

LOS ANGELES POLICE COMMISSION

***REVIEW OF THE DEPARTMENT'S
AUDIT OF AUDIOTAPES USED IN
NON-CATEGORICAL USE OF FORCE
INVESTIGATIONS
(Fiscal Year 2006/2007)***



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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PURPOSE

The Office of the Inspector General (OIG), pursuant to a request by the Police Commission, performed an “executive level” review of the Los Angeles Police Department’s (LAPD or Department) Non-Categorical Use of Force (NCUOF) Investigations Audiotapes Audit (Audit).¹ The Audit was completed by the Department’s Office of Operations in the second quarter of Fiscal Year 2006/2007 and received by the OIG on January 4, 2007.

BACKGROUND ON THE DEPARTMENT’S AUDIT

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 excessive force regarding the force used by a Department employee(s); and/or,
- The force used results in a serious injury, such as a broken bone, dislocation, or an injury requiring sutures;² and/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); and/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.

¹ The Audit Report cover sheet and Intradepartmental Correspondence to the Police Commission erroneously indicated that the Department’s Audit included audiotapes of NCUOF and complaint investigations. However, the Audit only assessed audiotapes of NCUOF investigations.

² If the investigating supervisor is unable to verify the seriousness of an injury or complained of injury, it should be reported as a Level I incident. However, if the subject’s injuries (related to the use of force) require hospitalization, Force Investigation Division investigates the incident as a Categorical Use of Force.

Because of the requirement to tape-record public witness and subject interviews in all Level I NCUOF investigations, the Department's Audit assessed investigations classified as Level I. In order to identify and select a sample of NCUOF investigations, the Department's Office of Operations worked in collaboration with the Use of Force Review Division. A total of 315 Level I NCUOF investigations were initiated between July 24, 2004 and March 11, 2006. To ensure each community police station throughout the Department was evaluated, along with Juvenile, Vice, and Metropolitan Divisions, they attempted to identify two of the most recently completed NCUOF investigations for each entity.³ The resulting Audit sample included 46 NCUOF investigations. The Department's Audit had three primary objectives:

- OBJECTIVE NO. 1: To verify that the summarized statements were consistent with the tape-recorded interviews and any allegations of misconduct were appropriately addressed in the NCUOF investigation;
- OBJECTIVE NO. 2: To verify that the audiotapes associated with these NCUOF investigations were properly booked at Scientific Investigation Division; and,
- OBJECTIVE NO. 3: To verify that the NCUOF investigations contained an explanation if the subject and/or public witness statements were not tape-recorded, as required.

The Office of Operations developed an evaluation document to test for these objectives in the sampled NCUOF investigations and then requested personnel at the bureau level (i.e., South Bureau, West Bureau, Central Bureau, Valley Bureau, Detective Bureau, and Special Operations Bureau) to audit the sampled NCUOF investigations for the areas/divisions (e.g., community police stations) within their chain of command. Once the bureau personnel completed their assessment, the Office of Operations selected a sample of ten investigations and re-performed the same evaluation. No additional findings were identified in their meta-audit. Therefore, the Office of Operations compiled and reported on the Audit results for each bureau.

The Department's Audit reported the following for each objective:

- OBJECTIVE NO. 1: Of the 43 NCUOF investigations with tape-recorded interviews, 41 (95 percent) did not have any issues with the associated summarized statements and no additional allegations of misconduct were identified that were not already addressed by the NCUOF investigations. The Department's Audit identified one NCUOF investigation (completed by Southwest Area, South Bureau) where a complaint investigation was not initiated but should have been since the subject alleged that an officer told him several times to "sit the [profanity omitted] down." The Department's Audit identified another NCUOF investigation (completed by Foothill Area, Valley Bureau) where a witness initially stated (but later

³ The Office of Operations erroneously reported that they took a sample of NCUOF investigations "completed" between July 24, 2004 and March 11, 2006, instead of NCUOF investigations with "incident dates" between that time period.

recanted) that he was thrown against a wall by an officer, but this information was not included in his summarized statement.

