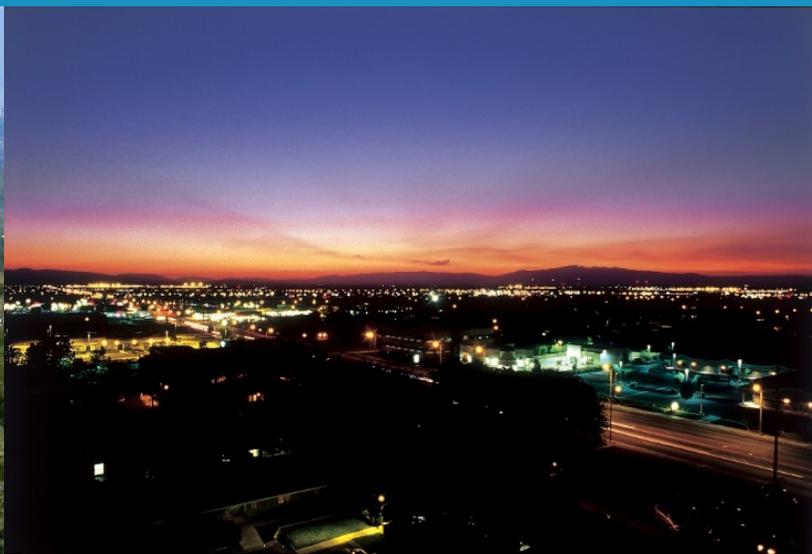
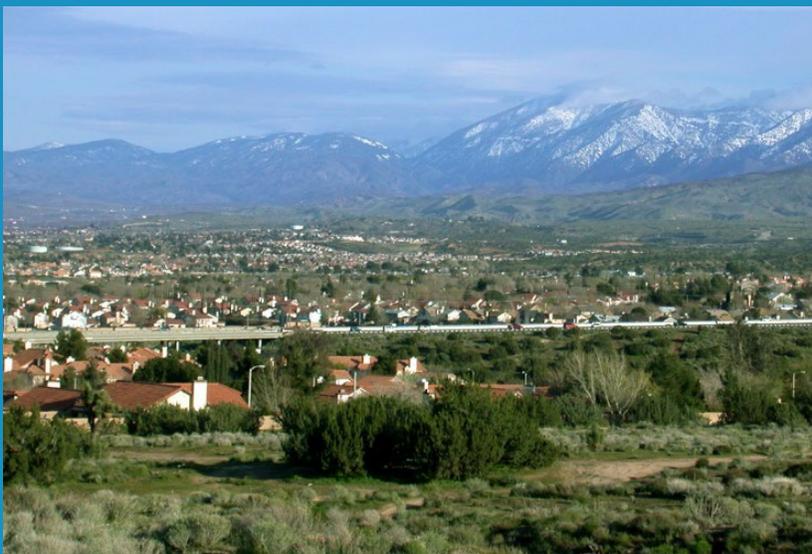


**Antelope Valley Monitoring Team  
Audit of Uses of Force Adjudicated by the  
LASD Executive Force Review Committee**



**November 2019**

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## EXECUTIVE SUMMARY

### PURPOSE

On April 28, 2015, the United States Department of Justice (DOJ) and Los Angeles County Sheriff's Department (LASD or the Department) entered into Settlement Agreement (SA) governing the way in which the Department provides law enforcement services to communities in the Antelope Valley.<sup>1</sup> The SA includes numerous requirements associated with the use of force (UOF). That includes the avoidance and de-escalation of force when possible, prompt reporting of use-of-force incidents, thorough and independent investigations, and adjudication based on a preponderance of evidence. The SA requires that the Monitoring Team (MT) conduct regular compliance audits to assess the manner in which the Department is complying with the SA's mandates.

In October 2018, Monitors submitted an "Antelope Valley Monitoring Team Use-of-Force Audit." That audit thoroughly examined the way in which AV supervisors and managers investigated and adjudicated Category 1 and 2 uses of force.<sup>2</sup> However, only one Category 3 use of force occurred during the three-month audit period, which was insufficient to draw reliable conclusions on those high-risk incidents. So, the Monitors initiated a supplemental audit using an expanded time period so that sufficient numbers of Category 3 uses of force could be audited to evaluate the Department's compliance with SA Paragraph 114:

*"LASD agrees to continue to require that the Executive Force Review Committee [EFRC] review use of force incidents requiring response by the Internal Affairs Bureau [IAB] Force/Shooting Response Team under current policy, and to review the incidents for any policy, training, or tactical concerns and/or violations."*

This executive summary provides a brief overview of the audit's scope, population, methodology, and key findings. It does not provide detailed information supporting every finding nor does it contain any information not provided in the full report. A full understanding of this audit can only be obtained by thoroughly reading the full report that immediately follows the executive summary.

### SCOPE

The Department separates uses of force into three categories based on the type of force used and resulting injury sustained by the subject of the force. The less-serious Category 1 and 2 cases are investigated and adjudicated at the station and Division levels. The MT's October 2018 UOF audit documented the Department's level of compliance for those two categories. The scope of this supplemental audit is to evaluate the more serious Category 3 cases. Specifically, this audit evaluates IAB's investigation and the EFRC's adjudication of those incidents to assess their compliance with SA requirements and Department policy.

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<sup>1</sup> Settlement Agreement, No. CV 15-03174, United States v. Los Angeles County et al. (D.C. Cal. Apr. 28, 2015).

<sup>2</sup> Category 1 and 2 uses of force are investigated and adjudicated at the station and division level while the more serious Category 3 incidents are investigated by IAB and adjudicated by the EFRC.

This audit did *not* assess Category 3 incidents occurring in the AV that involved deputies from non-AV commands. The Monitors and DOJ remain in disagreement with the Department as to whether or not the SA applies to deputies from non-AV commands, such as Gang and Narcotics Units who work out of AV stations but who report to command staff outside of AV, and to deputies in specialized units, such as K-9 and SWAT who respond to high-profile incidents in the AV. Until those issues are resolved, the MT cannot conclusively determine compliance on this audit's objectives. Therefore, the findings in this audit are to be considered preliminary.

## **POPULATION AND METHODOLOGY**

Auditors selected an audit time period from January 1, 2015, through March 31, 2018. Twenty Category 3 uses of force involving AV deputies occurred during that period, 13 of which had been adjudicated by the EFRC.<sup>3</sup> All 13 of those cases were audited, so sampling was not utilized. Each investigation was reviewed by at least two MT auditors to determine whether:

- The force used was necessary, proportional, objectively reasonable, and in response to behavior that posed a threat to the deputy or public safety (Paragraphs 102, 104–106g);
- Efforts were made whenever possible to use advisements, warnings, and persuasion to defuse and de-escalate evolving situations and resolve them without using force (Paragraph 103);
- The force used involved a hard strike to the head with an impact weapon in an incident that did not justify the need for deadly force (Paragraph 107);
- Force incidents were accurately reported to a supervisor in a timely manner (Paragraphs 108–110);
- The use of force was thoroughly investigated (Paragraphs 111–112);
- The EFRC provided complete reviews of Category 3 UOF incidents that required response by the IAB Force/Shooting Response Team including review for policy, training, and tactical concerns (Paragraph 114);
- Complaints of deputy misconduct were investigated and adjudicated (Paragraphs 127, 130–131, 133, 142 partial);
- The findings and conclusions were supported by a preponderance of evidence (Paragraph 113);

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<sup>3</sup> Originally 14 cases were included in the audit, but it was determined that one case was actually part of another case, so those two cases were combined, resulting in 13 actual Category 3 incidents.

- Effective management oversight was occurring, including holding deputies accountable for policy violations and supervisors accountable for not adequately investigating force that was unreasonable or otherwise contrary to Department policy and/or the law (Paragraph 115, 116 and 118); and,
- Information was recorded correctly on the forms and in the Performance Recording and Monitoring System (PRMS) (Paragraph 142 partial).

### **COMPLIANCE METRICS**

On August 1, 2019, the Department, DOJ, and the Monitors finalized the compliance metrics for the SA's UOF paragraphs. Those qualitative and quantitative compliance measures were used to determine the Department's level of compliance with each objective.

### **EXECUTIVE FORCE REVIEW COMMITTEE**

The EFRC evaluates every shooting and force incident requiring activation of IAB's Force/Shooting Response Team. Homicide Bureau also responds when the incident involves an in-custody death or a deputy-involved shooting resulting in someone being shot. Homicide Bureau's criminal investigation takes precedence, so IAB's investigation is usually held in abeyance while Homicide Bureau conducts its investigation.

The EFRC comprises three commanders, one of whom is designated as the chair. Membership is assigned by the Sheriff as a collateral duty. The EFRC makes its finding on:

1. Tactics, including de-escalation if warranted;
2. Whether the force itself was consistent with Department policy;
3. A policy finding when a vehicular or foot pursuit was involved; and
4. Any other policy violations not related to the above.

The EFRC also makes a recommendation on any allegation of misconduct that is related to the EFRC's responsibility.

The completed case along with a memo documenting the EFRC's recommendations are forwarded to the involved employee's unit commander. The file is processed by the unit commander and then the division chief, and it is eventually returned to the Professional Standards Division. EFRC staff forwards the case to the Discovery Unit for input into PRMS.

### **SUMMARY OF CASES**

Chapter IX of the full report provides a detailed description of each Category 3 use of force in this audit.

## **AUDIT FINDINGS**

### **The Use of Force**

The Department is in compliance with SA Paragraphs 106g (recording law enforcement activity) and 107 (head strikes with an impact weapon). There were no cases that violated those provisions.

The Department is out of compliance with SA Paragraphs 102 (use of objectively reasonable force) and 104 (force used for resistive behavior). Two cases violated those standards resulting in a compliance rate of 85%, which is below the 95% standard agreed upon by the Parties.

The Department is out of compliance with SA Paragraph 105 (prohibited use of retaliatory force). In one case, the suspect clearly alleged the deputy used retaliatory force, and the Department completely ignored that allegation. Whether or not the allegation was true, ignoring it hardly constitutes "explicitly prohibiting the use of retaliatory force."

### **Avoiding Force and De-Escalation**

The Department is out of compliance with SA Paragraph 103 (de-escalation). In two cases, at least one deputy failed to utilize advisements, warnings, and verbal persuasion when the opportunity was available, and in those same two cases at least one deputy failed to decrease the UOF as resistance decreased. This resulted in a compliance rate of 85%, which is below the 95% standard agreed upon by the Parties.

### **Reporting Uses of Force**

The Department is in compliance with the requirements of SA Paragraphs 108 (partial) and 110, which require timely notification to a supervisor whenever an employee is involved in or is witness to a reportable UOF. In every case (100%), a field supervisor was notified as soon as was practical.

### **Completion of Reports**

The Department is out of compliance with the requirements of SA Paragraphs 108 (partial) and 109. The substantial errors in the reports prepared by deputies in two cases were determined to be critically deficient because they rendered those reports unreliable. Those shortcomings should have been identified and addressed by Department managers, but they were not. That resulted in a compliance rate of 85%, which is below the 95% standard agreed upon by the Parties.

### **Use-of-Force Investigations**

The Department is in compliance with SA Paragraph 111a, which requires that a supervisor respond to the scene and ensure the suspect received medical care, and with Paragraphs 111b–d, which require that the investigator collect evidence, canvas and interview witnesses and collect statements from witness deputies. The Department complied with these requirements in each of the cases audited.

The Department is out of compliance with SA Paragraph 111e, which requires that the investigator review all deputy UOF statements for adequacy, accuracy, and completeness. In two cases, the deputy's report was inconsistent with the evidence and neither deputy was confronted with that inconsistency. This resulted in a compliance rate of 85%, which is below the 95% standard agreed upon by the Parties.

### **Uses of Force With Alleged Misconduct**

The Department is out of compliance with the requirements of SA Paragraphs 127, 130, 131, 133, and 142, which require the intake, investigation, adjudication, and recordation of all personnel complaints made by the public. Four UOF cases contained public allegations of misconduct, one of which was addressed in the investigation. The remaining nine cases in the audit population did not contain allegations of misconduct. That resulted in three cases with unaddressed allegations of misconduct, for a compliance rate of 77%, well below any reasonable standard that may be established.

### **Management Oversight**

The Department is out of compliance with SA Paragraphs 113 (partial), 114, 115, and 116. In four cases the adjudication contained critical deficiencies, for a compliance rate of 69%, which is below the agreed-upon compliance standard of 95% for critical deficiencies. In three other cases there were non-critical deficiencies, for a compliance rate of 77%, which is below the agreed-upon standard of 85%. Monitors were very concerned that one case in which the force was not objectively reasonable appears to have been misplaced and has never been adjudicated by the Department.

### **Directed Training**

The Department is out of compliance with SA Paragraphs 118, reviewing and tracking training, and 167, recording training in the Department's Learning Management System (LMS). There were three cases in which the EFRC directed that deputies receive training. The training was provided in two of those cases for a compliance rate of 67%, which is below any standard that may be agreed to by the Parties and MT.

**Recordation of Data**

The Department is in compliance with SA Paragraph 112 requiring the investigating supervisor to accurately complete a "Supervisor's Report on Use of Force. That report was completed accurately for 12 of the cases; one case mixed up which deputies used which control holds. However, all involved deputies were accounted for using force, and the particular control holds were similar in nature.

The Department is out of compliance with SA Paragraph 142, requiring accurate data entry into PRMS. Half of the Category 3 uses of force had not yet been entered into PRMS at the time the audit fieldwork began.

