

# LOS ANGELES POLICE COMMISSION

## *Review of the Department's Non-Categorical Use of Force Reports Audit*



Conducted by the

**OFFICE OF THE INSPECTOR GENERAL**

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**OFFICE OF THE INSPECTOR GENERAL  
REVIEW OF DEPARTMENT'S  
NON-CATEGORICAL USE OF FORCE REPORTS AUDIT**

**PURPOSE**

The Office of the Inspector General (OIG), pursuant to Consent Decree Paragraph 135, reviewed Audit Division's (AD) Non-Categorical Use of Force (NCUOF) Reports Audit (Audit). The Audit was completed in the Fourth Quarter, Fiscal Year 2006/2007 and received by the OIG on July 2, 2007. The OIG assessed the Audit's completeness, findings and quality.

**BACKGROUND ON AUDIT DIVISION'S AUDIT**

Audit Division conducted its sixth NCUOF Reports Audit and assessed the Los Angeles Police Department's (Department) compliance with Consent Decree Paragraphs 65, 68, 69, 80(c, e & f), 82, 128, 129, and 131(a, c & e).

The Department defines a NCUOF as an incident in which a Department employee uses a less-lethal control device or physical force to compel a person to comply with their directions, overcome resistance of a person during an arrest or detention, or defend any individual from an aggressive action by another person. The NCUOF incidents are investigated as Level I or Level II. Level I investigations are generally related to higher-risk NCUOF incidents and, unlike Level II, generally require all subject and public witness interviews to be tape-recorded.<sup>1</sup> Additionally, their interviews must be summarized if their statements are not tape-recorded or the subject's account of the use of force is in substantial conflict with the involved Department employee's account.<sup>2</sup> All other NCUOF investigations that do not meet Level I criteria are classified as Level II.

Uninvolved Area supervisors investigate these uses of force while the Watch Commander/Officer-In-Charge evaluates whether the amount of force 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. Based on this evaluation and the totality of the investigation, the tactics and use of force are adjudicated by the Area Commanding Officer and the Bureau Commanding Officer. The investigation file is subsequently submitted to the Use of Force Review Division (UOFRD) for evaluation. When necessary, the UOFRD will "kickback" the investigation file to the Area Commanding Officer for additional investigation and/or clarification. Once the UOFRD has completed their evaluation, it is submitted to the UOFRD Commanding Officer for final approval and closeout of the investigation.

Audit Division selected all of the NCUOF incidents that were initiated from September 1, 2006 through February 2007 and completed through April 2007. A total of 78 Use of Force Reports were identified, of which 11 involved Gang Enforcement Detail (GED) officers and 67 involved non-GED officers. Table No. 1 (next page) contains the compliance percentages reported by AD in their Audit Report.

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<sup>1</sup> A NCUOF shall be reported as Level I under the following circumstances: an allegation of excessive force by a Department employee; the force used results in a serious injury, such as a broken bone, dislocation, or an injury requiring sutures; the injuries to the person upon whom force was used are inconsistent with the amount or type of force reported by the involved Departmental employee; and/or, accounts of the incident provided by witnesses and/or the subject of the use of force substantially conflict with the involved employee's(s') account(s).

<sup>2</sup> Interviews of Departmental employees who are involved or considered witnesses are not required to be tape-recorded or summarized.