- OBJECTIVE NO. 2: Of the 43 NCUOF investigations with tape-recorded interviews, 40 (93 percent) were properly booked at Scientific Investigation Division. The tapes for the three remaining investigations were located at the investigating areas/divisions.
- OBJECTIVE NO. 3: Of the 46 NCUOF investigations, 43 contained the subject and/or public witness tape-recorded statements. The three remaining investigations properly documented an explanation for the deviation.

THE OIG'S REVIEW METHODOLOGY

The OIG's "executive level" review focused on the assessment of the findings for Objective No.1 (Completeness and Accuracy of Summarized Statements and All Allegations of Misconduct Addressed by the Investigation). In the past, the OIG identified concerns in its other audits/reviews related to summarization of tape-recorded statements and the handling of misconduct allegations in NCUOF investigations, and given the high compliance percentage reported by the Department's Audit (95 percent), the OIG decided to focus its review on this area.

As stated previously, prior to issuing the results of the Department's Audit, the Office of Operations selected a sample of ten NCUOF investigations and re-evaluated the work performed by bureau personnel. No additional findings were identified from their meta-audit. To determine whether that was an accurate assessment, the OIG re-evaluated the ten investigations (which contained 34 tape-recorded subject and witness interviews). Specifically, the OIG compared the tape-recorded interviews to their associated NCUOF investigations to determine if the statements were consistent. If the subject or public witness account was in substantial conflict with the involved officer(s) account, the OIG assessed the completeness and accuracy of their summarized statements. For any allegations of misconduct, the OIG evaluated whether they were adequately addressed in the NCUOF investigation and whether the allegations resulted in the initiation of a complaint investigation.

SUMMARY OF THE OIG'S REVIEW

Overall, the OIG believes that the Department's Audit sampling methodology was good, in that the Audit attempted to get a sample of NCUOF investigations from each area/division. However, the OIG identified that Jail Division completed nine Level I NCUOF investigations, but the Department's Audit did not include this division in its sample. Since there is a risk associated with in-custody uses of force and in order to fully assess Department-wide NCUOF investigations, going forward, it is suggested that NCUOF investigations completed by Jail Division also be evaluated in the Department's Audit. According to the Office of Operations, the Audit was to focus on field operations, but they agreed that it would be a good idea to include Jail Division in future audits.

The Department's Audit concluded that 41 of the 43 NCUOF investigations with tape-recorded interviews did not have any issues with the summarized statements and allegations of misconduct were adequately addressed by the NCUOF investigations (Objective No.1). The OIG re-evaluated the ten sampled NCUOF investigations audited by the Office of Operations. Based on the OIG's review, concerns in two investigations were identified. Specifically, in one NCUOF investigation (NCUOF No. 2002949), the OIG determined that one public witness' summarized statement omitted pertinent information that was stated in her tape-recorded interview. In another NCUOF investigation (NCUOF No. 2002036), the OIG determined that one subject and two public witnesses' summarized statements omitted or inaccurately portrayed information that was stated in their tape-recorded interviews. Moreover, during the OIG's review of this NCUOF investigation and the associated complaint investigation, some significant investigation-related concerns were identified. Since these concerns were outside the scope of the Department's Audit, the OIG noted them in the "Additional Concerns Outside the Scope of the Department's Audit" section of this report.

DETAILS ON THE TWO INVESTIGATIONS WITH CONCERNS

NCUOF No. 2002949 (77th Street Division, South Bureau)

This NCUOF involved two officers who used force on an adult male who admitted that he had consumed alcohol prior to driving. The use of force occurred at the termination of a vehicle pursuit after the subject's vehicle lost control and crashed into a tree. The officers indicated that one officer punched the left side of the subject's head (three times) when the subject attempted to punch the officer. Other types of force used by the involved officers included a wristlock, twistlock, firm grip, block, takedown, and bodyweight. The subject sustained a facial contusion and blunt head trauma. An officer complained of pain to his right hand. The subject was arrested for battery on a peace officer (Penal Code Section 69). The involved officers' tactics were adjudicated as "no action" and their uses of force were adjudicated as "in policy/no action." A public witness filed a complaint against the involved officers alleging unauthorized force on the subject. That complaint investigation was not completed at the time of this report.

