

LOS ANGELES POLICE COMMISSION

***NON-CATEGORICAL USE OF FORCE
INVESTIGATIONS AUDIT
(Fiscal Year 2006/2007)***



Conducted by

OFFICE OF THE INSPECTOR GENERAL

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Inspector General

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EXECUTIVE SUMMARY
OFFICE OF THE INSPECTOR GENERAL
NON-CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT
(FISCAL YEAR 2006/2007)

PURPOSE

The Office of the Inspector General (OIG), pursuant to Consent Decree Paragraph 136(ii), completed its annual Non-Categorical Use of Force (NCUOF) Investigations Audit (Audit). The Audit focused on assessing the following:

- 1) The Overall Quality of NCUOF Investigations and
- 2) The Handling of Unauthorized Force Allegations, if applicable.

The 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 (Department) Audit Division performs that type of assessment annually. Instead, this Audit provides a global assessment of the above-listed risk areas. In determining whether a particular concern was reportable, the OIG evaluated the totality of circumstances. In some instances, other concerns were identified that did not necessarily fit into the above-mentioned Audit areas. Those concerns are also reported herein.

At the request of the Police Commission, the OIG also reviewed a specific use of force incident, which occurred in February 2005 on the Venice Beach boardwalk. Sometime after the use of force, a citizen's video depicting the use of force incident surfaced and was brought to the attention of the Commission, the Department and the public. The OIG's assessment of that use of force incident is located in the Additional Matters Section of the Audit report.

AUDIT METHODOLOGY

Since 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 compared to NCUOF Level II investigations. To identify our population, the OIG requested Use of Force Review Division to provide a listing of all NCUOF Level I investigations closed during the months of September, October, and November 2006.¹ Nineteen investigations were identified.² The OIG evaluated all 19 NCUOF investigations and listened to all public witness and subject tape-recorded interviews associated with the investigations. Where necessary and available, the OIG also listened to tape-recorded interviews of Department employees.

¹ According to UOFRD, 154 investigations were closed during the months of September, October and November 2006, of which 19 (12 percent) were NCUOF Level I investigations and 135 (88 percent) were Level II investigations.

² There could have possibly been other NCUOF investigations closed during these months that were improperly classified as Level II instead of Level I. 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.

SUMMARY OF RESULTS

Based on the OIG's review of the 19 NCUOF investigations, four were identified as having a noteworthy concern with the quality of the investigation, as indicated in the table below. It should be noted that the OIG identified two investigations with concerns relating to the accuracy and completeness of summarized statements in the NCUOF investigation when compared to the subject/witness' tape-recorded statements. The OIG's 2006 audit of NCUOF investigations (issued in March 2006) identified eight of 19 investigations with accuracy and completeness of summarized statement concerns, so it appears that there has been improvement.

| NCUOF No. | Accuracy/ Completeness of Summarized Statements | Transfer of Evidence for Reclassified Investigations | Duplicate Investigation |
|------------------|--|---|------------------------------------|
| 2003516 | X | | |
| 2002517 | | X | X |
| 2002800 | X | | |
| 2002982 | | X | |

Additionally, our review assessed whether a complaint investigation was initiated when allegations of unauthorized force were made. The OIG's review determined that ten of the 19 investigation files reviewed had a complaint investigation initiated for an unauthorized force allegation and identified only one instance in which a complaint investigation was not initiated when a subject alleged unauthorized force. In comparison, the OIG's 2006 audit of NCUOF investigations determined that four of the 19 investigation files reviewed had a complaint investigation initiated for an unauthorized force allegation and identified 12 instances in which a subject alleged unauthorized force and a complaint investigation was not initiated. Thus, there has been significant improvement since the prior audit.

Finally, the OIG's review of the investigation files indicated an abundance of "kickback" letters from Use of Force Review Division to the Areas/Divisions, requesting that certain investigation deficiencies be corrected and that certain ambiguities in the NCUOF report narratives be clarified. These letters appear to be the result of Use of Force Review Division's comprehensive and diligent review of the files.

**OFFICE OF THE INSPECTOR GENERAL
FISCAL YEAR 2006/2007
NON-CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT**

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).¹ This paragraph 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 investigations. For this Audit, the OIG conducted a global assessment to evaluate: 1) the overall quality of NCUOF investigations; and 2) the handling of unauthorized force allegations that stem from NCUOF investigations, if applicable.

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 provides a global assessment of the two aforementioned areas. In determining whether a particular concern was reportable, the OIG evaluated the totality of circumstances. In some instances, other concerns were identified that did not necessarily fit into the above-mentioned Audit areas. Those concerns are also reported herein.

At the request of the Police Commission, the OIG also reviewed a specific use of force incident, which occurred in February 2005 on the Venice Beach boardwalk. Sometime after the use of force, a citizen's video depicting the use of force incident surfaced and was brought to the attention of the Commission, the Department and the public. The OIG's assessment of that use of force incident is located in the Additional Matters Section of this report.

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 incidents from requiring the completion of 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);

¹ In 2005, this Paragraph was amended to allow the OIG the flexibility to determine the manner to best review NCUOF investigations, which serves to enhance the oversight and role of the OIG and to maximize its resources.

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- 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 categories, Level 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,
- The force used results in a serious injury, such as a broken bone, dislocation, or an injury requiring sutures;² or,
- The injuries to the person upon whom the force was used 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 subject of the use of force 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 tape-recorded, unless impractical or the interviewee refuses to be taped-recorded. However, an explanation for the inability to tape-record the interview must be documented. Also, the interview of each subject and witness must be summarized if a statement is not tape-recorded or the person's account of the use of force is in substantial conflict with the involved Department employee's account. The investigator is not required to tape-record the interviews of Department employees who are involved or considered witnesses in the NCUOF and the Department does not require that these interviews be summarized. Uninvolved Area supervisors investigate these uses of force.