## I. DEPARTMENT OF JUSTICE—CIVIL RIGHTS DIVISION INVESTIGATION

In August 2011, the Department of Justice's (DOJ) Civil Rights Division began its investigation into allegations that the Los Angeles County Sheriff's Department (LASD) engaged in unconstitutional policing at the Lancaster and Palmdale Stations in the Antelope Valley (AV). In its June 28, 2013, findings letter, the DOJ concluded that LASD's Antelope Valley stations *"have engaged in a pattern or practice of discriminatory and otherwise unlawful searches and seizures, including the use of unreasonable force, in violation of the Fourth Amendment, the Fourteenth Amendment, and Title VI,"* and that deputies assigned to Lancaster and Palmdale Stations:

*... use unreasonable force against handcuffed detainees who do not pose threats to the deputies or to the public. Notably, the vast majority of the use of force incidents that involved handcuffed subjects were against people of color. While most of these incidents appeared contrary to LASD policy, some LASD policies and practices appear to permit and even encourage deputies to use force that is out of proportion to the threat of harm presented.*

Finally, the DOJ expressed concern with the AV deputies' use of unreasonable head and face strikes on handcuffed individuals:

*Punches to the head or face can cause severe injuries to the individual, and additionally carry a high risk of injury to the deputy using such force. Deputies should only use this extremely dangerous level of force where lower force levels are not available or are ineffective, especially when the individual is already handcuffed and less severe use of force alternatives are available. See Graham, 490 U.S. at 396. LASD's Deputy Field Operations Manual and Defensive Tactics Manual state that "personnel are discouraged from striking an attacker's head with a fist," and encourages deputies "to use an open hand palm heel strike to lessen the potential of cutting injuries."*

The DOJ acknowledged that the LASD policies reviewed were, “for the most part, consistent with constitutional policing.” However, its investigation determined that those policies were not consistently followed and that some types of policy violations were routinely tolerated:

*This tolerance for misconduct occurs in part because the accountability measures LASD has in place are not effectively implemented in the Antelope Valley. We found that LASD must do more to ensure that deputies adhere to policies, and that supervisors and commanders provide appropriate redirection, guidance, and accountability when errant conduct occurs. . . . We found deficiencies in how the Antelope Valley stations implement the use of force review systems that LASD has put in place, deficiencies that compromise LASD's ability to effectively respond to problematic uses of force by Antelope Valley deputies. While LASD supervisors in the Antelope Valley appeared willing to offer guidance or mild critiques of officer uses of force, we found a pattern of reluctance to hold deputies accountable even when they commit serious violations of LASD policy, including significant uses of unreasonable force.*

## **II. SETTLEMENT AGREEMENT**

On April 28, 2015, the DOJ and the LASD entered into a Settlement Agreement (SA) with the goal of ensuring that police services are delivered to the people of Lancaster, Palmdale, and the surrounding unincorporated areas in a manner that fully complies with the Constitution and laws of the United States, effectively ensures public and deputy safety, and promotes public confidence in the Department and its deputies. Included in that document are several definitions pertaining to the use of force (UOF) as well as several paragraphs enumerating the specific objectives to be achieved. Specifically, SA Paragraphs 102 through 118 address UOF policy and principles as well as the manner in which the Department is required to report, investigate, and review each UOF. The full text of those paragraphs is provided under the relevant objective in the Audit Objectives and Findings section of this report. Additionally, several other SA

paragraphs, such as those governing public complaints and audits, are also included in the relevant objectives.

### **III. PURPOSE OF AUDIT**

On November 6, 2018, the Monitors completed an audit of AV UOF investigations, which was presented and discussed with the Department, county counsel, and DOJ representatives.

The audit report was published on the Monitors' public website:

<http://antelopevalleysettlementmonitoring.info/>.

The audit population for that engagement consisted of uses of force that occurred in the Antelope Valley from January 1 through March 31, 2017. That population contained only one Category 3 UOF.

*Note:* As explained in the following chapter, Category 3 cases are the most serious uses of force and include deputy-involved shootings, serious bodily injury, and death. They are investigated by the Internal Affairs Bureau (IAB) and adjudicated by the Executive Force Review Committee (EFRC).

The Monitors could not draw reliable conclusions about the quality of IAB's investigation of AV deputies' uses of force and/or the EFRC's review of those investigations for policy and SA compliance based on a single case. Therefore, this follow-up audit was conducted to evaluate SA compliance for Category 3 uses of force occurring in the AV. This audit used an expanded time period to ensure there were sufficient Category 3 uses of force to reach reliable conclusions regarding the way in which the AV's most serious uses of force are investigated and adjudicated.

#### IV. SCOPE OF AUDIT

The scope of this audit is to evaluate the completeness of IAB's investigations into AV deputy uses of force, and the EFRC's evaluation of those investigations for compliance with SA and Department policy requirements.

The Department separates uses of force into three categories based on the type of force used and resulting injury sustained by the subject of the force. The less serious Category 1 and 2 cases are investigated and adjudicated at the station and Division levels. The Monitoring Team's recent UOF audit documented the Department's level of compliance for those two categories. The scope of the current audit is to evaluate the more serious Category 3 cases, which include the following.<sup>4</sup>

- All shootings in which a shot was intentionally fired at a person by a Department member.
- Any type of shooting by a Department member that results in a person being hit.
- Force resulting in admittance to a hospital.
- Any death following a UOF by any Department member.
- All head strikes with impact weapons.
- Kick(s), delivered from a standing position, to an individual's head with a shod foot while the individual is lying on the ground/floor.
- Knee strike(s) to an individual's head deliberately or recklessly causing their head to strike the ground, floor, or other hard, fixed object.
- Deliberately or recklessly striking an individual's head against a hard, fixed object.
- Skeletal fractures, with the exception of minor fractures of the nose, fingers, or toes, caused by any Department member.

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<sup>4</sup> See LASD Manual of Policy and Procedures (MPP) 3-10 Force Policy.

- All canine bites.
- Any force that results in a response from the IAB Force/Shooting Response Team, as defined in the LASD Manual of Policy and Procedures (MPP) 3-10/130.00 Activation of the IAB Force/Shooting Response Teams.

Depending on the type of force used, Category 3 uses of force are either investigated by IAB's Force/Shooting Response Team or jointly by the IAB Force/Shooting Response Team and Homicide Bureau investigators. If there are indicia of criminal culpability on the part of a deputy, a criminal investigation is conducted by the Internal Criminal Investigations Bureau (ICIB). Once the criminal investigation is completed and the district attorney's office has made a prosecutorial decision, IAB conducts an administrative investigation. When the investigation is complete, it is adjudicated by the EFRC. (A detailed description of this process is provided in Section VIII.)

Settlement Agreement Paragraph 114 requires that LASD "continue to require that the Executive Force Review Committee review use of force incidents requiring response by the IAB Force/Shooting Response Team under current policy, and to review the incidents for any policy, training, or tactical concerns and/or violations." That standard is also contained in the MPP, which requires of the EFRC's findings report document that "issues concerning tactics, training, and/or policy revisions shall be cited and a memorandum forwarded to the appropriate Department unit/bureau for consideration."<sup>5</sup>

This audit assessed the extent to which those requirements are being achieved and is submitted as partial documentation of the Monitors' responsibilities under the SA.

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<sup>5</sup> MPP 3-10/140.00 Executive Force Review Committee.

- The Monitor will assess the County's progress in implementing, and achieving compliance with, the Agreement; report on the status of implementation to the Parties and the Court. (Paragraph 146)
- In order to assess and report on LASD's implementation of this Agreement and whether implementation is resulting in constitutional policing, the Monitor shall conduct compliance reviews and audits and outcome assessments. (Paragraph 148)
- The Monitor shall conduct compliance reviews or audits as necessary to determine whether LASD has implemented and continues to comply with the material requirements of this Agreement. (Paragraph 149)
- The monitor will conduct an ongoing review and report on LASD use of force on restrained individuals, use of force in response to spitting, and use of OC spray. (Paragraph 151)

#### **A. Non-AV Commands**

Three non-AV LASD commands have personnel working full time out of the AV stations: Operation Safe Streets (gangs), the Narcotics Bureau, and the Community Partnerships Bureau. There are also three non-AV commands with a regular presence in the AV but which do not have personnel working out of an AV station: the Court Services Division, the Countywide Services Division (county building security), and the Transit Services Bureau. Additionally, a variety of specialized units such as K9 and SWAT deploy personnel to the scene of incidents that require their expertise.

As discussed in detail in the Monitors' previous UOF audit, the Parties disagree whether the SA provisions apply to deputies from non-AV commands. In this audit, the auditors determined that at least four Category 3 uses of force occurred during the audit period involving K9 and/or SWAT personnel. We are in the process of identifying all uses of force occurring during the audit period that involved personnel from non-AV commands, and that

information will be used to facilitate the discussion regarding the SA's applicability to those entities. But until this issue is resolved, uses of force involving deputies from non-AV commands were not included in this audit.

**Recommendation 1: As was recommended in the first UOF audit, the Parties to the Settlement Agreement need to resolve the issue of whether the SA provisions apply to auditable events occurring in the AV involving deputies from non-AV commands.**

## **V. AUDIT METHODOLOGY**

Auditors conducted interviews with LASD's Compliance Unit staff to discuss the audit's scope, objectives, and methodology and to arrange access to the personnel and records needed to complete this engagement. Auditors developed an audit matrix, checklists, spreadsheets, and other assessment documents to collect pertinent data on each UOF investigation in the audit population. Auditors evaluated completed Category 3 UOF investigations involving AV deputies that occurred during the audit time period that had been adjudicated by the EFRC. Each investigation was reviewed by at least two auditors, and all the audit work papers were cataloged and memorialized. Auditors then compared the audit findings to the Settlement Agreement's mandates. Specifically, the audit assessed whether:

- The force used by AV deputies was necessary, proportional, objectively reasonable and used in response to behavior that posed a threat to the deputy or public safety (Paragraphs 102, 104–106g);
- Efforts were made whenever possible to use advisements, warnings, and persuasion to defuse and de-escalate evolving situations and resolve them without using force (Paragraph 103);

- The force used involved a hard strike to the head with an impact weapon in an incident that did not justify the use of deadly force (Paragraph 107);
- Force incidents were accurately reported to a supervisor in a timely manner (Paragraphs 108–110);
- The UOF was thoroughly investigated (Paragraphs 111–112);
- Complaints of deputy misconduct were investigated and adjudicated (Paragraphs 127, 130–131, 133, 142 partial);
- The findings and conclusions were supported by a preponderance of evidence (Paragraph 113);
- The EFRC provided complete reviews of Category 3 UOF incidents that required response by the Internal Affairs Bureau (IAB) Force/Shooting Response Team including review for policy, training, and tactical concerns (Paragraph 114); and,
- Effective management oversight of the UOF was occurring, including holding deputies accountable for force trends and policy violations, and supervisors accountable for not detecting, adequately investigating, or responding to force that was unreasonable or otherwise contrary to Department policy and/or the law. (Paragraphs 115–118)

Subsequent MT use of force audits will assess the Department’s compliance with SA 117, which requires AV Unit Commanders to address use-of-force trends, which includes any trends identified in this audit.

Settlement Agreement Paragraphs 141, 142, and 143 include numerous requirements for LASD associated with the development, implementation, and analysis of PPI/PRMS data, which are beyond the scope of this audit. The scope of this audit includes partial analysis of SA Paragraph 142 and its requirements associated with the accurate data collection and input of use-of-force data and criminal obstruction arrests that involve the use of force by AV deputies.

During this engagement, auditors experienced an unusual delay in the Department’s response to some of the auditors’ requests for materials pertaining to the 13 cases to be

audited. The auditors received documents that referred to myriad supporting materials, such as video and audio recordings and photographs, that were not included with the materials provided. On May 18 and 19, auditors made additional requests for materials that should have been provided in the first place. On July 19, auditors received materials that altered their findings and changed Audit No. 5 from compliant to non-compliant. One of the video recordings of the use of force in Audit No. 7, was not made available to auditors until September 9, 2019. These issues delayed the completion of the audit and were discussed with the Department.

## **VI. AUDIT POPULATION**

Auditors met with the Compliance Unit and utilized the Department's Personnel Review Management System (PRMS) to identify all Category 3 uses of force involving AV personnel over the past several years. It was clear that Category 3 uses of force are a relatively rare occurrence in the AV, so a multiyear audit period was required to ensure sufficient cases were evaluated. It was also found that the Department routinely holds an administrative investigation in abeyance until any related criminal investigation is completed and the prosecutor has decided whether to file charges. This can result in a lengthy time period between the occurrence and EFRC adjudication, particularly when the incident is a deputy-involved shooting.

After reviewing the data, auditors determined the time period from January 1, 2015, through March 21, 2018, provided a sufficient population of Category 3 UOF cases. Most of the cases that occurred during that period had been investigated and reviewed by the EFRC. It also

provided ample time for the Department to respond to the EFRC findings and for the force data to be entered into PRMS.

PRMS indicated that 20 Category 3 uses of force occurred involving AV personnel during the audit period (Addendum A). Fourteen of those incidents appeared to have been investigated and adjudicated when the sample was drawn on December 12, 2018. Each of those 14 cases was assigned an audit number, one through 14. The other six cases—four deputy-involved shootings and two cases still within the one-year statute and pending review—either had incomplete investigations, had not yet been scheduled for the EFRC, or were scheduled for the EFRC after the audit began. Those six incomplete cases were excluded from this audit sample and will be evaluated in the Monitors' next Category 3 UOF audit.

After the audit began, auditors determined that one of the 14 cases (Audit No. 11) was actually a secondary Category 1 UOF of another case (Audit No. 12) that did involve a Category 3 injury. The subordinate case (Audit No. 11) was withdrawn from the audit and any findings associated with it were included in the auditors' assessment of the primary incident (Audit No. 12). Table 1 identifies the cases in the audit sample.

Table 1		
Category 3 UOF Audit Sample		
Audit No.	Occurred	Unit of Occurrence
1	12/09/17	Lancaster
2	07/12/17	Lancaster
3	05/01/17	Palmdale
4*	02/15/17	Palmdale
5	09/14/16	Palmdale
6	09/11/16	Palmdale
7	07/21/16	Lancaster
8	03/30/16	Palmdale
9	03/08/16	Lancaster
10	12/20/15	Palmdale
11	Determined to be part of Audit No. 12	
12	09/15/15	Palmdale
13	09/09/15	Palmdale
14	03/08/15	Lancaster

*Note:* The Department was provided with a conversion table identifying LASD's file number for each case.  
 \*This case was reviewed in the first UOF audit.

One of the 14 cases (Audit No. 5) was purportedly reclassified by either the Professional Standards Division Chief or the EFRC from a Category 3 to a Category 2 UOF, approximately one year after the incident occurred and days before the case was to be heard by the EFRC. However, there is no documentation of that reclassification, the case was not reviewed or adjudicated as a Category 2, and it is still shown as a Category 3 UOF in the PRMS database, so it was included in the audit sample.

In another case (Audit No. 13), the subject of the force refused medical attention and was booked at Palmdale Station's jail. A Palmdale sergeant conducted an investigation into what was believed at the time to be a Category 2 UOF. The subject was transferred to Olive View Psychiatric Hospital, where six and a half weeks later it was determined he had a fractured wrist.

The Internal Affairs Bureau was notified and assumed the investigation of the case as a Category 3 UOF.

#### **A. Validation of Audit Population**

Auditors worked with Compliance Unit and Discovery Unit staff to identify and validate the completeness of the audit population. Auditors also reviewed related sources of information such as news reports, AV community complaints, claims for damages and lawsuits, and incidents that often involve a Category 3 UOF, such as foot and vehicle pursuits and assaults on deputies. Auditors then compared that data with the PRMS printout for Category 3 UOFs involving AV personnel during the audit period and found no unreported Category 3 uses of force.

The auditors also compared the PRMS printout to serious uses of force reported on the California attorney general's Open Justice website (<https://openjustice.doj.ca.gov/>). Government Code Section 12525.2 requires that California law enforcement agencies collect certain UOF data and provide the California Department of Justice (CA DOJ) with an annual report of all incidents in which a peace officer employed by the agency:

1. Shoots a civilian;
2. Is shot by a civilian;
3. Uses force against a civilian resulting in serious bodily injury or death; and,
4. Is the subject of force used by a civilian, resulting in the officer's serious bodily injury or death.

Government Code Section 12525.2(d) defines serious bodily injury as "a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or

protracted loss or impairment of the function of a bodily member or organ.” Agencies began reporting this data in 2017, and it is now published on the Open Justice website under the Use of Force Incident Reporting System (URSUS).

