physical disability, mental illness, intoxication, or muscle rigidity of a person (if the force does not result in an injury or complained of injury);
- Discharges of less-lethal projectile weapons that do not contact a person;
- Force used by an organized squad in a crowd control situation or a riotous situation when the crowd exhibits hostile behavior and does not respond to verbal directions from Department employees; and,
- Any incident investigated by Force Investigation Division (e.g., a Categorical Use of Force).

All NCUOF investigations are classified into two levels, I and II. Level I investigations are generally related to higher-risk NCUOF incidents and involve one or more of the following:

- An allegation of unauthorized force used by a Department employee(s); or,
- A serious injury resulting from the force used, such as a broken bone, dislocation, or an injury requiring sutures;¹ or,
- Injuries to the person upon whom the force was used that are inconsistent with the amount or type of force reported by the involved Department employee(s); or,
- Accounts of the incident provided by witnesses and/or the subject² of the use of force that substantially conflict with the involved employee(s) account.

All other NCUOF investigations are classified as Level II. Level I investigations, unlike Level II, require all subject and public witness interviews to be recorded, unless impractical or the interviewee refuses to be recorded. However, an explanation for the inability to record the interview must be documented. Also, the interview of each subject and witness must be summarized if a statement is not recorded or the person's account of the use of force is in substantial conflict with the involved Department employee's account. The NCUOF investigator is not required to record the interviews of Department employees who are involved or considered witnesses to the NCUOF and the Department does not require these interviews to be summarized. Uninvolved Area supervisors investigate these uses of force.

Since March 2006, the new and updated Training Evaluation and Management System (TEAMS II) was implemented, which allowed NCUOF cases to be created, documented, and adjudicated on-line.³ The implementation of the system provides for the electronic review and submittal of the NCUOF investigation by the watch commander/officer in charge. The watch commander provides a written evaluation as to whether or not the type of force and tactics reported by the involved Department employee(s) were reasonable, consistent with available evidence, and adhere to Department policy. The watch commander then electronically forwards the NCUOF investigation to the Area commanding officer to recommend an adjudication, after which, it is forwarded to the Bureau commanding officer to recommend an adjudication. Once the NCUOF investigation is systematically approved and submitted through the involved employee's chain of command, it is reviewed by personnel assigned to Use of Force Review Division (UOFRD) to ensure the NCUOF investigation is complete and that all relevant policy considerations have been addressed before forwarding the NCUOF investigation to the Commanding Officer of UOFRD for its final adjudication and close-out.

¹ If the NCUOF investigator is unable to verify the seriousness of an injury, the investigation should be classified as Level I. However, if the subject received injuries requiring hospitalization related to the use of force, Force Investigation Division (not the involved officer's Chain of Command) should investigate the incident as a Categorical Use of Force.

² Within this Report, the word "subject" refers to the person upon whom officers involved in the NCUOF incident used force.

³ When an officer reports a use of force to the watch commander, the watch commander will assign the case to a supervisor, which allows the supervisor to create and document the investigation in the Use of Force System (an application within TEAMS II).

SCOPE AND METHODOLOGY

As the Department conducts an annual Department-wide audit of NCUOF investigations, this Audit focused on NCUOF Level I investigations, as they are generally higher risk than NCUOF Level II investigations. To identify our population, the OIG requested UOFRD to provide a listing of all NCUOF Level I investigations closed during the months of September and October, 2007.⁴ Thirty-four NCUOF investigations were identified and 26 were randomly selected for review.⁵ To evaluate the 26 NCUOF investigations, the OIG reviewed documentation within the NCUOF investigations and listened to all public witness and subject recorded interviews associated with the investigations.

The Audit utilized two detailed matrices as a guide to evaluate the NCUOF investigations and recorded statements. The Audit Report includes concerns that the OIG believed to be significant because they could have impacted the adjudication of a NCUOF investigation, the subject's criminal case, and/or any related complaint investigation (or lack thereof) of "excessive force" allegations. Less significant concerns were separately communicated to the Commanding Officer of UOFRD for consideration and appropriate action.

On April 10th, 2008, the OIG discussed the results of the Audit with UOFRD. At that time, they expressed general agreement with the results.⁶ The OIG wishes to thank UOFRD for their cooperation and for sharing their expertise while we were conducting this Audit.

RESULTS OF THE AUDIT

The Audit revealed that, overall, the NCUOF investigations were completed in a quality manner. The OIG believes, in large part, this was due to UOFRD conducting thoughtful and standardized reviews of the Area NCUOF investigations prior to their final adjudication and closure. In fact, 25 of the 26 NCUOF investigations reviewed contained "kickback" notifications from UOFRD to the Areas/Divisions. Most of the "kickback" notifications indicated that NCUOF investigative shortcomings needed to be corrected and/or ambiguities needed to be clarified.⁷ It was evident throughout our Audit that the approach utilized by UOFRD improved the overall quality of the investigations and facilitated on-going training to Area investigators who are responsible for conducting the NCUOF investigations.

⁴ There could have possibly been other NCUOF investigations closed during these months that were improperly classified (i.e., classified as Level II instead of Level I or classified as Level I instead of Level II). However, since the Department's annual audit of NCUOF investigations (which is subsequently reviewed by the OIG) evaluates the classifications of NCUOF investigations, this Audit did not include a review of this area.

⁵ From all 34 NCUOF Level I investigations closed in September and October of 2007, the OIG randomly sample of 26 investigations based on a one-tail sample size calculation with a 95 percent confidence level, an expected error rate of six percent, and a plus precision of four percent.

⁶ The issuance of this Report was extended from March 31st to enable the OIG to have an exit meeting to discuss the findings of this Report with UOFRD.

⁷ A "kickback" notification could be in the form of intradepartmental correspondence, fax, email, or electronic communication sent from UOFRD to the Areas/Divisions.

The OIG did, however, identify four types of concerns related to investigative quality that, were noted in multiple investigations and warranted a detailed discussion within this Report. The table below delineates the four types of investigative quality concerns as well as the number and percentage of NCUOF investigations in which the type of concern was present.

TYPES OF CONCERNS IDENTIFIED BY THE OIG

TYPE OF CONCERN	APPLICABLE NCUOF INVESTIGATIONS WITH THE CONCERN	
	NUMBER	PERCENTAGE
Handling of Excessive Force Allegations	3 of 12 ⁸	25%
Miranda Admonition of Subjects ⁹	7 of 25 ¹⁰	28%
Collection of Photographic Evidence	6 of 26	23%
Documentation of Witness Vantage Points and Portions of a Use of Force Observed	6 of 26	23%

The following sections, organized by concern type, provide a general discussion on the concern type and information related to individual NCUOF investigation findings. Other noteworthy concerns, some of which related to investigative quality¹¹ as well as others which did not relate to investigative quality (i.e., the timeliness of NCUOF investigation closure and notifications to the Mental Evaluation Unit), are reported in the Additional Matters section of this Report.