During May 2005, the Department began transitioning from the legacy use of force tracking system to a new and updated system. During this time, the Use of Force Review Division developed procedures to input "in-flight" cases in preparation for the rollout of the new Use of Force System.³ A phased deployment of this system took place but by March 2006, the system was fully deployed to all Areas (e.g., community police stations). The new Use of Force System allows cases to be created, investigated, and adjudicated on-line.⁴ The implementation of the system provides for the electronic review and approval of the investigation by the Watch

² If the Investigating Officer is unable to verify the seriousness of an injury, it should be reported as a Level I incident. However, if the subject received injuries requiring hospitalization related to the use of force, Force Investigation Division shall investigate the incident as a Categorical Use of Force.

³ "In-flight" cases are considered investigations that are closed on paper but in the process of being input into the new Use of Force System. The Use of Force Review Division decided to input previously closed cases that were initiated after January 2005. Information regarding cases initiated before January 2005 were systematically uploaded from the legacy use of force system through data conversion.

⁴ Once an officer reports a use of force to the Watch Commander, the Watch Commander will systematically assign the case to a sergeant, which allows the sergeant to create and investigate the case within the new Use of Force System.

Commander/Officer in Charge and Commanding Officers from an Area, Bureau (a Bureau oversees an Area), and Use of Force Review Division. The Watch Commander provides a written evaluation and adjudication 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 adherence with Department policy. The Watch Commander then electronically forwards the investigation to the Area Commanding Officer for adjudication, after which, it is forwarded to the Bureau Commanding Officer for adjudication. Once the investigation is systematically approved and submitted through the involved employee's chain of command, it is reviewed by the Use of Force Review Division to ensure the investigation is complete and that all relevant policy considerations have been addressed before the investigation is electronically submitted to the Commanding Officer of the Use of Force Review Division for its final adjudication and close-out. When necessary, Use of Force Review Division will "kickback" the investigation to the Area for additional clarification and/or investigation.

SCOPE AND METHODOLOGY

Since 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 compared to NCUOF Level II investigations. To identify our population, the OIG requested Use of Force Review Division to provide a listing of all NCUOF Level I investigations closed during the months of September, October, and November 2006.⁵ Nineteen investigations were identified.⁶ The OIG evaluated all 19 NCUOF investigations and listened to all public witness and subject tape-recorded interviews associated with the investigations. Where necessary and available, the OIG also listened to tape-recorded interviews of Department employees.

The Audit utilized two detailed matrices as a guide to evaluate the investigations and tape-recorded statements. Additional concerns identified in this Audit that were classified as less significant were separately communicated to the Commanding Officer of Use of Force Review Division for consideration and appropriate action.

On March 28th, 2007, the OIG met with the Use of Force Review Division management to discuss the Audit's findings.

⁵ According to Use of Force Review Division, 154 investigations were closed during the months of September, October and November 2006, of which 19 (12 percent) were NCUOF Level I investigations and 135 (88 percent) were Level II investigations.

⁶ There could have possibly been other NCUOF investigations closed during these months that were improperly classified as Level II instead of Level I. 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.

SUMMARY OF FINDINGS

Based on the OIG’s review of the 19 NCUOF investigations, four were identified as having a noteworthy concern with the quality of the investigation, as indicated in the table below. It should be noted that the OIG identified two investigations with concerns relating to the accuracy and completeness of summarized statements when compared to the subject/witness’ tape-recorded statements. The OIG’s 2006 audit of NCUOF investigations (issued in March 2006) identified eight of 19 investigations with accuracy and completeness of summarized statement concerns, so it appears that there has been improvement.

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Additionally, our review assessed whether a complaint investigation was initiated when allegations of unauthorized force were made. The OIG’s review determined that ten of the 19 investigation files reviewed had a complaint investigation initiated for an unauthorized force allegation and identified only one instance in which a complaint investigation was not initiated when a subject alleged unauthorized force. In comparison, the OIG’s 2006 audit of NCUOF investigations determined that four of the 19 investigation files reviewed had a complaint investigation initiated for an unauthorized force allegation and identified 12 instances in which a subject alleged unauthorized force and a complaint investigation was not initiated. Thus, there has been significant improvement since the prior audit.

Finally, the OIG’s review of the investigation files indicated an abundance of “kickback” letters from Use of Force Review Division to the Areas/Divisions, requesting that certain investigation deficiencies be corrected and that certain ambiguities in the NCUOF report narratives be clarified. These letters appear to be the result of Use of Force Review Division’s comprehensive and diligent review of the files.

