

**LOS ANGELES POLICE COMMISSION**

***REVIEW OF THE DEPARTMENT'S  
CATEGORICAL USE OF FORCE  
INVESTIGATIONS AUDIT***

**Fiscal Year 2006/2007**



Conducted by the

**OFFICE OF THE INSPECTOR GENERAL**

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Inspector General

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(FISCAL YEAR 2006/2007)**

**PURPOSE**

Pursuant to Consent Decree (CD) Paragraph 135, the Office of the Inspector General (OIG) reviewed the Department's Categorical Use of Force (CUOF) Investigations Audit (Audit) performed by Audit Division (AD). This Audit was completed in the Fourth Quarter, Fiscal Year 2006/2007, and received by the OIG on July 2, 2007. As required, the OIG assessed the Audit's completeness, findings, and quality.

**BACKGROUND ON AUDIT DIVISION'S AUDIT**

The Consent Decree defines a CUOF as the use of deadly force (e.g., officer involved shootings (OIS)), upper body control holds, law enforcement related injuries resulting in hospitalization or death (LERI), head strikes with an impact weapon, deaths while the arrestee or detainee is in custodial care of the Los Angeles Police Department (LAPD or Department), and canine contact resulting in hospitalization. At the Department's discretion, other incidents can also be investigated as a CUOF, especially when significant risk-management issues are present. All CUOF incidents are investigated by Force Investigations Division (FID), which was established in August 2004.

According to the Audit, the purpose was to assess the Department's compliance with Consent Decree Paragraphs 57, 80, 82, 128, and 129. The evaluated Consent Decree Paragraphs were categorized into 21 audit objectives. There are approximately 120 CUOF incidents every year. The selected population consisted of 27 CUOF investigations that had been reviewed and approved by the Commanding Officer of FID between October 23, 2006 through February 23, 2007.

The most frequent problems identified by AD with the investigations this year were supervisory oversight of the incident and adequacy of the investigation. Regarding supervisory oversight, the most common problem of the investigations was the lack of documentation regarding the actions of the supervisors. Regarding adequacy of the investigation, the significant problem noted was the lack of witnesses not identified and/or interviewed. Furthermore, the conduct of officer or fire department personnel interviews three to eight months after the incident for which these personnel stated that there were unable to recollect details of the incident. Audit Division recommended as a best practice that FID interview all witnesses soon after the incident to capture recollections when they are fresh and most accurate. The table on the next page summarizes the Audit's overall evaluation of each audit objective along with the associated Consent Decree Paragraph compliance rate.

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**AUDIT DIVISION'S EVALUATION OF CONSENT DECREE PARAGRAPHS**

<b>Objective No.</b>	<b>CD ¶</b>	<b>Audit Objective Title</b>	<b>Compliance Percentage 2005/2006</b>	<b>Compliance Percentage 2006/2007</b>
1	57	Criminal Investigations of CUOF	100% (4/4)	100% (9/9)
2	80a	Record Interviews	100% (24/24)	100% (27/27)
3	80b	Interview Witnesses at Convenient Sites and Times	100% (24/24)	96% (26/27)
4	80c	No Group Interviews	92% (22/24)	100% (27/27)
5	80e	Interview On-Scene Supervisors Regarding Their Conduct	92% (22/24)	96% (25/26)
6	80f(i)	Collect and Preserve Evidence	100% (24/24)	96% (26/27)
7	80f(ii)	Canvass for Witnesses	100% (24/24)	100% (27/27)
8	80g	Inconsistencies in Statements Addressed	100% (24/24)	100% (27/27)
9	82	Collateral Misconduct Investigations	100% (12/12)	100% (8/8)
10	128a	Completeness of the Investigation	96% (23/24)	100% (27/27)
11	128b(i)	No Canned Language	100% (24/24)	100% (27/27)
12	128b(ii)	No Inconsistent Information	96% (23/24)	100% (27/27)
13	128b(iii)	Articulation of the Legal Basis for the CUOF	100% (24/24)	100% (24/24)
14	128b(iv)	Lack of Indicia the Information Is Not Authentic or Correct	100% (24/24)	100% (27/27)
15	128c(i)	Underlying Action was Appropriate and Legal	100% (24/24)	100% (27/27)
16	128c(ii)	Underlying Action Conformed with Department Procedure	90% (12/21)	100% (24/24)
<b>17</b>	<b>128d(i)</b>	<b>Supervisory Oversight of the Incident</b>	100% (24/24)	<b>88% (23/26)</b>
18	128d(ii)	Supervisory Post-Incident Review	N/A <sup>1</sup>	96% (26/27)
19	129b <sup>2</sup>	Explanation for Missing Evidence	100% (24/24)	100% (27/27)
20	129c <sup>3</sup>	Comparison of Investigator Summary with Witness Statements	96% (23/24)	100% (27/27)
<b>21</b>	<b>129d<sup>4</sup></b>	<b>Adequacy of the Investigation</b>	46% (11/24)	<b>81% (22/27)</b>