Several issues were found when auditors compared URSUS data to PRMS. The PRMS printout shows six Category 3 uses of force occurring in the AV during 2017 (Addendum A). In contrast, URSUS shows seven “serious” UOF incidents occurring in the AV during that same time. One of the cases in the audit population, Audit No. 11, was identified as a Category 3 UOF by the Compliance Unit, but that case is not on the PRMS printout that was provided to the auditors. Also, one of the uses of force on the PRMS printout (Audit No. 3) is not shown on CA DOJ’s URSUS chart, and two of the incidents on the URSUS chart are not on the PRMS printout. Table 2 synthesizes the issues.

Table 2							
Comparison of URSUS to PRMS Data 2017							
Control No.	URSIS ID No.	MT Audit	Date	Station	Suspect Gender	Suspect Race	Age
1	URSUS-19-0000-2017-552	No. 4	02/15/17	Palmdale	M	H	61–65
2	URSUS-19-0000-2017-ed6	<b>Not on PRMS</b>	04/14/17	Palmdale	M	H	31–25
3	URSUS-19-0000-2017-e90	<b>Not on PRMS</b>	04/29/17	Palmdale	F	W	66–70
4	URSUS-19-0000-2017-215	OIS Pending	06/22/17	Palmdale	M	H	10–17
5	URSUS-19-0000-2017-184	OIS Pending	07/04/17	Palmdale	M	H	31–35
6	URSUS-19-0000-2017-ce0	No. 2	07/12/17	Lancaster	F	B	31–35
7	URSUS-19-0000-2017-2a9	No. 1	12/09/17	Lancaster	M	H	31–35
8	<b>Not in URSUS</b>	No. 3	05/01/17	Palmdale	M	W	38

There may well be explanations for these inconsistencies. For example, it appears (preliminarily) that Control No. 2 may be in URSUS because a deputy sustained a bone fracture during the incident. Until these inconsistencies are resolved auditors cannot unconditionally validate the audit population.

**Recommendation No. 2: The Compliance Unit should conduct a comprehensive review of AV Category 3 UOF data in PRMS and resolve any discrepancy between that data and the AV incidents reported to the California Department of Justice for their URSUS data base.**

These concerns notwithstanding, auditors took every reasonable precaution to validate the audit's population, so auditors are reasonably certain all relevant cases were included in the audit population.

## **VII. COMPLIANCE MEASURES**

On August 1, 2019, the Department, DOJ, and Monitors finalized the compliance measures for the Settlement Agreement's UOF paragraphs. Those qualitative and quantitative compliance measures are detailed at the conclusion of each audit objective and were used to determine the Department's level of compliance with each objective.

## **VIII. EXECUTIVE FORCE REVIEW COMMITTEE**

In preparation for this audit, auditors reviewed the Department manual sections governing the EFRC and the Critical Incident Review Panel (CIRP). In order to better understand

how the EFRC works, auditors met with Commander Scott Gage and Senior Assistant County Counsel Roger Granbo. This chapter describes the Department's process for investigating and adjudicating Category 3 uses of force and provides some insight into the rationale for some of those processes. Both Commander Gage and Mr. Granbo concurred that this summary accurately reflects the process.

The EFRC evaluates every shooting and force incident requiring activation of IAB's Force/Shooting Response Team. Homicide Bureau also responds when the incident involves an in-custody death or a deputy-involved shooting that results in someone being shot. Homicide Bureau's criminal investigation takes precedence, so IAB's investigation is usually held in abeyance while Homicide Bureau conducts its investigation.

Within about a week of any major incident, the CIRP conducts a preliminary review to identify any issues requiring the Department's immediate attention. The CIRP comprises three commanders who are not in the involved employee's chain of command. A variety of Department managers attend the meeting, including assistant sheriffs, the Professional Standards Division chief, the division chief and unit commander for the employee involved in the incident, and the chair of the EFRC. Representatives from the Office of the Inspector General and County Counsel usually attend the meeting. Training staff and other subject matter experts (SMEs) deemed appropriate by the CIRP chair also attend.

When Homicide Bureau concludes its investigation of a Category 3 UOF and the district attorney issues its findings letter, IAB will resume its investigation. IAB usually re-interviews the involved deputies who generally agree to be interviewed voluntarily. The Department admits

this can occur several months, and in some cases more than a year, after the incident. When IAB finishes its investigation, the investigation report and materials are forwarded to the EFRC.

The EFRC comprises of three commanders, one of whom is designated as the chair. Membership is assigned by the Sheriff as a collateral duty. For the past several years, the commander of Professional Standards Division has been designated as the EFRC chair. Currently the other two members are the commanders of Detective Division and East Patrol Division.

About two weeks before a case is to be heard, a copy of the complete investigation including all recordings is sent to the EFRC members as well as to the involved employee's division chief and unit commander. A copy is also provided to the OIG, county counsel and various SMEs. If the case falls under the purview of the CIRP, prior to the EFRC the EFRC board chair reviews the notes from the CIRP to become familiar with their concerns and identify any remedial action that has already been taken. This prevents the EFRC from recommending training that has already been provided via the CIRP.

Prior to convening, the EFRC members and supporting staff meet to identify any questions they may have or factual issues. This ensures there is a common understanding of the facts and affords the investigators an opportunity to obtain additional information or clarify facts. When the EFRC convenes, the IAB investigators present the case. Following that, anyone present can ask questions pertaining to facts or ask for clarification as desired. Once there is a shared understanding of the facts, non-EFRC attendees have an opportunity to express their observations or concerns. That includes a discussion on tactics and training from the Training Bureau representative, concerns from the OIG and county council, and insights from the unit

commander into the incident and involved employees. With this input, the EFRC makes its finding on:

1. Tactics including de-escalation if warranted;
2. Whether the force itself was consistent with Department policy;
3. A policy finding when a vehicular or foot pursuit was involved; and,
4. Any other policy violations not related to the above.

The EFRC also makes a recommendation on any allegation of misconduct that is related to the EFRC's responsibility.

The EFRC members almost always reach consensus on their findings. But should a member dissent, the issue is presented to and resolved by the Professional Standards Division chief or, if cannot be resolved at that level, the Sheriff. When the EFRC determines that formal discipline is warranted, they make their recommendation to:

- The unit commander if the penalty is less than 15 days; or,
- The division chief if the penalty is 15 days or more.

Having the EFRC make penalty recommendations promotes Department-wide consistency in discipline for violations of the Department's UOF policy. The Professional Standards Division chief or the Sheriff resolves any penalty disagreements between the EFRC and the unit commander and/or division chief.

The EFRC chair meets with the IAB captain and lieutenants after every meeting to debrief cases. This improves the quality of the IAB investigations.

The completed case and a memo documenting the EFRC's recommendations are forwarded to the involved employee's unit commander. The EFRC staff person notifies the

command of any employee who has transferred from the involved command. The file is processed by the unit commander and then the division chief and is eventually returned to Professional Standards Division, where the EFRC staff member closes it out and files it for retention. The EFRC staff member is also responsible for ensuring the matter is forwarded to the Discovery Unit for input into PRMS.

## **IX. SUMMARY OF CASES**

Following is a summary of the cases reviewed in this audit. Case packages ranged from about 80 pages to well over 300 pages. Auditors completed an audit matrix, checklists, spreadsheets, and other assessment documents to capture the pertinent data for each case. This section provides a summary of what auditors perceive to be the pertinent facts in each case. How those facts comply or fail to comply with SA requirements is addressed in Section X, Audit Objectives and Findings.

### **A. Audit Number 1**

Lancaster patrol deputies set up surveillance on an unoccupied stolen vehicle. A few moments later, the suspect, who subsequently admitted to stealing the car, entered the vehicle with a female companion. A brief vehicle pursuit occurred, which was monitored by a sergeant and the watch commander. At one point the suspect drove onto the sidewalk, and his vehicle became lodged on a wheelchair ramp. A foot pursuit occurred, during which the suspect climbed over a wooden fence. The suspect said that a deputy grabbed his shirt as he climbed over the fence, which caused him to fall and break his wrist. The deputy denied he grabbed the

suspect as he climbed the fence, however, and denied causing the suspect to fall from the fence and break his wrist. The deputy stated that after the suspect climbed over the fence, he had to chase the suspect, and then he "reached out and pushed" the suspect, who lost his balance and fell to the ground. A freelance reporter and his passenger responded to the scene and were mistaken by deputies as sheriff's deputies driving an unmarked sheriff's vehicle. The reporter's vehicle inadvertently cut the suspect off, slowing him down. The reporter witnessed the use of force and stated the pursuing deputy caught up to the suspect and pushed him, causing him to lose his balance and fall. The suspect was then handcuffed without further resistance.

Medical personnel responded to the scene and provided treatment. The suspect was transported to the hospital by uninvolved deputies, treated for a broken wrist, and then booked into Lancaster jail. Due to his broken wrist, IAB was notified and responded to the scene to conduct the UOF investigation. The investigation was approved by the IAB lieutenant 10 and a half months later. One month after that, the EFRC convened and determined the UOF was within policy.

## **B. Audit Number 2**

Lancaster deputies responded to a radio call of a disturbance involving a woman who threatened another woman with a shovel. The first deputy to arrive saw the suspect standing in the street striking the point of a shovel on the ground. While keeping his distance, the deputy used his PA system and asked her about 10 times to put the shovel down, but she kept striking it on the ground. Two sergeants arrived, and one began video recording the incident. A Mental Evaluation Team (MET) was requested, but they were unavailable. The

deputies contacted the victim, and their investigation confirmed the suspect had threatened her and her boyfriend (Terrorist Threats 422 PC).

One of the sergeants and three deputies followed the suspect on foot to a duplex. They temporarily lost sight of her until a sergeant and two deputies saw her through a window inside one of the (abandoned) units. She was still armed with the shovel and standing over a man who was lying face down on a mattress. Fearing she was going to assault the man, a deputy kicked the front door open and made entry; a sergeant and another deputy followed. The sergeant told the suspect the Taser was going to be used. She ignored him and held onto the shovel with both hands. Fearing she was going to assault the man, a deputy deployed his Taser. The Taser did not incapacitate the suspect, and she continued holding the shovel. A second deputy deployed his Taser, and she released the shovel. The deputies pulled her to the ground, but she fought back. As one of the deputies tried to control her arms and handcuff her, he heard and felt a snap in her arm. The suspect stopped fighting and was handcuffed.

Medical assistance responded to the scene and she was transported to AV Hospital. She was diagnosed with a "mid-shaft fracture of the right humerus" bone, two Taser dart wounds and an abrasion to her forehead. Due to the fracture, IAB was notified and investigated the UOF. When she was interviewed by IAB the next day, she said the abrasion was caused by the adult male that she was threatening with the shovel, and that injury occurred four to five days before the UOF. The investigation determined that the suspect had been the subject of 15 radio calls for service in the preceding three years, three of which were for "mental illness."

The investigation was completed 11 months after the incident. The ERFC heard the case four weeks later, which was 11 days before the one-year statute. The ERFC determined that the UOF and tactics were within Department policy, and there is no documentation of any other EFRC findings.

**C. Audit Number 3**

Palmdale deputies responded to a call of a critical missing person. The call indicated the subject was a hiker who might have been dehydrated and non-responsive. Four deputies responded along with LA County Fire Department personnel. The deputies and firefighters hiked the Pacific Crest Trail for a quarter mile and located the subject lying on his back, conscious and breathing but verbally unresponsive. The firefighters began a medical assessment of the subject, who refused to answer questions and displayed symptoms of being under the influence of a hallucinogenic. The firefighters determined the subject needed further medical treatment. So, they assisted him to his feet and held onto him while he walked the trail to their vehicle. During that effort, one deputy assisted while holding onto the subject's wrist. About halfway to the vehicle, the subject stopped walking, violently jerked his body from side to side, and broke free. As he did so, the subject swung his arm toward a firefighter's face. The firefighter stepped back and ducked under the subject's punch. The subject then swung his other arm toward the deputy. Another deputy who was following stepped forward and punched the subject once in the face, knocking him unconscious. The subject was taken by ambulance to Palmdale Regional Medical Center, where it was determined he sustained a fractured left orbital and jaw. IAB was notified and

conducted the UOF investigation. The IAB investigation was completed 11 months later.

Three weeks after the investigation was completed, the EFRC convened and determined the UOF was within policy guidelines.

**D.     **Audit Number 4**** (This case was reviewed in the Monitors' first UOF Audit.)

Two deputies responded to an elder abuse call that included information that the suspect was on active parole and had an outstanding arrest warrant. En route, a deputy confirmed the suspect's parole status and spoke with his parole officer, who verified the warrant. The deputies were met by the victim, who was the suspect's mother, and her caregiver. The victim told deputies her son was "wild and out of control" and had assaulted her several times. The victim had been staying with her caregiver, in another mobile home, but she was old and wanted to return home. The victim asked deputies to search her mobile home to see if the suspect was there. The deputies requested a sergeant and were advised to proceed while the sergeant was on the way. The caregiver unlocked the door so the deputies could enter. They could not locate a light switch, so they illuminated the area with flashlights and conducted a search. As they finished their search, they heard a noise coming from the living room. They located the suspect, sitting on the couch under a blanket. A deputy removed the blanket, and the suspect became enraged. The deputies tried to de-escalate the situation by giving the suspect some space and using calm tones. However, the suspect suddenly started throwing kitchenware at the deputies. The deputies requested assistance while they wrestled with the suspect. Three additional deputies arrived, and after a lengthy struggle that involved punches,

control holds, and the use of a Taser in drive stun mode, all five deputies were able to control him.<sup>6</sup>

LA County Fire responded, and the suspect was transported to Palmdale Regional Medical Center for booking clearance. His medical treatment revealed he sustained a left orbital fracture and fractured ribs. He was eventually booked into County Jail.

IAB was notified and conducted the UOF investigation. They attempted to interview the suspect at the hospital about six hours after the incident. The IAB report says the suspect was suffering from a mental illness crisis, so they were unable to interview him. There is no documentation IAB made any further attempt to interview the suspect. The deputies were interviewed seven months later, and they understandably were unable to recall many of the details of the incident. The IAB investigation was approved 10 months after the incident occurred, and the EFRC convened one month later. The EFRC found the UOF and tactics to be in policy and made three recommendations:

- The five employees should attend Tactics and Survival I, High Risk Contacts, and Arrest and Control Techniques Training;
- A tactical debriefing should be held with the employees involved in this incident; and,
- A Field Operations Directive should be created for desk personnel to ask for additional information regarding the mental health, intoxication level, weapons possessed or accessible, and prior criminal history prior to deputies' arrival and include that information in the call for service.

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<sup>6</sup> During the altercation the suspect tried to gouge out one of the deputy's eyes and bit his right hand.