DETAILED FINDINGS

NCUOF No. 2003516

This incident occurred in September 2005. This incident was initially investigated by Force Investigation Division as a Categorical Use of Force incident because the Department preliminarily believed that the subject was hospitalized.⁷ However, since the subject was taken

⁷ Force Investigation Division, a division that has investigators independent of the involved officer’s chain of command, investigates the use of force. Additionally, the Police Commission, not the involved officer’s chain of command, adjudicates Categorical Uses of Force.

to the Los Angeles County Jail and placed in a medical ward, it was determined that the subject was not “hospitalized” and therefore, the investigation was reclassified to a NCUOF. According to the investigation narrative, this incident occurred after two patrol officers initiated a consensual encounter with a male loitering in front of a residential apartment building (during the nighttime hours) of a known high-narcotics area. One of the officers observed the subject drop two objects to the ground. The officer retrieved the objects and determined that they were rock cocaine and a cylindrical glass cocaine pipe. At this point, the officer ordered the subject to place his hands behind his back. As the officer attempted to handcuff the subject, the subject quickly dropped his hands and made an effort to run. While the officer reached forward and grabbed the subject, the subject raised his fist and punched the officer in his face. The officers verbalized for the subject to stop struggling but the subject did not comply. The officers used a takedown and their bodyweight to push the subject into a prone position. One of the officer’s arms was around the subject’s thighs which resulted in the subject falling to ground with the officer falling on the back of the subject’s legs. The subject continued to resist by flailing his arms in an attempt to hit the officers and he made repeated efforts to stand up. Because of the ongoing struggle, the officers requested assistance. While waiting for another unit, the officers continued to order the subject to comply, but instead the subject continued to kick and flail his arms at the officers. With the help from one of the officers from the additional unit, they were finally able to control the subject and handcuff him. Because of the use of force, the subject sustained a fractured jaw, and one of the officers complained of soreness to both hands. The subject was arrested for being in possession of a controlled substance (Health and Safety Code 11350(a)) and the officers requested additional filing for possession of drug paraphernalia. There was no indication in the Arrest Report or the NCUOF investigation file that there was a separate filing for resisting arrest. For both officers, the use of force and tactics were adjudicated as “in policy/no action” and “training,” respectively. A complaint investigation was initiated as a result of an allegation that one officer used unauthorized force. The complaint investigation was still pending at the time of our review.

The OIG’s evaluation of this NCUOF investigation identified the following concerns:

Investigation Quality

Accuracy/Completeness of Summarized Statements⁸

Based upon a comparison of the tape-recorded interviews and related summarized statements in the investigation, the OIG noted the following concerns with inaccuracies/omissions of pertinent information:

1. The tape-recorded statement of the officer who guarded the subject while receiving treatment indicates that a doctor at California Hospital informed her that due to the subject’s injuries, he contacted Los Angeles County Medical Center (13th floor), but there were no beds

⁸ The following referenced interviews were conducted by the Force Investigation Division during the Categorical Use of Force investigation and subsequently transcribed. As there were substantial conflicts between the subject’s account of the use of force and the officers’ accounts, the NCUOF investigators, per Special Order No. 13, 2004, must summarize the subject’s tape-recorded statements. However, the subject’s interviews were not summarized nor were the transcribed statements referenced or included in the NCUOF investigation.

available. The officer further stated that the doctor indicated he would release the subject for booking only if there was an infirmary with a doctor at the location that he was being transported to. The officer then stated that he took the subject to LAPD's Police Administration Building Dispensary, but the doctor at that location told the officer that the subject could not stay there and the subject needed to be transported to the Los Angeles County Jail. The officer indicated he did not know why the doctor wanted the subject transported to the Los Angeles County Jail, but the OIG believes it may have been due to the subject's injuries, as the Los Angeles County Jail has a medical ward. Once at the Los Angeles County Jail, this officer gave sheriff deputies [medical] orders from the doctor at California Hospital, which indicated that the subject had a fractured jawbone and orbital bone. As this information was important to assess the extent of the subject's injuries, it should have been included in the investigation.

2. The subject was interviewed twice on tape: the first time in September 2005 and the second time in November 2005. The concerns identified with the subject's summarized statement in the investigation are as follows:

First Interview of the Subject

- The subject indicated in his tape-recorded interview that he had already been patted down before the use of force occurred. This would have been an important statement to summarize because it indicates that the officers knew the subject was not armed, which would be pertinent in assessing the level of force used by the officers.
- The subject's tape-recorded interview revealed that his account was in substantial conflict with the involved employee's account. However, only a portion of his statement was summarized and included in the NCUOF investigation. The subject's summarized statement in the NCUOF investigation only indicates that he was hit by the officer in the face which fractured his jaw. Yet, on tape, the subject further described that the officer hit him in the left side of his face several times; however, the Investigator's Notes indicate that during the interviews of the officers, they never indicated that they struck the subject. Additionally, in the subject's tape recorded interview, he also indicated that when he fell on the parkway when the officers took him down, his knees first hit the ground and then the right side of his face hit the ground which was "mostly dirt with some grass." The subject indicated that he did not believe that he hit the right side of his face "real hard" when he landed on the parkway. The involved officers indicated in the Arrest Report and on tape that the subject fell chest and face first on to the curb and grass area next to the parked vehicle. The subject also indicated that only his right side of his face made contact with the ground, which would not support that the injuries he sustained on the left side of his face were from his fall to the ground. This information should have been summarized because the investigation could lead a reviewer to believe that the way the subject fell to the ground is consistent with the injuries that the subject sustained during the takedown, while the subject's account would appear to suggest that his injuries were not the result of the takedown, but from subsequent strikes by the involved officer.

