

## INTRADEPARTMENTAL CORRESPONDENCE

June 11, 2013  
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**BPC #13-0192**

**TO:** The Honorable Board of Police Commissioners

**FROM:** Inspector General, Police Commission

**SUBJECT:** REVIEW OF NON-CATEGORICAL USE OF FORCE INVESTIGATIONS

### **RECOMMENDED ACTION**

REVIEW and APPROVE the Office of the Inspector General's (OIG) Review of Non-Categorical Use of Force Investigations.

### **DISCUSSION**

In this report, the Office of the Inspector General examines the process for documenting, investigating, and adjudicating Non-Categorical Use of Force (NCUOF) incidents at the Los Angeles Police Department (LAPD). As they involve less serious uses of force than do Categorical Use of Force (CUOF) incidents, NCUOF incidents undergo a relatively streamlined investigation and review process. These cases make up the vast majority of uses of force by the LAPD, with potentially significant impact on the Department's relations with the community and exposure to liability. While the OIG has regularly conducted compliance audits of NCUOF investigations, this report represents the OIG's first evaluation of the efficacy of the NCUOF process itself.

I am available to provide any information the Board may require.

**E-Copy – Original Signature on File with the Police Commission**

ALEXANDER A. BUSTAMANTE  
Inspector General  
Police Commission

Attachment

c: Executive Director Richard M. Tefank  
Chief of Police Charles L. Beck  
Assistant Chief Sandy Jo MacArthur, Director, Office of Administrative Services  
Assistant Chief Earl C. Paysinger, Director, Office of Operations  
Deputy Chief Stephen Jacobs, Chief of Staff  
Deputy Chief Debra McCarthy, Commanding Officer, Professional Standards Bureau

LOS ANGELES POLICE COMMISSION

*Review of Non-Categorical  
Use of Force Investigations  
Public Report*



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

ALEXANDER A. BUSTAMANTE  
Inspector General

June 11, 2013

## **1. EXECUTIVE SUMMARY**

In this report, the Office of the Inspector General (OIG) examines the process for documenting, investigating, and adjudicating Non-Categorical Use of Force (NCUOF) incidents at the Los Angeles Police Department (LAPD). As they involve less serious uses of force than do Categorical Use of Force (CUOF) incidents, NCUOF incidents undergo a relatively streamlined investigation and review process. These cases make up the vast majority of uses of force by the LAPD, with potentially significant impact on the Department's relations with the community and exposure to liability. While the OIG has regularly conducted compliance audits of NCUOF investigations, this report represents the OIG's first evaluation of the efficacy of the NCUOF process itself.

Beginning in October 2012, the OIG examined a sample of NCUOF cases from various perspectives -- compliance with current Department protocols, quality of documented evidence and conclusions, and investigation of related complaints of unauthorized force from the public. As a result, the OIG has determined that investigations of NCUOF incidents appear to be thoroughly conducted and, on the whole, adhere to Department policies. There were, however, some areas of the process -- such as documentation of individual statements, identification and resolution of material conflicts, and written evaluation of the force used -- that could be improved. The OIG has identified some recommended revisions to the current process that should result in more transparent and robust evaluations of NCUOF incidents.

It is unlikely that the implementation of such revisions would have impacted the outcome of most of the sample cases reviewed by the OIG, as only a small subset of those investigations brought up substantive concerns or questions. Nonetheless, the modifications should strengthen the Department's ability to detect any issues that may exist in use of force incidents or investigations. The Department has independently identified many of the same areas of improvement and has worked with the OIG to develop these recommendations and a plan for their implementation.

## **FINDINGS AND RECOMMENDATIONS**

The OIG found that the Department's process for investigating NCUOF incidents is comprehensive, in that it requires investigating officers (I/Os) to independently interview each involved person and witness, canvass the area and collect evidence, and document any conflicting information. As in previous years, the Department scored high marks in the OIG's compliance audit, which found that, with very few exceptions, I/Os indicated that they conducted each of these steps in the manner required by Department policy. With respect to the overall effectiveness of these practices, however, the OIG did note some areas for which documentation was limited, impacting the ability of the OIG to fully review all of the evidence and the manner in which it was collected and evaluated.

One of the areas in which the OIG recommends procedural changes relates to the documentation of the individual accounts provided by those who were involved in or witnessed the use of force. LAPD policy, in most cases, requires the documentation of a person's independent statement only

when the I/O determines that there are inconsistencies among accounts. In principle, this policy efficiently highlights areas of possible concern and allows investigative and reviewing personnel to focus their efforts on conflicts in the evidence, rather than on developing or combing through redundant information. In practice, however, this system places much of evidence assessment -- the determination of whether accounts are consistent -- in the hands of the first-level investigating officer, with limited opportunity for oversight by subsequent reviewers or auditors.

The OIG has recommended to the Department that it require additional documentation for all officer accounts gathered during a NCUOF investigation, regardless of the classification level or the presence of inconsistencies. In collaboration with the OIG, the Department will therefore develop and implement a NCUOF Supplemental Officer Statement form, to be promptly completed by all officers and other Department employees present at a use of force. The Department has also agreed to require that the investigative record provide additional information, such as the person's vantage point or the portion of the incident witnessed, about the relevance of interviews with non-Department persons who witness or become involved in a NCUOF.

The OIG also considered whether Watch Commander Insights, the initial evaluative mechanism for NCUOFs, contained a full and well-supported analysis of each incident. There are few written guidelines for how these evaluations should be developed or what elements they should include. The OIG's review found that, for each person using force, the evaluation identified each type of force used, assessed the tactics used, and determined whether the force used was objectively reasonable. The quality of these evaluations varied. While many conclusions were supported by thorough analysis and a clear rationale, there were some for which the rationale was unclear or where it did not appear to address salient aspects of the case. In its process review, the OIG did not make a determination as to whether a given use of force was in or out of policy. It has recommended to the Department, however, that watch commanders receive additional training in the analysis and evaluation of the use of force, including factors to consider when determining whether force is objectively reasonable. In response, the Department will develop a set of trainings for supervisors on the analysis and adjudication of NCUOF incidents.<sup>1</sup>

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<sup>1</sup> The Use of Force Review Division currently provides regular training to field supervisors on conducting a NCUOF investigation.

## **2. INTRODUCTION**

### **I. USE OF FORCE AT THE LAPD**

When the number of arrests -- on average, approximately 160,000 per year over the past 5 years -- is taken into account, a small proportion, approximately 1 percent, involved the use of reported force.<sup>2</sup> Between 2008 and 2012, employees of the Department reported an average of 1757 such incidents per year.<sup>3</sup> As a matter of policy, the Department investigates and evaluates all instances of reportable force to determine whether the force used, as well as any associated tactics, fell within LAPD policy guidelines.<sup>4</sup>

Force incidents are divided into two primary types, Categorical and Non-Categorical, which dictate how they are to be investigated and adjudicated. The vast majority -- approximately 95 percent of all force incidents between 2008 and 2012 -- were NCUOFs. The two categories are described briefly below; the NCUOF process will be described in greater detail throughout each chapter of the report.

#### **A. Categorical Use of Force (CUOF) Incidents**

CUOF incidents include all discharges of a firearm or uses of lethal force, in-custody deaths, and hospitalizations resulting from a use of force by the police.<sup>5</sup> These are investigated by the Force Investigation Division (FID), a dedicated detective unit within the Department. Investigations of these incidents are exhaustively documented, undergo rigorous review and analysis by both the Department and the OIG, and are ultimately adjudicated by the Board of Police Commissioners (Commission).

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<sup>2</sup> "Statistical Digest," Los Angeles Police Department, 2008-2011. Preliminary statistics for 2012 obtained from LAPD Application Development and Support Division.

<sup>3</sup> Use of Force Review Division. Includes both Categorical and Non-Categorical Uses of Force. A breakdown of the types of force used is included as an appendix.

<sup>4</sup> The parameters for reportable force are described in the following chapter.

<sup>5</sup> Along with firearm discharges, types of force that fall into this category also include intentional head strikes with an impact weapon, uses of the carotid restraint control hold, and canine contacts resulting in hospitalization.

The OIG has significant oversight of the investigation and adjudication of each CUOF and works closely with the Department during the CUOF investigation, review, and adjudication processes. Its role includes, but is not limited to, the following tasks:

- responding to the on-scene investigation<sup>6</sup>
- reviewing the investigative file for completeness and quality
- analyzing the tactics and use of force of substantially involved officers
- developing recommendations to the Commission regarding the adjudication of the case

### **B. Non-Categorical Use of Force (NCUOF) Incidents**

NCUOF incidents encompass all other reportable uses of force by Department employees. As such, NCUOFs range from incidents involving lower-level force methods such as holds and joint locks to the use of an impact weapon or less-lethal device such as a TASER.<sup>7</sup> Each is classified as either a Level I or Level II incident, which dictates the level of documentation required for the investigation. A Level I incident is classified as such because it involves a serious injury, substantially conflicting evidence, and/or a complaint of unauthorized force, while a Level II incident includes any other NCUOF incident that does not meet those criteria. The criteria for each level are described in further detail in the following chapter.

NCUOF incidents are investigated and evaluated at the area or division level, then reviewed up the chain of command, with final approval assigned to the commanding officer of the Use of Force Review Division (UOFRD).<sup>8</sup> NCUOF investigations also differ from CUOF investigations in that they require significantly less documentation. The OIG is not routinely involved in the NCUOF process, but conducts regular audits of those files. The OIG also reviews the Department's internal compliance audits of NCUOF cases by assessing their methodology and re-auditing a sample of cases.

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<sup>6</sup> The OIG does not routinely respond to animal shootings, non-tactical unintentional discharges, or incidents where there is no on-scene investigation.

<sup>7</sup> The use of a less-lethal weapon that does not contact the subject is not reportable.

<sup>8</sup> The LAPD's jurisdiction – the City of Los Angeles -- is divided into 21 geographic areas, previously called divisions. Officers may also be assigned to a non-geographic division.

### **C. LAPD Use of Force Policy**

The Department's current use of force policy, established in 2009, permits officers to use "only that force which is 'objectively reasonable' to:

- Defend themselves;
- Defend others;
- Effect an arrest or detention;
- Prevent escape; or,
- Overcome resistance."

The term "objectively reasonable," established by case law, requires that "the force must be reasonable under the circumstances known to the officer at the time the force was used."<sup>9 10</sup> As such, it should take into account a list of relevant factors, e.g., the seriousness of the crime or suspected offense; the level of threat or resistance presented by the subject; the potential for injury to citizens, officers, or subjects; and relative factors such as age, size, and strength. The Department judges reasonableness from the "perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances."<sup>11</sup>

According to Department policy, a use of force will be determined to be "out of policy" if it does not meet the objectively reasonable standard. Tactics, on the other hand, are evaluated based on approved tactical training standards.