## **E. Audit Number 5**

Two Palmdale deputies responded to a radio call about a burglary theft from motor vehicle (BTMV) suspect in a parking lot. They located the suspect and detained him without incident. They determined that no crime occurred, but the suspect was arrested for a DUI warrant. One deputy transported the suspect to Palmdale Station, and as he walked the suspect into the station a UOF occurred at the station door. The entire incident was captured on the station's security camera. In his arrest report, the deputy wrote:

*As I was escorting the suspect to the jail entrance, I was holding his right forearm with my left hand. The suspect asked me if I could loosen my grip and I told him no. I could feel the suspect tensing his arm. As we approached the jail entrance, I stopped walking and asked the suspect if he had any contraband on his person. The suspect said "Huh?" I explained to him if he had any narcotics hidden anywhere on him to tell me or he will be charged with a felony crime if myself or any other department personnel find it on him inside the jail. The suspect snapped at me, "I'm not a fucking drug addict!" He began to turn towards me while twisting and pulling his right arm. I could feel his arm tensing in my grip. I told him to relax. I began to tighten my grip on his arm to maintain control. The suspect yelled, "Let go of my arm like that!" He continued to twist his arm towards me. His forearm was pressing back against my thumb and I could feel my grip begin to loosen. Fearing he may pull away from me and run, I pushed the suspect forward into the left corner of the jail door. As I did so, the suspect was tightening his body and pushing backwards against me. Immediately as I held the suspect against the door to maintain control over him, the suspect's body and muscles were tensed, and he was pushing backwards against my arms. I wrapped my right arm around the suspects chin area and spun him to the right. Using a takedown, I placed the suspect on the ground, with his front torso making contact with the ground. I immediately placed my upper body on the suspect to prevent him from getting up . . ." <sup>7</sup>*

The suspect was transported to Palmdale Regional Medical Center for medical clearance and then booked into Palmdale Station's jail. The suspect subsequently complained of pain in

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<sup>7</sup> During the deputy's IA interview, he classified the subject's actions as falling under the Department's classification of "assaultive and high risk" behaviors.

his right hand and was taken back to Palmdale Regional Medical Center and was diagnosed with a "boxer's fracture" to his hand. Due to the fracture, IAB was notified and conducted the UOF investigation. In his statement to the IAB investigators, the suspect was adamant that his injury occurred during the altercation with the deputy. He also alleged that the force used was unnecessary.

The IAB investigation was completed just over 11 months after the incident occurred. Two weeks later, one week before the one-year statute expired, the commander of Professional Standards Division received an email from the chief physician of Correctional Health Services. In the email, the chief physician said he reviewed a medical report of the suspect's x-ray and concluded the fracture occurred 5 to 15 days before the UOF. (The chief physician did not say what prompted his review of the report.) There is no transmittal letter from either the EFRC or Professional Standards Division documenting a reclassification of this use of force or directing the Palmdale Station captain or North Patrol Division to review and adjudicate it. This incident still showed as a Category 3 UOF when auditors queried PRMS in December 2018.

#### **F. Audit Number 6**

Two Palmdale deputies on patrol saw an employee standing in front of his market waving his arms at them and pointing at a man running away. Believing a crime had occurred, possibly a robbery, the deputies went in foot pursuit of the suspect. One deputy grabbed the suspect's collar, which caused him to fall forward and land on his face and chest, with the deputy

landing on top of him. The partner deputy and a third deputy arrived, and the suspect was taken into custody. The deputies determined the suspect had stolen some beer from the store.<sup>8</sup>

When they stood the suspect up the deputies saw he was bleeding from his forehead. The fire department responded and provided medical care. The suspect was transported to Palmdale Regional Medical Center, where it was determined he sustained an orbital fracture. He was treated and booked into the Palmdale jail.

Due to the fracture, IAB was notified and conducted the UOF investigation. During his IAB interview, the suspect stated that he tired while running from the deputy and gave up, but:

*That wasn't good enough for the officer. He had to get me down on the ground. He hit me. He slammed my head into the ground three times in rapid succession on this side (pointing to his left). I was still not resisting whatsoever, had my hands behind my back, one of them chickened me up . . . and the other one hit me with a light on this side of my head (pointing to his right swollen eye).*

The suspect went on to say he was on the ground about 10 seconds before the deputy slammed his head against the ground and hit him with the flashlight.<sup>9</sup> He alleged the deputy said "You made me run, you want to die mother fucker? The investigation never addressed the allegation that the deputy used retaliatory force.

The IAB investigation was completed 11 and a half months after the incident occurred. The EFRC heard the case one week later (three days before statute) and determined the UOF was in policy.

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<sup>8</sup> The suspect was also charged with a violation of parole.

<sup>9</sup> An independent witness refuted the suspect's allegation that the deputy struck the suspect with a flashlight or struck his head on the pavement.

## **G. Audit Number 7**

Several Lancaster units responded to a radio call of a suspect breaking into cars. Two people who called followed the suspect on foot and recorded the entire incident. One of them described the suspect as extremely intoxicated: "The way he was walking, stumbling. And I mean, just the way he was acting you could tell. I mean, he could barely walk."

The suspect entered the back seat of an occupied pickup truck. The truck owner, who was in the driver's seat with the engine running, told the suspect to get out, but the suspect did not respond. The owner, who was afraid, exited the truck with the ignition keys. The first two deputies to arrive formed a tactical plan and were waiting for additional deputies to arrive. The third deputy to arrive took a position of containment on the opposite side of the truck. A video recording of the incident captures the sound of screeching tires approaching the location. Then, a fourth deputy (6'2", 280 pounds) walked rapidly into view of the camera. Without saying a word to the other deputies, he approached the truck with his gun drawn, kicked the rear driver's side door (causing more than \$2,600 in damage), and yelled, "Don't fucking move! Don't fucking move or I'm gonna shoot you!"

*Note:* In his IAB interview, the deputy said he reacted this way because the other deputies were frozen. In reality, the other deputies had contained the suspect and formulated a tactical plan including designation of less lethal and lethal options.

After kicking the door, the deputy opened the rear door and saw the suspect reach between the center console and seats. Several commands were given for the suspect to stop reaching, but he ignored the commands. One of the original deputies feared the suspect may have been reaching for a weapon, so he deployed his Taser, which was effective. The

fourth deputy then pulled the suspect out of the truck by his leg and onto the ground. The suspect held onto the door frame, so the fourth deputy forcefully punched him several times on his upper back. The fourth deputy was then able to pull the suspect out of the truck, and several deputies rolled him onto his stomach. The fourth deputy stated the suspect refused to submit to handcuffing and he believed the effects of the Taser were wearing off, so he forcefully punched the suspect three more times in his upper back and shoulder area.

*Note:* During an interview, IAB investigators asked one of the witnesses what the suspect was doing when the deputies pulled him out of the truck. The witness responded, "He was unresponsive I believe because the Taser. I don't know. I mean, he was—he was still talking. He was conscious, but he was—you know, he was like limp because the taser, I guess. But when they—they did pull him out, they took him straight to the ground. And the bigger cop—they proceeded to move him from where he first hit the ground, I'd say like an extra two or three feet heading west. They dragged him like a little bit further, and then that's when he proceeded to punch him again and tell him to put his hand behind his back."

The suspect's face and head are mostly obscured by the deputies in the video recordings, but the video that auditors received on September 11, 2019, does show the suspect's face hitting the pavement as he is punched by the deputy. Furthermore, an independent witness said the suspect's head bounced off the pavement as he was being punched. In one of the video recordings, one of the two witnesses who was recording the incident turned toward the car owner and said, "You've just seeing police brutality" [*sic*]. While the deputy was punching the suspect, two of the deputies walked up from the side of the fourth deputy and put their hands on the deputy's shoulder and back areas. The suspect was then handcuffed, and a hobble restraint was applied.

The suspect was transported for medical treatment and diagnosed with multiple injuries, including a traumatic brain injury, a 9-millimeter cerebral temporal contusion and hemorrhage, a fractured right elbow, and bleeding behind his right eye. When he was interviewed, the suspect did not remember the incident and stated that earlier that day, he was riding a bicycle when he crashed into someone on a scooter and they butted heads.

IAB was notified and responded to the scene. ICIB was also notified and initiated a criminal investigation into the deputy's conduct. The ICIB investigation was completed within three months and presented to the district attorney's office for filing consideration. Four months later, the DA declined to prosecute. IAB then conducted its investigation, which was completed 10 months later. The EFRC met one week later and determined the force used by the first three deputies on scene was reasonable, but the force and tactics used by the fourth deputy were found to be out of policy. The EFRC recommended the fourth deputy be terminated. The sheriff at that time concurred with that recommendation, and the fourth deputy was terminated. However, the deputy was reinstated by the current Department administration during his appeal process.

#### **H. Audit Number 8**

A deputy responded to a radio call that a shoplift had just occurred at a market. The deputy searched the area and located the suspect in a nearby park. The deputy approached the suspect and told him he was being detained for investigation of petty theft. As the deputy walked the suspect toward the patrol car, he went to grab one of the suspect's arms, and the suspect pulled away, saying, "Don't touch me." The deputy talked the suspect into cooperating.

When they reached the deputy's patrol vehicle, the deputy wanted to perform a cursory search of the suspect, so he told him to place his hands behind his back. The suspect did so, but when the deputy grabbed his hands and reached for his handcuffs, the suspect spun around and began yelling. The deputy pushed the suspect against the patrol car and used his handheld radio to request assistance. The suspect continued pulling away, so the deputy (6'2", 255 pounds) took the suspect (5'9", 165 pounds) to the ground, and the deputy fell on top of the suspect. The struggle continued while both men were on the ground, and the deputy was eventually able to handcuff the suspect.

Fire Department personnel responded to the scene, but the suspect refused to cooperate. He was transported to the Palmdale Regional Medical Center, where he again refused to cooperate with medical personnel. He was booked into the Palmdale jail. A Palmdale supervisor began conducting the UOF investigation and interviewed the suspect, who was also subsequently interviewed by the watch commander. During his recorded interview with the sergeant, the suspect stated: "They slammed me on my face, and he called me a 'nigger,' and he said, 'Get your black ass on the ground.' And, I was, like what? And then he slammed me on the ground." The suspect did not repeat the racial allegation to the watch commander, but he alleged excessive force, stating:

*"And then when backup showed up, that's when he slammed me to the ground. Told me to stop resisting. I was not, I was not resisting. I did everything that they, that the officer told me to do okay, but he still, I mean come on. Look at my face. I'm bloody. I wasn't fighting him. I wasn't fighting him at all."*

The suspect complained of facial pain the next day and was taken back to the hospital, where he was diagnosed as having an orbital fracture. IAB was notified and responded to the

station to conduct the UOF investigation. The IAB investigators were provided with the supervisor's investigation and video recordings of the suspect's interviews by the sergeant and watch commander. When IAB interviewed him, the suspect repeated his allegation of excessive force, but not the racial comments.

The IAB investigation was completed 11 months after the incident occurred. The EFRC met one month later and determined the force and tactics used were in policy. There is no documentation that the EFRC inquired about the allegations of misconduct.

#### **I. Audit Number 9**

Two Lancaster deputies stopped a vehicle for a DUI investigation. The suspect, who was accompanied by a female companion, pulled over. As the deputies approached the car, the suspect sped off. A brief vehicle pursuit ensued until the suspect abandoned the vehicle and fled on foot, eluding arrest. He was located a short time later in a car sales lot.<sup>10</sup> The suspect re-entered his vehicle, swerved while backing up toward responding deputies, and a second vehicle pursuit occurred. The second pursuit lasted 17 minutes and reached speeds of 85 mph. The pursuit involved four patrol units and a sergeant and was authorized by the watch commander. Finally, the suspect hit a curb, flattening his tire. The suspect again fled on foot with the deputies in foot pursuit. When the lead deputy approached him, the suspect tried to punch him. A UOF occurred involving all seven deputies and the sergeant. Six of the deputies and the sergeant weighed at least 200 pounds, and the force included a takedown, four punches, two knee strikes, one Taser application, control holds, and resisted handcuffing.

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<sup>10</sup> The female companion was subsequently detained by a sergeant without incident.

Medical personnel responded to the scene, and the suspect was transported to Antelope Valley Hospital, where it was determined he sustained an orbital fracture, a fractured sinus cavity, and a sprained ankle. He was transported to Lancaster station and booked into the jail.

IAB was notified, responded to the location, and conducted the UOF investigation.

The IAB investigation was completed 11 months later. Two weeks after that, the EFRC heard the case and determined the UOF and tactics were within policy.

#### **J. Audit Number 10**

Employees at a restaurant were closing up at 2:30 a.m. when they saw a car stopped in the drive-through lane. They did not see anyone inside the car and thought it might be a ruse to draw them outside. After about 10 minutes the vehicle slowly moved forward and struck the building. The driver's door opened, but no one exited. The employees called the sheriff's office, and several Palmdale patrol units responded. When sufficient units arrived, deputies approached the car and saw the suspect sleeping in the driver's seat with the door open. The lead deputy could smell the odor of an alcoholic beverage coming from the vehicle. He also saw the suspect holding a cup with what appeared to be an alcoholic beverage.

A deputy tapped the suspect on the shoulder and woke him up. The suspect identified himself and provided (false) identification. The deputies had the suspect exit the car and after cursorily searching him, placed him in the back seat of a patrol car while they conducted their investigation. One deputy stayed with the suspect while others conducted a traffic collision (TC) investigation, interviewed witnesses, and reviewed the restaurant's surveillance video.

The deputy determined the suspect was impaired and administered a Preliminary Alcohol Screening (PAS) test with two blood alcohol sample collections, which indicated he had a blood alcohol content of 0.17 and 0.14. The deputy directed the unhandcuffed suspect to sit in the back seat while he discussed the results with the deputy conducting the TC investigation. The deputy then informed the suspect of the test results and that he was under arrest for driving under the influence. The suspect said he was not going to jail for "stupid shit." The deputy told the suspect to turn his back to the door so he could be handcuffed. The suspect seemed to comply, so the deputy opened the rear door and reached in to grip his hands and apply handcuffs. The suspect suddenly turned toward the deputy and started putting his legs outside the car. The deputy told him to relax and tried to control his hands. Another deputy was walking into the restaurant, saw the deputy trying to control the suspect and ran to assist. The two deputies tried to force the suspect back into the car so they could close the door. (The patrol car had a detention cage.) Two more deputies saw the struggle and ran to assist. An altercation ensued between the suspect and several deputies. At one point, the deputy who had been dealing with the suspect felt the suspect pulling his firearm from its holster. The suspect pulled so forcefully that the holster moved from the deputy's right hip to the front of his waistband. The deputy yelled that the suspect was trying to get his gun while he tried to hold onto the weapon with one hand while pushing the suspect away with the other. This struggle went on for several seconds with deputies punching the suspect, pulling on him, and trying to separate him from the deputy underneath him. Despite those efforts, the suspect continued to pull on the deputy's gun. As the deputy struggled to maintain control of his firearm, he yelled several times, "He's got my gun!" Another deputy, fearing the suspect had gained control of the gun and was

about to shoot the deputies, unholstered his weapon, yelled for other deputies to move aside, and fired one round at the suspect from about six inches. The suspect did not react and continued pulling on the other deputy's gun, so the deputy fired four additional rounds at the suspect, who finally stopped fighting and fell to the ground. Deputies initiated CPR and were relieved by medical personnel when they arrived. The suspect was transported to AV Hospital, where he died.