Second Interview of the Subject

- In the subject's second tape-recorded interview, he stated that he was afraid to say anything right away because he was afraid that the officers would file more charges against him. He stated that although he was not doing what the officers told him to do, he did not feel that the officer needed to punch him as many times as he did in order to gain compliance. He stated he didn't hit the officer with his elbow. Additionally, the subject stated that he asked the officer, "Are you trying to kill me?" because he could not breathe when the officers were on top of him. Yet, the officers' Arrest Report indicated that the subject stated that they needed to kill him because he was not going back to jail. Given this discrepancy and the fact that the subject stated that the officers lied in court when they said that the subject threatened them, this information would have been pertinent to be summarized.
 - The subject stated that the involved officer was wearing a handbrace when he exited the vehicle, although the subject was unsure which hand it was on. The investigation indicates that the officer had a small contusion on his knuckle and an injury to his fingernail, but the Commanding Officer of the Use of Force Review Division indicated that he did not believe the officer's injuries were indicative of the subject being repeatedly struck. Therefore, it would have been important to indicate in the investigation that the officer may have been wearing a handbrace.
 - The subject, on tape, agreed to sign (on tape, he appeared to be signing the form) a Release of Medical Information Form; however, the Use of Force – Subject section of the Use of Force System indicates that an authorization to release medical records was requested but not obtained from the subject. The investigation file only contains the Los Angeles Fire Department emergency medical records, but on tape, the subject indicated he was also treated at California Hospital, LAPD's Police Administration Building Dispensary, the Los Angeles County Jail Ward and the Los Angeles County Medical Center, and the subject authorized the release of his medical records at each location. The medical records would have been important to show the severity of the subject's injuries.
3. The Injuries/Medical Treatment section of the NCUOF report indicates that the doctor at the California Hospital informed the officers that the subject sustained a fractured jaw bone; however, according to the tape-recorded statements of three officers, the doctor also indicated that the subject had sustained a fractured orbital bone.⁹ On tape, approximately 35 days after the initial use of force, the subject complained that his eye still felt droopy. Nowhere in the investigation file did it mention that the subject also sustained a fractured orbital bone nor did it indicate whether this injury was ever medically treated.

⁹ The investigation file contained portions of their tape-recorded interviews; however, it did not indicate that the subject also sustained a fractured orbital bone (the bone that surrounds a person's eyeballs).

Other Concerns – Not Related to the Quality of the NCUOF Investigation

Proper Classification of the Investigation

When the Investigating Officer was informed of the seriousness of the subject's injuries, he contacted the Force Investigation Division for advice. The Force Investigation Division decided to take over the investigation, as they determined that this incident should be classified and investigated as a Categorical Use of Force. According to Special Order No. 8, 2006, a use of force incident resulting in an injury *requiring* hospitalization should be investigated by Force Investigation Division as a Categorical Use of Force. However, this Special Order has been interpreted to require that the subject be *admitted* to a hospital before it is investigated as a Categorical Use of Force incident. The NCUOF investigation indicated that Force Investigation Division determined that due to the "totality of [their] investigation" the subject was not hospitalized and, accordingly, this incident should be investigated by the officer's chain of command as a NCUOF Level I.

The investigation file indicates that the subject was under medical observation at the Los Angeles County Jail Ward for 35 days. Although the subject indicated that the Los Angeles County Jail medical staff told him that there was nothing wrong with him, he was eventually taken to the Los Angeles County Medical Center where the doctor confirmed the original diagnosis and wired his fractured jaw. Because there were no medical records in the investigation file, the OIG is unsure whether the subject was admitted at this time. However, given the totality of the circumstances, the OIG believes the Department should have erred on the side of caution and continued to investigate this incident as a Categorical Use of Force.

NCUOF No. 2002517

This incident occurred in June 2004. Two uses of force occurred in an apartment complex. There was one Categorical Use of Force (due to one person being hospitalized as a result of the use of force) and the other was a NCUOF because one involved officer gave a baton strike to the body of the subject and another officer used bodyweight to control the subject. According to the investigation narrative, two patrol officers responded to a "help" call from officers who were involved in a Categorical Use of Force with another person. A hostile crowd had gathered in the courtyard where the use of force occurred. These two officers ordered the crowd to move away and all but one person (the subject) complied with their commands. One of the officers ordered the subject to move back. The subject moved back a little, but he would have still been able to compromise the officers' safety. The officer again ordered the subject to go inside his residence or he would be struck with a baton. The subject appeared to be aggressive and combative and fearing an attack, the officer shoved the subject with the tip of a baton and another officer used bodyweight. This NCUOF was investigated and adjudicated as part of the Categorical Use of Force incident. The subject was arrested for obstructing a police officer (Penal Code Section 148(a)(1)). The use of force and tactics for both officers were adjudicated as "in policy/no action" and "no action," respectively.

The OIG's evaluation of this NCUOF investigation identified the following concerns:

Investigation Quality

Duplicate Investigation

This incident was already investigated by Critical Incident Investigation Division (now known as Force Investigation Division) and the Police Commission adjudicated the involved officers' tactics and use of force as part of the Categorical Use of Force incident. During the investigation, it was determined that the two uses of force should be bifurcated and that the officers' chain of command should investigate the NCUOF. However, during the investigation, it appears that Critical Incident Investigation Division reversed that decision and investigated the NCUOF as part of the Categorical Use of Force incident. In June 2005, the Police Commission adjudicated both the officers' tactics and uses of force as part of the Categorical Use of Force. However, according to the NCUOF investigation file, it appears that Use of Force Review Division was unaware that the Police Commission had already adjudicated the NCUOF and consequently, the separate NCUOF investigation was adjudicated and closed in September 2006, over a year later. Although both adjudication results were the same, the investigations were duplicated, resulting in apparent inefficiencies and an error relating to an involved officer's use of force history, which incorrectly reflects two incidents instead of one.

Transfer of Documentary Evidence for Reclassified Investigations

The OIG also noted that there were several witnesses (who were concerned with the force used by the officer) identified during the Categorical Use of Force investigation and that investigation also located and collected a videotape (taken by a public witness) depicting the use of force, but the Area's NCUOF investigation indicated that no witnesses were located and the video was not mentioned or included as evidence.