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<sup>9</sup> As described later in the report, the OIG notes that the Department manual also contains a second provision relating to the use of force, LAPD Manual Section 1/240.10, "Use of Force," that does not appear to be entirely consistent with the standard described here. The OIG recommends that the Department review and reconcile these two policies.

<sup>10</sup> LAPD Manual 1/556.10, "Policy on the Use of Force." The full use of force policy is attached as an appendix to this report. See also *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>11</sup> *Id.*



## II. BACKGROUND

The OIG's in-depth examination of the NCUOF process took shape as a result of the following considerations:

- Compliance audits conducted by the Department and the OIG -- including the audit performed for this report -- have found generally high levels of adherence to NCUOF policies and procedures.<sup>12</sup> The narrow focus of the structured audit process, however, does not necessarily provide for the evaluation of the overall efficacy of the procedures themselves.
- Statistical reports show that nearly all NCUOF incidents are found to be within LAPD policy. Of the 16,970 officer uses of force<sup>13</sup> between 2007 and 2010, 52 -- 0.3 percent -- were found to have involved out-of-policy force, or force that was not objectively reasonable. A slightly lower proportion, 0.2 percent, received a finding of Administrative Disapproval<sup>14</sup> for the tactics used.<sup>15</sup>
- In the course of its review of the Department's Quarterly Disciplinary Report (QDR) for the First Quarter of 2012, the OIG noted that, of the 186 allegations of unauthorized force closed during that period, none was sustained.<sup>16</sup> Upon further review, the OIG found that over the past three years, the Department sustained 13 of 1,711 such complaints, only 2 of which related to a NCUOF incident. The review of such complaints focused on the role played by the underlying NCUOF review and, in particular, how the quality of that review affected the investigation and adjudication of the complaint.

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<sup>12</sup> The most recent Department audit of NCUOF incidents was published by the Internal Audits and Inspection Division (IAID) in the Third Quarter of Fiscal Year 2012/2013.

<sup>13</sup> NCUOF incidents only. Some officers were involved in multiple NCUOF incidents during this period and are thus counted more than once.

<sup>14</sup> Although not specifically defined for a NCUOF, an Administrative Disapproval for tactics represents a "finding, supported by the preponderance of the evidence that the tactics employed during a[n] incident unjustifiably and substantially deviated from approved Department tactical training." LAPD Manual 3/ 792.05, "Definitions."

<sup>15</sup> "2010 Use of Force Annual Report," Los Angeles Police Department. As described later in the report, officers may also receive a finding of "in policy/non-disciplinary action," which generally requires additional training in one or more areas of tactics. During the report period, 14 percent of officers received such a finding for tactics.

<sup>16</sup> A personnel complaint differs from a NCUOF investigation in that it is initiated by a complaint of misconduct, is investigated by the Department's Internal Affairs Group (IAG), and may result in disciplinary action if sustained.



### **III. Methodology**

This examination of NCUOF investigations was designed to be a multi-faceted review of that process. As such, it comprises three separate components: a compliance audit, a review of the process, and a complaint review. The results of those reviews are described throughout the report.

#### **A. Compliance Audit**

The first step of the study was a compliance audit of NCUOF files, using a sample of 28 case files closed between January and May of 2012. The cases were selected from the population of 209 NCUOF incidents where either the force was found to be out of policy or where an officer received an “in policy/non-disciplinary action” finding due to tactical issues or other concerns.<sup>17</sup>

In general, OIG audits seek to focus on particular questions or areas relating to NCUOF incidents in order to supplement internal audits conducted by the Department.<sup>18</sup> In this case, the sample was selected to provide insight into whether the Department is properly identifying out-of-policy uses of force and incidents involving deficient tactics.

The final sample included: 1) all of the 3 out-of-policy NCUOF cases closed during the period, 2) a random sample of 13 Level I in-policy cases resulting in non-disciplinary action, and 3) a random sample of 12 Level II in-policy cases resulting in non-disciplinary action. Using a series of questions based on the Department’s written policies governing the use of force and the NCUOF investigation process, the audit provides an overview of the Department’s compliance with those requirements.<sup>19</sup>

#### **B. Process Review**

The second component of the study was a review of a random sample of 45 NCUOF cases that occurred during the Third Quarter of 2011.<sup>20</sup> The OIG used that quarter because it was the most recent period for which all or most of the investigations had been closed at the time of review. In

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<sup>17</sup> The sample size was selected using a 95% one-tail confidence level, an expected error rate of 6%, and a plus-precision of 7%.

<sup>18</sup> The OIG conducts reviews of the quality and accuracy of each of the internal NCUOF audits completed by the Department. Reports detailing the results of those reviews, as well as previous OIG audits of the NCUOF process, can be found on the OIG’s website.

<sup>19</sup> The list of test questions used for the audit is attached as an appendix.

<sup>20</sup> The sample was selected from a population of 451 completed investigations.

contrast to the audit, the cases were selected regardless of finding in order to examine the quality of all investigations, including those where no concerns were identified by the Department.

Of the 45 cases included in the process review sample, 3 were classified as Level I and 42 were classified as Level II. The Department found the force used in each of the 45 cases to be in policy.

The OIG's review of these cases was primarily qualitative, assessing the extent to which they reflected independent, objective, and detailed accounts from involved persons and witnesses. The review also considered whether the investigating officer (I/O) addressed all material questions and collected all relevant evidence. Finally, the review included an assessment of all written evaluations of the incident, including whether they addressed any outstanding questions or conflicts, whether the findings were adequately supported by analysis, and whether any apparent tactical or legal issues were identified and addressed.

### **C. Complaint Review**

The third component of the study was a review of 30 randomly selected personnel complaint investigations closed in the First Quarter of 2012 where the allegations included a complaint of unauthorized force. The OIG determined that 9 of those cases were initially reported and investigated under the NCUOF process.

The OIG examined whether Internal Affairs Group (IAG) investigative practices complied with applicable Department policy and whether the underlying NCUOF report provided sufficient information to adjudicate the case. The OIG also reviewed any analyses undertaken by IAG and commanding officers and assessed whether a clear and consistent standard of review was used.

Over the following chapters, this report will describe Department policies relating to the classification, documentation, investigation, and evaluation of NCUOF incidents, as well as the investigation of associated complaints of unauthorized force, and provide an assessment of the Department's basic compliance with those policies. Using data from the audit and the expanded process review, the report will also broadly assess the effectiveness of each of these protocols in completing thorough and fair investigations. In each section, the OIG will also present any related recommendations that it has made to the Department, along with the Department's response to those recommendations.

### **3. INVESTIGATION OF NON-CATEGORICAL USE OF FORCE (NCUOF) INCIDENTS**

#### **I. THE NCUOF PROCESS**

##### **A. Categorization of Reportable Force**

According to Department policy, officers must report a use of force any time they use physical force or a less-lethal weapon to compel compliance with an employee's direction, overcome resistance during an arrest or detention, or defend a person from an "aggressive action" by the subject.<sup>21</sup> The following actions are not considered reportable NCUOF incidents:<sup>22</sup>

- The use of a C-grip, firm grip, or joint lock to gain compliance, unless it results in an injury or complaint of such. Use of these methods in conjunction with other types of force is reportable, however.
- The use of force "reasonable to overcome passive resistance due to physical disability, mental illness, intoxication, or muscle rigidity of a person," unless it results in injury or the complaint of such.
- The use of a less-lethal projectile weapon such as a beanbag shotgun or TASER that does not contact a person.
- The use of force by an organized squad in certain crowd-control or riotous situations.

As noted earlier, when any use of force is associated with the hospitalization or death of the subject, it is classified and investigated as a Categorical Use of Force (CUOF). Any discharge of a firearm or other use of lethal force, including the use of a carotid restraint control hold or intentional head strike with an impact weapon, is also classified as a CUOF.<sup>23</sup> Any NCUOFs that occurred during a CUOF incident will also be investigated as part of that process. Incidents involving any other reportable use of force are classified and investigated as a NCUOF.

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<sup>21</sup> LAPD Manual 4/245.05, "Reportable Non-Categorical Use of Force Incidents."

<sup>22</sup> The Department maintains separate reporting and review processes for non-contact uses of a less-lethal weapon and the crowd-control/riotous situations included in this category. They are not investigated under the CUOF or NCUOF process, however.

<sup>23</sup> Special Order No. 28, 2010, defines CUOFs as incidents involving the use of lethal force, such as intentional officer-involved shootings, unintentional firearm discharges, all carotid restraint control holds, all uses of force resulting in an injury requiring hospitalization, all unintentional (inadvertent or accidental) head strikes with an impact weapon involving serious bodily injury, all intentional head strikes, all other uses of force resulting in death, all deaths while the arrestee or detainee is in the custodial care of the LAPD, or any canine contact which results in hospitalization. All CUOFs are investigated by the Department's Force Investigation Division.

## **B. NCUOF Level**

Officers who become involved in a NCUOF incident are required to notify a supervisor “without delay,” which results in an uninvolved supervisor, referred to as the Investigating Officer or I/O, responding and beginning an on-scene investigation.<sup>24</sup> At that time, the I/O determines whether the NCUOF should be classified as Level I or Level II, which will determine the parameters for the investigation.

The Level I designation identifies those NCUOF cases where serious injury of the subject or conflicting evidence exists, therefore requiring greater scrutiny. As such, a case is classified as a Level I if one or more of the following conditions apply:

- An allegation of unauthorized force is made by a witness or subject.<sup>25</sup>
- The force used results in a serious injury, such as a fracture, dislocation, or injury requiring sutures. If the subject is admitted to a medical facility, however, the case is upgraded to a CUOF.
- The injuries to the subject are inconsistent with the type or amount of force reported.
- Witness or subject accounts substantially conflict with the involved officers’ account.<sup>26</sup>

As described more fully in the following section, Level I investigations include three additional components in addition to those required for Level II investigations:

- A written incident overview
- Audio-recordings and/or summaries of all non-Department interviews
- Documentation of the vantage point and portion of force observed for all witnesses

All NCUOFs that do not meet Level I criteria are classified as Level II and do not require the above components.

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<sup>24</sup> LAPD Manual 4/245.10, “Reporting a Non-Categorical Use of Force Incident.” Note that off-duty employees using force must notify a supervisor “without unnecessary delay.”

<sup>25</sup> This has also been used to classify reports of unauthorized force by a Department employee. In one of the cases reviewed for the audit, an incident was reportedly classified as a Level I based on the involved officer’s own report of unauthorized force.

<sup>26</sup> The current classification policy does not explicitly account for conflicts among involved officer accounts.