**TABLE NO. 1 – COMPLIANCE PERCENTAGES REPORTED BY AUDIT DIVISION**

Objective	CD¶	Description	Compliance Percentages		
			Overall	Non-GED	GED (CD ¶131)
<i>Completeness</i>					
1	128	Evaluation of Completeness	97%	97% (65/67)	100% (11/11)
<i>Authenticity</i>					
2a	128	Eval. for Inappropriate Canned Language/Copy & Paste	<b>72%</b>	<b>70% (47/67)</b>	<b>82% (9/11)</b>
2b	128	Evaluation for Inconsistent Information	96%	96% (64/67)	100% (11/11)
2c	128	Evaluation for Articulation of Legal Basis	100%	100% (67/67)	100% (11/11)
2d	128	Evaluation for Information Not Authentic	100%	100% (67/67)	100% (11/11)
<i>Underlying Actions</i>					
3	128	Evaluation of Underlying Actions	97%	97% (65/67)	100% (11/11)
<i>Supervisory Oversight</i>					
4a	128	Evaluation of On-Scene Supervision	100%	100% (9/9)	100% (1/1)
4b	128	Evaluation of Post-Incident Supervisory Review	<b>76%</b>	<b>76% (51/67)</b>	<b>73% (8/11)</b>
<i>Evaluation of Investigations</i>					
5a	68, 129(a)	Analysis of Relevant Documents	100%	100% (67/67)	100% (11/11)
5b	68	Identification of Witnesses	99%	99% (66/67)	100% (11/11)
<i>Management Oversight</i>					
6a	69	Review at the Area and Bureau Levels	<b>92%</b>	<b>93% (62/67)</b>	<b>91% (10/11)</b>
6b	69	Timeliness of Review of Investigation	97%	97% (65/67)	100% (11/11)
<i>Completeness of Evidence Documentation</i>					
7	129(b)	Evaluation of Completeness of Evidence Documentation	96%	97% (65/67)	<b>91% (10/11)</b>
<i>Evaluation of Statements</i>					
8a	129(c)	Evaluation of Investigator’s Representation of Statements	100%	100% (12/12)	100% (2/2)
8b	129(c)	Eval. of Investigator’s Documentation of Consistent Stmnts.	99%	99% (66/67)	100% (11/11)
<i>Adequacy of the Investigation</i>					
9a	80(c)	Prohibiting Group Interviews	100%	100% (67/67)	100% (11/11)
9b	80(e)	Interviewing All At-Scene Supervisors	<b>82%</b>	<b>90% (9/10)</b>	<b>0% (0/1)</b>
9c	80(f)	Collecting and Preserving Evidence	<b>88%</b>	<b>88% (59/67)</b>	<b>91% (10/11)</b>
9d	80(f)	Canvassed the Area to Locate Witnesses	<b>86%</b>	<b>87% (58/67)</b>	<b>82% (9/11)</b>
10	82	Reporting Allegations of Misconduct	99%	99% (66/67)	100% (11/11)

Greater detail on AD’s methodology and findings can be found in AD’s Audit Report.

**REVIEW METHODOLOGY**

The OIG assessed the completeness, findings, and quality of AD’s Audit by reviewing the final Audit Report, Audit Work Plan, and AD’s Microsoft Access database (used to compile and analyze their audit results).<sup>3</sup> The OIG randomly selected a sample of 31 NCUOF investigations, which included a total of 22 Non-GED investigations and 9 GED investigations.

On September 19, 2007, the OIG met with AD management to discuss the results of this review.

<sup>3</sup> The OIG’s review of supporting workpapers was based on a randomly selected one-tail sample size calculation with a 95 percent confidence level, an expected error rate of six percent, and a plus-precision of seven percent, with samples selected from the Non-GED and the GED populations.

## **REVIEW RESULTS**

### **COMPLETENESS**

To assess the Audit's completeness, the OIG reviewed AD's Audit Report and supporting workpapers to ensure all applicable Consent Decree mandates were addressed and AD selected from a complete population.

The OIG determined that the Audit sufficiently met the requirements specified in Consent Decree Paragraphs 65, 68, 69, 80(c, e & f), 82, 128, and 129, and 131(a, c & e). Additionally, the OIG determined that AD selected from a complete population, identifying and testing all 78 NCUOF incidents that were initiated from September 1, 2006 through February 28, 2007 and completed through April 30, 2007.

