

**LOS ANGELES POLICE COMMISSION**

*Review of the Department's  
Non-Categorical Use of Force  
Reports Audit (Fiscal Year 2007/08)*



Conducted by the

**OFFICE OF THE INSPECTOR GENERAL**

ANDRÉ BIROTTE, JR.  
Inspector General

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

**PURPOSE**

The Office of the Inspector General (OIG), pursuant to Consent Decree Paragraph 135, reviewed the Department's Non-Categorical Use of Force (NCUOF) Reports Audit (Audit) conducted by Audit Division (AD). The Audit was completed in the Fourth Quarter, Fiscal Year 2007/2008 and received by the OIG on July 1, 2008. The OIG assessed the Audit's completeness, findings and quality.

**BACKGROUND ON AUDIT DIVISION'S AUDIT**

Audit Division conducted its seventh 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(b, c & d), 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 classified and investigated by an uninvolved area supervisor 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 and investigated as Level II.

The Use of Force Review Division (UOFRD) identified 143 NCUOF investigations that were "administratively closed" from September 1, 2007 through April 18, 2008, of which Audit Division reviewed a total of 82 Level I and Level II investigations stratified as follows:

**Audit Division's NCUOF Sample**

<b>Classification</b>	<b>Non-GED</b>	<b>GED<sup>3</sup></b>	<b>Total</b>
Level I	16	2	18
Level II	52	12	64
<b>Total</b>	<b>68</b>	<b>14</b>	<b>82</b>

The Table on the next page contains the compliance rates reported by AD in their Audit report based on each objective comparing the prior year 2006/2007 with the current year 2007/2008.

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<sup>1</sup> A NCUOF incident 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 audio-recorded or summarized.

<sup>3</sup> In its report, AD provided separate compliance rates for Department-wide and Gang Enforcement Detail (GED).

Review of the Department’s Non-Categorical Use of Force Reports Audit

**TABLE NO. 1 – AUDIT DIVISION’S COMPLIANCE RATES BY OBJECTIVES AND CD ¶<sup>4</sup>**

Obj. No.	CD ¶	Description	2006/2007		2007/008	
			Incidents & %		Incidents & %	
<b>Completeness</b>						
1	128	Evaluation of Completeness	76/78	97%	82/82	100%
<b>Authenticity</b>						
2a	128	Evaluation for Inappropriate Canned Language/Copy & Paste	<b>56/78</b>	<b>72%</b>	82/82	100%
2b	128	Evaluation for Inconsistent Information	75/78	96%	<b>75/82</b>	<b>91%</b>
2c	128	Evaluation for Articulation of Legal Basis	78/78	100%	82/82	100%
2d	128	Evaluation for Information Not Authentic	78/78	100%	82/82	100%
2e	128	Investigator's Documentation of Inconsistencies	77/78	99%	72/75	96%
<b>Underlying Actions</b>						
3	128	Evaluation of Underlying Actions	78/78	100%	82/82	100%
<b>Supervisory Oversight</b>						
4a	128	Evaluation of At-Scene Supervision	10/10	100%	82/82	100%
4b	128	Evaluation of Post-Incident Supervisory Review	<b>59/78</b>	<b>76%</b>	79/82	100%
4c	128	Watch Commander’s Insight	4	4	<b>48/82</b>	<b>59%</b>
4d	128	Approval of Reports by the Investigating Supervisor	4	4	<b>75/82</b>	<b>91%</b>
<b>Evaluation of Investigations</b>						
5a	68, 129(a)	Analysis of Relevant Documents	78/78	100%	82/82	100%
5b	68	Identification of Witnesses	77/78	99%	79/82	96%
5c	68	Required Information on Level I Cases	4	4	<b>16/18</b>	<b>89%</b>
5d	68	Required Information on Level II Cases	4	4	<b>58/64</b>	<b>91%</b>
<b>Management Oversight</b>						
6a	69	Review at the Area and Bureau Levels	<b>72/78</b>	<b>92%</b>	<b>76/82</b>	<b>93%</b>
6b	69	Timeliness of Review of Investigation	76/78	97%	82/82	100%
<b>Completeness of Evidence Documentation</b>						
7	129(b)	Review of Appropriate Evidence and Documentation	75/78	96%	<b>76/82</b>	<b>93%</b>
<b>Evaluation of Statements</b>						
8	129(c)	Evaluation of Investigator’s Representation of Statements	4	4	71/75	95%
<b>Adequacy of the Investigation</b>						
9a	80(c)	Prohibiting Group Interviews	78/78	100%	80/82	100%
9b	80(e)	Interviewing All At-Scene Supervisors	<b>9/11</b>	<b>82%</b>	<b>6/7</b>	<b>86%</b>
9c	80(f)	Collecting and Preserving Evidence	<b>69/78</b>	<b>88%</b>	78/82	95%
9d	80(f)	Canvassed the Area to Locate Witnesses	<b>67/78</b>	<b>86%</b>	<b>74/82</b>	<b>90%</b>
9e	80(f)	Photographs of Employee Injuries or the Lack Thereof	4	4	<b>56/82</b>	<b>68%</b>
9f	129(d)	Proper Classification of Investigation	4	4	73/75	97%
10	82	Reporting Allegations of Additional Misconduct	77/78	99%	<b>11/12</b>	<b>92%</b>
11	65	Notifying the Department without Delay	4	4	80/82	98%

<sup>4</sup> A change in methodology precludes a direct comparison to last year’s audit. Furthermore, the population sample for each objective is based on the sample of investigations with the specific attribute of the objective. Note that out of compliance objectives (less than 95 percent) for both years are bolded.