### **C. Investigation**

The Department's policy for the investigation of a NCUOF incident requires the I/O to interview all involved persons and witnesses, take relevant photographs of the scene and persons involved in the incident, and collect and review medical and other pertinent reports. Upon completion, the I/O must then document each task and its result, including identifying any inconsistencies, and upload all evidence into the TEAMS II database for review.<sup>27</sup> For Level I cases, the I/O must also prepare an incident overview -- a brief written summary of the encounter -- as part of the investigation.

The following sections describe the process for completing a NCUOF investigation.

#### *1. Use of Force Report*

The primary component of a NCUOF investigation is the officers' written report, which provides the narrative against which each piece of evidence is compared. The LAPD does not currently use a specialized use of force reporting form. Instead, the primary source document for a NCUOF incident is either the arrest report or -- if no arrest was made -- an employee's written report of the incident. This document -- referred to throughout this report, for the purposes of convenience, as the UOF report -- outlines the events leading up to the force, the reasons for the contact with the subject, and any material actions by the subject or officers. Although some UOF reports reviewed by the OIG did include individual officer perspectives, the majority of cases, in keeping with Department policy, contained a single summary that included all of the uses of force that occurred during the incident.

The UOF report may also include supporting documentation, such as summaries of statements provided by individual officers, witnesses, or subjects. Finally, the UOF report includes basic details about the NCUOF investigation, including, for example, the name of the investigating supervisor and whether interviews were found to be consistent with the officers' report.

#### *2. Interviews*

As part of the on-scene NCUOF investigation, the I/O is required to canvass the area for any witnesses to the use of force, documenting all locations canvassed and any witnesses located. The I/O must then conduct individual interviews with all involved officers, all Department and non-Department witnesses, and all subjects of the use of force, and document in the investigative record that this has been completed.

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<sup>27</sup> TEAMS II is the Department's Training, Evaluation, and Management System.

Documentation of the substance of these interviews varies by level. For Level I cases, all non-Department interviews must be audio-recorded. If the interview cannot be recorded, the I/O must describe the reason and provide a brief summary of the statement. (Interviews of Department personnel are not recorded and are exempt from this requirement.) Level I interviews must also be summarized in writing if they are “in substantial conflict” with the UOF report. The I/O should also note any other discrepancies between accounts. Finally, in a Level I case, the I/O must document in the investigative record, for each witness interviewed, the person’s vantage point and portion of force observed.<sup>28</sup>

Level II investigations require a lower level of documentation for interviews. For these interviews, the I/O must indicate whether the person’s statement was consistent with the UOF report and, if it was not, note any conflicts or discrepancies. If the statement is determined to be consistent, no further documentation of the substance of the interview is required. The policy states that the UOF report “will serve as documentation of statements for the subject of the use of force, witnesses, and involved Department employees.”

The Department requires I/Os to advise in-custody subjects or witnesses of their Miranda rights, where applicable, before they are interviewed. The Miranda advisement and the subject’s associated responses must be documented as part of the investigation, and any such interview should be summarized and attached to the arrest or UOF report. An in-custody interviewee who refuses to waive his or her rights should not be interviewed. Until June 2011, Department policy required that an I/O immediately cease interviewing any subject who unequivocally invoked his or her right to remain silent. A revision to that policy now allows for the I/O to ask and receive permission to conduct a “non-coercive administrative interview” for the purposes of a NCUOF investigation.<sup>29</sup>

### *3. Other Evidence*

Along with gathering witness statements, the I/O is also required to document any other evidence that may be relevant to the investigation. This includes taking photographs of the scene, involved

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<sup>28</sup> Chief of Staff Notice, “Documentation of Witness Statements during Level I Non-Categorical Use of Force Investigations,” February 27, 2009.

<sup>29</sup> See Chief of Staff Notice, “Miranda Admonitions for Non-Categorical Use of Force Incidents of Suspects in Custody,” July 2, 2008; Chief of Staff Notice, “Clarification of Miranda Procedures during Non-Categorical Use of Force Interviews of Suspects in Custody,” May 12, 2009; and Special Order No. 14, “Procedures for Custodial Interrogation of Adults and Minors – Revised; Procedures for Admonition of Constitutional Rights per California Welfare and Institutions Code, Section 625 – Minors Taken Into Custody – Revised; and Procedures for Questioning During Administrative Investigations – Established,” June 21, 2011.

persons, and any injury or – if necessary – lack of injury to subjects and officers. Where relevant to the investigation, the I/O should also take photographs of witness vantage points.

The I/O must also request authorization from the subject to obtain a record of any medical treatment given and, if provided, obtain the record itself. If the subject refuses to provide authorization, the I/O may not request any medical information, although he or she is to document any visible or complained-of injuries.

All such supporting evidence is directly uploaded for review into the TEAMS II NCUOF investigative record.

#### **D. Evaluation and Adjudication**

Once an investigation has been completed in the TEAMS II computer system by the I/O, it is electronically passed on to a watch commander (or other designated supervisor), who reviews the case and, in a section of the TEAMS II record called the “Watch Commander’s Insight” (W/C Insight), analyzes the use of force and the tactics used. The watch commander determines whether the force used was objectively reasonable and whether the tactics were in compliance with Department training, and makes a recommendation for adjudication.

The case is then electronically forwarded and reviewed up the chain of command at the area and bureau levels, where additional information or revisions are requested as needed. The commanding officers at both the area and bureau level will approve or disapprove the previously-recommended findings, providing a written rationale for any disagreement. Finally, the file is electronically transferred to the Use of Force Review Division (UOFRD), which reviews all materials and documentation for completeness and consistency, with final approval of the investigation and the adjudication falling to the commanding officer of UOFRD.

The final adjudication provides an in- or out-of-policy finding for each discrete use of force, along with a finding for the overall tactics used by each involved officer. An out-of-policy finding results in Administrative Disapproval and, in some cases, the initiation of a personnel complaint for the use of unauthorized force, while a tactics finding could, at the time of the review, either result in no action, Non-Disciplinary Action (usually training) or Administrative Disapproval.<sup>30</sup>

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<sup>30</sup> The Department recently made some changes to its classification categories. The term “Non-Disciplinary Action” is no longer used and has been replaced by a set of options for “Actions Taken.” See Notice, “Non-Categorical Use of Force Report – Revision of Classification Categories for Chain of Command Adjudications,” Office of Administrative Services, December 20, 2012.



## II. INVESTIGATION OF RELATED PERSONNEL COMPLAINTS

Complaints of unauthorized force are investigated by the Department's Internal Affairs Group (IAG).<sup>31</sup> Unlike NCUOF investigations, which are automatically initiated when an officer reports the use of force, complainants who allege an unauthorized use of force must file a complaint with the Department. The subject, an employee, an anonymous person, or a third party may initiate a complaint for any misconduct.<sup>32</sup> While the majority of complaints reviewed for this report were initiated by the subject of the use of force, the OIG noted that two were opened by the Department following a finding during the NCUOF process that a use of force was out of policy.<sup>33</sup>

Department policy requires that for Complaint Investigations, "Internal Affairs Group shall promptly review every complaint, Form 01.28.00, determine whether the complaint will be investigated by IAG or by the employee's command, and promptly notify and forward the complaint to the affected entities for appropriate action."<sup>34</sup> In its investigation, the LAPD shall, subject to and in conformance with applicable state law:

- a. Identify all involved employees;
- b. Obtain names, addresses, and telephone numbers of all witnesses, and a summary of their statements (indicating the times, locations, and business and residence phone numbers where witnesses will be available for re-interview.);
- c. Individually interview and record all complainants, involved Department employees, and witnesses. Should a non-employee complainant or witness refuse to be recorded, an attempt shall be made to record the refusal on tape or on a signed statement of refusal;
- d. Identify and document inconsistencies between statements made by Department employees and witnesses.<sup>35</sup>

In order to avoid duplication of efforts, the IAG's general practice is to wait until the conclusion of an NCUOF investigation before it begins its own review of the incident. In its review of such cases, the OIG noted that, unless there were additional allegations that were not included in the NCUOF investigation, IAG generally did not conduct a full re-investigation of the complaint.

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<sup>31</sup> In some cases, Force Investigation Division (FID) will handle complaints associated with a Categorical Use of Force.

<sup>32</sup> LAPD Manual 3/810.01, "Complaint – Defined."

<sup>33</sup> Includes complaint investigations reviewed in conjunction with the audit as well as the 9 randomly-selected NCUOF-related complaints of unauthorized force.

<sup>34</sup> LAPD Manual 3/816.05, "Internal Affairs Group's Responsibility."

<sup>35</sup> LAPD Manual 3/815.01, "General Investigation Guidelines."

Instead, the underlying NCUOF investigation -- and any associated findings -- formed the primary basis for the investigative file.

Along with documenting the investigation and identifying any conflicts, the IAG I/O is also responsible for framing the allegations -- i.e., listing each alleged act of misconduct -- and identifying the associated standards of review, which could include Department policy, legal standards, or case law. Once the investigation is complete, it is generally the responsibility of each involved officer's chain of command to develop a recommended rationale and finding for each allegation of misconduct and propose a penalty for any that are sustained. Final approval of any assigned disciplinary penalty is the responsibility of the Chief of Police.

#### 4. RESULTS OF THE OIG’S REVIEW

##### I. COMPLIANCE AUDIT: NCUOF POLICIES AND PROCEDURES

The first step of the OIG’s review of the NCUOF process was a compliance audit of NCUOF investigations. As described in the previous chapter, the OIG selected a sample of 28 investigative files and assessed their compliance with the policies and procedures described in the previous section. The sample included 3 cases with an out-of-policy finding and 25 cases with a finding of In Policy/Non-Disciplinary Action. The overall findings of the audit are described below.