### **FINDINGS**

To assess the Audit findings, the OIG randomly selected a sample of 31 NCUOF investigations, which included a total of 22 Non-GED investigations and nine GED investigations. The OIG performed this testwork to determine if AD adequately identified and reported all relevant issues and if all reported issues were valid. Based on the OIG's review, overall, AD presented the audit findings in a logical manner, and AD generally identified and reported concerns relevant to the ongoing operations of the Department. However, the OIG identified concerns related to Objective 2a: Evaluation for Inappropriate Canned Language/Copy and Paste and Objective 4b: Evaluation of Post-Incident Supervisory Review, which are discussed in the Focus Point below. Additionally, the OIG noted some issues that AD reported that should not have been reported. Conversely, the OIG noted an issue that AD did not report that should have been reported. The focus point as well as the other issues is presented below.

#### **Focus Point**

***Objective No. 2a: Evaluation for Inappropriate Canned Language/Copy and Paste - CD ¶ 128***  
***Objective No. 4b: Evaluation of Post-Incident Supervisory Review - CD ¶ 128***

Audit Division reported compliance percentages of 72 percent (56/78) for Objective No. 2a and 76 percent (59/78) for Objective No. 4b. According to AD, the low compliance percentages for these two objectives were generally attributed to inappropriate copying and pasting of the Watch Commander's Insight from one involved officer's Insight to the another involved officer's Insight and not modifying the language to meet the specifics of the incident. Audit Division indicated that they also measured compliance with this objective by assessing whether the Department's use of copying and pasting undermined the quality of the Watch Commander's evaluation and did not provide the necessary information for management to make accurate assessments of the force used. For Objective No. 4b, AD assessed, among other matters, whether the Watch Commander's Insight adequately evaluated the force used by the involved officers, ensuring that all tactical, use of force,

and policy issues were addressed. Consent Decree Paragraph 128 and Special Order No. 13, 2004 address the requirements for these objectives.<sup>4</sup>

Based on our review, the OIG believes that these low compliance percentages may be attributed, in part, to an apparent ambiguity/misunderstanding in the requirements of Special Order No. 13, 2004, which caused watch commanders in various divisions to interpret it differently. For example, some Watch Commanders in some Insights itemized and evaluated each force option applied by each involved officer, while other Watch Commanders made more generic statements and did not itemize and evaluate each force option applied by each involved officer. In an attempt to reduce this ambiguity, the OIG recommends that the existing policy be enhanced and/or clarified. The enhanced/clarified policy should require for each Insight that the Watch Commander name the involved officer, and itemize and evaluate each force option applied by that officer. Although the involved officer's name and the force applied during the incident is already evident on the involved officer's IPR when the Watch Commander completes his/her Insight, having to articulate in the Insight this information (even if there were no issues identified during the investigation) should provide better assurance that the Watch Commander considered all of the involved officer's actions in his/her evaluation.

The OIG disagreed with AD's position regarding one investigation (NCUOF No. 2004243 – see details below) which was held out of compliance for Objective No. 2a for inappropriate copying and pasting, with the OIG believing that the involved officers' Internal Process Reports (IPRs) contained sufficient information to support that the involved officers' actions during the incident were adequately evaluated.

**NCUOF No. 2004243** – Although both of the involved officers' IPRs contain some of the same language, this Watch Commander evaluated, in some detail, the totality of the incident, including the rationale for one of the officer's use of Oleoresin Capsicum (OC) spray. The Watch Commander concluded that the force used by both officers was reasonable and recommended in-policy adjudication. Excerpts from officer A's IPR are as follows: "The suspect's aggressive and confrontational action dictated [this officer's] instinctive reaction to protect himself, and his partner. The force used by [officer A] was reasonable to prevent the suspect's attack and overcome his resistance." Excerpts from the officer B's IPR are as follows: "The officers were attempting to take the suspect into custody when the [suspect] attempted to strike [officer A]. The suspect's aggressive and confrontational action dictated [officer B's] instinctive reaction to protect himself and his partner, by utilizing his OC spray. The officers then took the suspect to the ground to gain control of him. The force used by officer A and his partner was reasonable to prevent the suspect's attack and overcome his resistance." Although there is some copying and pasting, the OIG does not believe it calls into the question the authenticity or reliability of the information in these reports. Moreover, in addition to providing the narrative addressing the involved officers' actions during the incident, the Watch Commander provided an electronic recommendation for the adjudication of each specific force option applied by each officer.