NCUOF No. 2002800

This incident occurred in March 2006. Two gang officers heard a broadcast for a robbery/carjacking in their area. Minutes later, the officers observed a vehicle matching the license plate number of the stolen vehicle. The officers followed the vehicle while requesting back-up units to respond. They continued to follow the vehicle until the back-up units arrived and an air unit was overhead. The officers then activated their emergency lights in an attempt to conduct a traffic stop. The vehicle sped away and traveled at about 100 miles per hour for several miles until it came to an abrupt stop at which time the subject exited the vehicle and ran. According to the investigation narrative, two back-up officers followed the subject in their vehicle and when the officers closed their distance they exited their vehicle and initiated a foot pursuit. As they approached the subject, he appeared to slow; however, an officer, believing he was still a flight risk and possibly armed, grabbed the subject's upper body and took him to the ground. Once the subject was in a prone position, the subject attempted to put his arm under his body. Due to the violent nature of the crime and that the subject was aggressive and combative and possibly armed, the officer placed his open hand on the subject's head and proceeded to strike him on his upper back with a closed fist. The subject responded by relaxing his hand, which enabled the officers to handcuff him without further incident. The subject was arrested for carjacking (Penal Code Section 215(a)). The officers requested additional filings for felony

evading, the subject being an unlicensed driver, and possession of methamphetamine. The subject also had an outstanding warrant. The use of force and tactics for both officers were adjudicated as “in policy/no action” and “no action,” respectively.

The OIG’s evaluation of this NCUOF investigation identified the following concerns:

Investigation Quality

Accuracy and Completeness of Summarized Statements

Based upon a comparison of the tape-recorded and summarized statement of the subject in this investigation, the OIG noted a concern with the omission of pertinent information in his summarized statement. Specifically, the subject stated that when officers hit his head on the floor and hit him on the back of the head, his hands were behind him on his back, and “after all this,” he was handcuffed. Because this information conflicts with the involved officers’ statements, this information should have been summarized.

Handling of Unauthorized Force Allegation

Due to the subject’s assertion during his tape-recorded interview that his hands were already behind his back when officers hit his head on the floor and hit him on the back, a complaint investigation should have been initiated to address this inconsistency. Since the officers indicated that the subject had his left-hand underneath his stomach while on the ground and therefore struck the subject, the OIG believes that this matter should have been addressed in a complaint investigation.

NCUOF No. 2002982

This incident occurred in February 2005. Two patrol officers received a radio call regarding an attempted robbery of a dry cleaning business involving four juveniles. Upon their arrival, the officers met with the business owner. While the officers were interviewing the owner, they observed a surveillance camera above the store counter. After viewing the tape, the officers requested additional officers to review the tape and possibly identify the suspects. A few hours later, while in their patrol vehicle, two of the officers observed the same four juveniles that they recently identified on the store videotape as the robbery suspects. As the officers exited their vehicle, three of the suspects were taken into custody; however, the fourth suspect (the subject of the use of force) began to run. Two officers from another unit observed the subject running from the officer and pursued him in their vehicle. According to the NCUOF investigation narrative and the associated Arrest Report, as the subject was running, he slipped and fell which allowed the pursuing officers to advance towards the subject. One officer was about six feet from the subject and yelled for the subject to stay on the ground. The subject did not comply and began to get up on his knees. Before the subject was able to stand up, the officer pushed him to the ground and placed his knee on the subject’s back. The subject squirmed aggressively in an attempt to free himself. In order to gain compliance, the officer gave a distraction strike to the subject’s shoulder and after that, the subject complied. While the officer continued to apply his bodyweight to the subject’s back with his knee, he handcuffed him and then took him into custody. The subject was arrested for robbery (Welfare and Institutions Code 602). The officers

requested additional filing for assault with a deadly weapon and false imprisonment. The use of force and tactics for both officers were adjudicated as “in policy/no action” and “training,” respectively. Two complaint investigations were initiated from this use of force. One complaint was initiated by the subject alleging unauthorized force and discourtesy and the second complaint was initiated by a witness and by the Department alleging discourtesy and the failure of the involved officer to make a timely notification of a reportable use of force, respectively. Both allegations for the first complaint were adjudicated as “unfounded.” For the second complaint the discourtesy allegation was adjudicated as “unfounded” and the neglect of duty allegation was adjudicated as “sustained.” The investigation was initially classified as a Categorical Use of Force because the subject indicated that he was hit in the head with a metal object. Upon an initial review of the use of force by the Force Investigation Division, it was presented to the Use of Force Review Board who determined that the incident should be reclassified to NCUOF Level I.

The OIG’s evaluation of this NCUOF investigation identified the following concerns:

Investigation Quality

Transfer of Documentary Evidence for Reclassified Investigations

The NCUOF investigation file lacked certain pertinent information that was collected during the related Categorical Use of Force investigation that tended to support the subject’s account of the use of force. When investigations are reclassified from a Categorical Use of Force to a NCUOF, all pertinent documentary evidence collected as part of a Categorical Use of Force investigation should be transferred to the NCUOF investigation to ensure that all significant information is considered. At a minimum, the NCUOF investigation file should include a compact disk of the documentary evidence collected during the Categorical Use of Force investigation.

Other Concern – Not Related to the NCUOF Investigation

Faulty Rationale for the Complaint Investigation Adjudication

The subject indicated during the Categorical Use of Force investigation that he was hit in the head with a metal object by an officer and that this caused the injury to his head. The complaint investigation concluded that the injury occurred during an altercation between the subject and a business owner that occurred earlier in the day. However, the subject denied that he was injured in the earlier altercation and the business owner stated twice on tape, during the Categorical Use of Force investigation, that he did not hit the subject. This evidence was not included in the NCUOF or the subsequent complaint investigation. Thus, the OIG questions the rationale to support the “Unfounded” adjudication for the unauthorized force allegation.