<i>Objectives and Summary of Results</i>	<i>Compliance Rate</i>
<b>A. Involved Officer Responsibility</b>	
Objective A1: Determine if the involved officer had the legal/constitutional right to contact/detain/arrest the subject of force	<b>100%</b>
Objective A2: Determine whether the available evidence supported the use of force finding.	<b>100%</b>
<b>B. Investigating Supervisor Responsibility</b>	
Objective B1: Determine if the investigating supervisor acted in accordance with Department protocol.	<b>100%</b>
Objective B2: Determine if the investigating supervisor conducted and documented interviews in accordance with Department protocol. <sup>36</sup>	<b>100%</b>
Objective B3: Determine if the audio-recorded interview was conducted within Department requirements.	<b>95%</b>
Objective B4: Determine if the investigating supervisor documented UOF subject injuries in accordance with Department protocol.	<b>96%</b>
Objective B5: Determine if the investigating supervisor documented photographs according to protocol when the use of force resulted in injuries.	<b>100%</b>
<b>C. Watch Commander Responsibility</b>	
Objective C: Determine if the watch commander reviewing the NCUOF investigation documented his/her insight in accordance with Department protocol	<b>97%</b>
<b>D. Chain of Command Responsibility</b>	
Objective D: Determine if the In Policy/Non-Disciplinary Action or Out of Policy disposition assigned by the Chain of Command was reasonable based on the preponderance of the available evidence.	<b>100%</b>

The OIG reviewed the content of each UOF report to see whether officers, as described in the written account, complied with basic guidelines for the type of contact involved and the use of

<sup>36</sup> Department Manual Section 4/245.12 states that the investigating supervisor is required to either audio-record or provide a written summary of the subject and all public witness interviews.

force. In all of the cases reviewed, the audit found that the officers' report articulated a valid reason for the contact, detention, or arrest of the subject of the use of force. The OIG also determined that, based on the available evidence, the use of force by officers in all but three cases appeared to be objectively reasonable. In each of those three cases, the Department properly identified the instance of out-of-policy force.<sup>37</sup>

With three exceptions, the audit also found that supervisors documented that they fulfilled each required task according to codified policy.<sup>38</sup> Specifically, the OIG found that, in each case reviewed, an uninvolved supervisor arrived to conduct the on-scene investigation, and that the supervisor (I/O) appropriately classified the incident level based on the facts known at that time.

The audit found that, in each case, the I/O documented taking steps to collect relevant evidence, including canvassing the area for witnesses. It also found that each I/O interviewed all relevant persons and that each interview of a subject or non-Department witness was recorded when required by policy. Where such recording was not possible, the reason and a summary of the person's interview were documented as required. The OIG reviewed recordings of subject and witness interviews in each Level I case and found that the I/O properly summarized any interviews that were in substantial conflict with the UOF report.<sup>39</sup> With regard to photographs, the audit found that each of the cases reviewed complied with all of the applicable standards, including taking photographs of any relevant injuries, lack of injuries, or vantage points.

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<sup>37</sup> The OIG specifically included in its sample any case that included an out-of-policy finding. As a result, their number is not proportionate to the overall number of out-of-policy cases. For this reason, the OIG also modified its objective to assess whether the available evidence supported each use of force finding, rather than whether each use of force was objectively reasonable.

<sup>38</sup> Two exceptions resulted from the I/O not following Miranda procedures before interviewing the in-custody subject of the use of force. In one case, the subject was not Mirandized, reportedly because he had earlier provided spontaneous statements. The OIG's review of the associated recording, however, found that the subject was asked questions during his interview and therefore should have been provided with a Miranda admonition. In the second case, the I/O conducted the NCUOF interview with the subject without Mirandizing him. The OIG found that the subject had previously been Mirandized at the hospital and had refused to waive his rights. In both of these cases, the error was identified during the Department's review process.

The third exception was based on a violation of Department policy on obtaining medical records, Manual Section 4/245.12.2, "Medical Release Not Obtained." In that case, a subject refused to sign an Authorization to Release Medical Information Form, which is noted in the investigation. Despite this refusal, however, the medical organization involved provided documented confidential information to the Department, which was included in the file.

<sup>39</sup> In one case, the OIG was unable to obtain the interview recordings.

Finally, the audit found that, in all but one case, a watch commander or designated supervisor documented his or her insight according to written Department policy.<sup>40 41</sup> The OIG also found that each case was reviewed and approved up the chain of command in accordance with Department requirements, and that any assigned non-disciplinary action was justified and properly documented.

## **II. Qualitative Review of NCUOF Investigative Files and Associated IAG Investigations**

Following its compliance audit, the OIG expanded its review of NCUOF investigations to include 45 additional randomly selected investigative files. As described in the Methodology section, this review was primarily qualitative, looking not only at whether the investigation and subsequent adjudication adhered to Department procedures and protocols, but at the overall quality and substance of the resulting investigation. In particular, the review looked at whether the investigative file included sufficient, independent evidence to support a conclusion about the force and tactics used, and whether the ultimate finding was based on a clear, articulated rationale.

The OIG's qualitative review also looked at a sample of 9 personnel complaint investigations, conducted by IAG, that included allegations of unauthorized force during a NCUOF incident. In each of these cases, the original NCUOF investigation formed the basis for the subsequent personnel complaint, although the IAG I/O may have conducted additional investigation. In reviewing each case, the OIG assessed the overall quality of the combined investigative file and the extent to which they met the Department standards for a personnel complaint investigation.

To complete its review, the OIG assessed the extent to which the responsible person(s) completed each of the following elements of a NCUOF investigation in a thorough and transparent manner:

- Officer Accounts: officer reports regarding the use of force and any events leading up to the force.
- I/O Investigation: investigation of the incident by the assigned area supervisor, including interviewing, evidence collection, and documentation of the investigation and any identified inconsistencies.
- Watch Commander Evaluation: documentation of the recommended findings and any associated rationale regarding the force and tactics used by each involved officer.
- IAG Investigation: review and additional investigation by IAG of a personnel complaint associated with the NCUOF incident.

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<sup>40</sup> See case discussed on page 29.

<sup>41</sup> The audit also noted, however, that in 2 of the 3 NCUOF incidents resulting in an out-of-policy finding for the use of force, the watch commander recommended that the force be found in policy but was later overruled.

As with the compliance audit, these expanded reviews found that, on the whole, Department investigations of NCUOF incidents were conducted in accordance with Department policies. In particular, the files indicated that NCUOF I/Os worked to identify and collect relevant testimonial, medical, and photographic evidence about the incident, and properly identified the officers who used force and the force that was used. The records also indicated that, in each case, the file was reviewed and approved at several levels, and that documentary mistakes were regularly corrected through this process. In substantial part, the high level of consistency among investigations can be attributed to the diligence of UOFRD, as the OIG noted many cases where errors or inconsistencies were noted -- and, in most cases, corrected -- through its final review of the files.

Despite this general adherence to Department-mandated procedures, the OIG found areas where the overall quality of the investigative file could be strengthened through improvements in Department policy or training. In making these recommendations, the OIG notes that, although there was a small subset of cases for which the OIG identified substantive questions or concerns, the vast majority of investigations appeared satisfactory. The OIG has no reason to believe that changes to the process would affect the outcome of most of the cases reviewed, often because the I/Os in those cases went above the minimum documentation requirements, or because the use of force appeared straightforward. Nonetheless, the OIG believes that the recommendations discussed in this report would enhance the overall quality of NCUOF investigations, allow for greater oversight of the process, and make it easier for reviewers to identify any substantive issues that may exist.

### **A. Officer Accounts**

As described in the previous chapter, the UOF report represents the primary account of the actions and observations of officers present during a use of force, whether they used force or simply witnessed it. Each officer must also submit to an individual interview with the I/O.

In reviewing officers' UOF reports, the OIG found that, in each case reviewed, the report included articulated reasons for the initial contact, detention, or arrest, as well as an account of the rationale for using force. In general, the reports were detailed, well-written, and included each of the elements important to a review of the analysis of the use of force in the context of the incident as a whole. In terms of the overall investigative quality, however, the OIG did note areas for improvement, as described below.

#### *1. Independence*

Under the current policy, just one written account is required for each force incident, regardless of the number of employees using force. The majority of the investigations reviewed by the OIG involved multiple involved officers. In addition, there is no requirement that the report be written by an employee who used force. In some of the cases reviewed by the OIG, the person writing the

report was a partner officer or other non-involved employee. The OIG has identified two related concerns about this process. First, under the current process, officer accounts can be combined, and officers are not precluded from accessing evidence regarding the incident. As such, the documented account does not necessarily reflect an officer's independent recollection of the event. Second, objective reasonableness is judged based upon the facts known, at the time, to the officer using force. A composite account may not provide enough officer-specific information to make this determination.

Department policy currently requires that each involved officer also be independently interviewed by the I/O. This process allows the I/O to hear the officer's individual account, ask pertinent questions, and weigh accounts against one another, if necessary. If conducted at an early stage of the investigation, the interview process should also mitigate any possible contamination of an individual's account, and will later allow the I/O to verify that the UOF report is consistent with the officers' accounts.

Officer interviews, however, are never audio-recorded and are rarely individually documented. Rather, the I/O must summarize an officer's interview only if it substantially conflicts with involved officer accounts. While the OIG's review found that, in some cases, the I/O went beyond the basic documentation requirements by providing written summaries of officer statements, this information was in addition to that required by Department policy.

## *2. Level of Detail*

While UOF reports were, on the whole, well-written and detailed, the OIG noted 7 reports (out of the 78 audit and process review cases) that included insufficient information to evaluate a particular significant action or decision, ranging from the original contact to a use of force. The OIG also noted occasional instances of the unsupported characterization of a subject's behavior as -- for example -- aggressive, violent, nervous, or uncooperative. Such descriptions are conclusory and do not, without further context, provide sufficient detail to determine whether a particular response was objectively reasonable. In order to enhance the quality of UOF reports, conclusory language should be avoided, in favor of plain-language descriptions of the subject's and officers' specific actions.

## *3. Recommendations*

The OIG has recommended to the Department that all officer accounts of a NCUOF (including those of witness officers) be individually and independently documented in a prompt manner. Doing so would allow for review, both by the chain of command and by Department and OIG auditors, of the nuances of each officer's independent account, including whether they fully corroborate those of other officers. In response to this recommendation, The Department is



working with the OIG to develop a Supplemental Officer Statement Form to capture individual accounts of the incident.

The OIG also recommended that the Department update and reinforce current guidelines for the preparation of UOF reports and individual accounts to require that officers provide full, plain-language descriptions of all material subject and officer actions. The Department conducts regular training Department-wide for supervisors, and has agreed to reinforce guidelines on the avoidance of conclusory language and the importance of review to ensure that suspect behavior is clearly articulated relative to each use of force.

## **B. I/O Investigation**

### *1. Subject and Non-Department Witness Accounts*

The Department's requirements for the documentation of interviews with non-Department personnel, described in the previous chapter, depend primarily on the assigned investigative level. If the case is a Level I, the interviews must be audio-recorded or summarized, with inconsistencies among accounts identified and noted as part of the investigative record. If the case is a Level II, recording is optional, although I/Os must still note any conflicts. The Department also requires that interviews with in-custody subjects be summarized as part of the associated arrest or other UOF report, with witness statements being included on a case-by-case basis.<sup>42</sup>

The OIG determined that, based on the available evidence, initial classification decisions by I/Os were made in compliance with Department policy. In 9 of the 11 study cases that began as a Level II incident but later met the criteria for reclassification as a Level I, however, the file did not ultimately contain audio-recordings for all non-Department interviews.<sup>43</sup> The OIG also identified limitations in the practice of requiring only that the I/O note whether a statement is consistent without providing context for such a characterization.