12	129(d)	Adjudication/Findings of the Force Used	4	4	<b>77/82</b>	<b>94%</b>
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**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>5</sup> The OIG randomly selected a sample of 24 NCUOF investigations stratified as follows:

**OIG’s NCUOF Sample**

<b>Classification</b>	<b>Non-GED</b>	<b>GED</b>	<b>Total</b>
Level I	4	2	6
Level II	15	3	18
<b>Total</b>	<b><u>19</u></b>	<b><u>5</u></b>	<b><u>24</u></b>

On September 30, 2008, the OIG met with AD management to discuss the results of this review, and AD generally agreed with the issues raised. Disagreements are identified in the Findings section of this Report.

**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(b, c & d), and 131(a, c & e). Additionally, the OIG determined that AD selected from a complete population.

**FOCUS POINTS AND FINDINGS**

The OIG reviewed 24 NCUOF investigations and determined that AD adequately identified and reported all relevant issues and that all reported issues were valid, except that the OIG disagreed with three of the findings that AD reported. Details of these disagreements are provided in the *Findings* section of this report.

Also, the OIG noted that AD reported low compliance rates of 59 percent for Objective No. 4c - Watch Commander’s Insight, and 68 percent for Objective No. 9e - Photographs of Employee Injuries or the Lack Thereof. Our comments relative to those issues are addressed in the *Focus Points* section of this report.

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<sup>5</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.

## **FOCUS POINTS**

### **Objective No. 4c: Watch Commander's Insight - CD ¶128**

#### **General Discussion**

Audit Division reported for Objective No. 4c that the Department was out of compliance at 59 percent (48/82). According to AD's Report, "Each finding either lacked the specificity necessary to determine which officer actions were assessed, or applications of force used by the officer were not addressed." This issue was also raised by AD in its 2006/2007 NCUOF Reports Audit, and to address this audit issue, Chief of Staff Notice 2.2.6 was issued October 19, 2007, which states:

*"Due to a recent audit conducted by the Audit Division, a recommendation was made to provide additional directions for completing the Watch Commander Insight. The watch commanders are reminded that they need to evaluate the force options utilized by each officer and determine if it is reasonable based on the actions of the suspect."..... EXAMPLE: "I have reviewed the investigation and related reports and determined that the firm grip, takedown, and bodyweight used by the officer was reasonable based on the suspect's aggressive actions towards the officer....."*

Audit Division and the OIG interpreted this Notice to mean that each force option applied by an officer should be itemized in that officer's Watch Commander's Insight narrative, as in the aforementioned example (e.g. firm grip, takedown, and bodyweight) in the Notice. In contrast, UOFRD advised that since each force option applied by an officer is already itemized in that officer's Internal Process Report table, it is not necessary to also itemize the force options applied by the officer in that officer's Watch Commander's Insight narrative.

**Recommendation:** The OIG recommends that the requirements of Chief of Staff Notice 2.2.6 dated October 19, 2007 be clarified as to whether each force option applied by an officer should be itemized in that officer's Watch Commander's Insight narrative.

### **Objective No. 9e: Photographs of Employee Injuries or the Lack Thereof - CD ¶80f**

Audit Division reported for Objective No. 9e that the Department was out of compliance at 68 percent (56/82), and recommended that Department-wide training be provided to ensure supervisors understand the requirements set forth in Special Order No. 13, 2004, which are that photographs shall be taken of visible injuries, or the lack thereof, incurred by the involved Department employee(s) if: (1) relevant to the use of force, or (2) when a criminal filing for a crime against a peace officer will be sought.

In interpreting the aforementioned requirements for (2) above, AD's position has been that photographs should always be taken of Department employees involved in a NCUOF incident whenever the suspect is charged with California Penal Code Sections 148 (resisting, delaying or obstructing a peace officer in discharge of his/her duties) or 243 (battery against a peace officer).

Use of Force Review Division, in contrast, verbally advised the OIG that they do not believe that photographs of officers should be required whenever the suspect is charged with California Penal

Code Sections 148 or 243. They believe that photographs should be required only when there are visible injuries to the involved officer(s). However, UOFRD acknowledged that Department policy has not been clear on this matter and should be clarified/revised.