Greater detail of AD's methodology and findings can be found in its Audit Report dated June 28, 2007.

<sup>1</sup> Audit Division changed the methodology for this objective from the prior year and a comparison was not appropriate.

<sup>2</sup> The Audit Report Table incorrectly stated the Consent Decree Sub-paragraph as 129a.

<sup>3</sup> The Audit Report Table incorrectly stated the Consent Decree Sub-paragraph as 129b.

<sup>4</sup> The Audit Report Table incorrectly stated the Consent Decree Sub-paragraph as 129c.

## **REVIEW METHODOLOGY**

The OIG assessed the completeness, findings, and quality of AD's Audit, related audit plan, supporting work papers, and source documents.<sup>5</sup> The OIG reviewed 15 of FID's completed investigations that were audited by AD, performing the same tests that AD performed for five investigations, and limited tests for the remaining ten investigations.<sup>6</sup>

On September 19, 2007, the OIG met with AD management to discuss the results of this review. At that time, they provided feedback and comments regarding the findings, and indicated some agreement with this review's findings.

## **REVIEW RESULTS**

### **COMPLETENESS**

To assess the completeness of the CUOF Investigations Audit, the OIG reviewed the Audit Report and supporting work papers to ensure that Consent Decree mandates were addressed and that all of the investigations fitting AD's criteria were included in the Audit.

Based on the Department's Annual Audit Plan, the Audit evaluated all required Consent Decree mandates. Regarding the audit population, AD requested from FID a complete population of CUOF investigations completed between October 23, 2006 through February 23, 2007. FID inadvertently excluded three CUOF investigations that should have been included in the sample population that were completed by the Commanding Officer of FID. There was one Officer Involved Shooting (F121-05) completed November 14, 2006, and two LERIs (F108-05 and F112-05) that were completed October 27, 2006 and October 24, 2006, respectively.

### **FINDINGS**

The OIG independently performed the same audit tests performed by AD for our judgmental sample of five investigations and limited tests for the remaining ten investigations. The OIG compared its findings to those reported by AD. As a result of this review, the OIG identified additional concerns that were not included in AD's Audit Report, for which we are reporting by investigation and by objective as follows:

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<sup>5</sup> The OIG selected its sample size of 15 CUOF investigations utilizing a one-tail test, 95% confidence level, expected error rate of 6%, and plus precision of 7%.

<sup>6</sup> Since the OIG UOF Section had previously reviewed all CUOF investigations in great detail, the OIG Audit Section focused its detailed testing on five CUOF investigations that contained higher risk-management concerns, based on the totality of circumstances.