Homicide Bureau investigators responded to the scene along with IAB. While the homicide investigators conducted the criminal investigation, IAB held their investigation in abeyance. The homicide investigation was submitted to the district attorney, and the DA determined the shooting was lawful. IAB activated their investigation, and it was approved on September 19, 2018. The EFRC convened four weeks later and determined the UOF and tactics were within Department policy. The EFRC recommended Training Bureau release a "Tip of the Week" training video regarding handcuffing suspects in the back seat of a patrol vehicle.

**K. Audit Number 11**

(Auditors determined this was a lesser aspect of Audit No. 12.)

**L. Audit Number 12**

Several Palmdale deputies responded to an early-morning (5:30 a.m.) business disturbance at a motel. The first deputy to arrive (5'11", 185 pounds) was approached by a man (6'3", 270 pounds) identifying himself as the man the motel manager called about. The deputy told the man to stand in front of his patrol car. The man initially refused, then complied. The

deputy walked about 10 feet to the motel lobby and spoke to the manager. The manager told the deputy the suspect broke the doorbell, harassed patrons for money, and refused to leave. The deputy determined the suspect vandalized motel property and was loitering. The manager signed a private person's arrest for those charges.

As the first deputy was talking to the manager, a second deputy (5'8", 185 pounds) arrived. After the deputies talked briefly, the first deputy told the suspect he was under arrest and to lace his hands behind his back. The suspect yelled profanities at the deputies, took a fighting stance, and said he was not going to be searched. As the deputies requested backup, the suspect put his hand under his shirt and into his waistband. Fearing he was going for a weapon, both deputies drew their firearms, pointed them at the suspect, and ordered him to turn around and place his hands behind his back. The suspect said he was only trying to hold up his pants. The suspect kept his hand there for about 30 seconds until he finally did what he was told. The deputies holstered their firearms and approached the suspect. After they applied one handcuff, the suspect pulled away and turned on the deputies. The deputies took him to the ground. By now a third deputy had arrived, and he held the suspect's legs while the two deputies applied the other handcuff.

The LA County Fire Department responded, and the suspect was transported to Palmdale Regional Medical Center. He was treated for abrasions and a laceration above his right eyebrow that required sutures. It was also determined that he had an orbital fracture on the left side of his face. However, he had an existing laceration in that area that already had sutures, and he told the investigating sergeant that the injury occurred about a week earlier when he was struck at least three times with a crowbar. The treating physician was unable to determine when the

fracture occurred, so the investigating sergeant, in consultation with the watch commander, decided to proceed with a unit UOF investigation because the injuries from the UOF were on the right side of his face and the orbital fracture and resulting sutures on the left were most likely caused by the earlier altercation.

*Note:* The suspect was involved in a second (Category 1) UOF at the hospital, which was reported and investigated separately (Audit No. 11).

The sergeant completed a unit UOF report. About six weeks later, IAB was notified and responded to the station.<sup>11</sup> IAB assumed responsibility for the UOF investigation at that time. IAB's investigation confirmed that the orbital fracture most likely occurred during the earlier altercation. The IAB investigation was completed about nine months later, and one month after that the EFRC heard the case. The EFRC determined the UOF and tactics were both in policy.

#### **M. Audit Number 13**

Two Palmdale deputies responded to a domestic violence restraining order call involving a parolee. The deputies contacted the suspect outside the residence front door and handcuffed him without incident. While one deputy interviewed the residents, the other deputy walked the suspect to the patrol car. Suddenly, the suspect started yelling that he was walking toward demons. The suspect pulled away and fell on the grass. The escorting deputy tried to hold onto him, but he lost his balance and fell on the handcuffed suspect. The suspect began flailing back and forth on the ground, so the deputies held him down and waited for additional units to

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<sup>11</sup> The reports did not indicate why this notification occurred six weeks later.

arrive. As they held him, the suspect twice tried to bite a deputy. A video recording of the incident showed the deputies used great restraint and continually attempted to de-escalate the situation. But the suspect was irrational, apparently hallucinating, and combative. When additional deputies arrived, a hobble restraint was applied to control the suspect's legs. A MET team was requested, but the incident unfolded before one could respond.

When medical personnel arrived, the suspect was placed on a gurney and sedated. He was transported by ambulance to Palmdale Regional Medical Center, where he was cleared for booking. He resisted the deputies' efforts to place him in a patrol vehicle. Deputies made extraordinary efforts to de-escalate the situation, including having his mother try to reason with him. However, the suspect remained delusional and combative. Finally, deputies had to use force (firm grips) to put the suspect into the patrol vehicle.

While en route to Palmdale Station, the suspect freed himself from his seatbelt, removed his spit mask, and slammed his head against the plexiglass partition multiple times. The transporting deputies rolled Code-3 to the station. At Palmdale Station, the suspect voluntarily exited the patrol car and walked into the jail. While inside the booking cell, the suspect resisted and struggled against the deputies' efforts to book him. Deputies used control techniques, leverage, and firm grips to control him. As deputies were placing him in his cell, the suspect tried to escape, so they pushed him back into the cell to close the cell door. The suspect began yelling and slammed himself against the closed cell door.

Because the suspect had been striking his head on the door, paramedics responded to the jail. The suspect was taken back to the Palmdale medical center for re-evaluation. He was subsequently transported to Olive View Medical Center for mental health evaluation. He was

discharged from Olive View the next day and taken to Los Angeles County USC Medical Center for pre-booking medical evaluation. At the medical center, a navicular (scaphoid) fracture was discovered in the suspect's right wrist, and a cast was applied. The suspect was transported to the LASD Inmate Reception Center (IRC) for booking where another UOF (control holds) occurred.

IAB conducted the UOF investigation. It was never determined precisely when or how the suspect fractured his wrist. It may have been during the UOF when he pulled away and the deputy fell on him, or it could have been during one of his self-destructive psychotic episodes. The investigation was completed in about 11 months, and the EFRC reviewed the case about two weeks later. The EFRC determined the UOF and tactics were consistent with Department policy.

#### **N. Audit Number 14**

At about 2:30 a.m., an 18-year-old was watching television in the living room with his 12-year-old sister. They heard the front door open and went to investigate. They saw someone standing behind the door and pulled it open. The person behind the door, the 17-year-old subject, quickly turned and ran away. The 18-year old chased him and jumped on his back, causing them both to fall onto the street. The two men wrestled on the ground until a neighbor arrived and helped hold the subject down. Two Lancaster deputies responded to the location. They told the men to release the subject and then approached him. The subject reeked of alcohol and tried to run away but was quickly detained by the two deputies. They grabbed his wrist, blocked his foot, and pulled him to the ground. The subject landed on his stomach and

tried to lift himself up. The deputies held him on the ground and after a brief struggle were able to handcuff him.

The subject was arrested for burglary and transported to Antelope Valley Hospital for injuries he sustained. It was determined he sustained a fracture to his right knee. IAB was notified and responded to the location. IAB conducted the UOF investigation. The investigation was unable to determine if the subject sustained the fractured knee during the altercation with the deputies or when he was detained by the victim. The investigation was completed 11 months later. One week later, the EFRC met and determined the UOF and tactics were consistent with Department policy.

## **X. AUDIT OBJECTIVES AND FINDINGS**

The audit objectives address each of the SA's UOF paragraphs. While the purpose of this audit is to report on the Department's level of compliance with those specific requirements and prohibitions, it is important to do so while remaining mindful of the framework established in the preamble to the UOF Section of the SA:

*LASD agrees to revise its force policies and practices to reflect its commitment to upholding the rights secured or protected by the Constitution of the United States, protecting human life and the dignity of every individual, and maintaining public safety. LASD agrees to ensure that its accountability measures are implemented appropriately so that Antelope Valley deputies use force only when objectively reasonable, and in a manner that avoids unnecessary injury to deputies and civilians; and to use force as a last resort and de-escalate the use of force at the earliest possible moment. Deputies and staff shall endeavor to use only that level of force necessary for the situation.*

## **XI. OVERVIEW OF USES OF FORCE**

Use-of-force events are arguably the most complex incidents in law enforcement. The reason for contacting the subject, the mental health of the subject, the subject's ability to comprehend instructions, the officer's ability to de-escalate evolving incidents without using force, the objective reasonableness of the force used, and the agency's ability to objectively investigate and adjudicate these incidents are just some of the critical factors that need to be evaluated.

Each audit objective analyzes specific aspects of each UOF. Before addressing the audit's findings for those objectives, it is helpful to have a broader understanding of the circumstances and any patterns associated with these cases including:

- The reason deputies came in contact with the subjects;
- The gender and ethnicity of the subjects;
- If the subjects were armed, if they attempted to arm themselves, or if deputies reasonably perceived them to be doing so;
- If there were indicia that the subjects were experiencing mental health issues;
- If there were indicia that the subjects were under the influence of alcohol and/or drugs;
- The primary charge for the subject's detention and/or arrest;
- The type of force used; and,
- The type of injuries sustained by the subjects and the deputies.

**A. Reason for Initial Contact**

Eleven of the 13 incidents (85%) were initiated from radio calls for burglary/theft from motor vehicle, petty theft, disturbing the peace, elder abuse, critical missing person, robbery, and a domestic incident involving a parolee and a protective order (Audit Nos. 1–5, 7, 8, 10, 12, 13–14). One incident involved a citizen flag down (Audit No. 6) and another a detention for driving under the influence (Audit No. 9).

**B. Station of Occurrence**

Eight of the 13 incidents (62%) occurred in Palmdale and involved Palmdale Station deputies, and five (38%) occurred in Lancaster and involved Lancaster Station deputies (see Addendum A).

**C. Subject Profile**

Interestingly, each UOF involved only one subject of the deputies' force. Of the 13 subjects:

- Five were male Caucasians (38%); of those, two were Lancaster Station incidents (Audit Nos. 9 and 14), and three were Palmdale Station incidents (Audit Nos. 3, 6, and 12);
- Four were male Hispanics (31%); of those, two were Lancaster Station incidents (Audit Nos. 1 and 7), and two were Palmdale Station incidents (Audit Nos. 4–5);
- Three were male Blacks (23%); of those, one was a Lancaster Station incident (Audit No. 2), and two were Palmdale Station incidents (Audit Nos. 8 and 10);
- One (Audit No. 2) was a female Black (8%); and,

- One of the subjects (a male Caucasian in Audit No. 14) was a 17-year-old juvenile (8%).

#### **D. Armed Suspects**

Two of the suspects (15%) were armed. One suspect, a homeless Black female with mental health issues, was armed with a shovel (Audit No. 2); the other, a Black male who was wanted for armed robbery and assault with a firearm, was in the process of arming himself with a deputy's semi-automatic pistol when an officer-involved-shooting occurred (Audit No. 10).

#### **E. Subjects With Vulnerabilities**

Eight of the 13 subjects of these uses of force had vulnerabilities that affected their ability to follow the deputies' instructions and/or the deputies' ability to gain voluntary compliance.

- Four (31%) of the subjects had indicia of mental illness or mental health issues (Audit Nos. 2, 4, 12, and 13). One of these subjects was also homeless (Audit No. 2).
- One subject (8%) was under the influence of drugs (Audit No. 3).
- Three subjects (23%) were intoxicated (Audit Nos. 7, 10, and 14).

#### **F. Arrest Charges**

The UOF subjects were arrested for:

- Grand theft auto or driving without owner's consent (Audit Nos. 1 and 7);
- Terrorist threats (Audit No. 2);

- Assault, or assault with a deadly weapon on a peace officer (Audit Nos. 3, 4, 9, and 13);
- Warrant for DUI (Audit No. 5);
- Theft and violation of parole (Audit No. 6);
- Shoplifting/burglary (Audit No. 8);
- Vandalism/disturbing the peace (Audit No. 12); and,
- Burglary theft from motor vehicle (Audit No. 14).

One suspect (8%) was shot and killed when he violently assaulted and tried to disarm a deputy who had detained him for DUI (Audit No. 10).

Interestingly, none of the Category 3 uses of force began with a deputy's decision to arrest or detain someone for obstructing, interfering, resisting, or assaulting an officer. Those charges may have arisen as the incident progressed, but they were not the reason for the initial detention or arrest.

**Significant Finding No. 1: None of the Category 3 uses of force in this audit sample began with a deputy's decision to arrest or detain someone for obstructing, interfering, resisting, or assaulting an officer.**

#### **G. Types of Force Used by Deputies**

All 13 cases involved multiple types of force, ranging from control holds to an officer-involved shooting. The types of force used included:

- One (8%) was an officer-involved shooting (OIS) (Audit No. 10);

- Three (23%) involved use of a Taser (Audit Nos. 2, 4, and 7);
- Four (31%) involved punches (Audit Nos. 3, 4, 7, and 9); and,
- Seven (54%) involved some form of taking the subject to the ground (Audit Nos. 1, 5, 8, 9, 12, 13, and 14).

## **H. Subject Injuries**

All 13 of the force subjects sustained serious injury, which was expected with an audit population consisting exclusively of Category 3 uses of force. The subjects' more significant injuries included:

- One subject died from gunshot wounds (Audit No. 10);
- One subject sustained a traumatic brain injury, broken elbow, and bleeding behind his eye (Audit No. 7);
- Six subjects had fractured orbitals (Audit Nos. 3, 4, 6, 8, 9, and 12); one of those subjects also sustained a broken jaw (Audit No. 3) and another had fractured ribs (Audit 4);
- Two subjects had fractured wrists (Audit Nos. 1 and 13);
- One subject had a fractured hand (Audit No. 5);
- One subject had a fractured arm (Audit No. 2); and,
- One subject had a fractured knee (Audit No. 14).

**Significant Finding Number 2: Six of the 13 use-of-force subjects (46%) sustained orbital fractures.**

## **I. Deputy Injuries**

There was one case in which the documents auditors received recorded a deputy being injured (Audit 4). The deputy in that case had his hand bitten by the suspect and scratches to his eye when the suspect tried to gouge his eyes.

### **Objective 1: The Use of Force**

The following SA paragraphs establish the requirements for this objective:

- LASD agrees to continue to prohibit the use of force above [compliant] handcuffing to overcome passive resistance, except where physical removal is permitted as necessary and objectively reasonable. (Paragraph 102)
- LASD agrees to clarify that Antelope Valley deputies may not use force against individuals who may be exhibiting resistive behavior, but who are under control and do not pose a threat to the public safety, themselves, or to other deputies. LASD agrees to continue to require that Antelope Valley deputies assess the threat of an individual prior to using force and emphasize that a use of force must be proportional to the threat or resistance of the subject. If a threat or resistance no longer exists, deputies cannot justify the use of force against a subject. (Paragraph 104)
- LASD agrees to explicitly prohibit the use of retaliatory force, particularly against subjects who express criticism of, or disrespect for, LASD Antelope Valley deputies. (Paragraph 105)
- LASD agrees to explicitly prohibit interfering, threatening, intimidating, blocking or otherwise discouraging a member of the public, who is not violating any other law, from taking photographs or recording video (including photographs or video of police activities) in any place the member of the public is lawfully present. Such prohibited interference includes . . . using force upon that person. (Paragraph 106, partial)
- LASD will continue to require, and emphasize in its training, that a hard strike to the head with any impact weapon, including a baton, is prohibited unless deadly force is justified. Unintentional or mistaken blows to these areas must be reported to ensure that all reasonable care was taken to avoid them (Paragraph 107).