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<sup>42</sup> Chief of Staff Notice, "Miranda Admonitions for Non-Categorical Use of Force Incidents of Suspects in Custody," July 2, 2008.

<sup>43</sup> Includes audit, process review, and complaint review cases, but does not include a case where no personnel complaint was opened despite the subject's request to file one.

a. Delayed Reclassification

The OIG's audit revealed that 5 of the 14 Level I NCUOF audit cases began as Level II incidents, and that in those cases, the I/O was unable to re-interview and audio-record at least one interview. Additionally, 6 of the 9 NCUOF-related personnel complaints reviewed by the OIG were classified as Level II incidents, despite the fact that a complaint was filed. In 4 of those cases, there were witnesses or subjects whose statements were not audio-taped.

i. *Upgrading a NCUOF Investigation*

Despite the possibility that "Level I" information – whether it be a substantial inconsistency, a complaint of unauthorized force, or medical treatment for a severe injury – could come to light after the initial NCUOF investigation has begun, there are no written Department procedures for reclassification. Rather, the policy directs that "[s]upervisors investigating a **Level I** [emphasis in original] incident shall tape record statements from the subject of the use of force and all non-Department employee witnesses."

Based on the OIG's review, it is the practice of the Department that supervisors in such a circumstance attempt to re-interview all non-Department persons on tape. Doing so should bring the investigation into compliance with Department requirements for a Level I NCUOF investigation. As was the case in all 5 of the reclassified cases reviewed during the audit, it is not always possible to conduct such a re-interview, whether because the person refused or simply could not be located. The I/Os in these cases complied with current policy by documenting the reason and summarizing the initial interview.

ii. *Personnel Complaints Associated with Level II NCUOF Incidents*

As described in the previous chapter, Department policy on personnel complaints requires I/Os in those cases to "[i]ndividually interview and record all complainants, involved Department employees, and witnesses."<sup>44</sup> Because a complaint of unauthorized force is one of the criteria for a Level I investigation, the related audio-recording requirement, in effect, brings the original interviews with non-Department witnesses and subjects into compliance with IAG standards.

An issue arises when a complainant chooses to file a complaint of unauthorized force after the Level II NCUOF investigation has been completed. The Department does not have a clear procedure for such a case. Based on the OIG's complaint review, however, it is apparent that the

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<sup>44</sup> The policy goes on to state that "[s]hould a non-employee complainant or witness refuse to be recorded, an attempt shall be made to record the refusal on tape or on a signed statement of refusal."

Department is not upgrading some of its NCUOF investigations. Of the 9 complaints with attached NCUOF reports, 6 cases maintained their Level II designations despite subsequent or concurrent complaints alleging unauthorized force:

- 1 complaint was filed on the same day as the NCUOF;
- 5 complaints were filed between 3 days and 1 year and 9 months after the NCUOF.

Since these 6 cases were not reclassified, the original NCUOF I/Os did not re-interview or record any of the statements from parties or witnesses as part of their NCUOF investigations. In 4 of those investigations, IAG also did not find it necessary to re-interview any of the parties or witnesses because of an underlying NCUOF report that found the use of force in policy.<sup>45</sup>

Based on the OIG's review, it appears that IAG I/Os in each of these 4 cases did not fully comply with the policy requirement to conduct recorded, individual interviews with each complainant, witness, and Department employee involved in a personnel complaint. None of the underlying NCUOF investigations in these cases provided recorded or summarized statements from all parties or witnesses. Per Department policy on NCUOFs, the assigned NCUOF I/Os noted only that the witness statements were consistent with the UOF Report, thereby negating the requirement to record or summarize. Without original statements on which to rely, using an underlying "in policy" NCUOF as the crux of the IAG's classification does not appear to meet the Department's guidelines for the investigation of a personnel complaint.

The OIG notes, however, that even where IAG does re-interview parties or witnesses to a use of force, these interviews may not take place until several months after the incident occurred. By that time, even if I/Os can find parties or witnesses, the likelihood is reduced that they can accurately recall the alleged unauthorized force in detail. Even if the parties or witnesses can provide a detailed account of the events, without a recording from the initial interview with which to compare, the opportunity to establish the original statement is diminished should the person make additional allegations or change their account.

For the 9 complaints reviewed by the OIG, it took anywhere between 7 months to almost 3 years to complete the combined NCUOF and IAG investigations.<sup>46</sup> On average, it took around one year to complete both investigations.

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<sup>45</sup> For one complaint, while the I/O did not re-interview any of the parties or witnesses, the I/O based his findings on a digitally recorded video that captured the use of force.

<sup>46</sup> While the average time is between three to 3 to 8 months, one complaint took nearly 3 years to complete.

b. I/O Characterization of Interviews

As described, audio-recorded statements are not required for Level II investigations. Instead, the investigative files reviewed by the OIG generally contained abbreviated interview summaries or a note that the interviews were “consistent” with the information provided in the UOF report.<sup>47</sup> The OIG is unable to review or otherwise evaluate the quality of each unrecorded interview and the accuracy of its characterization by the I/O.

The OIG also notes that the sole utilization of the term “consistent” to characterize an interview, as occurs in many cases, may not capture the nuances of a particular statement. For example, it does not indicate whether the person was in a position to witness the entire incident and the extent to which they were able to provide a detailed account of what they observed. The “consistent” characterization also does not provide information about what questions were asked of the person. Current policy requires that additional context be provided only for Level I investigations.

c. Recommendations

The OIG has recommended to the Department that it ensure that all IAG investigations of alleged unauthorized force comply with applicable Department policies, including in those cases that were first investigated through the NCUOF process. In the event that an underlying NCUOF investigation involved interviews of non-Department persons that were not recorded as part of that process, it should be incumbent upon the IAG I/O to attempt to re-interview and record those persons. The Department has agreed to reinforce this requirement through ongoing training.

The OIG also recommended that the Department develop written procedures for upgrading NCUOF investigations to a Level I in the event that qualifying information comes to light after the initial investigation has been completed, to include a process for promptly attempting to obtain recorded interviews. The Department is in the process of developing a draft NCUOF Special Order, which will include written policies for the upgrading of NCUOF investigations in such an instance.

Finally, the OIG recommended that I/Os provide information about witnesses’ vantage point and portion of force observed in every investigative file, including Level II investigations. This information, which should clarify the extent to which a witness is able to corroborate or contradict other accounts, is a key aspect of the relevance and importance of each statement and should be

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<sup>47</sup> The OIG found that some investigations provided more information about subject and witness interviews (including recordings, written statements, or other summaries) than required by the NCUOF policy, often as part of the original UOF report. Interview summaries were not provided in many cases, however, and were not always descriptive or directly relevant to the use of force. In the few cases where a statement was determined by the I/O not to be consistent, additional information about the inconsistency and any corroborating or conflicting evidence was provided.

made easily available to a reviewer. The OIG also made this recommendation in its 2009 audit of NCUOF investigations. The Department has agreed to the recommendation and will have this mandate added to the draft of the pending NCUOF Special Order.

## *2. Identification of Inconsistencies*

A core component of the investigation of a use of force incident is the identification and -- to the extent possible -- resolution of any material inconsistencies in the evidence or accounts of parties and witnesses to the event. As such, the Department's investigative protocols emphasize this aspect of the process in two important ways:

- They mandate that any investigation involving either substantial conflicts between accounts or inconsistent injuries be upgraded to a Level I case, thereby receiving greater scrutiny.
- They require I/Os to determine whether the statement provided by every party and witness to the incident is consistent with the UOF report, and document any identified "substantial conflicts and/or discrepancies."

Better documentation of interviews and statements, as recommended in the previous sections, should provide greater transparency to the I/Os' decisions in this area, but the need for proper identification of conflicts is still paramount. In its review of the Department's policies in this area, the OIG found that there is currently no definition provided as to what constitutes either a "substantial conflict" or a reportable "discrepancy" for the purposes of a UOF investigation.

Because inconsistencies may be directly relevant to whether a use of force is objectively reasonable, I/Os and reviewers should identify any conflicts among officer, subject, and witness accounts with regard to any involved party's actions associated with a use of force. Investigators and reviewers should pay special attention to conflicts relating to the basis and constitutionality of a stop, the level of force used by officers, the suspect's actions precipitating a use of force, and the subject's level of resistance or threat.

As previously discussed, the OIG was unable to independently compare statements among parties in the majority of Level II investigations, which did not contain recorded interviews or detailed interview summaries. Even so, the OIG noted 5 NCUOF cases -- both Level I and Level II -- that contained apparent inconsistencies or omissions that were not addressed in the file. For example, there were cases in which officers reported that a subject made threatening or violent motions, but the summary of the subject's statement either made no mention of such actions or appeared to deny that they occurred as reported.

In cases where there was no recording of the interview, it was difficult to determine what questions were asked of the interviewee and whether they were indeed denying -- or simply omitting -- pertinent aspects of the incident. Providing additional context for each interview should shed some light on such questions.

The OIG also found that such inconsistencies were not always identified or addressed during the evaluation and review process.

### Recommendations

The OIG recommended that the Department define the term “substantially conflicts” in its policy, or adopt and define a more established term for its analysis, such as “materially differs.” The Department should also clarify, for the purposes of a NCUOF investigation, what constitutes a reportable discrepancy. The Department has agreed to utilize the term “materially differs” for this purpose, the definition of which will be added to the draft of the pending Special Order. The Department will also provide information about what constitutes a reportable discrepancy and ensure that this aspect is included in current and future training as well as the Special Order.

The OIG has also recommended that the Department clearly require that I/Os, as part of their determination, identify substantial conflicts relating to the subject’s actions as well as those of the officers. Where it is determined that an apparent inconsistency or conflict does not rise to a Level I substantial conflict, the evidence and reasoning for this determination should be clearly documented in the file. The Department will reinforce this guideline through training and add it through the draft of the pending Special Order.

Finally, the OIG has recommended that the Department train supervisors, watch commanders, and other evaluators to review all available documents for apparent inconsistencies and, where they are identified, attempt to resolve them using the preponderance of the evidence standard as part of the Watch Commander’s Insight. The Department has agreed that future training will reinforce this concept and will add this protocol to the draft of the pending Special Order.

### *3. Video Evidence*

Overall, the OIG’s review of the process of collecting and documenting non-testimonial evidence found that it produces a complete and useful record of that relevant information. Because reviewers – and auditors – are able to directly view photographs, medical records, and any other available evidence, this system allows them to independently consider whether that information is consistent with officer accounts and assists them in weighing any contradictory accounts. As such, the review did not identify any concerns with this process.