HANDLING OF EXCESSIVE FORCE¹² ALLEGATIONS

DISCUSSION

During the OIG’s 2005/2006 NCUOF Investigations Audit, a concern was raised regarding the Department’s handling of excessive force allegations that were identified during NCUOF investigations. At that time, based on discussions with Department management, generally, when a subject and/or witness to a NCUOF incident alleged excessive force, the allegation was investigated as part of the NCUOF investigation. The investigator addressed the allegation in a note within the NCUOF investigation. Consequently, a separate complaint face sheet (which documents allegations made by the public and results in a complaint investigation being initiated) was not generated and because the specific allegation was not adjudicated through the complaint process, the allegation

⁸ For 12 of the 26 NCUOF investigations, the OIG determined that a witness and/or the subject alleged excessive force.

⁹ Certain investigations contained arrest reports that referenced a subject’s statement and/or the associated tape number that were obtained during a NCUOF interview; however, since the interviews were conducted outside of a Miranda Admonition or after the subject’s Miranda Rights were invoked, the OIG viewed them as having a potential concern. As the Department is working on providing clarification on this area to NCUOF investigators, the OIG believes it is important to provide details on these instances.

¹⁰ For 25 of the 26 NCUOF incidents, a subject was arrested.

¹¹ The OIG did not believe these areas warranted an extensive discussion, thus they were reported in the Additional Matters section of this Report.

¹² The Department officially classifies these types of allegations as “unauthorized force,” not “excessive force.”

was not reflected on the involved officer's TEAMS II record.¹³ The Department typically only generated a complaint face sheet when the use of force was found "out of policy." At that time, Department management indicated that the use of force adjudication of whether the force was "in policy/no action" addressed the allegation of excessive force. For that Audit, the OIG determined that four of the 19 NCUOF investigations reviewed had a complaint face sheet generated for an excessive force allegation; however, 12 other NCUOF investigations also contained allegations of excessive force but a complaint face sheet was not generated.

When our prior Audit Report was issued (March 2006), Department management indicated they were aware of the issue and the Commanding Officer of UOFRD indicated that, in December 2005, he began discussions with Department management to address the lack of relevant guidance in the Department's policy.

Subsequent to our 2005/2006 NCUOF Investigations Audit, although the Department had held several meetings in an attempt to address the issue, there had been no official clarification provided to NCUOF investigators regarding when they should generate a complaint face sheet for allegations of excessive force.

For our 2006/2007 NCUOF Investigations Audit, UOFRD appeared to diligently ensure that excessive force allegations resulted in a complaint face sheet being generated. That Audit determined that ten of the 19 NCUOF investigations had a complaint investigation initiated for an excessive force allegation, and the OIG identified only one instance in which a complaint face sheet was not generated when a subject alleged excessive force. Thus, the OIG's 2006/2007 NCUOF Investigations Audit indicated there had been significant progress when compared to the results from the prior year.

For our current 2007/2008 NCUOF Investigations Audit, the OIG identified three instances in which the NCUOF investigator did not generate a complaint face sheet when it appeared warranted. However, for two of the three investigations, once the completed NCUOF investigation was submitted to UOFRD for review and approval, UOFRD identified the allegation of excessive force and a complaint face sheet was subsequently generated. Ultimately, 11 of the 12 applicable NCUOF investigations (that contained an allegation of excessive force) had a complaint investigation initiated due to allegations of excessive force made during the NCUOF investigation. While it appears that UOFRD continues to diligently review investigations, ensuring complaint face sheets are generated when necessary, clarification on when complaint face sheets should be generated is apparently still needed and should be provided to NCUOF investigators. Because UOFRD typically receives a completed NCUOF investigation several months after the NCUOF incident, if the NCUOF investigator does not promptly generate a complaint face sheet, it could possibly impact the resulting complaint investigation as the California Peace Officers Bill of Rights prescribes that, generally, "no discipline can be imposed beyond one year of the date the alleged incident occurred" and typically, Internal Affairs Group (IAG) does not initiate an investigation if more than a year has passed since the date of the NCUOF incident (when the allegations were

¹³ However, the TEAMS II record would reflect the NCUOF incident and the adjudication of the use of force.

reported to a NCUOF investigator). For the two complaint face sheets mentioned above that were generated after UOFRD identified the excessive force allegation, one complaint investigation was not conducted as the complaint face sheet was generated over a year and a half after the allegation was made to the NCUOF investigator.

As previously stated, current Department policy¹⁴ does not provide clear guidance on how to handle allegations of excessive force in NCUOF investigations. Yet, Consent Decree Paragraph 93(i) requires allegations of excessive force to be investigated by IAG. From the OIG's perspective, clarification is needed for the following reasons:

- If the excessive force allegation is not framed and investigated during a complaint investigation, the involved and witnessing officer interviews are not recorded (these interviews are not required to be recorded in NCUOF investigations). In most of the NCUOF investigations reviewed, an arrest report and/or employee's report served as the primary source for all the involved and witnessing officers' accounts. Other than the investigator's statement that the officer accounts are consistent, there is no way to verify this information. However, in complaint investigations of excessive force allegations, the witnessing and involved officers' interviews are typically recorded and summarized, which allows for a more complete review of the facts of the case.
- If the excessive force allegation is not framed in a complaint investigation, the person(s) making the allegation will not be notified of the disposition of their allegation and the Department cannot use TEAMS II to identify use of force incidents that involved an allegation of excessive force. Although the NCUOF incident will be reflected on the involved officer's TEAMS II record, the record will not indicate that there was an associated allegation of excessive force.

Additionally, in a NCUOF investigation, the Department is required to evaluate and conclude whether the involved officer's use of force and tactics were applied in accordance with the Department's policies and training; but the excessive force allegation may not always be addressed by the investigation. Specifically, if the officer's account of the use of force corresponded with Departmental policy; but the subject provided a different account, alleging that excessive force caused his injuries, then the use of force could be adjudicated as "in policy/no action" even when the evidence collected supports both the officer's account and the subject's account. Yet, if the excessive force allegation was framed within a complaint investigation, it could be adjudicated as "not resolved."¹⁵

¹⁴ Department policy states that, "when a complaint is related to a NCUOF, the investigating supervisor shall notify his/her watch commander or officer in charge immediately. The watch commander or officer in charge shall assess the situation and determine if immediate notification to IAG is required. If IAG does not respond and assume responsibility for investigating the incident as a personnel complaint, the supervisor shall complete the use of force investigation and include the complaint information in his/her report."