1. Monitor Activity

Monitoring Team auditors conducted at least two levels of review of the UOF incidents in the audit population to evaluate the uses of force by AV deputies. Those reviews included but were not limited to: the deputies' arrest and supplemental reports; the supervisory investigations; the IAB investigations; the ICIB investigation; IAB chronological logs; video and audio recordings of the incidents; interviews of the involved deputies, witnesses, and UOF subjects; medical records; and the EFRC Office Correspondences and Attendance Sheets documenting the EFRC's review and adjudication of the UOF incidents.

*Note:* Auditors evaluated this same material for each of the objectives, but it is not repeated under each objective in order to avoid unnecessary repetition.

2. Findings

Auditors assessed the force used in the each of the 13 cases in the audit population and determined that the force used in two cases (15%) was objectively unreasonable (Audit Nos. 5 and 7). There is no documentation that one of those cases (Audit No. 5) has ever been adjudicated by the Department, and the other case (Audit No. 7) resulted in the deputy being terminated then re-hired during the appeal process.

- *Audit Number 5:* A deputy was escorting a handcuffed DUI warrant suspect into Palmdale Station. The station security camera shows the two men at the back door with the deputy holding the suspect's arm. The deputy (5'11", 225 pounds) wrote in his report that he felt he was losing control of the suspect (5'11", 160 pounds) and that the suspect may have been attempting to escape. The video shows the suspect turn slightly toward the deputy, then gradually raise his right (handcuffed) arm. His movement was not abrupt or in any way threatening. If the much larger deputy felt his grip was beginning to loosen, he could have simply readjusted it. Instead, the deputy suddenly and forcefully drove the handcuffed suspect approximately six feet forward into the station wall, then wrapped his arm around his neck and took him down to the ground on his chest, landing on top of him. There were no indicia that the suspect was trying to escape or that his actions were in any way assaultive or high risk.<sup>12</sup>
- *Audit Number 7:* While three deputies were trying to deal with an intoxicated suspect sitting inside a pick-up truck, a fourth deputy walked up, kicked the truck's rear door, dragged the suspect (who had already been successfully tased) out of the truck onto his chest, and then punched him very forcefully approximately 12 times with a closed fist.

#### Objective 1.1: Resistive Non-Threatening Behavior

Of the 13 incidents in the audit population, Monitors identified two cases (Audit No. 5 and No. 7) where force was used on a suspect who was showing resistive, but non-threatening behavior.

- *Audit Number 5:* There are no indicia in the UOF investigation, which includes a video recording of this incident, that the deputy, who outweighed the handcuffed suspect by 65 pounds, was losing control of the suspect, or that the suspect posed a threat to the deputy.
- *Audit Number 7:* The intoxicated suspect had already been successfully tased and was not combative. Four deputies were on scene, and the use of approximately 12 forceful punches by the 280-pound deputy was objectively unreasonable.

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<sup>12</sup> The Department disagrees with this finding and believes the force used was objectively reasonable.

## Objective 1.2: Retaliatory Force

There was one case in which the subject of the UOF clearly alleged that a deputy used force in retaliation for the subject running away and making the deputy chase him.

- *Audit Number 6:* In his video recorded interview, the subject of the UOF admitted stealing beer from the market and running away when the deputy drove by. When he couldn't run any longer because he "just didn't have any run in him," he said he stopped and gave up. Then, he alleged, "That wasn't good enough for the officer. He had to get me down on the ground. He hit me. He slammed my head into the ground three times in rapid succession on this side [*he pointed to his left*]. I was still not resisting whatsoever, had my hands behind my back, one of them chickened me up . . . and the other one hit me with a light on this side of my head," pointing to his swollen right eye. During questioning, he said he was on the ground with the deputy for about 10 seconds before the deputy slammed his head against the floor then hit him with a flashlight. The suspect said he was saying he was sorry, and the deputy said, "You made me run, you want to die mother fucker?"<sup>13</sup> This allegation was not alleged, investigated, or adjudicated by management. In fact, when the IAB investigators interviewed the deputy who was the subject of this allegation, his attorney asked if there were any specific allegations. The IAB investigators said there were not and never asked about them.

## Objective 1.3: Inhibiting Lawful Activity

There were no incidents in the audit population that involved a deputy trying to prevent or inhibit anyone from lawfully recording or photographing police activity.

## Objective 1.4: Head Strike With Impact Weapon

There were no cases in the audit population where deputies reported they used a baton, flashlight, or any form of an impact weapon to subdue a suspect. However, in three cases,

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<sup>13</sup> A witness to the UOF did not support the suspect's claim that the deputy hit him with a flashlight. The witness was across the street and too far away to hear any conversation between the deputy and the suspect.

suspects claimed to have been struck on the head or struck their head on a hard object during the struggle.

- *Audit Number 6:* The subject of the deputy's force alleged that the deputy struck him with a flashlight and then struck his head against the pavement; however, that was refuted by a civilian witness to the incident.
- *Audit Number 7:* A witness to the use of force stated that when the deputy punched the suspect, after he had been dragged from a pickup truck, the suspect's head bounced off of the pavement. A video of the incident shows the suspect's head against the pavement when he was punched on his back by the deputy.
- *Audit Number 8:* The subject of the deputy's force alleged that he was slammed on his face when he was taken down to the ground by the deputy. The deputy stated that he swung the subject to the ground when he resisted.

a. *Compliance Metric: Use of Force*

The Parties have agreed that the Department will be deemed in compliance with SA Paragraphs 102, 104, 105, 106g, and 107 when:

- At least 95% of the Category 3 UOF incidents are assessed as objectively reasonable according to the mandates in SA Paragraphs 102, 104, 105, 106g, and 107.
- **Exception:** The Department will not be held out of compliance if one Category 3 UOF in a calendar year is found to have violated these paragraphs, but the Department's investigation identified the violation and prompt appropriate corrective action was taken.

b. *Monitors' Finding Objective 1: The Use of Force*

The Department is in compliance with the SA Paragraphs 106g (recording law enforcement activity) and 107 (head strikes with an impact weapon). Auditors did not identify any cases that violated these SA provisions.

The Department is out of compliance with SA Paragraphs 102 (use of objectively reasonable force) and 104 (force used for resistive behavior). In two cases, force was used in violation of these paragraphs. In the first case (Audit No. 5), the force used was unnecessary: The handcuffed suspect was, at best, verbally uncooperative, but he posed no threat to the much larger deputy. This case was never adjudicated by the Department, so it cannot fall under the exception for cases that have been addressed and corrective action taken. In the second case (Audit No. 7), the force used likewise violated both these SA provisions. The Department did initiate an internal criminal and administrative investigation into this case and ultimately terminated the offending deputy, but then rehired him without documenting any rationale for that decision.<sup>14</sup>

*Note:* On June 18, 2019, Monitors met with LASD Chief Dennis Kneer and Mr. Roger Granbo, LA county counsel, and discussed the lack of documentation associated with the rehiring of the terminated deputy in Audit No. 7. They agreed there was no documentation of the Department's rationale to rehire the terminated deputy and that there should have been. They explained that the deputy had no prior sustained citizen complaints for excessive force and that he was rehired as part of a negotiated settlement agreement. The deputy was suspended for the maximum amount of time allowed by county procedures (at that time), was assigned to performance monitoring, and had not been the subject of any further disciplinary action.

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<sup>14</sup> Other shortcomings in this investigation and the subsequent rehiring of this deputy will be discussed in Objective 7: Management Accountability.

The Department is out of compliance with these provisions as the shortcomings in these two cases resulted in a compliance rate of 85% (11 compliant cases out of 13), which is below the 95% standard agreed upon by the Parties.

Settlement Agreement Paragraph 105 states the “LASD agrees to explicitly prohibit the use of retaliatory force.” There was one case in this audit sample (Audit No. 6) in which the suspect clearly alleged the deputy used force in retaliation for having to chase the suspect on foot. The Department completely ignored that allegation to the point that the IAB investigator told the deputy’s attorney before the deputy’s interview there were no allegations of misconduct. Whether or not the suspect’s allegation was true, ignoring it hardly constitutes “explicitly prohibit[ing] the use of retaliatory force.” As a result, the auditors conclude the Department is out of compliance with SA Paragraph 105.

## **Objective 2: De-Escalation**

The following SA paragraphs establish the requirements for this objective:

- LASD agrees to . . . use force as a last resort and de-escalate the use of force at the earliest possible moment (page 24, Preface to SA UOF section); and,
- Deputies shall use advisements, warnings, and verbal persuasion, when possible, before resorting to force; and de-escalate force immediately as resistance decreases. (Paragraph 103)

### 1. Monitor Activity

The SA clearly recognizes that a deputy’s tone, demeanor, command presence, and use of verbal persuasion can often eliminate the need to use force. However, verbalization is not an

option in every case, as drug or alcohol influence, mental health issues, and the immediacy of the threat can reduce or even eliminate any opportunity to employ verbalization. With that said, there is no way to know how many evolving incidents occurred during the audit time period where AV deputies successfully avoided force by using time, tone, verbalization, and other resources. Therefore, this audit is relegated to reviewing the cases in the audit sample to determine whether deputies tried to defuse those situations, when practical, and, when force was necessary, de-escalated the force as the subjects of force decreased their resistance.

#### Objective 2.1: Use of Advisement, Warning, or Verbal Persuasion

Auditors identified two cases in which a deputy failed to use advisements warnings or verbal persuasion when there was an opportunity to do so.

- *Audit Number 5:* Rather than de-escalating the need to use force, the deputy, who outweighed the suspect by 65 pounds, escalated it when he forcefully drove the handcuffed suspect into a wall then took him down to the pavement face down and landed on top of him.
- *Audit Number 7:* The initial deputies on scene tactically deployed and used advisements, warnings, and verbal persuasion in an attempt to resolve the situation without using force. But the deputy who subsequently arrived locked up the wheels of his patrol vehicle as he skidded to a stop; he then got out of his vehicle and escalated the incident when he failed to communicate with the deputies on scene and kicked the door to the truck and screamed that he was going to shoot the suspect. After the suspect had been successfully tased, the deputy pulled the suspect from the vehicle and forcefully punched him approximately 12 times.

Auditors also identified one case in which the deputies' de-escalation efforts were exemplary.

- *Audit Number 13:* A deputy responded to a radio call regarding a family dispute, domestic violence restraining and protective order, (parolee) suspect there now. The subject was contacted by the deputies and was acting bizarrely. The deputies were able to get him handcuffed without incident. The video of the incident clearly shows that the subject was in distress, delusional, and hallucinating. The subject yelled at the deputies that he could see things that they could not see. He screamed hysterically, tried to bite one of the deputies on the thigh, and yelled that there were demons all around them. He tried to break free from the deputies but fell to the ground, and the deputy landed on top of him. Multiple deputies and two sergeants responded, and they took their time, used excellent de-escalation skills, and methodically secured the combative suspect to a gurney with the help of fire department personnel.

**Recommendation Number 3: The Palmdale supervisor(s) and deputies involved in Audit No. 13 are to be commended for their patience, professionalism, and extraordinary effort to deal with a person undergoing a mental health crisis.**

Objective 2.2: De-Escalation of Force

Auditors identified two cases in which a deputy failed to decrease the force being used as the subject's resistance decreased.

- *Audit Number 5:* After the deputy pinned the handcuffed suspect against a wall, the deputy took him down to the pavement with his arm around the subject's neck and landed on top of him.
- *Audit Number 7:* After the suspect was tased and dragged from the truck, there were additional opportunities to use verbalization, time, and tone to facilitate his handcuffing. Instead, a deputy escalated the UOF and unnecessarily, repeatedly, and forcefully punched the subject approximately 12 times.

a. *Compliance Metric: De-Escalation*

The parties have agreed the Department will be deemed in outcome compliance with Paragraph 103 when:

- Deputies use advisements, warnings, and verbal persuasion, and/or other de-escalation tactics, when possible, before resorting to force, and de-escalate the UOF immediately as resistance decreases in at least 95% of the Category 3 UOF incidents (Paragraph 103).
- **Exception:** If one Category 3 UOF in a calendar year is found to have violated Paragraph 102, 103, 104, 105, 106g, or 107, but the Department's investigation identified the violation and prompt appropriate corrective action was taken, the Department will not be held out of compliance.

b. *Monitors' Finding Objective 2: De-Escalation*

The Department is out of compliance with the requirements of SA Paragraph 103 (de-escalation). In two of the 13 cases, at least one deputy failed to utilize advisements, warnings, and verbal persuasion when it was available, and in those same two cases at least one deputy failed to decrease the UOF as resistance decreased (Audit Nos. 5 and 7). The shortcomings in these two cases resulted in a compliance rate of 85% (11 compliant cases out of 13), which is below the 95% standard agreed upon by the Parties.

**Objective 3: Reporting Uses of Force**

The following SA paragraphs establish the requirements for this objective:

- LASD agrees to continue to require deputies to report all uses of force above un-resisted handcuffing. (Paragraph 108 partial)

- LASD agrees to continue to require deputies who use or observe force to notify their supervisors immediately following any reportable use of force incident or upon receipt of an allegation of unreasonable or unreported use of force by any deputy. Deputies who use or observe force and fail to report it shall be subject to disciplinary action, up to and including termination. (Paragraph 110)

1. Monitor Activity

Auditors reviewed myriad sources of information, including news reports, community complaints, claims for damages and lawsuits, and incidents that often involve a UOF such as foot and vehicle pursuits and assaults on deputies. Auditors compared that data with the PRMS printout for Category 3 uses of force occurring in the AV during the audit period. Auditors evaluated the documentation in the UOF packages to determine if AV deputies promptly notified a supervisor of their involvement in a UOF.

Objective 3.1: Supervisory Notification

In each case in the audit population, a deputy notified a supervisor without unnecessary delay that a UOF had occurred.

a. *Compliance Metric: Supervisory Notification*

The agreed-upon compliance standards for uses of force did not include a metric to assess compliance with the SA's requirement that deputies notify a supervisor immediately following a reportable UOF. For purposes of this audit, any metric would be academic as a supervisor was notified in every case.

**Recommendation No. 4: The Parties should establish a metric to determine compliance with the SA requirement that deputies notify a supervisor immediately following a reportable UOF.**

*b. Monitor Finding Objective 3: Reporting Uses of Force*

By any standard, the Department is in compliance with the requirements of SA Paragraphs 108 (partial) and 110, which require timely notification to a supervisor whenever an employee is involved in or witness to a reportable UOF. A field supervisor was notified in every case (100%) as soon as was practical.