Although the audit did not specifically address the question of video recordings, the OIG noted that such evidence was among the most valuable in determining the facts of the case, as well as in auditing compliance. In particular, the OIG noted that in one of the out-of-policy cases reviewed for the audit, the video evidence proved to be the key in determining the facts of the case. In that case, the I/O had marked that all of the interviews were consistent with the UOF report, but the Bureau identified inconsistencies related to the subject's actions after viewing the video. In a second case, a use of force that was found to be out of policy was reported by the officer only after he had reviewed the in-car video associated with the event.

In 6 additional cases where the OIG was able to view a video of the incident as part of the audit, the video was found to corroborate the officers' account.

### Recommendation

Because of the potential value of videotaped evidence, the OIG has recommended to the Department that it require the I/O and reviewers at every level to view and certify that they have reviewed any video recordings of the incident. The Department noted that it already expects all levels to review all videos and will require that they certify that have done so. This process will be reinforced through training and will be added to the draft of the pending Special Order.

### **C. Watch Commander Evaluation**

The final step of a NCUOF investigation -- assuming there are no associated personnel complaints - is the evaluation of the force used and any tactics involved. In the majority of cases reviewed by the OIG, the Watch Commander's Insight was the only written evaluation of the NCUOF incident, with reviewers up the chain of command noting their concurrence with the findings. As such, the OIG's primary focus was on this level of the evaluative process, although it also reviewed additional analyses when available.

According to Department policy, the person completing the W/C Insight should "[e]valuate whether or not the amount of force used was reasonable and consistent with actions reported by the involved Department employee(s), ensuring that all relevant tactical, use of force, and policy issues are addressed. The watch commander/OIC shall evaluate the force that was used, not the force options that could have been considered."<sup>48</sup>

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<sup>48</sup> LAPD Manual 4/245.10 "Reporting a Non-Categorical Use of Force Incident." It should be noted that this manual section refers to paper forms that are no longer in use. As discussed later, the OIG recommends that the policy be updated to reference the current, TEAMS-II-based review process. The Insight should also address the actions of any supervisors present at the incident.



In reviewing the 45 evaluations for the process review, the OIG considered not only whether watch commanders accurately characterized the incident, addressing any apparent inconsistencies, but the extent to which the insights contained a meaningful evaluation of each use of force. It also considered whether recommendations for adjudication were supported by the evaluation and addressed all related tactical and policy questions. The OIG's review for this component of the study did not seek to make a determination as to whether each use of force was in or out of policy.

In all but 3 of the 78 cases reviewed by the OIG for both the audit and the process review, the force was determined to be within Department policy.<sup>49</sup> In its review of these evaluations, the OIG found that, while all of the authors made conclusions that the force used was objectively reasonable and consistent with the officers' reports, thereby fulfilling basic Department requirements, the quality of the written evaluation varied from incident to incident.

### *1. Supporting Analysis for the Use of Force Finding*

The OIG found that some W/C Insights did not provide a meaningful evaluation of the specific circumstances of the case beyond noting the fact of the subject's resistance, or combative or assaultive behavior. Such characterizations do not necessarily explain why a use of force was in policy. The determination of whether a use of force was within policy is, in most cases, a two-part test that considers, first, whether the circumstances met the threshold for any use of force. Second, the evaluator must consider whether the level of force was objectively reasonable based on the specific dynamics of the case. While officers are permitted to use force to overcome resistance, for example, the test of whether the *level* of force used was reasonable must take into account factors listed in the Department's force policy, such as the relative level of threat posed by the subject, the seriousness of the crime, and level and type of resistance displayed.

The OIG also noted some cases where a conclusion was offered without an accompanying rationale. Instead, the author would simply restate the actions of the officers and subject -- as described in the officers' UOF report -- and state a conclusion regarding whether the force was objectively reasonable. In 12 of the 45 process review cases, the conclusion regarding the use of force was provided without recounting facts of the case.<sup>50</sup> While some of these incidents included fairly straightforward, relatively low-level uses of force, other incidents were more complex and warranted a greater level of analysis. For example:

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<sup>49</sup> As noted elsewhere, the 3 out-of-policy cases reviewed for the audit were specifically selected due to their finding.

<sup>50</sup> The OIG did note, however, that in several of the cases noted here, the watch commander or subsequent reviewer did identify tactical issues or conduct an analysis of the tactics used.

- In a case reviewed by the OIG, the W/C Insight stated that “The force option used by the involved officer was within the array of Department approved options. The force used by [the officer] was objectively reasonable to affect [sic] an arrest and consistent with the reported actions.” An evaluation of the use of force, however, requires an analysis of actions by both the suspect and the officer. Here, the officer in question employed two punches, a baton strike, bodyweight, and a firm grip on the subject. While the review listed each type of force used and stated that they were “reasonable to overcome the suspect’s resistance,” it lacked sufficient, meaningful analysis of the level of resistance and threat posed by the subject or how these justified each use of force. The review did, however, address the officer’s tactics in using punches to a bony area, which could have injured the officer’s hands.<sup>51</sup>
- In second case, the W/C Insight for one of the involved officers stated: “[The officer’s] use of bodyweight, firm grip and hammer fists to assist in overcoming [the subject’s] resistance was objectively reasonable for the situation and a very minimal amount of force. [The officer] acted within Department policy, procedure, and the law.” It further notes that “[the officer] had to use hammer fists 12 times on the suspect, which did not gain compliance. In that situation the officer should have used another force option.” The evaluations for the other involved officers included similar language.

The evaluation of this incident did not appear to provide an analysis of why, given the subject’s reported level of resistance, the protracted series of strikes to the subject’s face -- 13 by this officer and another 4 or 5 by another -- was consistent with the Department’s use of force policy. The OIG also noted other substantive areas that were not fully addressed by the investigation or evaluation. These included questions about the basis for officers’ search of a witness, the fact that the officers did not call a supervisor when requested to do so, possible inconsistencies or omissions between the events depicted on a video of the incident and those described in the written report, and reported conflicts between the subject’s account and that of the officers. For this reason, this case -- which was part of the compliance audit sample -- was found to be out of compliance with the Department’s policy that W/C Insights address “all relevant tactical, use of force, and policy issues.”<sup>52</sup>

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<sup>51</sup> In this case, the second-level reviewer added some additional analysis, characterizing the subject as belligerent and combative. That reviewer also praised the officer’s tactics in providing a warning before using the baton and with regard to proper placement of punches.

<sup>52</sup> The subject in this case subsequently filed a claim and lawsuit regarding the incident, which resulted in the opening of a personnel complaint. As briefly described in the following section, the allegations made by the complainant were not properly framed by IAG. The OIG will submit a detailed Personnel Complaint Review to the Department regarding this case.

With regard to the officers' use of punches in this case and other cases reviewed by the OIG, it should be noted that the Department has recently taken the step of clarifying its expectations regarding punches by developing a new tactical directive for kicks and strikes.<sup>53</sup> The new document provides a clearer standard for the deployment of punches, as well as improved parameters for the evaluation of their use. In particular, the OIG has noted that the new directive states: "Absent exigent or unusual circumstances which must be fully articulated by the involved officer, fist strikes should be used primarily on soft tissue areas to prevent injury to an officer's hands, and to minimize the risk of serious injury to the suspect." The directive also discourages the use of palm heel and closed fist strikes against prone subjects with their hands under their body who do not comply with commands and submit to handcuffing.<sup>54</sup>

While the Department does not maintain specific policies for each authorized force option, tactical directives such as this one form the primary basis for the Department's evaluation of tactics, and should also play a role in the calculus of reasonableness, which is judged from the perspective of an LAPD officer with similar training.

## *2. Recommendations*

The OIG has recommended to the Department that it develop training for supervisors in how to evaluate a use of force, which would include guidelines relating to the OIG's above-listed comments. In particular, supervisors should be trained in how to apply the objectively reasonable standard, as well as the role that tactical and other relevant Department standards should play in evaluating the incident. The Department has agreed that future training will reinforce this concept and will add this protocol to the draft of the pending Special Order.

### **D. Framing and Investigating Allegations in an Associated Personnel Complaint**

In the majority of personnel complaints reviewed by the OIG, IAG appropriately framed and addressed allegations against named officers. In 4 of the 20 complaints reviewed, however, this did not occur, including one case where no personnel complaint was opened.<sup>55</sup> The OIG identified two issues relating to the framing of allegations: the inability of the subject to name the involved

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<sup>53</sup> Approximately 31 percent of the cases reviewed by the OIG during its process review involved the use of at least one punch. This is not representative of the entire population of the NCUOFs for the past five years. Please see the Appendix for a list of reporting rates for each force option.

<sup>54</sup> See Use of Force Tactics Directive No. 14, "Strikes and Kicks," December 2012.

<sup>55</sup> Includes 9 cases from the complaint review as well as 10 complaints associated with the audit and process review samples.

officers and a determination that the allegations had already been addressed through the NCUOF process.

*1. Identifying Officers*

From IAG's complaint investigations, it is clear that if a complainant can identify specific officers and their specific uses of force, I/O's can properly draft allegations against all involved officers. An issue arises when complainants do not identify all of the officers and the use of force each officer may have used against the complainant.

For example, in a Level II case, a complainant filed a Claim for Damages against the Department nearly 8 months after an alleged unauthorized use of force. The Claim for Damages gave rise to a personnel complaint, necessitating an investigation by IAG. The complaint named 5 LAPD officers that allegedly used unauthorized force. The complaint also alleged unauthorized force by unnamed employees. The OIG found that the initial IAG complaint contained the names of 5 officers. However, due to the complainant's inability to recall the names of the unnamed officers, the I/O chose to remove all of the names, including the names of named officers, and reframe the complaint against "Unknown Officers."<sup>56</sup> Having framed the allegations against "Unknown Officers," the I/O did not interview any of the officers named in the underlying NCUOF for his investigation. Furthermore, the act of removing officers' names from a complaint also meant that the officers' TEAMS II records would not reflect that such a complaint had been made.

Although the I/O did not use the names found in the NCUOF to name the officers in the IAG complaint, the I/O used the associated "In Policy" finding to support a classification of "Unfounded."<sup>57</sup> The OIG could not establish why the I/O reframed all of the allegations against "Unknown Officers" when the NCUOF investigation identified at least some of the officers who used force.

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<sup>56</sup> According to the IAG complaint investigation, "due to the large numbers of named and unnamed officers involved and [Complainant's] inability to specify which officers committed misconduct; allegations were formed against unknown officers. On May 19, 2011, [I/O] notified the Administrative Records Section, and the accused officers were removed."