¹⁵ For example, if there were only two involved officers present and both indicated that they performed a takedown on the suspect due to continued resistance, but the suspect indicated he was not resisting and was unnecessarily thrown to the ground while handcuffed, assuming there were no witnesses, the photographic evidence could support both versions of events. Therefore, the NCUOF investigation could result in the use of force (reported by the involved officers) being

It should be noted that if the NCUOF investigation was thorough, the complaint investigation may not require many more investigative steps, but it may require the interview of involved and witnessing officers, as their statements are generally not recorded and summarized during the NCUOF investigation.

Currently, the Department is in the process of enhancing policy to clarify this area. The OIG suggests that this policy provide guidance to NCUOF investigators so that allegations of excessive force are handled consistently and in accordance with the requirements set forth in the Consent Decree. Although UOFRD has done a good job to ensure allegations of excessive force are handled through the complaint investigation process, at times, completed NCUOF investigations are submitted several months after the NCUOF incident and if an unaddressed allegation of excessive force is identified by UOFRD, the untimely identification could impact the Department's ability to investigate it.

DETAILED FINDINGS

For three of the 12 applicable NCUOF investigations, the OIG believes the NCUOF investigator should have generated a complaint face sheet due to allegations of excessive force, but did not do so. As stated above, the OIG also identified two NCUOF investigations in which a complaint face sheet was not generated until several months after the NCUOF incident, when the excessive force allegation was identified by UOFRD during their review of the NCUOF investigation, as follows:

- **NCUOF No. 2002814**

One suspect (a passenger in a stolen vehicle) refused to exit a vehicle that crashed after a short pursuit. One officer forced the suspect (subject) out of the vehicle and onto the ground. As the subject would not give the officer his left hand and because the officer believed the subject was possibly arming himself, the officer punched the subject's upper back twice. Subsequently, the officers were able to control the subject's left hand and handcuff him. The subject, on the other hand, confirmed that he was punched on his back, but he also stated that he was kicked in the head. Photographs of the subject's head revealed markings that were inconsistent with the use of force reported by the involved officers (no officer reported kicking or hitting the subject's head) and the NCUOF investigation did not resolve the inconsistency. Although the incident occurred in April 2006 and the statute date was April 2007, a complaint face sheet was not generated until UOFRD reviewed the investigation in October 2007. As of March 21, 2008, the complaint investigation was still open. The OIG contacted IAG and learned that because the complaint face sheet was generated after the statute date, no investigation had been or would be conducted. If the allegation had been framed as a complaint investigation, the OIG believes the preponderance of the evidence would support a "not resolved" adjudication.

- **NCUOF No. 2003633**

In August 2006, two officers detained two minors for drinking alcoholic beverages in public. When the officers completed their citations, the handcuffed minors ran from the officers.

According to the officers, both minors fell on their own and they were apprehended. However, when the officers attempted to place one minor (subject) into their police vehicle, the subject refused and was uncooperative; therefore, one officer sprayed the subject with Oleoresin Capsicum (OC) to obtain his cooperation. Because of the OC spray used by the officer, a NCUOF investigation was initiated. During the NCUOF investigator's interview of the subject, the subject indicated that after he fell, an officer put his knee in his ribs, which caused him to scrape his shoulder and the officer punched his chest. The subject indicated that he asked the officers for their badge numbers, but they said "If you want badge numbers? You're going to get badge numbers." The subject indicated that he refused to get into the police vehicle until he was given the badge numbers and because he refused, he was OC sprayed. Although these inconsistent statements elevated the NCUOF to a Level I investigation, requiring the interview to be recorded, there was no explanation in the NCUOF investigation as to the reason the investigator did not attempt to record the subject's and other minor's statements. The NCUOF investigator did not generate a complaint face sheet. However, when UOFRD received the completed NCUOF investigation in July 2007, they sent Intradepartmental Correspondence to the Bureau Commanding Officer requesting that the watch commander review the subject's statement within the NCUOF investigation and determine whether a complaint investigation should be initiated to address the allegations. A complaint investigation was initiated on July 17, 2007, but the statute of limitation was in early August 2007. Therefore, the amount of time the IAG investigator had to complete the complaint investigation was extremely limited and the subject (complainant) was never reinterviewed regarding his allegations. The allegations of excessive force within the complaint investigation were adjudicated as "unfounded." Even though the Consent Decree requires that their interviews be recorded, they were not, and because their summarized statements were very brief in the NCUOF investigation, it is unknown whether the suspect's allegations of excessive force were fully addressed in the complaint investigation.

Additionally, the OIG identified a third NCUOF investigation in which the subject made allegations of excessive force, but a complaint face sheet was never generated and a complaint investigation was not initiated, as follows:

- **NCUOF No. 2004122**

An apparently mentally ill male (subject) was arrested for residential burglary after he entered an occupied apartment through a window looking for an unknown person and searching through drawers and cupboards. According to the arrest report, after being detained without incident, the subject was placed in the back of the arresting officers' patrol vehicle. While in the patrol vehicle, the subject hit his head against the vehicle windows and partition, which resulted in head injuries to the subject. Once the subject was taken to a Jail Division facility, multiple officers along with a supervisor began the process of fingerprinting the subject. Due to the subject's erratic behavior, the process was video recorded.

The video recording depicts the subject's arms banded behind his back and his hands being held by two officers. During the fingerprinting process, the subject leaned down for a minute and the sworn officer who was holding the subject's right hand yelled, let go of the subject, appeared to

quickly move his right arm up and then down toward the back of the subject's head, and stated that the subject bit him. The officer later stated that although he did move his right arm toward the back of the subject's head, he did not make contact with the subject's head.

Despite several allegations of excessive force made by the subject during this video recording and his tape recorded NCUOF interview, the NCUOF investigator documented that the subject was uncooperative and refused to answer questions or make a statement regarding the use of force, thus, the subject's actual statements were not summarized in the NCUOF investigation. However, the OIG found that the subject made several statements to the NCUOF investigator. Specifically, during the subject's NCUOF interview, the subject stated that officers broke his foot. The subject also stated that an officer lied when he said that the subject bit him, and the subject also stated that the officer punched him in the back of his head when he was passed out. The subject told the NCUOF investigator that he passed out several times while being fingerprinted and that the officer would have no evidence of a bite. Although the NCUOF investigator attempted to address the inconsistency regarding whether or not the subject bit the officer and whether or not an officer punched him, there were no photographs of the officer's arm/hand in the NCUOF investigation, the video recording of the fingerprinting process neither confirms or refutes whether the subject was actually struck by the officer, and there were some witnessing officers who indicated that they observed the officer hit the suspect and other witnessing officers who indicated the contrary. Furthermore, a complaint face sheet should have been generated, as the subject's allegation that the arresting officers broke his foot was not addressed in the NCUOF investigation.¹⁶

Given the noted allegations of excessive force, the OIG believes the NCUOF investigator should have generated a complaint face sheet.