Completeness and Accuracy of Summarized Statements

In comparing the tape-recorded interviews of the subject/witnesses to their summarized statements, the OIG identified pertinent information that was omitted from one public witness' summarized statement. Specifically, this witness, in her tape-recorded interview, stated that the officer who punched the subject lied to the responding officers, telling them that the subject hurt himself from the car accident, not from the punches. She said that was "completely untrue." Additionally, she stated that after the officer punched the subject on the face, she "started to see blood on the suspect's face," and she "did not see any blood when he got out of the car." These comments were omitted from her summarized statement. Given that the officers stated that the subject struck his head on the windshield causing him to bleed from his mouth and nose and the subject stated that he did not recall hitting the windshield or the steering wheel, the OIG believes the comments from this witness should have been included in her summarized statement. There

appears to be a significant inconsistency with respect to the *amount* of force reported by the involved officers and the witness was calling into question the veracity of the involved officers' account of an incident. Since there were no public witnesses indicating that the subject resisted the officers, the OIG believes this was pertinent information.

Note: *The Office of Operations did not concur with this finding and believed that the inconsistency regarding the cause of the subject's injury was not material. According to the Office of Operations, the NCUOF investigation identified the type of force used, and determined whether the use of force was in or out of policy based on the evidence, neither of which was solely determined by the presence or absence of an injury. The fact that the suspect had an injury to his head was not in dispute, and there were no inconsistencies regarding the type of force that was used, or whether the suspect had been in a car accident, either of which could have caused the injury. The opinion of the witness regarding which of the actions actually caused the injury, and the fact that her opinion was different than the officers' was not considered a material omission/inconsistency by the Office of Operations, and was therefore not reported in the Department's Audit.*

NCUOF No. 2002036 (Hollenbeck Division, Central Bureau)

This NCUOF incident involved four officers who used force on an adult male. The use of force occurred at the termination of a vehicle pursuit when the subject was attempting to flee on foot. The officers' account indicated that one officer gave a front kick to the subject's abdomen when the subject assumed a fighting stance and began to swing at the officer. The officer then took the subject down to the ground and although he intended to give subject a distraction strike to the back of his shoulder, the officer stuck the subject's head due to the subject's movement when he was resisting on the ground. Other types of force used included bodyweight and miscellaneous physical force. The subject sustained contusions to the left side of his head and face; abrasions to the left side of his forehead; and abrasions to his elbows, knees, and hands. The subject was arrested for felony evading (California Vehicle Code Section 2800.2). Officers requested additional charges for battery on a peace officer (Penal Code Section 69) and misdemeanor driving under the influence of an alcoholic beverage (Vehicle Code Section 23152). The involved officers' tactics were adjudicated as "no action" and their uses of force were adjudicated as "in policy/no action." The subject and his wife filed a complaint and alleged that the involved officers were discourteous and used unauthorized force against them both. In the complaint investigation, the allegations of unauthorized force on the subject's wife and discourteous remark to her were framed against an unidentified officer. These two allegations were adjudicated as "not resolved." The other six allegations against the two involved officers were adjudicated as "unfounded."