<sup>57</sup> In his rationale, the adjudicating officer stated, "the application of force by the officers who arrested [the Complainant] was thoroughly investigated in the Use of Force Investigation, reviewed by several supervisors, command staff and Use of Force Review Division. The use of force was deemed in policy/no action for all officers. There was no evidence that [Complainant] was kicked or that he reported that he was kicked." The NCUOF I/O did interview, but did not record, the Complainant for the NCUOF investigation, but noted that the Complainant was heavily intoxicated and talkative. The IAG I/O did not interview the Complainant for his investigation.

## *2. Framing Allegations Previously Investigated During the NCUOF Process*

As detailed in this report, the Department maintains two separate processes for NCUOF investigations and personnel complaint investigations. It is the Department's policy to accept and investigate all complaints of misconduct made against the Department and its employees, including those detailed in claims and lawsuits, regardless of the presence of any other administrative process. Although the IAG I/O in a NCUOF-related case may rely in substantial part on the evidence and findings contained in the NCUOF investigation -- at least where there is no additional material evidence to be considered -- he or she must nonetheless duly register and address any allegation that arises during the investigation of the complaint. This includes the documentation of the complaint under an involved officer's TEAMS II record, which allows the Department to track the number of complaints made against the officer by type and adjudication. This is a core component of the Department's risk management and early intervention system.

The majority of IAG complaint investigations, as noted earlier, properly framed and registered allegations against the accused officers. In two cases reviewed by the OIG, however, the relevant personnel determined that the allegations regarding the use of force should not be framed due to that fact that those aspects of the case had already been reviewed and adjudicated during the NCUOF process.

- In one of the cases mentioned in the previous section, a personnel complaint was opened after the Department received a lawsuit filed by the subject of the use of force. IAG stated that the complainant had "alleged that [two officers] used excessive force and failed to provide medical treatment for [the complainant's] injuries."<sup>58</sup> The investigation further stated that the "UOF investigation addressed the issue of excessive force and [the complainant's] medical treatment. Therefore, the allegations relating to the UOF and officers [sic] failure to provide adequate medical treatment for [the complainant's] injuries will not be framed [...]"<sup>59</sup> The investigation did identify and frame a separate allegation related to discourtesy against a third officer, which was unfounded based on a review of the video. No additional allegations were framed or investigated.
- In a second case, an allegation, made a little over 4 months after the initial NCUOF incident, did not result in the opening of a personnel complaint or any attempts to obtain audio-recorded interviews, again due to the fact that the use of force had already been investigated through the NCUOF process. In that case, however, the subject, who was described as being "incoherent

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<sup>58</sup> The lawsuit includes two named officers, one of whom was misidentified. The NCUOF investigation properly identified the officers using force, however.

<sup>59</sup> The OIG noted that the complainant's allegations related to his inability to receive medical care in the Los Angeles County Jail did not appear to relate to the LAPD and, as such, were not addressed as part of the NCUOF investigation.

due to intoxication” at the time, refused to be interviewed as part of the original NCUOF investigation process.<sup>60</sup> While the NCUOF I/O did interview 3 non-Department witnesses and provided very general summaries of their statements during the initial investigation, those interviews were not audio-recorded.

The OIG notes that Department policy requires employees to open a personnel complaint and frame each allegation made by the complainant, regardless of the finding of the NCUOF.

### *3. Recommendations*

The OIG recommends that the Department avoid framing allegations against "Unknown Officers" where an underlying NCUOF investigation contains the names of officers who used force during the incident. It should also clarify for all Department personnel that allegations regarding a use of force shall be framed even if they have previously been investigated under the NCUOF process. The Department has agreed to implement this recommendation.

## **III. Updates to Written Policy**

In examining the policies that govern the investigation and adjudication of a NCUOF incident, the OIG noted two areas of the manual that may require updating. First, the section on NCUOF investigations, though substantially accurate, has not been updated to reflect the TEAMS-II-based documentation and review process. Second, there appear to be multiple policies governing the use of force by officers, which may not be entirely consistent with one another.

### **A. NCUOF Investigation Policy**

Although this report does not go into detail about the mechanics of the documentation of a NCUOF investigation, it should be noted that this process is primarily conducted through the Department’s TEAMS II database. While the Department also maintains hard copies of supporting documentation, the primary record of the incident is housed in TEAMS II. There, the I/O documents pertinent details about the use of force -- including each method used by each officer, information about all parties and witnesses and their statements, medical information, results of the Miranda advisement, and notes about the investigation conducted. The I/O also uploads into the

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<sup>60</sup> The OIG also noted several instances in which the subject of the use of force refused or was otherwise unable to provide an interview while – as described by the I/O -- intoxicated or sedated. The OIG would prefer that, in such situations, I/Os delay their attempt to interview a subject regarding the use of force until a time when the subject is reasonably able to provide a meaningful statement.



system any supporting documentation, including the UOF report, medical treatment reports, photographs, and -- in a few cases -- recorded interviews. That record also reflects conversations about corrections and clarifications among reviewing personnel, the Watch Commander's insight, and any additional comments or reviews from the chain of command.

The OIG has noted that the TEAMS II database is not referenced in the NCUOF policy at all, which instead directs I/Os and reviewers to use forms that appear no longer to be in use. The OIG also noted that in 20 of the 45 cases included the process review, pertinent documents such as the UOF report were not attached to the record and had to be obtained elsewhere.

### *1. Use of Force Policy*

The OIG has noted that there appears to be more than one manual section pertaining to the use of force policy, with some cases referencing multiple sections. For example, in the 9 complaints reviewed by the OIG, IAG used three different standards of review to classify its use of force findings:

- Department Manual Vol. 1, § 115.30 - Used 5 times;
- Department Manual Vol. 1, § 240.10 - Used 5 times;
- Department Manual Vol. 1, § 556.10 – Used 5 times.

While each complaint provided a sound rationale behind the classification of each allegation, there are important differences among each section that result in slightly different standards of review. For example, Section 240.10 states, in part, "Officers are permitted to use whatever force that is reasonable and necessary to protect others or themselves from bodily harm." Section 556, however, additionally allows for the use of force to effect an arrest, prevent escape, or overcome resistance. It does not require that the force be "necessary," only that it be "objectively reasonable."

### *2. Recommendations*

The Department will work to update the manual to reflect current policy and practice. Its use of force policy, as noted in earlier chapters, is based on the "objectively reasonable" standard as described in LAPD Manual section 556.<sup>61</sup> Based on the OIG's research into this issue, it appears that the policy enumerated in Section 240.10 is outdated and no longer reflects current LAPD policy. The OIG also recommends that, until such revisions are implemented, IAG exclusively use Section 556 as its primary standard of review for allegations of unauthorized force. According to

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<sup>61</sup> Special Order No. 36, "Use of Force Policy – Revised," July 14, 2009.



the Department, these manual revisions have been drafted and forwarded to Planning and Research Division to complete this change.

## **5. SUMMARY OF RECOMMENDATIONS AND NEXT STEPS**

Below is a summary of the OIG's recommendations and the Department's response to each, as described throughout the report. The Department has agreed to implement each recommendation.

- 1. All officer accounts of a NCUOF (including those of witness officers) should be individually and independently documented in a prompt manner.**

The Department is working with the OIG to develop a Supplemental Officer Statement Form to capture individual accounts of the incident.

- 2. The Department should update and reinforce current guidelines for the preparation of UOF reports and individual accounts to require that officers provide full, plain-language descriptions of all material subject and officer actions.**

The Department conducts regular training Department-wide for supervisors, and will continue to reinforce guidelines on the avoidance of conclusory language and the importance of review to ensure that suspect behavior is clearly articulated relative to each use of force.

- 3. The Department should ensure that all IAG investigations of alleged unauthorized force comply with applicable Department policies, including those that were first investigated through the NCUOF process. In the event that an underlying NCUOF investigation involved interviews of non-Department persons that were not recorded as part of that process, it is incumbent upon the IAG I/O to attempt to re-interview and record those persons.**

The Department will reinforce this requirement through ongoing training.

- 4. The Department should develop written procedures for upgrading NCUOF investigations to a Level I in the event that qualifying information comes to light after the initial investigation has been completed, to include a process for promptly attempting to obtain recorded interviews.**

The Department is in the process of developing a draft NCUOF Special Order, which will include written policies for the upgrading of NCUOF investigations in such an instance.

- 5. I/Os should provide information about witnesses' vantage point and portion of force observed in every investigative file, including Level II investigations.**

The Department will have this mandate added to the draft of the pending NCUOF Special Order.

- 6. The Department should define the term “substantially conflicts” in its policy, or adopt and define a more established term for its analysis, such as “materially differs.” The Department should also clarify, for the purposes of a NCUOF investigation, what constitutes a reportable discrepancy.**

The Department will utilize the term “materially differs” for this purpose, the definition of which will be added to the draft of the pending Special Order. The Department will also provide information about what constitutes a reportable discrepancy and ensure that this aspect is included in current and future training.

- 7. The Department should clearly require that I/Os, as part of their determination, identify substantial conflicts relating to the subject's actions as well as those of the officers. Where it is determined that an apparent inconsistency or conflict does not rise to a Level I substantial conflict, the evidence and reasoning for this determination should be clearly documented in the file.**

The Department will reinforce this guideline through training and add it to the draft of the pending Special Order.

- 8. The Department should train supervisors, watch commanders, and other evaluators to review all available documents for apparent inconsistencies and, where they are identified, make an attempt to resolve them using the preponderance of the evidence standard as part of the Watch Commander's Insight.**

Future training will reinforce this concept and this protocol will be added to the draft of the pending Special Order.

- 9. Because of the potential value of videotaped evidence, the Department should require the I/O and reviewers at every level to view and certify that they have reviewed any video recordings of the incident.**

The Department already expects all levels to review all videos and will require that they certify that they have done so. This process will be reinforced through training and will be added to the draft of the pending Special Order.

- 10. The Department should develop additional training for supervisors in how to evaluate a use of force. In particular, supervisors should be trained in how to apply the objectively reasonable standard, as well as the role that tactical and other relevant Department standards should play in evaluating the incident.**

Future training will reinforce this concept and this protocol will be added to the draft of the pending Special Order.

- 11. The Department should avoid framing allegations against "Unknown Officers" where an underlying NCUOF investigation contains the names of officers who used force during the incident. It should also clarify for all Department personnel that allegations regarding a use of force shall be framed even if they have previously been investigated under the NCUOF process.**

The Department has agreed to implement this recommendation.

- 12. The Department should update the manual to reflect current policy and practice. Until such revisions are implemented, IAG should exclusively use Section 556, or the associated Special Order, as its primary standard of review for allegations of unauthorized force.**

These manual revisions have been drafted and forwarded to Planning and Research Division to complete this change.