ADDITIONAL MATTERS

The following are additional matters that the OIG identified in its review of the 19 NCUOF investigations. Additionally, at the request of the Police Commission, the OIG assess the “Venice Beach” Use of Force incident (see page no. 14).

Consistent Statements Verbiage

According to Special Order 13, 2004, statements provided by witnessing Department employees that are consistent with events as depicted in related reports “should” be noted by including a standard sentence to indicate the consistency. Conversely, statements provided by non-Department employee (public) witnesses that are consistent with events as depicted in related reports “shall” be noted by including a similar standard sentence. As “should” is often interpreted as being optional and “shall” is interpreted as being a requirement, Department policy should be re-worded from “should” to “shall.” Given that Department employee witness’ interviews are generally not tape-recorded or summarized, this standard consistent statements verbiage is important for a reviewer. The inclusion of this verbiage allows for a more efficient and effective review by the chain of command and the Use of Force Review Division.

Review of Involved Officer’s History

The electronic NCUOF report contains fields for the review of the involved officer’s history by the Area, Bureau, and Use of Force Review Division Commanding Officers and the Watch Commander to document that they reviewed the involved officer’s work history and the date it was reviewed. The OIG’s review revealed that, generally, only one commanding officer and/or the Watch Commander documented that they reviewed the officer’s record and the other reviewers left these fields blank. However, a review/evaluation of the involved officer’s history is an important part of the approval process and, as such, the OIG suggests that the Department evaluate whether the Use of Force system should systematically require Commanding Officers to complete this field to indicate whether or not they reviewed the involved officer’s history.

Officer Training Not Documented

For one investigation, the involved officer did not receive his recommended training.¹⁰ Specifically, the Watch Commander’s Insight, noted on the paper version of the NCUOF report, addresses the officer’s actions and recommends that he receive informal divisional training regarding his use of a frontal “bear hug” on the subject, which exposed his weapon and himself to the subject. All three Commanding Officers concurred with the Watch Commander and adjudicated the tactics used by this officer as “Training.” This concern was discussed with Department management and the employee has since received the recommended training.

Quality of Tape-Recorded Interviews

For four of the 19 investigation files reviewed, there were issues related either to the tape recording equipment, the tape audibility, or the interview completeness, which affected the overall quality of the tape-recorded interviews.¹¹ For one investigation, the tape recorder

¹⁰ NCUOF No. 2003516.

¹¹ NCUOF No. 2002367, 2002450, 2002495, and 2002680.

malfunctioned, resulting in not being able to tape record the interviews of two witnesses.¹² One of these witnesses remained anonymous and did not provide any contact information (i.e., an address or telephone number), which prevented the ability to go back and re-interview her. For the other three investigations, there was one or more interviews that either started in the middle, recorded a lot of background noise or an echo (making it difficult to hear the interview) or the interviewee's statements were not always clear.

Tape-recorded interviews enhance the investigation process because it allows the investigator to concentrate on the interview and go back later to ensure all pertinent information was obtained and inconsistencies were addressed. Therefore, the OIG recommends that the Department re-emphasize to Area NCUOF investigators that tape recording equipment should be tested prior to initiating an interview.

Additionally, introductory statements made on tape seem to vary from one investigator to another. For instance, some of them began almost immediately with a line of questioning and only a brief introduction while others take the time to state the tape number and side, the names of the interviewer and interviewee, place, date and time of the interview as well as the related incident. A full introduction at the beginning (or even at the end) of the taped interviews would help provide the relevant identifying information to the reviewer of the NCUOF investigation.

Possible Witnessing Employees Not Identified

For two of the 19 investigations, there was evidence that Department employees may have been in close proximity to the use of force, but were not identified as witnesses or an explanation was not provided as to why they were not considered potential witnesses.¹³ The Arrest Report for one investigation identifies two officers who were part of a directed patrol involving three patrol vehicles and six officers. The Investigating Officer identified all of the officers, except for these two officers, either as an involved or witnessing employees. There is no indication in the file to indicate that the officers split up from the other four officers. Although it is possible these officers, who were assigned to two different vehicles, did not observe the use of force, the Investigating Officer should have clearly documented their involvement or lack thereof in this incident. For the second investigation, the Arrest Report indicates that while in the airport terminal two partnered officers ran after the subject. One officer is listed as an employee witness; however, the other is not. One officer drew his handgun and ordered the subject to stop. When the subject did not comply, two other officers utilized a team takedown. Given that the two partnered officers were together when they ran after the subject, it appears that both of the officers may have been in a position to observe the use of force. At a minimum, investigators should indicate the reason a Department employee did not witness a use of force if he/she was present during a use of force incident.

Officer Injury Photographs

For one investigation, the file does not contain photographs of an officer's injuries.¹⁴ According to the Injury/Medical Treatment section of the NCUOF Report, an officer sustained abrasions to

¹² NCUOF No. 2002450.

¹³ NCUOF Nos. 2001895, and 2002307.