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<sup>4</sup> Consent Decree Paragraph 128 requires that Department audits of NCUOF investigation reports include an examination for "canned" language to generally determine whether it calls into question the authenticity or reliability of the information. Additionally, Special Order No. 13, 2004 requires that the Watch Commander include in his/her Insight an evaluation as to whether the amount of force used was reasonable, ensuring that all relevant tactical, use of force, and policy issues are addressed.

***Objective No. 4b: Evaluation of Post-Incident Supervisory Review - CD ¶ 128***

For one investigation, AD reported that a witnessing supervisor conducted the investigation without providing an adequate explanation for this exception. Audit Division held the investigation out of compliance for this objective, but the OIG disagrees with AD's finding and related conclusion.

**NCUOF No. 2003944** - Audit Division reported that "The investigating supervisor was a witness to the use of force. The Watch Commander's Insight documented that no other supervisors were available to investigate the use of force. However, in the Investigating Supervisor's Notes section, the investigating supervisor stated he used a supervisor to assist with the investigation. No explanation was given as to why the assisting supervisor could not have completed the investigation."

The OIG disagrees that the investigation should have been held out of compliance for this objective for the following reasons:

- 1) The investigating supervisor did witness the UOF; however, justification for allowing this supervisor to complete the investigation was provided in both the IPR and an Investigator's Note. Specifically, the investigation file indicates that on the night of occurrence the station had two additional field supervisors working; however, one was investigating a NCUOF incident and the other was investigating a complaint. Hence, no other supervisors were available.
- 2) An Investigator's Note indicates that this witnessing sergeant at no time directed the use of force nor had any physical contact with the suspect.
- 3) The Watch Commander indicated on the IPR that he "would have preferred that another supervisor conduct the use of force investigation, but none were available." The Watch Commander further indicated that this sergeant "did not direct the use of force and when a supervisor from another station became briefly available, he attempted to involve this supervisor in the investigation; however, the personnel needs mandated that this witnessing sergeant investigate this use of force;"

Although the OIG believes that the investigating supervisor could have better articulated why the supervisor from the other station was not able to complete the investigation, the OIG believes that this did not warrant holding the entire investigation out of compliance for this objective.

***Objective No. 6a: Management Oversight Review at Area/Division and Bureau Level - CD ¶ 69***

For one investigation, AD reported that management did not adequately document their review of the investigation. Consent Decree Paragraph 69 requires that the Department shall continue to have NCUOF incidents reviewed by chain-of-command managers at the Division and Bureau level. Audit Division held the investigation out of compliance for this objective, but the OIG disagrees with AD's finding and related conclusion.

**NCUOF No. 2004231** – Audit Division reported that “The UOFS [Use of Force System] report in the section entitled, ‘Use of Force Review’ attributes four types of force to an involved officer. However, the officer’s IPR indicated one of the types of force used was not reviewed by the Area commanding officer or the Bureau commanding officer. The Area commanding officer or the Bureau commanding officer did not document a classification for a type of force used by the officer on that officer’s IPR.”

The OIG disagrees that his investigation should have been held of compliance for this objective for the following reasons:

- 1) According to the involved officer’s statement, he utilized firm grip, leg sweep, *takedown*, and bodyweight during the use of force. The Area and the Bureau Commanding Officers each adjudicated firm grip, bodyweight, and leg sweep; however, based upon the UOFRD Commanding Officer’s review, *takedown* was added and adjudicated as a force option, which he is authorized to do as the final approving authority of the UOF Report to help ensure the force used that was articulated in the Arrest Report agrees with the force attributed to the involved officer in TEAMS II.<sup>5</sup> Furthermore, the UOFRD’s current practice does not include “kicking back” (and therefore, delaying the investigation), if upon their review an additional force option is added. Rather, the UOFRD electronically notifies the Area Commanding Officer of the final findings associated with the incident (including the force options applied and the related adjudication), which serves to inform the Commanding Officer that another force option was added.
- 2) As the Area or the Bureau Commanding Officers did not review this additional use of force option added, then there is a logical assumption that they would also not have classified (i.e. adjudicated) this use of force.