Review of Non-Categorical Use of Force Investigations  
Appendix A: Incidents by Type

**NCUOF Incidents by Type (2008-2012)<sup>62</sup>**

<b>Force Method</b>	<b># of Incidents</b>	<b>% of Incidents<sup>63</sup></b>
<b>Severity: 1</b>		
Other Force <sup>i</sup>	753	9%
Firm Grip	5840	70%
<b>Severity: 2</b>		
Joint Locks	1442	17%
Chemical Agent/OC Spray <sup>ii</sup>	894	11%
<b>Severity: 3</b>		
<u>Impact Device</u>	<b>419</b>	<b>5%</b>
Collapsible Straight Baton	114	1%
Expandable Side-Handle Baton	16	0%
Flashlight	4	0%
Other Impact Device (Ex: Projectile rounds)	6	0%
Side-Handle Baton	279	3%
Straight Baton	15	0%
<u>Less than Lethal Device</u>	<b>365</b>	<b>4%</b>
37mm Rubber Baton	2	0%
Beanbag Shotgun	187	2%
Other Less than Lethal Device <sup>iii</sup>	11	0%
SAGE (Less-Lethal Projectile)	7	0%
TASER	1589	19%
<u>Physical Motion</u>	<b>6951</b>	<b>83%</b>
Block	43	1%
Bodyweight	5720	69%
Elbow Strike	208	3%
Inadvertent Head Strike	5	0%
Kick	363	4%
Knee Strike	514	6%
Lateral Head Displacement <sup>iv</sup>	87	1%
Leg Sweep	514	6%
Martial Arts (Elbow Lock)	1	0%
Other Motion <sup>v</sup>	452	5%
Palm Heel Strike	254	3%
Physical Force <sup>vi</sup>	2532	30%
Punch	1546	19%
Strike	73	1%
Takedown	3516	42%

<sup>62</sup> N = 8333, as of March 18, 2013. This preliminary data is taken from a query of the Department's Use of Force System (UOFS) database and may not include data from open or otherwise incomplete cases. Cancelled and sealed investigations were excluded from the query.

<sup>63</sup> Represents the number of cases involving a particular force option. As a single incident may involve multiple force options, percentages will not add up to 100 percent.

# Review of Non-Categorical Use of Force Investigations

## Appendix A: Incidents by Type

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<sup>i</sup> Includes such actions as applying restraints, carrying, rolling, and bear-hugging.

<sup>ii</sup> OC Spray refers to Oleoresin **Capsicum** (pepper) spray.

<sup>iii</sup> Includes TASER XREP, impact projectile, and area denial devices.

<sup>iv</sup> Handcuffing technique used to gain control of a suspect's wrist when a suspect refuses to pull his or her arm from under his/her body. It requires the officer to push his or her elbow against the side of the individual's head to create an opening and then reach under his armpit to grab the wrist.

<sup>v</sup> Includes such actions as forcibly applying restraints, pushing, pulling, some strikes.

<sup>vi</sup> Includes actions such as grabbing and/or moving arms and leg and pushing.

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 36

July 14, 2009

APPROVED BY THE BOARD OF POLICE COMMISSIONERS ON JULY 14, 2009

SUBJECT: USE OF FORCE POLICY - REVISED

PURPOSE: The purpose of this Order is to provide Department personnel with a Use of Force Policy that is concise, easily understood, and consistent with prevailing law and industry best practices.

PROCEDURE:

- I. **PREAMBLE TO USE OF FORCE.** The use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public.

The Department's guiding value when using force shall be reverence for human life. When warranted, Department personnel may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to legal and physical hazards, and violate the rights of individuals upon whom unreasonable force is used. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers.

II. **DEFINITIONS.**

- A. **Objectively Reasonable.** The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the United States Constitution. See *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* states in part, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of



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reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving - about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application." The force must be reasonable under the circumstances known to the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard, rather than a subjective standard.

**B. Factors Used To Determine Reasonableness.** The Department examines reasonableness using *Graham* and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:

- \* The seriousness of the crime or suspected offense;
- \* The level of threat or resistance presented by the subject;
- \* Whether the subject was posing an imminent threat to officers or a danger to the community;
- \* The potential for injury to citizens, officers or subjects;
- \* The risk or apparent attempt by the subject to escape;
- \* The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
- \* The time available to an officer to make a decision;
- \* The availability of other resources;
- \* The training and experience of the officer;
- \* The proximity or access of weapons to the subject;
- \* Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects; and,
- \* The environmental factors and/or other exigent circumstances.

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- C. Deadly Force.** Deadly Force is defined as that force which creates a substantial risk of causing death or serious bodily injury.
- D. Imminent.** Black's Law Dictionary defines imminent as, "Near at hand; impending; on the point of happening."
- E. Serious Bodily Injury.** California Penal Code Section 243 (f)(4) defines Serious Bodily Injury as including, but not limited to:
- \* Loss of consciousness;
  - \* Concussion;
  - \* Bone fracture;
  - \* Protracted loss or impairment of function of any bodily member or organ;
  - \* A wound requiring extensive suturing; and
  - \* Serious disfigurement.
- F. Warning Shots.** The intentional discharge of a firearm off target, not intended to hit a person, to warn others that deadly force is imminent.

**III. POLICY.**

- A. Use of Force - General.** It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:
- \* Defend themselves;
  - \* Defend others;
  - \* Effect an arrest or detention;
  - \* Prevent escape; or,
  - \* Overcome resistance.
- B. Deadly Force.** Law enforcement officers are authorized to use deadly force to:
- \* Protect themselves or others from what is reasonably believed to be an **imminent** threat of death or serious bodily injury; or,
  - \* Prevent a crime where the subject's actions place person(s) in **imminent** jeopardy of death or serious bodily injury; or,

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\* Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

**C. Warning Shots.** Warning shots shall only be used in exceptional circumstances where it might reasonably be expected to avoid the need to use deadly force. Generally, warning shots shall be directed in a manner that minimizes the risk of injury to innocent persons, ricochet dangers and property damage.

**D. Shooting At or From Moving Vehicles.** Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants. Firearms shall not be discharged from a moving vehicle, except in exigent circumstances and in the immediate defense of life.

**Note:** It is understood that the policy in regards to discharging a firearm at or from a moving vehicle may not cover every situation that may arise. In all situations, Department members are expected to act with intelligence and exercise sound judgment, attending to the spirit of this policy. Any deviations from the provisions of this policy shall be examined rigorously on a case-by-case basis. The involved officer must be able to articulate clearly the reasons for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

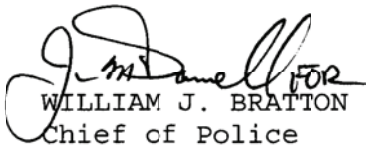
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**AMENDMENTS:** Department Manual Section 1/556 is renamed "Use of Force." This Order amends Section 1/556.10 and deletes Sections 1/556.20, 1/556.25, 1/556.30, 1/556.35, 1/556.40, 1/556.50, 1/556.55, 1/556.60, 1/556.70, and 1/556.75 of the Department Manual.

**AUDIT RESPONSIBILITY:** The Commanding Officer, Internal Audits and Inspections Division, shall monitor compliance with this directive in accordance with Department Manual Section 0/080.30.

  
WILLIAM J. BRATTON  
Chief of Police

DISTRIBUTION "D"

Review of Non-Categorical Use of Force Investigations  
Appendix C: Audit Test Questions

**NCUOF Audit Test Questions  
2012-2013**

A. Officer's Responsibility

1. Did the officer(s) articulate in the arrest/crime/employee report the reason for the contact/detention/arrest?
2. Was the contact/detention/arrest valid in relation to the policy and/or laws that govern it?
3. Did the available evidence support the use of force finding?

B. Investigating Supervisor's Responsibility

4. Did the investigating supervisor respond and conduct an on-scene investigation?
5. Was the supervisor conducting the investigation uninvolved in the NCUOF incident? Did the investigating supervisor determine an initial classification of the NCUOF as either a Level I or II incident?
6. Did the I/S obtain sufficient, relevant, competent evidence?
7. Did the investing supervisor canvas the scene to locate witnesses? If not, describe the reason provided?
8. Did the investigating supervisor audio-record all involved subject(s) and non Department witnesses? If not please provide the documented explanation? **(LI only)**
9. Did the investigating supervisor provide brief statements of the involved subject(s) or non Department witnesses who either refused to be audio-recorded or were not audio-recorded for another reason? If so were parties involved willing to be interviewed? **(LI only)**
10. Did the investigating supervisor note consistent statements provided by suspect, employee using force, witnessing officers, and non Department employee witnesses within the investigation?
11. Did the investigating supervisor indicate what portion of the UOF was observed and from what vantage point it was observed? **(LI only)**
12. If the UOF subject was in custody and being interrogated, was the Miranda Rights admonition given in accordance with Special Order No. 14, 2011?
13. Based on a review of all of the audio-recorded interviews, were brief summarized statements of the suspect(s) and/or witness(es) prepared when the account of the use of force conflicts with the involved employee's account? Did the investigating supervisor document all visible and complained of injuries as required? **(LI only)**
14. Did the investigating supervisor obtain "Authorization for Release of Medical Information Forms" for individuals who received medical treatment? If the person refused or was unable to sign the form, describe the provided information.



Review of Non-Categorical Use of Force Investigations  
Appendix C: Audit Test Questions

15. Did the investigating supervisors attempt to collect medical information based on personal observations and/or statements from the subject of the use of force, the involved officer(s), and non-medical witnesses?
16. Did the supervisor document medical treatment information in the Non-Categorical Use of Force Report and indicate the source of the information?
17. Did the supervisors ask the subject of the use of force if and how he/she was injured and document the response?
18. Did the investigating supervisor (or SID) take photographs of the subject's visible injuries?
19. Did the investigating supervisor (or SID) take photographs of the officers' visible injuries?
20. Did the investigating supervisor (or SID) take photographs of the officers' visible injuries *when the subject is being charged for assault on an officer (69 PC) or similar charge?*
21. Did the investigating supervisor (or SID) take photographs of the scene of the incident?
22. Did the investigating supervisor (or SID) take photos of the vantage point of witnesses when relevant?

***C. Watch Commander's Responsibility***

23. Did the watch commander/OIC/designated supervisor document his/her insight to include all uses of force?
24. Did the watch commander/OIC/designated supervisor describe all actions by suspect and officers?
25. Did a watch commander/OIC/designated use boilerplate language?

***D. Command Staff Responsibility***

26. Was there an allegation of misconduct other than the force used?
27. Did the COC concur or differ from Watch Commander Insight?
28. Did the UOFRD CO approve or disapprove the recommended disposition?
29. Was the Non-Disciplinary action assigned justified?
30. Was the assigned training documented in T2/LMS/15.7?
31. Document any other additional concerns which have not been previously addressed in the matrix questions.