*Note:* There were no cases in the audit population where a deputy failed to report that he or she used force, observed force by another deputy, or were informed of an allegation of unreasonable force. Thus, the portion of Paragraph 110 requiring the imposition of discipline for such cases could not be evaluated at this time.

**Objective 4: Completion of Reports**

The following SA paragraphs establish the requirements for this objective:

- LASD shall continue to require Antelope Valley deputies to completely and accurately describe the force used or observed, including describing in detail the actions of the suspect necessitating the use of force and the specific force used in response to the suspect's actions, any injuries or complaint of injuries, and any medical treatment or refusal of medical treatment. (Paragraph 108 partial)
- Deputies shall be held accountable for material omissions or inaccuracies in their use of force statements, which may include being subject to disciplinary action. (Paragraph 109)

The Department's UOF policy also requires that UOF reports be prepared in a manner that details the UOF incidents. Specifically, MPP 3-10/100 requires:

*"Each member reporting force in a report or memorandum shall describe in detail the force incident, including the tactics leading up to the use of force, the actions of the suspect necessitating the use of force, and the specific force used in response to the suspect's actions. Any injuries or complaint of injuries, and any medical treatment or refusal of medical treatment, shall be documented in the first report, supplementary reports or memoranda."*

1. Monitor Activity

Monitor Team auditors evaluated every UOF package in the audit sample to determine if they complied with SA Paragraphs 108 and 109.

Objective 4.1: Completion of Reports

Auditors identified two cases in which the deputies' reports did not completely and accurately describe the force used and suspect's actions necessitating the force used.

- *Audit Number 5:* The evidence in this case does not provide a *reasonable basis* for the deputy's opinion that he may have been losing control of the handcuffed suspect. The deputy outweighed the handcuffed suspect by 65 pounds and was standing alongside him grasping his arm, making it highly unlikely the suspect posed any viable threat. When the deputy selectively wrote that the suspect "continued to twist his arm toward me," he failed to accurately describe, which the video shows, that the suspect *slightly* turned toward the deputy and *gradually* raised his arm in a non-threatening manner.

- *Audit Number 7: The deputy's report was inaccurate and contained canned and boilerplate language that drastically minimized the level of force he actually used. The deputy wrote: "I delivered approximately three punches with my right hand to the suspect's upper left side, for pain compliance" and "Fearing the suspect was reaching to remove a weapon from his wristband, I delivered three more punches to the suspect as a distraction" (emphasis added). Those punches, by the 280-pound deputy, were extremely forceful and cannot reasonably be classified as a method to achieve "pain compliance" or to "distract" the suspect in order to achieve handcuffing. Additionally, the deputy punched the suspect approximately 12 times, many more than the six times he reported. Finally, the deputy reported that the effects of the Taser were wearing off, which was refuted by the independent witness who video recorded the incident and told the IAB investigating officer: "He was unresponsive I believe because the Taser. I don't know. I mean, he was—he was still talking. He was conscious, but he was—you know, he was like limp because the Taser, I guess" (emphasis added).*

#### Objective 4.2: Supervisors Holding Deputies Accountable

A supervisor approved the deputy's report in Audit No. 5 despite the video evidence and his significant size advantage over the suspect, which challenges the reasonableness of his fear that he "may" have been losing control of the suspect. In fact, that UOF has not been adjudicated by the Department.

The Department initiated a criminal investigation into the deputy's actions on Audit No. 7. The EFRC ultimately determined the force used was out of policy, and the offending employee was terminated; the deputy was later rehired during a settlement agreement.

##### *a. Compliance Metric: Completion of Reports*

The agreed-upon compliance measure for this objective is that LASD will be deemed in substantial outcome compliance when overall, at least 95% of the Category 3 cases reviewed

were *not* classified by the auditors as Investigation With Critical Deficiencies, as per the compliance metrics for SA Paragraphs 108 through 112.

Investigation With Critical Deficiencies may include failure to interview a key witness; failure to obtain a statement from the supervisor directing a UOF; failure to obtain a statement from a supervisor present during a UOF; unreasonable failure to obtain a written statement from an involved or witness deputy; failure to gather or analyze a crucial piece of evidence; inaccurately summarizing a key witnesses' recorded statement in an important area; approving an adjudication classification that is not supported by a preponderance of evidence; or inaccurately recording important aspects of the UOF in PRMS.

*b. Monitors' Finding Objective 4: Completion of Reports*

The Department is out of compliance with the requirements of SA Paragraphs 108 (partial) and 109. The substantial errors in the reports prepared by deputies involved in Audit Nos. 5 and 7 were determined to be critically deficient because they rendered those reports unreliable. Those shortcomings should have been addressed by Department managers, but they were not. The reports in this audit achieved an 85% compliance rate (11 of 13 cases complied), which is below the 95% agreed-upon standard for Category 3 uses of force.

**Objective 5: Use-of-Force Investigation**

*Note:* This objective does *not* include failure to investigate alleged misconduct. Misconduct allegations have different requirements under the SA and are addressed in Objective 6.

The following SA paragraph establishes the requirements for this objective.

*For all reportable uses of force, the investigating supervisor shall conduct a thorough investigation. This investigation will require supervisors to:*

- a. Respond to the scene, examine the subject of the force for injury, interview the subject for complaints of pain, and ensure that the subject receives medical attention from an appropriate medical provider;*
- b. Identify and collect all relevant evidence;*
- c. Canvass for, and interview, civilian witnesses;*
- d. Collect statements from witness deputies; and*
- e. Review all deputy use of force statements for adequacy, accuracy, and completeness. (Paragraph 111)*

1. Monitor Activity

Auditors evaluated all the UOF investigations in the audit sample.

Objective 5.1: Supervisory Response

In all 13 cases (100%), a field supervisor promptly responded to the UOF location and took charge of the scene. In many cases the on-duty watch commander also responded to the scene and frequently to the hospital where the suspect was being treated. In every case, medical aid was rendered at scene either by Los Angeles County Fire Department personnel or an ambulance service. Suspects were transported promptly to an AV medical facility where medical treatment was rendered.

## Objective 5.2: Determining UOF Category

Once the scene was stabilized, the field supervisor and/or watch commander were able to make a timely determination that a Category 3 UOF had occurred in eight cases (Audit Nos. 1, 3, 4, 6, 7, 9, 10 and 14). In those cases, IAB was notified promptly, responded to the location in a timely manner and assumed responsibility for the UOF investigation.

In four cases, the IAB notification and/or response were delayed:

- *Audit Number 2:* The auditors could not locate any specific documentation showing how long it took the IAB investigators to respond. The chronological log shows the IAB investigators were notified at 2:00 p.m., but the subject of the UOF was not interviewed until 12:15 the following morning, about 10 hours later.
- *Audit Number 5:* The investigation documents that IAB was notified at 9:15 p.m. hours, but it does not document when IAB responded. The IAB investigators did not interview the UOF subject until 1758 hours the following day. The auditors asked twice for the investigating officers' chronological logs for this case but were told they could not be found.
- *Audit Number 8:* The subject of force refused medical treatment the day of the incident, so his fracture was not diagnosed until the following day.
- *Audit Number 13:* The subject of the force was booked into the jail and subsequently transferred to Olive View Psychiatric Hospital. Six and a half weeks later, it was determined he had a fractured wrist and IAB assumed the investigation.

Even though they were determined to be and investigated as a Category 3 uses of force, there were challenges in identifying the source of the subject's injuries in two other cases:

- *Audit Number 5:* Nearly a year after the incident, the county chief physician sent an email to the Professional Standards Division commander stating he reviewed a report of the X-ray taken the day of the incident. Based on the documentation of the biological healing process present in the subject's X-ray, he opined the fracture occurred approximately five to 15 days before the UOF.

- *Audit Number 7:* The subject, who was forcefully punched multiple times, was diagnosed with multiple injuries, including a traumatic brain injury, "a 9 millimeter cerebral temporal contusion and hemorrhage," a fractured right elbow, bleeding behind his right eye, bruising to his right eye, Taser dart puncture wounds on the left side of his abdomen, and scrapes to both knees. However, the suspect did not remember the incident and stated that earlier in the day he had been riding a bicycle when he crashed into a person operating a scooter and they butted heads.

### Objective 5.3: Independent Investigation

Every investigation was conducted by Internal Affairs investigators. In one case the IAB investigation relied heavily on a Homicide Bureau investigation (Audit No. 10), and in another it relied on an ICIB investigation (Audit No. 7). There were no indicia in any of the cases that the investigators or their supervisors had any conflict of interest with the involved deputies.

### Objective 5.4: Quality of Investigations

With the exception of the deficiencies already identified (Audit Nos. 5 and 7), the investigations in the audit sample could reasonably be relied upon by management to make informed decisions about the objective reasonableness of the force used. The investigation into the one officer-involved shooting in the audit sample (Audit No. 10) was exceptionally well done.

**Recommendation No. 5: The officer-involved-shooting investigation done by Homicide Bureau investigators assigned to Audit No. 10 was exceptionally well done. The investigators and their supervisors are to be commended for the quality of this investigation.**

## Objective 5.5 Timely Submission of Investigations

The investigations were not submitted in a timely manner. In just about every case, the investigation was approved within a few weeks of the administrative statute of limitations expiring.

While still within the statute of limitations for taking administrative action, completing an investigation within weeks of the statute leaves the EFRC little or no time to address any significant issues that may arise during their review.

<b>Table 3</b>			
<b>Timeliness of IAB Investigations</b>			
<b>Audit No.</b>	<b>UOF Occurred</b>	<b>Inv Approved</b>	<b>Months to Complete</b>
1	12/09/17	10/31/18	10
2	07/15/17	06/04/18	11
3	05/01/17	03/22/18	10
4	02/15/17	12/13/17	10
5	09/14/16	08/21/17	11
6	09/11/16	08/28/17	12
7 (ICIB)	07/21/16	10/31/16 (to DA)	3
7 (IAB)	05/10/17 (ICIB to IAB)	03/05/18	10
8	03/30/16	03/02/17	11
9	03/08/16	02/15/17	11
10	12/20/15	09/19/18	9
12	09/15/15	06/06/16	9
13	09/09/15	08/12/16	11
14	03/08/15	02/09/16	11

a. *Compliance Metric: Use-of-Force Investigations*

As described earlier, the agreed-upon compliance measure for this objective is that LASD will be deemed in compliance when overall at least 95% of the Category 3 cases reviewed were *not* classified as “Investigation With Critical Deficiencies” as per the mandates of SA Paragraphs 108 through 112.

“Investigation With Critical Deficiencies” may include failure to interview a key witness; failure to obtain a statement from the supervisor directing a UOF; failure to obtain a statement from a supervisor present during a UOF; unreasonable failure to obtain a written statement from an involved or witness deputy; failure to gather or analyze a crucial piece of evidence; inaccurately summarizing a key witnesses’ recorded statement in an important area; approving an adjudication classification that is not supported by a preponderance of evidence; or inaccurately recording important aspects of the UOF in PRMS.

b. *Monitors’ Finding Objective 5: Use-of-Force Investigations*

The Department is in compliance with the requirements of SA Paragraph 111a, which requires that a supervisor respond to the scene and ensure that the subject of force received medical care. In every case (100%), a field supervisor quickly responded and medical care was promptly provided at scene.

The Department is in compliance with the requirements of SA Paragraph 111b, c, and d, which require that the investigator collect evidence, canvas and interview witnesses, and collect statements from witness deputies. Those requirements were met in every case auditors reviewed (100%).

The Department is out of compliance with the requirements of SA Paragraph 111e, which requires that the investigator review all deputy UOF statements for adequacy, accuracy, and completeness. In Audit No. 5, the deputy's statement that he may have been losing control of the suspect is inconsistent with the video, and he was not confronted with that inconsistency during his interview. In audit No 7, the deputy's statement is likewise inconsistent with the video, and he too was not confronted with that inconsistency. Equally important, the other deputies who were present were not asked their opinion of the force he used. Those critical errors resulted in a compliance of 85%, which is below the 95% compliance standard for this objective.

The length of time it takes the Department to complete these high-risk investigations, which involve serious injuries, is a risk management issue that needs to be addressed.

**Recommendation Number 6: The Department needs to remedy the length of time it is taking to complete Category 3 UOF investigations. Most of the AV investigations are being completed within weeks of the statute running.**

#### **Objective 6: Uses of Force With Alleged Misconduct**

The following Settlement Agreement paragraphs establish the Department's mandates for compliance with this objective:

- LASD will implement mechanisms to ensure that all personnel allegations are accurately classified at all investigative stages, from intake through resolution, so that each allegation receives the appropriate level of review required under policy. (Paragraph 127)

- LASD shall investigate every allegation of misconduct that arises during an investigation even if an allegation is not specifically articulated as such by the complainant. (Paragraph 130)
- All investigations of Antelope Valley personnel complaints, including reviews, shall be as thorough as necessary to reach reliable and complete findings. (Paragraph 131)
- LASD will not permit any involved supervisor, or any supervisor who authorized the conduct that led to the complaint, to conduct a complaint investigation. (Paragraph 133)
- LASD-AV will ensure that PPI data is accurate and hold responsible Antelope Valley personnel accountable for inaccuracies in any data entered. (Paragraph 142)

The SA contains specific requirements for the investigation and adjudication of public complaints. For example, complainants must be interviewed in person, deputies must be interviewed separately, and a deputy's version of events cannot be given automatic preference. Further, each complaint must be adjudicated using the preponderance of evidence standard, and the complaint and adjudication must be recorded in the employee's complaint history in PRMS.<sup>15</sup>

#### 1. Monitor Activity

Department policy that was in effect during this audit period (and is in effect today in every command except the AV) allows allegations of misconduct made in conjunction with a UOF investigation to be investigated and adjudicated along with the UOF. The complaint is *not* required to be reported on a Service Comment Report (SCR), and, therefore, it is never recorded

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<sup>15</sup> The "preponderance of evidence standard" means that the evidence presented makes the issue being considered more likely true than not true.

on an employee's complaint history unless the allegation is sustained and discipline imposed. That procedure bypasses many and in most cases all of the related SA provisions.

Auditors reviewed each UOF case to identify those with an allegation of misconduct from the public. That includes deputies' actions that constituted misconduct that was not identified as such by the complainant.