MIRANDA ADMONITION OF NCUOF SUBJECTS

DISCUSSION

In the OIG's 2005/2006 NCUOF Investigations Audit, we reported on potential concerns with interviews of subjects charged in connection with crimes involving an altercation with officers. Specifically, we identified four NCUOF investigations in which the subject invoked his/her Miranda Rights during his/her criminal investigation, but for administrative purposes, the subject gave a statement in the NCUOF investigation. We were concerned that the invocation of Miranda Rights may have an impact on whether the Department should then interview the subject for administrative purposes and then include those statements in an arrest report. At that time, we discussed this concern with Department management and learned that they were aware of this concern and had already requested that Planning Research Division and the City Attorney provide clarification.

¹⁶ On the video recording, the subject repeatedly indicated that his foot was injured.

For this current (Fiscal Year 2007/2008) NCUOF Investigations Audit, the OIG identified seven out of 25¹⁷ NCUOF investigations as having a possible concern with referencing statements and/or the recording number of a subject's NCUOF interview in an arrest report in which the related statements were taken outside of a Miranda Admonition or after Miranda Rights were invoked. In all seven instances, the subject was asked questions or provided information that related to a crime that he/she was originally arrested for (e.g., resisting arrest or battery on a police officer) or for a crime in which officers requested an additional criminal filing.

The Department had been aware that this area required clarification and on February 8, 2008, Intradepartmental Correspondence was submitted to the Police Commission indicating that Department management has been actively working with the City Attorney and the Police Commission to clarify when it would be applicable to Mirandize suspects who are interviewed only for the purpose of an administrative investigation. The Department anticipates that a comprehensive policy will be finalized in May 2008.

DETAILED FINDINGS

For seven of the 25 NCUOF investigations, a subject's statement and/or recording number from his/her NCUOF interview were documented in the subject's arrest report even though the related statements were taken outside of a Miranda Admonition or after the subject's Miranda Rights were invoked. The issues noted within each investigation are described below so that they may be considered by the Department when clarifying policy for NCUOF investigators.

- **NCUOF Nos. 2004367, 2004215 and 2003615**

Officers requested a filing on an arrestee (subject) for battery on a police officer or interfering with a police officer. During the NCUOF investigations, the subjects were interviewed while in custody regarding the officers' uses of force when the alleged crime occurred, yet they were not given the Miranda Admonition.¹⁸ In one of the three NCUOF investigations,¹⁹ during the subject's interview, he indicated he did not recall the entire incident and did not recall striking the officer. This statement and the associated recording number were referenced in a follow-up report that updated the subject's arrest report.

- **NCUOF No. 2004360**

Officers requested a filing against the arrestee (subject) for assault with a deadly weapon on an officer, as the subject kicked the officer in the groin. The subject was interviewed regarding the use of force while in-custody during the NCUOF investigation. The arrest report indicated the subject was originally read the Miranda Admonition but declined to make a statement. But, the

¹⁷ For one NCUOF incident, the subject was not arrested, so the NCUOF investigation was not applicable for assessing the Miranda Admonition of NCUOF subjects.

¹⁸ The OIG also noted that for NCUOF Nos. 2004315 and 2004615, the arrestee (subject) was interviewed regarding the use of force and although the officers did not request a filing related to the altercation with the officers (e.g., resisting or interfering with a police officer), the subject's statement and/or interview recording number was referenced in a follow-up report that updated the subject's arrest report.

¹⁹ NCUOF No. 2004367.

arrest report also indicated that she was interviewed separately regarding the NCUOF incident and documented that she did admit to kicking the officer in the groin.

- **NCUOF No. 2004002**

Officers requested a filing on the arrestee (subject) for resisting arrest. The arrest report indicated that the subject “invoked his Miranda Rights” but during the NCUOF investigation, the NCUOF investigator turned on a recorder before approaching the subject and then began to explain to the subject the reason he was arrested. On the recording, the subject clearly challenged the basis for his arrest and he made multiple statements related to the incident and again confirmed that he did not want to give any information without a lawyer. However, the NCUOF investigator still recorded his statements. These statements were referenced in the arrest report.

- **NCUOF No. 2004587**

Officers requested a filing on the arrestee (subject) for resisting arrest, criminal threats, challenging the officers to fight, and battery on a police officer. Although the subject was not admonished during the NCUOF interview, he was asked and provided detailed information about the NCUOF incident. Although the subject’s arrest report did not include his statements made during the interview, the arrest report referenced the related interview recording number.

- **NCUOF No. 2003565**

Although the subject (a minor) was not charged with a crime related to the use of force incident (e.g., resisting arrest or battery on a police officer), during his NCUOF interview he made an incriminating statement related to his arrest for felony vandalism. Specifically, the subject invoked his Miranda Rights but did provide a statement to the NCUOF investigator regarding the force utilized by the officer to initially take him into custody and the subject admitted that he was “with the guys who were painting on the park walls.” This statement was referenced in a follow-up report that updated the subject’s arrest report.

COLLECTION OF PHOTOGRAPHIC EVIDENCE

DISCUSSION

Per Department policy, photographs must be taken of visible injuries, or the lack thereof, of the subject involved in the use of force. Additionally, this policy requires that photographs be taken of visible injuries, or the lack thereof, incurred by the involved Department employee(s) if relevant to a use of force incident, or when a criminal filing for a crime against a peace officer (e.g., battery or resisting a police officer) will be sought. As part of the review of the NCUOF investigations, the OIG evaluated whether these types of photographs and other photographs that would be pertinent to the NCUOF investigation were indeed taken. The OIG determined that six of the 26 NCUOF investigations did not include necessary photographic evidence.

DETAILED FINDINGS

For six of the 26 NCUOF investigations, the OIG does not believe all necessary photographic evidence was collected. Our concerns with the collection of photographic evidence are detailed below.

- **NCUOF No. 2002814**

One suspect (a passenger in a stolen vehicle) refused to exit a vehicle that crashed after a short pursuit. One officer forced the suspect (subject) out of the vehicle and onto the ground. As the subject would not give the officer his left hand and because the officer believed the subject was possibly arming himself, the officer struck the subject's upper back twice. Subsequently, officers were able to control the subject's left hand and handcuff him. The subject, meanwhile, confirmed that he was punched on his back but also stated that he was kicked in the head. A photograph of the subject's head revealed triangular markings that appeared inconsistent with the reported use of force. As the subject alleged that an officer kicked his head, photographs of the involved officer's shoes should have been taken. Based on a review of the NCUOF investigation, these photographs were not taken.