***Objective No. 7: Evaluation for Completeness of Evidence Documentation - CD ¶ 129(b)***

For one investigation, AD reported that referenced information was not included in the investigation file. Consent Decree Paragraph 129(b) requires that the Departmental audits of NCUOF investigation reports assess the completeness of the investigation file, including whether the file contains all appropriate evidence and documentation, or, if evidence is missing, an explanation as to why the evidence is missing. Audit Division held the investigation out of compliance for this objective, but the OIG disagrees with AD’s finding and related conclusion.

**NCUOF No. 2004072** - Audit Division reported that “The use of force investigation package references four photographs which are not part of the package.”

The OIG’s review of TEAMS II for this investigation revealed that all four photos were uploaded by the investigating supervisor the day after the incident occurred and were available for review the same day that they were uploaded.

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<sup>5</sup> According to the involved officer’s statement, the *takedown* occurred as a continuation of the leg sweep, which may explain why *takedown* was not identified as a force option by the investigating supervisor and adjudicated by the Area and the Bureau Commanding Officers.

***Objective No. 9b: Interviewing All At-Scene Supervisors - CD ¶ 80(e)***

For one investigation (No. 2003944) previously discussed on page 5, whereby a witnessing supervisor conducted the NCUOF investigation, AD reported as an issue that the witnessing/investigating supervisor was not interviewed. Consent Decree Paragraph 80(e) requires that the investigation include an interview of all at-scene supervisors with respect to their conduct at the scene during the incident. Also, Special Order No. 13, 2004 requires that an investigating supervisor who witnesses the incident shall summarize their observations in the Investigating Supervisor's Notes section and include him/herself as a witness. Audit Division held the investigation out of compliance for this objective, but the OIG disagrees with AD's finding and related conclusion.

**NCUOF No. 2003944** – Audit Division reported that “The investigating supervisor was a witness. The Internal Process Report indicates that he was interviewed. However, the report does not indicate who interviewed him. Additionally, there was no written statement by the investigating supervisor as to what he witnessed.”

The OIG disagrees that this investigation should have been held of compliance for this objective. According to the investigation file, the Department had made a decision to allow this witnessing supervisor to conduct the investigation.<sup>6</sup> Having made this decision and in accordance with Special Order No. 13, 2004, the investigating supervisor documented his observations while at the scene in the Investigating Supervisor's Notes section and also listed himself as a witness in the Use of Force Report - Employee Witness section.<sup>7</sup> The Use of Force Report – Employee Witness section does indicate that this investigating supervisor was interviewed; but as this employee witness was also the investigator, there is a logical assumption that he cannot interview himself, which is why the Department requires them to include their observations.

***Objective No. 9d: Canvassing the Area - CD ¶ 80(f)***

For one investigation (No. 2004243), AD reported that “The investigation did not properly document the scope of the canvassing conducted during the investigation.” Audit Division held the investigation out of compliance for this objective, but the OIG disagrees with AD's finding and related conclusion. For another investigation (No. 2003787), AD identified but did not report that the investigating supervisor did not properly document the scope of the canvassing performed during the investigation. Consent Decree Paragraph 80(f) requires that the Department collect and preserve all appropriate evidence, including canvassing the area to locate witnesses where appropriate. Also, Special Order No. 13, 2004 requires that the investigating supervisor shall document their efforts to canvass the area and locate evidence and witnesses.

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<sup>6</sup> See Objective No. 4(b) - NCUOF No. 2003944 (page 7) for the related issue.

<sup>7</sup> Although not required by Special Order No. 13, 2004, the investigating supervisor also documented his observations in the Follow-Up Investigation Report.

**NCUOF No. 2004243** – Audit Division reported that “[the investigating supervisor] did not properly document the scope of the canvassing conducted during the investigation.”