¹⁴ NCUOF No. 2002307.

his right wrist and left pinky finger; but no photographs of the officer’s wrist and hand were taken. Additionally, according to the subject, as soon as he was on the ground "a gang of officers" jumped on his back and started beating him with closed fists. Thus, photographs of the involved officers' knuckles would have been relevant, but they were not taken.¹⁵

Timeliness of Closing NCUOF Incidents

Consent Decree Paragraph 69 states that NCUOF incidents shall generally be reviewed by Division management within 14 days of the incident; however, there is nothing in the Consent Decree or elsewhere (Department Special Order, etc.) which specifies a timeframe for the final approval and closure of a NCUOF incident. The OIG performed an analysis of the 19 NCUOF investigations that were evaluated as part of our Audit and calculated the following regarding the length of time it took to close the investigations.

| Average Days to Close | Median Days to Close | Range in Days to Close | |
|-----------------------|----------------------|------------------------|------|
| | | Low | High |
| 321 | 290 | 92 | 821 |

Understandably, these figures are for Level I investigations that are generally more complex, but given the disparity in the number of days for the final approval and closure of NCUOF investigations, the OIG suggests that the Department mandate a reasonable timeframe for these investigations to be closed.¹⁶ The Department should also consider an option for the timeframe to be extended for more complex use of force investigations.

“Venice Beach” Use of Force (NCUOF No. 2000113)

In February 2005, on the Venice Beach “boardwalk,” a use of force incident occurred and sometime later, a citizen’s video depicting the use of force surfaced. This use of force was classified as Level II, so it was not within the scope of this Audit. However, at the request of the Police Commission, the OIG reviewed the NCUOF as part of this Audit.

Background

A patrol officer, working with the Venice Beach Sub-Station, responded to call from a storeowner who stated there was a “crazy man” in his store hitting him and his customers. Upon arrival at the store, the officers observed a male being held to the ground by another unknown male who had assisted the storeowner in subduing the apparently mentally ill subject. The unknown male released the subject and the two officers took the subject into custody. While the officers were attempting to place the subject into the police vehicle parked along Ocean Park Walk, he became rigid and refused to get into the vehicle. An officer ordered the subject to sit in the backseat and he did not comply and began to scream incoherently. The subject kept his body rigid and started to scream again. The officer again ordered the subject to sit in the rear of the vehicle and this time he partially complied; however, he would not place his feet inside the

¹⁵ As the OIG has identified a similar concern in other reviews and audits, this matter was included in the Additional Matters section.

¹⁶ The Department, when determining a reasonable timeframe for the final approval and closure of an investigation, should consider that the initial review of the investigation is completed within 14 days of the incident and, generally at that time, the Investigating Officer has already completed most of the investigation.

vehicle. Both officers continued to coax the subject into the vehicle but he remained rigid and stood up and spit at one of the officers which made contact on the officer's chest area. According to the NCUOF investigation narrative, the officer, fearing that the subject was about to spit at him again and possibly kick him, stepped back about two feet and sprayed the subject's face with two one-second bursts of Oleoresin Capsicum ("OC"). Immediately after being sprayed, the subject complied and sat in the police vehicle. The subject was arrested for battery on a police officer (Penal Code Section 243(b)). The officers requested additional filings for battery on a person and vandalism. The adjudication for the officer who used "OC" spray was Tactics – "Training" and Use of Force – "In Policy/No Action." A public witness videotaped the entire use of force. Several months later, a copy of the videotape was given to the Chief of Police and a complaint investigation was initiated due to an allegation of unauthorized force. The complaint investigation included allegations made by the Department and two different complainants. The complaint investigation resulted in eight framed allegations claiming unauthorized force, neglect of duty, and unbecoming conduct.¹⁷ The Chief of Police recommended that training be provided to these named officers. The involved officer resigned from the Department in June 2005, before the initiation of the complaint investigation, to accept a position with an out-of-state police department. The subject of the use of force filed a "Claim for Damages" against the City of Los Angeles, the Chief of Police, the involved officer, the officers present during the use of force, and the NCUOF investigator. This claim is still pending.

The OIG's evaluation of this NCUOF incident and associated NCUOF and complaint investigations identified the following issues:

Tactics

The officer used "OC" spray twice, each time from what appeared to be a distance of less than two feet. According to the Department's Training Bulletin, dated December 2003, the effective range of these canisters is three to twelve feet. At less than three feet, the "OC" spray may not become fully activated. Also, at such a close range, there may be a chance of eye injury. Although the tactics for this officer were adjudicated as "Training," according to a Commanding Officer's Insight, this tactical error does not appear to have been considered by the Commanding Officer regarding his recommendation for training. According to the Commanding Officer's Insight, the training adjudication was based on the officer's failure to provide a warning before his use of the "OC" spray. The Commanding Officer acknowledged that a warning was not required, per policy, but felt that if a warning was given, it could have resulted in a different outcome.

Use of Force

The officer, in the Arrest Report, indicated that he was trying to get the subject's feet inside the police vehicle and was afraid that the subject would spit again or possibly kick him. As such, the

¹⁷ According to the complaint investigation file, the framed allegation involving unauthorized force was adjudicated as "not resolved" and the unbecoming conduct allegation was adjudicated as "sustained." Both of these allegations were against the involved officer who has since left the Department. The unauthorized force allegation asserted that this involved officer unnecessarily sprayed the subject with "OC." The unbecoming conduct allegation asserted this involved officer submitted an Arrest Report that contained inaccurate information. The other allegations were adjudicated as "not resolved" for the unknown officers and "unfounded" for the other three Department employees who were present during the use of force.

officer used his “OC” spray on the subject at close range. The OIG reviewed the associated videotape in an attempt to determine whether the subject’s feet were inside or outside of the vehicle at the time the “OC” spray was administered. However, due to the videotape not showing the lower portion of the police vehicle’s door, the OIG was unable to confirm whether the subject’s feet were inside or outside the police vehicle. The position of the subject’s body sitting in the back of the police vehicle could have allowed his feet to be placed either way.