- **NCUOF No. 2005083**

During the subject's recorded interview, he alleged that the involved officers struck him with a baton two times on the back of his left thigh. He also alleged that another officer kicked his rib cage approximately three to four times. There were no photographs taken of these areas. The only photograph of the subject in the NCUOF investigation showed a large laceration above his right eyebrow. The subject further alleged that when officers took him down to the ground, his shoulder hit the ground and then the officer pushed his head down on the concrete, which caused the laceration above his eyebrow. As such, the NCUOF investigation should have also taken a photograph of the subject's shoulders.

- **NCUOF No. 2004122**

During the subject's recorded interview, he alleged that an officer, during the booking process, lied when he said that the subject bit the officer. The subject also alleged that the officer punched him in the back of the head. Although there were photographs taken of the front of subject's head, there were no photographs of the back of his head.²⁰ Additionally, no photographs were taken of the officer's right arm/hand and knuckles to assist in confirming or refuting the subject's allegations.

- **NCUOF No. 2004315**

During the subject's recorded interview, the subject alleged that the officers used excessive force, which resulted in injuries to his face. The officers indicated that the subject resisted and therefore, one officer punched the subject in the ribs. However, the subject indicated that the officers lied when they stated they hit the subject in the ribs. Rather, the subject alleged he was

²⁰ A video recording captured the back of the subject's head through a "spithood." As this footage did not provide enough evidence to confirm or refute whether the officer punched the subject's head, a photograph should have been taken of this area without the "spithood."

never hit in the ribs but was, instead, kicked in the groin once he was handcuffed. Due to this inconsistency in the statements of the involved officers and the subject, in addition to the photographs taken of the subject's head, there should have been attempts to photograph the subject's rib cage and groin area. However, the NCUOF investigation does not indicate that these attempts were made and no such photographs were included in the file.

- **NCUOF No. 2004587**

The suspect (subject) struck an involved officer's chest and kicked a sergeant's left ankle. However, photographs of these areas were not included in the NCUOF investigation. As the associated arrest report indicated the officers requested a filing for resisting a police officer (Penal Codes 148 and 69), photographs of these areas should have been collected.

- **NCUOF No. 2004591**

The suspect (subject) kicked an involved officer's chest with his right foot and punched him on the right side of his face with his left fist, but no photographs were taken of this officer to document whether he sustained any injuries. As the officers requested an additional filing for battery on a police officer (Penal Code 243(b)), photographs of these areas should have been collected.

DOCUMENTATION OF WITNESS VANTAGE POINTS AND PORTIONS OF A USE OF FORCE OBSERVED

DISCUSSION

Per Department policy, the NCUOF investigator is to determine whether the statements provided by witnesses were consistent with events as described by the involved officers or as described in the associated arrest report. If the NCUOF investigator determines that the statement is consistent, the NCUOF investigator is not required to summarize the witness' statement;²¹ instead, the NCUOF investigator must document that the statement was consistent with the involved officers/arrest report. Typically, the NCUOF investigator merely indicates "the witness' statement is consistent with the arrest report/involved officers."

For 14 of the 26 NCUOF investigations reviewed by the OIG, there were a total of 28 witnessing officers present during the use of force. Of these 28 witnessing officers, the NCUOF investigator indicated that 24 witnessing officers' accounts were consistent with the involved officers, without providing any additional detail. The NCUOF investigator summarized the statements of the remaining four witnessing officers. During the OIG's review of the associated arrest reports and the NCUOF investigations, for 20 of the 28 witnessing officers, the arrest report provided enough information to understand their positioning and the portions of the use of force they were able to observe. However, for eight witnessing officers (in six NCUOF investigations), the arrest report and NCUOF investigation was silent as to their vantage points and/or the portions of the use of force observed. Current Department policy does not require a NCUOF investigator to specify this

²¹ Department policy (Special Order No. 13, 2004) requires public witness interviews to be recorded for Level I NCUOF investigations.

type of information within a NCUOF investigation; however, the OIG believes that the lack of this information adversely affects the quality of NCUOF investigations.

In light of these concerns, the OIG believes that Department policy should be enhanced to require NCUOF investigators to document a witness' vantage points and whether the witness (public²² or officer) observed the entire use of force or just portions of the use of force. The OIG believes this enhancement would improve the quality of NCUOF investigations and should be required for both NCUOF Level I and II investigations.

DETAILED FINDINGS

For six of the 26 NCUOF investigations, the OIG found that there was not enough detail gathered during the investigation regarding a witnessing officer's vantage point and/or portions of the use of force observed within the NCUOF investigation. These concerns are detailed below:

- **NCUOF No. 2004579**

For two witnessing officers identified in the NCUOF Report, the arrest report indicated they were in the vicinity when a use of force took place, but neither the arrest report nor the NCUOF Report indicated the portions of the use of force these two officers were able to observe.

- **NCUOF No. 2004360**

For two witnessing officers identified in the NCUOF Report, the investigation indicated that they were assigned to escort a male domestic violence arrestee to the front of his residence. During this time, a use of force occurred on the male arrestee's sister (who was also arrested) and his mother. However, there was no articulation in the arrest report or NCUOF Report as to what portion of these uses of force these two witnessing officers were able to observe.

- **NCUOF No. 2002814**

For one witnessing officer (a sergeant) identified in the NCUOF Report, the arrest report indicated that he was on scene at the termination of the vehicle pursuit and conducted the pursuit investigation; however, it was not clear either in the arrest report or NCUOF Report what, if anything, he was able to observe regarding the reported use of force. The arrest report also indicated that an airship was following the vehicle pursuit, but it did not indicate its vantage point during the use of force, and none of the airship officers were listed as employee witnesses to the use of force.

²² Since NCUOF Level II investigations do not require public witness interviews to be recorded, it would also be important to document vantage points and portions of the NCUOF incident observed by public witnesses.

- **NCUOF No. 2004023**

For one witnessing officer identified in the NCUOF Report, the arrest report indicated that this officer was with the female arrestee while the partner officer was using force on the male arrestee down the street. Although the NCUOF investigation indicated the female arrestee did not witness the use of force, there was no articulation in the arrest report or NCUOF Report as to what portion of the use of force the witnessing officer observed.

- **NCUOF No. 2003847**

For one witnessing officer identified in the NCUOF Report, the arrest report indicated that he recovered a marijuana-like substance from a bedroom; however, there was no articulation in the arrest report or NCUOF Report as to what portion of the use of force (that occurred in the hallway) this officer observed.