Completeness and Accuracy of Summarized Statements

In comparing the tape-recorded interviews of the subject/witnesses to their summarized statements, the OIG identified pertinent information either omitted or inaccurately portrayed in their summarized statements, as follows:

- Public Witness No.1, in his tape-recorded interview, stated that the officer placed his boot “on the back of the [subject’s] head,” which caused blood to come down from the subject’s face, and the subject’s “eyes were busted because of that.” Though these comments were mentioned in his summarized statement, he indicated these uses of force happened **after the subject was handcuffed**, and that “a little stomping was still happening.” His summarized statement omitted the portion that the use of force continued after the subject was handcuffed. Additionally, the witness stated on tape that, based on the involved officers’ body language and the profanity they used with the subject, he believed the officers were upset that they had to chase the subject.
- Public Witness No. 2, in his tape-recorded interview, stated that he did not see anything after the officers tackled the subject down to the ground because he was trying to get his mother back to their apartment. The witness stated that “after that” when he “looked back, the subject was already up [on his feet].” The subject and three other public witnesses stated that the officers punched and kicked the subject multiple times on his head and neck area while he was on the ground; however, the officers indicated that they only gave the subject one distraction strike while he was on the ground. The witness’ comments that he did not see any punches or kicks were consistent with the fact that he did not observe the entire incident. However, the summarized statement of Public Witness No. 2 indicated “he witnessed the incident and the officers had not beat[en] the suspect.” Since the comments that he did not see anything after the subject was tackled down to the ground because he was trying to get his mother back to their apartment were not included, this would leave the impression that he witnessed the entire incident, which was not the case. Therefore, the OIG believes this inaccuracy in the statement should have been reported in the Department’s Audit. The OIG further reviewed the subsequent complaint investigation and noted that the Commanding Officer relied on the summarized statement of Public Witness No. 2 in the NCUOF investigation to discredit the accounts of the subject and other public witnesses.⁴

Note: *The Office of Operations did not concur with this finding. The Office of Operations agreed the public witness said on the tape that he did not see any punches or kicks, and it was summarized as, “...witnessed the incident and the officers had not beaten the suspect.” However, the Office of Operations contended it was an accurate depiction of what the witness said, from his perspective. Therefore, they did not report on it in the Department’s Audit.*

⁴ The summarized statement of Public Witness No. 2 from the NCUOF investigation was included in the complaint investigation and he was not re-interviewed. The Department did not review the subsequent complaint investigation when conducting the Audit because it was outside of its scope.

- The subject, in his tape-recorded interview, stated that one witness was his wife's friend and all other witnesses were his neighbors (there were a total of five witnesses identified in the investigation). However, his summarized statement in a footnote indicated that all the witnesses, except Public Witness No. 2, were his friends. As previously stated, the summarized statement for Public Witness No. 2 gave the impression that he witnessed the entire use of force and was able to discount the versions of the other witnesses, but that was not the case. So, the summarized statement that all other public witnesses but Public Witness No. 2 were the subject's friends was pertinent to assessing the credibility of the other witnesses in this use of force. The OIG further reviewed the subsequent complaint investigation and noted that the Commanding Officer relied on this summarized statement to adjudicate the subsequent complaint investigation when he called into question the credibility of other witnesses.⁵ Specifically, the Commanding Officers' rationale indicated "there were many witnesses to this incident; however, all of the witnesses but one are friends of [the] complainant [subject]. The only witness who is not complainant [subject]'s friend is [Witness No. 2]."⁶ As a result, the unauthorized force allegations that officers punched and kicked the subject on the face were adjudicated as "unfounded."

***Note:** The Office of Operations did not concur with this finding and believed that the summarized statement and a relevant footnote sufficiently described the relationship between the subject and the witnesses. Therefore, they did not report it in the Department's Audit.*

Additional Concerns Outside the Scope of the Department's Audit

During the OIG's review of the NCUOF No. 2002036 investigation, some additional concerns were identified in both the NCUOF investigation and the associated complaint investigation that were not within the scope of the Department's Audit. These concerns are as follows:

- **NCUOF Investigation:** The investigation did not contain any evidence that there was an attempt to locate two potential public witnesses. Specifically, the subject had provided the name of another neighbor who observed the incident, but there was no evidence in the investigation that the investigator attempted to locate her. Additionally, one public witness, in her tape-recorded interview, indicated that she told her boyfriend to "get the names of those officers (who used force)." She may have been indicating that her boyfriend was present during the incident, however, the investigator did not ask for the boyfriend's name or clarify whether the boyfriend observed the incident. Thus, the OIG was unable to determine if he was another witness to the use of force.