Additionally, the OIG’s comparison of the videotape of this use of force to the associated Arrest Report identified a noteworthy inconsistency. Specifically, the Arrest Report, written by the involved officer, indicated that before using “OC” on the subject, he stepped back approximately two feet. In reviewing the videotape, the officer actually leaned forward into the police vehicle and it appeared that he was very close to the subject’s face. However, this inconsistency was never fully addressed by the complaint investigation.

Adequate Care of Subject During LAPD Custody

A review of the videotape of the NCUOF incident shows the officer quickly closing the passenger side rear door immediately after spraying the subject with “OC.”¹⁸ While this action may have been necessary to ensure that the subject’s feet remained inside the police vehicle so that they could transport him to the police station, no windows were left open. Forty seconds later, another officer at the scene opened the driver’s side door, but since the subject was in the backseat of the police vehicle that was partitioned and only slightly opened, ventilation, if any, was minimal. Approximately two minutes after that, the another officer entered and started the police vehicle and thirty seconds later the backseat window appeared to be rolled down one to two inches for the subject. According to Training Division, officers are taught to leave the subject in open air once the subject has been controlled. Normal ventilation helps to dissipate the effects of “OC” spray, and an attempt to provide proper ventilation should have occurred, but it did not for several minutes. The Department’s training bulletin does not thoroughly address this issue. However, the Police Commission has already requested the Department to clarify this area and the Department indicated that Training Division is working on the update.

Officers’ Work History Incomplete and/or Inaccurate¹⁹

The complaint investigation made allegations against three named police officers, a sergeant, and unknown officers. A review of their work history revealed that the discipline information for two of the named police officers and the sergeant is incomplete in that there is no adjudication information for the complaint investigation.

Additionally, for the involved officer, who has since left the Department, there are inconsistencies regarding the adjudication documented in the complaint investigation file and the information reflected in his work history. Specifically, for the three allegations framed against

¹⁸ According to the Department’s Training Bulletin, dated December 2003, “OC” spray normally affects the eyes, the respiratory system and the skin. When applied to the face, “OC” usually causes temporary closing of the suspect’s eyes. The mucus membranes swell, which may produce uncontrollable coughing, gagging, or gasping. Exposed areas of the skin may become inflamed causing an intense burning sensation and redness.

¹⁹ An officer’s Training Evaluation and Management System (TEAMS II) Record is his/her work history. For example, the TEAMS II tracks all complaints against an officer, force used by an officer, commendations received by an officer and training provided to an officer.

this involved officer (unauthorized force, unbecoming conduct, and neglect of duty), the complaint investigation file indicates an adjudication of “not resolved,” “sustained,” and “unfounded,” respectively. His work history correctly reflects “not resolved” for the unauthorized force allegation; however, it shows “unfounded” instead of “sustained” for the unbecoming conduct allegation and omits the neglect of duty allegation.

RECOMMENDATIONS

Prior Recommendations

The OIG’s prior NCUOF audit for Fiscal Year 2005/2006 made five recommendations. The first two were that the Department remind Investigating Officers of the importance of addressing conflicting statements in the Investigative Narrative Comments section and including the required standard verbiage when statements are consistent.²⁰ The OIG considers these two prior recommendations “closed” as they were addressed in the Chief of Police Notice, dated April 28, 2006, titled “Revision of Non-Categorical Use of Force Report.”

For another recommendation, the OIG believes that it is now outdated. Specifically, the OIG recommended that the Department require Area NCUOF investigators to provide a signature that verifies that they reviewed all reports related to the NCUOF, were not involved in the NCUOF, and interviewed all involved Department employees separately. Since the upgrade to the new Use of Force System is now electronic and requires this information to be documented, the OIG withdraws the recommendations and considers it “closed.”

The other two recommendations suggested that the Department: 1) Require allegations of unauthorized force be framed in a complaint and a complaint investigation initiated when allegations of unauthorized force are made during a NCUOF investigation; and 2) Revise its policy to require Investigating Officers to re-interview 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 unauthorized force. These recommendations will be addressed through revisions to the Department’s Use of Force Source Book, which will include tactical and use of force information. The section will be titled “Tactical Operations Resource Guide” and is now in the formal review process. As such, the OIG will regard these recommendations as “open” until the book is published and the relevant sections are reviewed by the OIG.

²⁰ The section titled Case Details on the electronic report contains an investigative narrative comments section which mirrors the Investigating Supervisor’s Notes section on the paper NCUOF Report and is now where Investigating Officers generally address conflicting statements. The consistent statement verbiage, if applicable, is now generally noted in either the Employee or Non-Employee Witness section of the electronic report under Statement Detail.

Current Recommendations

The OIG recommends that the Department:

- 1) Re-emphasize 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 Use of Force Review Division.
- 2) Re-emphasize to Area NCUOF investigators that tape-recorders should be tested prior to conducting interviews of complainants, witnesses, and Department employees (if applicable) to ensure the interviews are audible.
- 3) Re-emphasize to Area NCUOF investigators that a standard introduction should normally be stated in each tape-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, place, date and time of the interview as well as of the related incident.
- 4) Revise Department policy to require Area 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").
- 5) 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.
- 6) 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 Investigating Officer has already completed most of the investigation.
- 7) Continue to work on a 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.²¹

²¹ The Training Bulletin should provide specific instructions for officers to follow so that the vehicle is adequately ventilated to help dissipate the "OC" spray and help avoid any lingering effects to the subject.