- **NCUOF No. 2003565**

For one witnessing officer identified in the NCUOF Report, neither the arrest report nor the NCUOF Report articulated what portion of the use of force the officer observed. Although the officer was in close proximity to her partner officer when he used force on a minor, there were three other suspects present, who may have warranted some of her attention as the use of force was occurring.

ADDITIONAL MATTERS

As previously mentioned, the OIG also noted other areas of concern, some of which related to investigative quality as well as others which did not relate to investigative quality (i.e., the timeliness of NCUOF investigation closure and notifications to the Mental Evaluation Unit). Because these areas did not warrant an extensive discussion, they were reported in this section of the Audit Report.

INCOMPLETE WITNESS INTERVIEWS

For two NCUOF investigations, the OIG believes a witness' interview was incomplete, as follows:

- **NCUOF No. 2003945**

This NCUOF incident occurred when two patrol officers responded to a radio call of a robbery in progress. The suspect (subject) would not comply with the officers' orders, and a use of force occurred. According to the arrest report, the suspect, while on the ground, attempted to grab one officer's firearm on three separate occasions, prompting the officers' continued use of force on the suspect. However, three witnesses alleged that officers struck the subject when he was uncooperative (laying on the ground in a prone position, refusing to give his hands for handcuffing).²³ To fully evaluate these witnesses' statements, the OIG believes that the

²³ The first witness stated officers were beating the suspect when he was standing, and then they continued to beat him when he was on the ground lying on his stomach. At that point, the subject was not fighting with the officers, but he was resisting being handcuffed. She felt that his level of resistance when he was on the ground did not warrant being beaten by the officers. The second witness stated that when the officers continued to strike the suspect when he was on

interviews should have been more in-depth and included questioning related to the specific movements by the subject while on the ground, including whether the suspect attempted to grab an officer's firearm as the officers reported.²⁴

- **NCUOF No. 2004360**

This NCUOF incident occurred when two patrol officers responded to a residence to investigate a domestic violence incident. According to the arrest report, upon the arrival, the suspect complied with the officers' commands; however, his sister and his mother (both subjects) began to shout obscenities when the suspect was taken into custody. After the officers took one of the subjects into custody, the other subject (mother) then approached the officers yelling in Spanish. Further, per the arrest report, one officer continued to ask the mother to "stop" and "stay back." To stop her approach, one officer extended his left forearm. The mother ran into his arm and fell to the ground. Conversely, during the interview of the mother and the daughter-in-law, they stated that an officer used both his hands to push the mother to the ground, which caused her to hit her head on the ground. However, the OIG noted that the interviewer did not question the mother as to her actions when the use of force occurred.

RECORDINGS OF THE NCUOF INCIDENT

As some officers audio record interactions with individuals on their own personal recorders, the OIG believes that NCUOF investigators should document whether they asked involved and witnessing officers whether they recorded the NCUOF incident. For NCUOF No. 2004360, the NCUOF investigator told an arrestee/witness that the involved officer had a personal recorder "rolling" during the incident. Although the investigator's statement may have been an interviewing "ruse" to discourage false statements from the arrestee/witness, it remains unknown whether there was an audio recording of the incident. As NCUOF investigators do not record officer interviews and to ensure all available evidence is identified and collected, NCUOF investigators should make a declarative statement as to whether or not the involved or witnessing officers were asked whether they recorded the NCUOF incident. The OIG also believes that the NCUOF investigator should make a declarative statement as to whether public or private audio/video recording devices may have recorded the incident. This step is particularly important as the Department begins to equip police vehicles with an in-car digital audio/video recording system.

the ground, the male officer used "really big downward swings" and further stated that the suspect was resisting only to the extent that he was trying to avoid getting hit by the officers. The third witness stated that he did not understand why the officers continued to beat the suspect when he was on the ground and no longer in possession of the bat.

²⁴ The subject refused to provide a statement.

EFFORTS TO OBTAIN MEDICAL RECORDS

The OIG identified two of the 26 NCUOF investigations in which there were concerns regarding efforts to obtain medical records.

- **NCUOF No. 2004615**

For this NCUOF investigation, although the subject of the use of force signed a form to authorize the release of his medical records, the transporting officers misplaced the signed form and attempts to recover it were unsuccessful. Given that the subject was injured (left wrist was fractured and wrapped in medical gauze and placed in a sling) and he alleged excessive force, it would have been preferable for the investigator to have attempted to obtain another signed medical release form from the subject.

- **NCUOF No. 2002814**

For this NCUOF investigation, one subject stated that an officer kicked him in the head, and the subject had markings on his head that were inconsistent with the officers' reported use of force. However, an authorization to release his medical records was not requested. The NCUOF investigation indicated that the subject refused treatment from paramedics at the scene, but he was subsequently treated by the dispensary nurse, so medical records could have been helpful to verify the subject's injuries, especially given that the subject alleged that the involved officers used excessive force.

CONSISTENT STATEMENT VERBIAGE

The OIG identified that for one investigation, the investigator noted that witnesses' statements were consistent with the events depicted in the arrest report when they were not. As commanding officers rely on the investigator's assertion that statements are consistent while evaluating the investigation, when statements are inconsistent with the arrest report, the investigator should provide a brief written summary in the NCUOF Report documenting the inconsistency.

- **NCUOF No. 2004579**

The NCUOF report and the arrest report indicated that the tape-recorded interviews of two public witnesses were consistent with the events as depicted in the arrest report. However, based upon a review of their tape-recorded statements, there were several statements that were made on tape that were inconsistent with the arrest report. For one public witness, she indicated that her son was only putting air in the tires of his vehicle, but the arrest report indicated that individuals were repairing their vehicle "working on it" in violation of a Los Angeles Municipal Code. Another public witness, during a recorded interview, stated that involved officers allowed a person to enter a vehicle to assist the registered owner in gathering his belongings before the officers impounded the vehicle. This witness stated that the officers asked the registered owner to exit the vehicle and although he was slow, he was getting out. However, the arrest report indicated that this person "quickly entered" the vehicle, which heightened the officers' suspicion that the registered owner was attempting to start the vehicle and as a result,

the officers pulled the registered owner out of the vehicle and arrested him for resisting a police officer.