The OIG's review of the investigation file revealed that the incident occurred around a local university's stadium before a football game. The UOF Report – Case Details section states, “Numerous supervisors were at [the] scene [on football detail], and several witnesses were at [the] scene. Most of the witnesses did not want to get involved due to being afraid of retaliation.” The investigation file indicates that several supervisors canvassed the area [around the football stadium] and identified nine non-employee witnesses, which included three victims. It appears that two of these non-employee witnesses refused to be interviewed for fear of retaliation and one other witness was interviewed but would not provide his name; however, the other six witnesses identified themselves and were interviewed. Thus, by documenting their efforts involved in the canvassing for witnesses as well as the results of their canvassing, it appears that canvassing was performed and documented.

**NCUOF No. 2003787** – Audit Division identified in their workpapers that the investigating supervisor did not include the scope and results of the canvassing; however, they did not report it. Specifically, the investigating supervisor only documented on the Use of Force - Case Details section that the scene was canvassed for additional witnesses with negative results, without providing any other details of the scope of the canvassing that was performed.<sup>8</sup> The OIG concurs with AD's workpaper analysis that the scope and the results of the canvassing for this investigation were not adequate; however, the OIG believes that it should have been reported.

### **Other Related Non-Consent Decree Matters**

For one investigation (NCUOF No. 2004105), AD reported that the investigating supervisor did not request a medical release form and did not provide justification for not requesting it. However, the suspect was a minor and can not legally sign the release and Departmental policy does not require the investigating supervisor to contact the parent(s) or legal guardian in order to obtain a signed release. As there is no policy requiring the investigating supervisor to contact a minor's parent(s) or legal guardian, the OIG believes that this issue should have been treated as an “other related matter,” with the investigation not held out of compliance for Objective No. 4 – Evaluation of Post-Incident Supervisory Review, Consent Decree Paragraph 128. It should be noted that the investigation file contained several photographs depicting the suspect's injuries.

## **QUALITY**

To assess the Audit quality, the OIG evaluated the quality of both the Audit and the Audit Report.

Based on the OIG's review, the Audit was properly planned, performed, and supervised. The Audit Work Plan, which documented their methodology, indicated that AD addressed all of the required Consent Decree mandates in the planning of their Audit. In addition, the Audit Report properly delineated the Audit's objectives, scope, methodology, findings, and recommendations.

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<sup>8</sup> The one non-employee witness that was identified in the investigation was a spousal abuse victim (perpetrated by the suspect) who approached the involved officer and his partner in fear for her life.

Additionally, the Audit Report was issued in a timely manner (within a year of AD's prior audit) and used a fair and unbiased tone. Furthermore, the Audit Report presented its assessment of the Audit's objectives in a clear and concise manner.

However, in reviewing AD's Audit, the OIG noted that it did not have an objective to evaluate Consent Decree Paragraph 129(d) – Adequacy of the Investigation. For future NCUOF Reports audits, the OIG suggests that, to be consistent with their other audits, AD specifically include in their audit scope a separate assessment of the adequacy of each investigation reviewed and provide the related GED and non-GED compliance percentages. Furthermore, the OIG noted that AD did not conduct an exit conference with UOFRD management until more than two months after their report was released, thus missing a valuable opportunity to obtain feedback from them regarding the accuracy and validity of the issues.

### **CONCLUSION**

Overall, the OIG determined that the Audit was properly planned and conducted. Regarding the Audit quality/findings, the OIG identified the need for clarity in Special Order No. 13, 2004 to ensure that all force options applied during a NCUOF incident are adequately addressed by the Watch Commander in his/her Insight. Also, the OIG noted some issues that AD reported that should not have been reported. Conversely, the OIG noted an issue that AD did not report that should have been reported. However, the OIG's findings would not have significantly affected the compliance percentages reported by AD. For future NCUOF Reports audits, the OIG recommends that AD specifically include in their audit scope a separate assessment of the adequacy of each investigation reviewed and provide the related compliance percentages, consistent with Consent Decree Paragraph 129(d).

### **RECOMMENDATION**

The OIG recommends that Special Order No. 13, 2004 be enhanced to require that the Watch Commander indicate in his/her Insight the involved officer's name and the specific force options applied by that officer.