## **F001-06 Law Enforcement Related Injury/Canine Contact**

### **Incident Summary**

The suspect was an admitted gang member who challenged another person regarding gang affiliation. The suspect shot and killed the person, and fled the scene running across the transition lanes on a freeway. A canine search team was called to locate the suspect who was found by the canine hiding under the freeway embankment. The canine chased the suspect, jumped on his back, and effected a bite/hold on the suspect. The suspect was handcuffed while proned on the ground. The suspect alleged the officers, after the arrest, kicked and punched him in the head, back, and stomach. As a result of his allegations, a Complaint Form 1.28 was filed.

### **Objective No. 21 – Adequacy of the Investigation, Consent Decree Paragraph 129d**

The suspect alleged that as he was being taken into custody, an unidentified Special Weapons and Tactics (SWAT) officer punched and kicked him numerous times on the head, back, and stomach. Based on this allegation, OIG believes that FID should have requested Scientific Investigation Division to perform an analysis of the suspect's white sweatshirt for the possibility of scuffmarks from black shoe polish. In the OIG's review of the photographs of the suspect's white sweatshirt, there is indication of dark marks around the arms that could possibly be shoe polish rather than ordinary mud and dirt. This analysis could have been valuable in determining the cause of the suspect's punctured lung injury. This injury could have been caused by the suspect's fall (while fleeing, or from the canine contact), by the alleged punching and/or kicking by officers, or by other factors. (Note: The OIG determined that the subsequent complaint investigation also did not analyze the scuff-marks for the possibility of shoe polish. Audit Division management stated that they did not review this complaint investigation because it was not within their audit scope.)

The OIG was concerned that FID did not interview two sergeants that were the incident commanders at separate command posts. The Department's crib notes of the audit plan is to interview the supervisor who was in a position to have witnessed, directed, or participated in the CUOF, or a supervisor with relevant information about the circumstances surrounding the incident. Although the sergeants were not witnesses to the use of force, these sergeants were directing the incident from the command posts, had relevant information about the circumstances surrounding the canine deployment, and could have had information regarding their observations of the physical condition and visible injuries of the suspect.

Furthermore, the OIG was concerned that AD held the investigation of this LERI/canine contact out of compliance because a witness was not interviewed. In this case, the witness, a California Highway Patrol (CHP) officer, saw the suspect crossing the freeway and associated this with an orbiting LAPD helicopter. The CHP officer told an LAPD officer his observation, and left the scene. Although the OIG agrees that the FID investigator should have documented in the file why the CHP officer was not interviewed, AD should not consider this investigation out of compliance, since the CHP officer did not witness the use-of-force, but merely witnessed the suspect fleeing the crime scene, which the suspect admitted to and numerous witnesses confirmed.

## **F008-06 Law Enforcement Related Injury**

### **Incident Summary**

Officers were called to an apartment for a domestic violence incident between a victim/witness and her boyfriend (suspect). The victim/witness advised the officers that the suspect had no weapons and did not physically assault her, but another witness advised the officers that the suspect had a knife. However, when the officers knocked on the apartment door, the suspect verbally threatened the officers with a gun behind closed doors (the suspect never had a gun). The suspect barricaded himself in the apartment and set it on fire. The officers fired super-sock rounds at the balcony window to clear out the smoke from the burning apartment fire. The suspect was attempting to escape through the burning apartment window when he was shot in the torso and buttocks with the super-sock rounds.

### **Objective Nos. 13 and 16 – Lack of Articulation of the Legal Basis for the CUOF, and Use of Force Conformed with Department Procedures, Consent Decree Para. 128b(iii) and c(ii)**

As previously mentioned, the suspect set fire to his second-story apartment unit. The sergeant ordered the officer to fire one super-sock shotgun round at the suspect who was straddling the windowsill. The suspect was struck in the buttocks. Then the suspect was ordered to go back inside the apartment. The suspect did not comply, and the sergeant ordered the officer to fire a second super-sock round at the suspect, striking him in the torso.