INVESTIGATIONS CLOSED OVER A YEAR AFTER THE NCUOF INCIDENT

Consent Decree Paragraph 69 states that NCUOF incidents shall generally be reviewed by Department management within 14 days of the incident; however, there is nothing in the Consent Decree or elsewhere (a Department Special Order, etc.) which specifies a timeframe for the final approval and closure of a NCUOF incident. In our 2006/2007 NCUOF Investigations Audit, we performed an analysis of the 19 NCUOF investigations that were evaluated as part of our Audit and found that, on average, the investigations took 321 days to close. Understandably, NCUOF Level I investigations are generally more complex, but given the number of days for final approval and closure of the NCUOF investigations, the OIG recommended that the Department mandate a reasonable timeframe for the closure of NCUOF investigations. We also suggested that the Department consider an option for the timeframe to be extended for more complex NCUOF investigations.

Subsequent to that Audit, the Chief of Staff issued a Notice (June 2007) reminding all commanding officers of the need to have the incidents reviewed and approved by the chain of command within one year of the date of incident occurrence. In addition, correspondence was sent to all concerned bureaus when cases have not been received by UOFRD within six months of the date of occurrence. Although the OIG is pleased with the additional emphasis in this area, we continue to note that there is no formal Department policy on when NCUOF investigations should be closed.

During our current NCUOF Investigations Audit, the OIG noted that some of the 26 NCUOF investigations took a relatively lengthy amount of time to close. The following table provides a breakdown on the length of time it took to close the 26 NCUOF investigations.

Number of Months to Close the NCUOF Investigation When Compared to the NCUOF Incident Date	Total Number of Investigations	Percentage
Less than 3 Months	0	0%
4 to 6 Months	1	4%
7 to 9 Months	10	38%
10 to 12 Months	8	31%
Greater than 12 Months	7 ²⁵	27%
TOTAL	26	100%

Seven of the 26 NCUOF investigations were closed more than a year after the NCUOF incident occurred. For one of these investigations,²⁶ UOFRD did not receive the investigation until over a year and a half after the NCUOF incident. As there were significant allegations of excessive force

²⁵ NCUOF Nos. 2003645, 2003847, 2003615, 2003633, 2002814, 2003565, and 2004023.

²⁶ NCUOF No. 2002814.

that were never addressed, UOFRD generated a complaint face sheet, but because it had been over a year since the original NCUOF incident (when the allegations were reported to a NCUOF investigator), the case was out of statute and therefore, IAG did not conduct a complaint investigation. As UOFRD reviews the completed NCUOF investigations and, at times, identifies additional investigative quality concerns and/or unaddressed allegations, it is imperative that the NCUOF investigations are reviewed and closed in a more reasonable timeframe, especially given that IAG typically does not investigate allegations of misconduct for incidents that occurred and were reported to a NCUOF investigator more than a year earlier.

NOTIFICATIONS TO THE MENTAL EVALUATION UNIT

For one NCUOF investigation,²⁷ the incident involved a male (the suspect/subject) who removed a window screen and then dove through the window of an occupied residence. The suspect then walked around the apartment searching through drawers and cupboards looking for a female who was unknown to the occupants. According to the arrest report, while the suspect was sitting in the back of the police vehicle, he thrashed himself about hitting his head against the windows and partition. The suspect stated to the officers that he had been placed on a 72-hour mental evaluation hold (pursuant to Welfare and Institution Code 5150) in the past. The NCUOF investigation also included a video recording of the suspect that captured him being fingerprinted at Parker Center Jail Division. The video recorded the suspect being uncooperative while seated in a wheelchair and while several officers attempted to fingerprint him. Although the arrest report indicated that the suspect was very incoherent and uncooperative due to being under the influence of an unknown narcotic, based on the suspect's actions as described in the arrest report and recorded on the videotape, the OIG believes that his behavior should have alerted someone that his actions were possibly symptomatic of an underlying mental illness and the Mental Evaluation Unit (MEU) should have been contacted. The NCUOF investigation lacked evidence that the MEU was contacted at any time prior or subsequent to the subject's booking. The arrest report indicated that the suspect was later transported to a local hospital because while at the Jail Dispensary he stated that he wanted to kill himself.

The OIG understands that most officers are not experts at diagnosing mental illness, and a determination of whether someone is mentally ill or under the influence of some substance (or both) can be somewhat subjective. Nevertheless, when there are significant indications that an arrestee may be mentally ill, the MEU should be contacted.²⁸ Currently, there is policy regarding this issue and the Department has recently increased its efforts to help ensure that officers are aware of the existing requirements to notify the MEU when they suspect that a detainee or an arrestee may be mentally ill.

²⁷ NCUOF No. 2004122.

²⁸ Department Manual Section 260.20 states, "When a person with a suspected mental illness has been taken into custody for a criminal offense, the MEU shall be contacted prior to the person being booked."

PRIOR RECOMMENDATIONS

The following recommendations resulted from the OIG's 2005/2006 and 2006/2007 NCUOF Investigations Audits. The Department reported on the implementation status of each recommendation to the Police Commission during 2007/2008. This section consolidates the Department's responses and the OIG's assessment of implementation status.

1. Reemphasize to Area NCUOF investigators that when a Categorical Use of Force incident is reclassified to a NCUOF incident, all pertinent documentary evidence from the Categorical Use of Force investigation be collected and included in the NCUOF investigation prior to completion and adjudication by the officer's chain of command and the Commanding Officer of UOFRD.

The Department reported that this recommendation was implemented, as there are protocols now in place to ensure this concern is addressed. Specifically, UOFRD staff liaison with Force Investigation Division and Area investigators to ensure all pertinent documents and media are provided for all Categorical Use of Force investigations downgraded to NCUOF incidents. The UOFRD staff will not provide a final adjudication of a NCUOF incident until all pertinent documentary evidence is collected and reviewed. No concerns surrounding this area were identified in our current NCUOF Investigations Audit.²⁹ Therefore, the OIG considers this recommendation implemented.

2. Reemphasize to Area NCUOF investigators that recorders should be tested prior to conducting interviews of complainants and public witnesses to ensure the interviews are audible.

The Department reported that this recommendation was implemented because of the existence of Special Order No. 13, 2004. Although the OIG was aware of the existence of that policy, the OIG recommended that the policy be reemphasized to NCUOF investigations as our prior audit noted a concern with this area. Although technically the Department's response did not address the OIG's concern, generally, this was not an area of concern identified during the current NCUOF Audit. Therefore, the OIG considers this recommendation implemented.³⁰

3. Reemphasize to Area NCUOF investigators that a standard introduction should normally be stated in each recorded interview to help ensure consistency from one investigator to another. At a minimum, investigators should be reminded to state the tape number and side, the names of the interviewer and interviewee, and the place, date, and time of the interview as well as of the related incident.

The Department reported that this recommendation was implemented and the area of concern had been reemphasized during Watch Commander School, the Basic Supervisory Course, and at supervisor training sessions at the Area police stations. This was not a concern noted in our

²⁹ None of the 26 NCUOF investigations involved an incident that was originally investigated as a Categorical Use of Force.