⁵ The summarized statement of the subject from the NCUOF investigation was included in the complaint investigation and he was not re-interviewed. The Department did not review the subsequent complaint investigation when conducting the Audit because it was outside of its scope.

⁶ As previously mentioned, the summarized statement of this witness was inaccurately portrayed in the NCUOF investigation.

- **Complaint Investigation:** The OIG further reviewed the associated complaint investigation to assess if the unauthorized force alleged by the complainant (subject) was adequately investigated and properly adjudicated. The following additional concerns were identified:
 1. The Commanding Officer's rationale for refuting the complainant's (subject) allegations that officers struck his face and head against the sidewalk multiple times and that officers kicked him on the face was not supported. Specifically, the rationale stated that the contusion and bruises on the left side of the complainant's head and face were consistent with him striking the sidewalk when he went down to the ground, and that these injuries were not consistent with him being struck multiple times on the sidewalk (by the officers). However, three witnesses contradicted the officers' account by indicating that they saw officers repeatedly punch and kick the complainant's face and head and two of them indicated that they saw officers strike the subject's head against the sidewalk multiple times. Additionally, the OIG's further review of the complainant's injury photos revealed multiple contusions to the subject's left forehead above his eyebrow, and abrasions to the left side of his face which might also be consistent with being struck multiple times on the sidewalk. Given that no witness refuted the aforementioned allegations, the OIG questions the "unfounded" adjudication for the "unauthorized force" allegation.
 2. The Commanding Officer's basis for challenging the complainant's (subject) credibility is questionable. Specifically, part of the rationale indicated that the complainant denied being a gang member, however, because he had a gang-related tattoo on his abdomen, the Commanding Officer opined that "it brings doubt to his reliability as an accurate historian of events." However, in the complainant's (subject) tape-recorded interview, the complainant (subject) admitted that he had been a gang member in the past, but now he had a family and had not been associated with his neighborhood gang for more than 15 years. Therefore, the OIG questions the basis for questioning the subject's credibility.

Additionally, per the Department's Annual Audit Plan, this Department's Audit was to also include an audit of audiotapes used in complaint investigations and compare the statements made in tape-recorded interviews to their associated summarized statements. Since the Review and Evaluation Section of Internal Affairs Group conducts such audits on a monthly basis, to not duplicate their efforts, the Department's Audit only evaluated audiotapes used in NCUOF investigations. However, the OIG still believes the Department should ensure that the results of the Review and Evaluation Section audits are reported to the Police Commission. At present, the Department has not yet submitted any public audit reports related to the assessment of audiotapes used in complaint investigations to the Police Commission, as required by the Department's Annual Audit Plan for Fiscal Year 2006/2007.

CONCLUSION

The OIG's review identified issues with two of the ten sampled Level I NCUOF investigations, whereas the Office of Operations found no issues with its meta-audit of these investigations. Based on the issues identified in the OIG's review, we believe that the Audit's determination that 95 percent (41 of 43) of the NCUOF investigations did not have significant inconsistencies or allegations of misconduct that were not addressed may be overstated. Our findings are consistent with the OIG's Fiscal Year 2006/2007 NCUOF Investigations Audit (issued on March 30, 2007). That audit included an assessment of summarized statements and an assessment to determine whether complaint investigations were initiated when allegations of unauthorized force were made in all Level I NCUOF investigations that were closed in September through November of 2006. In that audit, the OIG determined that 84 percent (16 of 19) of the NCUOF investigations did not have any significant omissions or inaccuracies in subject and/or witness summarized statements and that all associated allegations of misconduct were appropriately addressed.⁷

It is suggested that the Department review the additional concerns presented in this report and take appropriate action where necessary.

⁷ The OIG identified two investigations that had omissions or inaccuracies in subject and/or witness summarized statements and one investigation in which a complaint investigation was not initiated when a subject alleged unauthorized force.