The OIG was concerned that the articulated basis for the firing of two less-than-lethal super-sock rounds was lacking. The sergeant stated the rationale was to prevent the suspect from coming down to the ground to avoid a containment problem, and the suspect was non-responsive to orders, FID Report, page 11. However, the suspect, who was straddling the window, appeared to be trying to escape the fire. The sergeant should have realized the potential for serious injury, if the suspect fell out of the window after being struck with a super-sock round. The refusal to obey the order to go back into a burning apartment may not have been a sign of the suspect being unresponsive, but an attempt to preserve his own life.<sup>7</sup>

### **Objective No. 15 – Underlying Action Was Appropriate and Legal, Consent Decree Paragraph 128f**

The victim/witness was handcuffed and detained for a significant period of time (45 minutes) during the incident. The OIG was concerned that FID investigators did not question the detaining officer about the decision and rationale to handcuff the victim/witness and detain him/her for 45 minutes. Furthermore, the FID investigators did not sufficiently question the victim/witness and other witnesses to determine whether the handcuffing and long detention were justified.

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<sup>7</sup> The Training Bulletin entitled "Beanbag Projectile Shotgun" October 2005 states that the beanbag projectile shotgun is another tool to control or temporarily incapacitate a suspect. The beanbag projectile shotgun may be used on an "aggressive and/or combative individual" who has gone beyond "uncooperative."

## **F010-06 – Officer Involved Shooting**

### **Incident Summary**

A person approached the officers and informed them he had been a victim of an attempted carjacking by a suspect displaying a firearm. The officers searched the surrounding neighborhood and identified the suspect. When the suspect was ordered to stop and keep his hands up above his head, he began running and removed a firearm from his waistband threatening the officer. The officer initially shot two rounds at the suspect, striking him the left torso with the second round. The suspect was arrested without further incident.

### **Objective No. 14 - Other Indicia that the Information Is Not Authentic or Correct, Consent Decree Paragraph 128e**

The OIG was concerned with instances of “leading” questions asked of law enforcement officers suggesting and soliciting the appropriate responses.<sup>8</sup>

## **F027-06 Law Enforcement Related Injury**

### **Incident Summary**

Gang officers were patrolling the neighborhood and spotted a vehicle with expired registration tags. The officers stopped behind the vehicle, and the suspect then immediately exited his vehicle and dropped an off-white substance to the ground. The suspect assumed a combative stance, questioned the stop, stated that he wanted to talk to a captain because of his medical problems, and shouted expletives at the officers. When the suspect reached into his left pants pocket, the officer immediately reacted by grabbing the suspect's left wrist. The suspect and officers engaged in a physical altercation with the officers successful in taking down the suspect who fell on his back onto the pavement. The suspect continued to be combative and wrestled with the officer on the ground. The other officer attempted to spray the suspect with Oleoresin Capsicum (OC). The suspect was able to grab the OC holster and pulled on it tearing it from the officer's belt. The suspect was sprayed with a two-second burst with no effect. The suspect then reached and grabbed the officer's holstered pistol, took hold of the weapon's handle, and pulled on it. While on the floor, the officer hit the suspect with two knee strikes to the head and two knee strikes to the ribs. The suspect was finally handcuffed and arrested.

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<sup>8</sup> Transcript of Tape No. 374618, The investigating officer asked the following questions: “And did you assume the weaver position?” Page 20, Lines 5-6.; “And a sergeant subsequently asked you for a public safety statement as to what occurred? And were you subsequently separated from your partner? And were you ordered not to discuss this incident with anybody? And you were ultimately transported to Newton Station by a supervisor?” Page 35, Lines 2-24; and “In your training and experience as a police officer, people that are armed with guns, do they commit robberies? And in your training as a police officer people that have guns, do they use these guns during the commission of these robberies?” Page 43, Lines 19-25.