³⁰ For NCUOF No. 2003945, the OIG noted that some witness interviews could not be heard on the recording. However, this anomaly appeared to be an isolated incident.

current NCUOF Investigations Audit, and the OIG also considers this recommendation implemented.

4. Revise Department policy to require NCUOF investigators to document whether Department employee witness statements were consistent with events as depicted in related reports, if applicable (i.e., reword the policy from “should” to “shall”).

The Chief of Police issued a Notice to all Department employees on July 16, 2007 rewording the policy from “should” to “shall.” Therefore, the OIG considers this recommendation implemented.

5. Continue to work on clarification to the Department’s Training Bulletin regarding the proper ventilation of the police vehicle when an officer uses OC spray on a subject while in a police vehicle.

The OIG issued this recommendation after reviewing a NCUOF incident that occurred in 2005, on the Venice Beach “boardwalk,” in which a citizen’s video recording surfaced depicting the use of force of a subject being OC sprayed and left in a minimally ventilated police vehicle. At that time, the Police Commission and the Department recognized the need to provide clarification on when ventilation should be provided. The Department reported that this recommendation was implemented, as Training Group published a Lesson Plan for the Standardized Roll Call Training Program that dealt with this concern. The Lesson Plan stated, “The suspect should be removed from the vehicle as soon as the OC [spray] has taken affect, however, there may be certain tactical situations that will not allow the suspect to be removed immediately. For example, if an L-car officer has to use OC [spray] to control a suspect in the back seat, the officer should monitor the suspect until additional officers arrive to take any other action.” Therefore, the OIG considers this recommendation implemented.

6. Consider revising Department policy to require NCUOF investigators to reinterview and tape-record applicable public witnesses and subjects if the NCUOF investigation is elevated to Level I and the original interviews were not tape-recorded, especially when there are significant injuries to a subject or allegations of excessive force.

The Department has issued a Notice (dated November 5, 2007) from the Office of the Chief of Staff clarifying the requirements for an investigator when a NCUOF incident is elevated from Level II to Level I. The Notice stated “If during the course of the investigation the incident is upgraded to a Level I incident; the [investigator] shall attempt to reinterview the subject of the use of force and [public witnesses] on tape. If they are unable to tape-record the interview at that time, an explanation of what attempts were made to reinterview the parties is required.” Therefore, the OIG considers this recommendation implemented.

7. Establish a reasonable timeframe for the final approval and closure of NCUOF investigations. The timeframe established should consider that the initial review of the investigation is normally

completed within 14 days of the incident and, generally by that time, the investigator has already completed most of the investigation.

The UOFRD concurred that a reasonable timeframe for final approval and closure of NCUOF investigations was needed and the Office of the Chief of Staff issued a Notice (June 2007) reminding all commanding officers of the need to have the incidents reviewed and approved by the chain of command within one year of the date of incident occurrence. In addition, correspondence was sent to all concerned bureaus when cases had not been received at UOFRD within six months of the date of occurrence. However, given that the OIG identified seven of 26 NCUOF investigations that were not closed within one year of the incident, the OIG will address this concern in the Current Recommendations section by recommending that the Department formalize the requirement into Department policy.

8. Require that Area NCUOF investigators provide an explanation as to why an employee was not included as a witness in a NCUOF investigation, in instances where it is not clear whether that employee witnessed a use of force.

The Department reported that this recommendation was implemented because Special Order No. 13, 2004 mandates NCUOF investigators to list all individuals, including non-involved employee witnesses and partner officers, who witnessed the use of force. The OIG was aware of the existence of that policy when the recommendation was made and the recommendation actually was to enhance current Department policy. The OIG's concern is that at times, there are officers known to be at the scene who are not listed as witnesses and there is no explanation as to the reason. To ensure that a witnessing officer was not missed for some reason, the investigators should provide an explanation (e.g., the officer was not in a position to witness the use of force). In our current NCUOF Investigations Audit, the OIG identified three NCUOF investigations that had a similar concern.³¹ Therefore, the OIG will restate the recommendation in the Current Recommendations section.

9. Require allegations of excessive force to be framed in a complaint investigation initiated when allegations are made during a NCUOF investigation.

The Department has reported that this recommendation has been implemented by referring to Department Manual Section 3/830.10, "Complaint Related to a NCUOF" which states, "when a complaint is related to a NCUOF, the investigating supervisor shall notify his/her watch commander or officer in charge immediately. The watch commander or officer in charge shall assess the situation and determine if immediate notification to IAG is required. If IAG does not respond and assume responsibility for investigating the incident as a personnel complaint, the supervisor shall complete the use of force investigation and include the complaint information in his/her report." However, as noted in the Handling of Excessive Force Allegations section of this report, this area continues to be a concern and therefore, the OIG will state in the Current Recommendations section that policy clarification is needed.

³¹ NCUOF Nos. 2003615, 2003847 and 2002814.

CURRENT RECOMMENDATIONS

The OIG reviewed and followed up on previous recommendations made in prior NCUOF Investigations Audits. The OIG noted that three recommendations have not been implemented as noted in the Prior Recommendation section above. Therefore, the OIG is restating the following recommendations to the Department:

1. Formalize into Department policy a reasonable timeframe for the final approval and closure of NCUOF investigations. The timeframe established should consider that the initial review of the investigation is normally completed within 14 days of the incident and, generally by that time, the investigator has already completed most of the investigation.
2. Require that Area NCUOF investigators provide an explanation as to why an employee was not included as a witness in a NCUOF investigation, in instances where it is not clear whether that employee witnessed the use of force.
3. Provide policy clarification regarding when a complaint face sheet should be generated when allegations of excessive force are made during a NCUOF investigation.

Based on the OIG's current NCUOF Investigations Audit, the OIG also offers the following additional recommendations to the Department:

4. Continue, in an expeditious manner, to work toward providing clarification to NCUOF investigators on the use of Miranda Admonitions in administrative investigations and the extent of references to suspect statements (taken outside of a Miranda Waiver) made within arrest reports.
5. Reemphasize to NCUOF investigators the requirement to take photographs of officer and subject injuries, or the lack thereof, and/or complained-of injuries.
6. Enhance existing policy to require NCUOF investigators to document the witness' vantage points and whether a witness (public or officer) observed the entire use of force or just portions of the use of force.
7. Require NCUOF investigators to make a declarative statement as to whether or not on-scene officers recorded the NCUOF incident or whether public or private audio/video recording devices recorded the incident. This type of control will help ensure that each involved or witnessing officer is asked whether this type of evidence may exist.