The OIG in its testing observed that AD applied Department policy as currently written, which the OIG believes was the prudent thing to do. The OIG also agrees with UOFRD that the policy should be clarified/revised, given the apparent misunderstanding and/or confusion relative to the Special Order's requirements. However, the OIG notes that in addition to requiring photographs when there are visible injuries to the involved officer(s), photographs should also be taken when the suspect and/or public witnesses allege additional force by an officer that the officers did not self report, so as to help prove or disprove these allegations.

### **FINDINGS**

#### **Objective No. 9c: Collecting and Preserving Evidence - CD ¶80(f)**

Audit Division reported for Objective No. 9c that the Department was 95 percent (78/82) compliant. Each investigation was reviewed to determine if appropriate evidence was collected, preserved, and properly documented. Audit Division determined that one investigation was out of compliance because the suspect's alcoholic beverage containers were not photographed and collected as evidence. The OIG disagreed with AD because it is our understanding that normal police practices would not require photographing or collecting as evidence alcoholic beverage containers when arresting suspects for driving under the influence (DUI) or drinking in public. Had AD deemed this investigation to be compliant, the compliance rate would have increased to 96 percent (79/82). The details of the investigation are as follows:

#### **NCUOF No. 2006267**

Audit Division reported this investigation as out of compliance because a beer can was not photographed and collected as evidence. For this incident, the use of force occurred in the "holding tank" of the area station while awaiting transport of the suspect to jail. The suspect was originally taken into custody near a liquor store parking lot, and arrested for resisting arrest, providing false information, and drinking in public. The drinking in public appears to be a relatively minor charge and was not the primary violation. Therefore, there is no reasonable expectation for the investigating supervisor to go to the field to photograph and collect the beer container that was not relevant to the use of force that occurred in the holding tank.

#### **Objective No. 10: Reporting Allegations of Additional Misconduct - CD ¶82**

Audit Division reported for Objective No. 10 that the Department was out of compliance at 92 percent (11/12). Each investigation was reviewed to determine if the investigating supervisor examined the incident for officer misconduct. The OIG disagreed with the finding for one investigation reported by AD that would have increased the compliance rate to 100 percent (12/12). The one investigation is as follows:

### **NCUOF No. 2005822**

For this GED NCUOF Level I investigation, AD concluded that the suspect's allegation of excessive force (officer put his/her foot on suspect's head) was not addressed by the Commanding Officer during the review process. Hence, AD deemed this investigation to be out of compliance with Consent Decree Paragraph 82.

However, the OIG noted that this excessive force allegation was adequately addressed by the investigating supervisor in the interviews of the witnesses and officers, as they were specifically questioned about the allegation that the officer put his/her foot on the suspect's head. Furthermore, the excessive force allegation by the suspect does not represent additional misconduct as defined in Consent Decree Paragraph 82:

*"If during the course of any investigation of a Categorical Use of Force, Non-Categorical Use of Force, or complaint, the investigating officer has reason to believe that misconduct may have occurred other than that alleged by the complainant, the alleged victim of misconduct, or the triggering item or report, the investigating officer must notify a supervisor, and an additional complaint form 1.28 investigation of the additional misconduct shall be conducted."*

### **Objective No. 12: Reporting Adjudication/Findings of the Force Used - CD ¶129(d)**

Audit Division reported for Objective No. 12 that the Department was out of compliance at 94 percent (77/82). The investigations were reviewed to determine if the final adjudication/finding for the use of force investigation was adequately supported. The OIG disagreed with the finding for one investigation reported by AD that would have increased the compliance rate to 95 percent (78/82). The one investigation is as follows:

### **NCUOF No. 2006102**

Audit Division held this investigation out of compliance because the adjudication/findings table immediately below the Watch Commander's insight did not include an adjudication for each force option applied. However, in the Watch Commander's Insight, there was an incident summary detailing the rationale, all of the force options applied by the involved officer, the supervisor's conduct of the investigation, and the classification that the investigation be classified "In Policy/No Action." Additionally, the adjudication/findings tables were completed by all the remaining adjudicators (Patrol Commanding Officer, Area Commanding Officer, Bureau Commanding Officer, and UOFRD Commanding Officer), who all adjudicated each force option applied as "In Policy/No Action."

## **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.

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, the OIG noted that AD and UOFRD did not hold an audit closing meeting prior to completion of the Audit.

### **CONCLUSION**

Overall, the OIG determined that the Audit was properly planned, conducted and supervised. Although the OIG noted that AD should not have reported three findings, this would not have affected the Consent Decree compliance determinations, except for two objectives. For Objective No. 10 - Reporting Allegations of Misconduct, the reported compliance rate would have been 100 percent (compliant) instead of 92 percent (out of compliance); and for Objective No. 12 - Adjudication/Findings of the Force Used, the reported compliance rate would have been 95 percent (compliant) instead of 94 percent (out of compliance).

### **RECOMMENDATION**

**Recommendation:** The OIG recommends that the requirements of Chief of Staff Notice 2.2.6 dated October 19, 2007, be clarified as to whether each force option applied by an officer should be itemized in that officer's Watch Commander's Insight narrative.