**Objective No. 6 – Collect and Preserve Evidence, Consent Decree Paragraph 80f(i)**

Although this incident was originally classified as a non-categorical use of force, OIG was concerned that the officer alleged that the suspect grabbed his holster and pistol, but they were not recovered by FID for testing and finger printing. In FID's Report, they stated that the officer's holster was not examined for latent prints due to the time that passed prior to FID becoming involved and the resulting "probability that the holster was contaminated."<sup>9</sup>

**Objective No. 10 – Completeness, Consent Decree Paragraph 128a**

The OIG was concerned that the Table of Contents indicated that diagrams of the incident location were included with a witness' statement, but they were not attached to the FID Report.<sup>10</sup>

**Objective No. 21 – Adequacy of the Investigation, Consent Decree Paragraph 129d**

The suspect stated in his interview that there were "two Hispanic men" directly across the street in front of a green house who witnessed the use of force. However, the OIG was concerned that these two potential witnesses were not identified and interviewed, and no justification was provided.<sup>11</sup>

**F043-06 Law Enforcement Related Injury**

**Incident Summary**

Officers were patrolling and observed a person that appeared to match the description of the outstanding parolee described during roll call. The officers made a consensual stop and asked permission for a pat-down search. The officer retrieved a package of cigarettes and a credit card bearing a female's name from the suspect's pant pocket. When the officer questioned the suspect, he responded that it was his mother's card. The officer, believing the credit card was stolen, decided to retrieve his handcuffs. As that occurred, the suspect pulled away from the officer and swung his right fist at the officer's face. The suspect ran a short distance, and the officers were able to tackle him from behind and put handcuffs on him. When placing the suspect into the police vehicle, the suspect began struggling and back-kicked at an officer but missed. The officer then placed his arms on the suspect's upper body, and with a leg sweep, dropped the suspect to the ground facedown. A hobble restraint was used to restrain the suspect's legs.

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<sup>9</sup> FID Report, Page 13.

<sup>10</sup> Transcript of Tape No. 388093, Page 17, Lines 3-5.

<sup>11</sup> Transcript of Tape No. 388930, Page 30, Line 21 and Page 31, Line 1, and Tape No. 368275, Page 19, Line 18.

**Objective No. 4 – No Group Interviews, Consent Decree Paragraph 80c**

The OIG was concerned that a 13-year-old boy appeared to be present when his father was interviewed. The OIG concluded this because the father referenced his son's presence in the room during the interview, and the investigator immediately began the interview with the son.<sup>12</sup>

**Objective No. 21 – Adequacy of the Investigation, Consent Decree Paragraph 129d**

During a second interview, a witness stated that his wife and children came in when he was looking at the incident. The FID investigator interviewed the wife about four months after the incident, but the investigation does not indicate whether the investigator attempted to ascertain the names and ages of the children to determine if they were old enough to interview.<sup>13</sup>

**QUALITY**

The OIG evaluated both the Audit and Audit Report for quality. Based on the OIG's review, the Audit was properly planned, supervised, and executed, in that the Audit's methodology allowed for proper and complete assessment of the audit objectives pursuant to Consent Decree mandates. Additionally, the Audit Report delineated the Audit's purpose, population, time period, findings, and the status of prior audit recommendations. The Audit Report used a fair and unbiased tone, and was found to be concise. However, OIG noted that AD did not conduct an exit conference with FID prior to the issuance of the report, which is standard auditing practice.<sup>14</sup>

**CONCLUSION**

Overall, the OIG found the Audit to be complete, and it appears that AD conducted a thorough analysis of the CUOF investigations it audited and their findings were supported. Although the OIG identified a few additional concerns, the OIG does not believe that the overall reported compliance percentages would have been significantly impacted.

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<sup>12</sup> Transcript of Tape No. 352898, Page 4, Lines 11-18. Note that the interview was not conducted by FID, but by the first responding supervisor.

<sup>13</sup> Transcript of Tape No. 417968, Page 12, Lines 19-23

<sup>14</sup> Audit Division conducted an Exit Conference with FID on July 12, 2007.