### Objective 6.1: Cases With Alleged Misconduct

One of the Lancaster and three of the Palmdale UOF cases contained a public complaint of misconduct. Those allegations included excessive or unnecessary force, vandalism, racial profanity, and racially motivated excessive force:

- *Audit Number 5:* The subject of the UOF said in his recorded interview, "all of this stuff [force] was very unnecessary to me." That statement was included in his paraphrased statement. The station's security camera captured the deputy's UOF, and it clearly shows the force used to be unreasonable and unnecessary. The subject's allegation of unnecessary force, which was supported by video evidence, should have been alleged, investigated, and adjudicated.
- *Audit Number 6:* In his video recorded interview, the subject of the UOF admitted stealing beer from the market and running away when the deputy drove by. When he could not run any longer because he "just didn't have any run in him" he said he stopped and gave up. Then he alleged, "*That wasn't good enough for the officer. He had to get me down on the ground. He hit me. He slammed my head into the ground three times in rapid succession on this side [he pointed to his left]. I was still not resisting whatsoever, had my hands behind my back, one of them chickened me up . . . and the other one hit me with a light on this side of my head*" pointing to his right swollen eye. During questioning, he said he was on the ground with the deputy about 10 seconds before the deputy slammed his head against the floor and then hit him with the flashlight. The suspect said he was saying he was sorry, and the deputy said, "You made me run, you want to die mother fucker?" When the IAB investigators interviewed the accused deputy, his attorney asked if there were any specific allegations. Inexplicably, the IAB investigators said there were not and never asked about them. These allegations were not alleged, investigated, or adjudicated by management.

- *Audit Number 7:* Prior to the use of force, the fourth deputy that arrived on scene, kicked the rear door of the victim's truck and caused \$2,600 in damage.<sup>16</sup> Furthermore, the subject of the UOF stated he had no memory of the incident. However, the UOF was video recorded by three separate cameras. In one of the video recordings, a witness turned toward the camera and said, "You've just seeing police brutality [sic.]," in reference to the deputy dragging the suspect from a pickup truck and forcefully punching him approximately 12 times. The substance of this third-party allegation, e.g., excessive and unnecessary force, was included in the ICIB and IAB investigations and adjudicated by management.
- *Audit Number 8:* In his interview with the Palmdale watch sergeant, the suspect alleged, "They slammed me on my face, and he called me a 'nigger,' and he said, 'Get your black ass on the ground.' And, I was, like what? And then he slammed me on the ground." That statement was included in the IAB investigation, but the deputy was never asked about it. It was not alleged, investigated, or adjudicated by management.

The allegations in Audit No. 7 were addressed, but the allegations of deputy misconduct in Audit Nos. 5, 6, and 8 were never recognized, investigated, or commented on by the EFRC or any other department manager. SCRs were not initiated, and they were not recorded in the PRMS database.

*a. Compliance Metric: Allegations of Misconduct*

The Department, DOJ, and Monitors are in the process of finalizing compliance measures for the SA paragraphs on public complaints. When those compliance measures are established, Monitors will use them to determine compliance. Meanwhile, Monitors need to evaluate how the Department responds to public complaints of alleged misconduct that surface during UOF investigations. In order to do that, Monitors used the following standards to determine compliance:

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<sup>16</sup> Initially, the North Patrol Division Chief initiated a criminal investigation for vandalism.

- **Out of Compliance:** The Department is not complying with an SA provision to the extent that it would not meet any reasonable qualitative and quantitative standard that may be established in the final work plans.
- **Unable to Determine:** Insufficient data has been provided, or the Parties must resolve substantive issues regarding the compliance measures.
- **In Preliminary Compliance:** The Department is complying with an SA provision to the extent that it meets or exceeds reasonable qualitative and quantitative standards that may be established in the final work plans; however, until such time as the Parties and MT finalize compliance measures and come to resolution on the scope of UOF audits, full compliance cannot be determined, nor can the 12-month compliance period begin (SA Paragraph 205).

*b. Monitors' Finding Objective 6: Uses of Force With Alleged Misconduct*

The Department is out of compliance with the requirements of SA Paragraphs 127, 130, 131, 133, and 142, which require the intake, investigation, adjudication, and recordation of all personnel complaints made by the public. Three UOF cases (Audit Nos. 5, 6, and 8) contained public complaints of misconduct, none of which was addressed in the investigations. One case with allegations of misconduct was investigated (Audit No. 7). The remaining nine cases did not contain allegations of misconduct. That resulted in three of the 13 cases with unaddressed allegations of misconduct, for a compliance rate of 77%, well below any reasonable standard that may be established.

The fact that these investigations were conducted by Internal Affairs merits some discussion. One would think that Internal Affairs investigators, who are charged with responding to personnel complaints from the public, would be more attuned to handling public complaints properly. Department policy clearly states that an allegation of misconduct generally should result in the initiation of a Service Comment Report. But an SCR was not initiated for any of

these complaints. More importantly, the allegations were not investigated and the deputies were never asked about them. When one deputy's attorney asked if there were any allegations, the IAB investigator said there were not, and the deputy was never asked about it.

**Recommendation Number 7: Internal Affairs investigators, their supervisors, and their managers should receive training and be held accountable for thoroughly documenting and investigating public complaints of misconduct that arise during their investigations.**

#### **Objective 7: Management Oversight**

The following SA paragraphs establish the requirements for this objective:

- Upon completion of the Supervisor's Report on Use of Force, the investigating supervisor('s) chain of command . . . will review the report to ensure that it is thorough and complete. (Paragraph 113 partial)
- LASD agrees to continue to require that the Executive Force Review Committee review use of force incidents requiring response by the IAB Force/Shooting Response Team under current policy, and to review the incidents for any policy, training, or tactical concerns and/or violations. (Paragraph 114)
- LASD will hold deputies accountable for uses of force that violate policy or law, and continue to require station commanders to refer uses of force that may violate law or the Department's Prohibited Force policy, to the Internal Affairs Bureau or the Internal Criminal Investigations Bureau for further investigation or review. (Paragraph 115)
- LASD will hold supervisors accountable for not detecting, adequately investigating, or responding to force that is unreasonable or otherwise contrary to LASD policy. (Paragraph 116).

1. Monitor Activity

For Category 3 uses of force, management oversight is ultimately exercised by the EFRC, including responsibility for recommending to the Sheriff any discipline for a UOF the EFRC finds to be out of policy. As explained to the auditors by the EFRC chair, assigning discipline authority to the EFRC promotes consistency in the discipline imposed for force violations. The Professional Standards Division chief or the Sheriff resolve any penalty disagreements between the EFRC and the unit commander and/or division chief.

Auditors reviewed each case in the audit sample to assess the Department's compliance with these provisions.

Objective 7.1: Management Review of UOF investigations

In addition to the SA requirements listed above, MPP requires that the EFRC's findings report cite any "Issues concerning tactics, training, and/or policy revisions" and that "a memorandum [be] forwarded to the appropriate Department Unit/Bureau for consideration."<sup>17</sup>

Auditors identified seven cases with issues that should have been addressed by the EFRC. Some of those issues pertain to alternative force measures that appear to have been available but were not used by the deputies. The EFRC's Findings Letters tend to be very brief and limited to the EFRC's findings on policy compliance of the force and tactics used. The Department has evidently not required the EFRC to document a comprehensive rationale for its findings or to include a discussion of why seemingly available alternative

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<sup>17</sup> MPP 3-10/140.00 Executive Force Review Committee

tactics were not used. So it is quite possible, and in some cases probable, that the issues identified here were discussed by the EFRC. However, without documentation that the EFRC recognized and addressed those issues, the auditors' only option is to make compliance determinations based on the available documentation prepared by the EFRC.

- *Audit Number 2:* Deputies had to deal with a mentally ill woman threatening a man with a shovel. They recognized her mental illness issues almost immediately and requested a MET team. However, the team was unavailable, and the reason for the MET's lack of availability was not documented in the investigation. The IAB investigators determined that the woman had been the subject of 15 calls for service during the preceding several years, three of which were related to her mental illness. The EFRC adjudicated the UOF, which resulted in the woman sustaining a fractured arm, and tactics as within Department policy. However, there is no evidence of an EFRC inquiry as to why a MET team was unavailable, which is a significant risk-management issue.
- *Audit Number 3:* Deputies were escorting a male subject, who had been reported as being in need of medical attention, along a trail back to their cars. About halfway down a hill, the subject stopped walking and began violently jerking his body from side to side and swung his arm toward a firefighter's face. The firefighter was able to step back and duck under the punch, while a deputy maintained control of his other arm. The subject then swung his free arm toward the deputy. A deputy (5'9", 270 pounds) who was about four feet behind the subject stepped forward and punched the subject once in the face, knocking him unconscious. The subject was treated at the hospital for a fractured left orbital and jaw. The EFRC determined the UOF to be within policy, but it did not include a basis for its findings and made no recommendations. Minimally, there should have been a discussion regarding alternative defensive tactics, specifically the use of a palm strike rather than a punch, which may have lessened the degree of injury sustained by the subject.

*Note:* On page 1, this audit report notes that DOJ cited the Department's Deputy Field Operations Manual and Defensive Tactics Manual, which states, "*personnel are discouraged from striking an attacker's head with a fist*" and encourages deputies "*to use an open hand palm heel strike to lessen the potential of cutting injuries.*" So any use of a punch merits at least a discussion of compliance with Department standards.

- *Audit Number 5:* A deputy was escorting a handcuffed DUI warrant suspect into Palmdale Station when a UOF occurred at the back door. The UOF was captured in its entirety by the station's security camera and was evaluated by Monitors as objectively unreasonable. Additionally, the suspect alleged the force used was unnecessary. Eight days before the one-year statute expired, the EFRC obtained an email from the chief physician of Correctional Health Services opining that the suspect's fractured hand occurred prior to the UOF.<sup>18</sup> The EFRC did not prepare any documentation reclassifying the incident, it was not assigned for review and adjudication, and it has not been adjudicated by the Department. Clearly, this constitutes a management failure and is contrary to the SA requirements that managers investigate misconduct complaints and hold employees accountable for the use of excessive or unnecessary force.
- *Audit Number 6:* The subject of this UOF clearly alleged that the deputies used retaliatory force following a foot pursuit. That allegation was never investigated by the IAB investigators assigned the case, and the EFRC did not question that deficiency.
- *Audit Number 7:* This UOF resulted in an ICIB investigation, which the district attorney declined to prosecute. IAB then conducted its investigation, which was heard by the EFRC nearly one year later. The EFRC made the correct decision that the UOF and tactics were out of policy and provided a very brief rationale for that decision. The EFRC recommended that the deputy be terminated from his position from the Department. However, the EFRC did not provide a rationale for the termination recommendation. It did not address the deputy's employment history, his discipline and UOF history, the level of force used, alternatives available to him, the degree and source of the suspect's injuries, or that the deputy's actions were perceived by a community member as police brutality and reflected horribly on the Department. The EFRC also did not address the responsibility of the other deputies who were present to intervene in the deputy's use of clearly excessive force.

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<sup>18</sup> The suspect adamantly denied that his hand had been fractured before the UOF incident.

The deputy was terminated by the former sheriff and then rehired by the current administration. The Amended Letter of Imposition rehiring the deputy, which was signed by the IAB captain and not a Department executive, provides no rationale for the decision to reverse the earlier decision. The absence of a clear and thoroughly documented rationale by the EFRC to recommend termination is troubling, but it is surpassed by the failure to provide any documented rationale to rehire him. As previously discussed, Monitors met with Department managers to discuss these issues, and the Department agreed there is no documented rationale to rehire the terminated deputy. They did point out that the deputy had no prior sustained use-of-force complaints and that he was rehired through a negotiated settlement agreement during his civil service appeal. That included a suspension for the longest period of time allowable under the disciplinary guidelines in effect at that time. The deputy was also transferred and assigned to performance monitoring. According to the Department, it considered, but did not document, the Department's stated purpose for discipline found in the Guidelines for Discipline Handbook (revised January 1, 2017), which states:

*Finally, the judgment of whether discipline is appropriate should be based upon several factors.*

1. *Seriousness of the offense; the impact, actual or potential, upon the Department and/or the community.*
2. *The length of service and overall performance of the employee.*
3. *The attitude and culpability of the employee.*
4. *Previous discipline and the length of time since imposed.*
5. *Harm to public trust.*

Sound risk management requires documentation of the factors that go into decisions to terminate and rehire employees. Managers who make those decisions may not recall their rationale years later, or they may not be available to explain their decision. Without documentation, there is no way to assess the reasonableness of complex management decisions.

- *Audit Number 8:* The subject of this UOF alleged that the deputy used racial slurs and that the UOF may have been racially motivated. However, those allegations were never addressed in the IAB investigation. In fact, when the accused deputy's attorney asked the IAB investigator if there were any allegations against her client, the investigator said there were not. The EFRC should have identified this deficiency, directed that the allegations be investigated, and held the IAB investigator, and the lieutenant who approved his report, accountable for failing to investigate these racially charged allegations.
- *Audit Number 9:* Seven deputies and a sergeant were involved in this UOF at the termination of a vehicle pursuit. Six deputies and the sergeant weighed at least 200 pounds each. The force included a takedown, four punches, two knee strikes, one Taser application, control holds, and resisted handcuffing. Though the suspect stated he hit his face on a rock when he was taken down, he was also punched on the left side of his face, and that is the side of his face on which he sustained the left orbital wall fracture. The use of punches and knees in this situation was a poor choice when considering there were eight staff and one suspect. That should have been addressed by the EFRC. Additionally, the sergeant's decision to become physically involved rather than supervise the deputies also should have been addressed. Instead, the EFRC determined the UOF and tactics were both within Department policy and made no recommendations.

The following table shows when an investigation was completed and the EFRC held.

Table 4			
EFRC Process Dates			
Audit No.	Inv Approved	EFRC held	Approval to ERFC
1	10/31/18	11/28/18	4 weeks
2	06/04/18	06/29/18	4 weeks
3	03/22/18	04/15/18	3 weeks
4	12/13/17	01/06/18	3 weeks
5	08/21/17	Not Held	
6	08/28/17	09/08/17	1 week
7	03/05/18	03/15/18	1 week
8	03/02/17	03/10/17	1 week
9	02/15/17	03/01/17	2 weeks
10	09/19/18	10/11/17	3 weeks
12	06/06/16	07/12/16	5 weeks
13	08/12/16	08/31/16	2 weeks
14	02/09/16	02/16/16	1 week

Clearly, the EFRC reviews these investigations in a very expeditious manner once they have been investigated. It also shows these complex high-risk cases are routinely heard by the EFRC within weeks, and in some cases, days, of the statute of limitation expiring.

#### Objective 7.2 Preponderance of Evidence.

With the exception of Audit No. 5, which was never adjudicated by the EFRC or any other Department manager, the EFRC's adjudication of the force used in the audited cases was consistent with the objectively reasonable and preponderance of evidence standards.

##### *a. Compliance Metric: Management Oversight*

The Parties have agreed that the following criteria will be used to evaluate UOF adjudications for completeness and compliance with the SA requirements.

- a. **Critical Deficiency:** The adjudication contained errors or omissions that quantitatively or qualitatively rendered it unreliable to adjudicate the incident. Critical deficiencies include basing the adjudication on an investigation containing a critical error; failure to adjudicate a case based on a preponderance of the evidence; failure to recognize and adjudicate a substantive allegation of misconduct; failure to hold deputies accountable for uses of force that violate policy or law; failure to hold supervisors accountable for not detecting, adequately investigating, or responding to force that is unreasonable or against LASD policy; and failure to ensure that important information is recorded accurately on the UOF forms and in PRMS.

- b. **Non-Critical Deficiency:** The adjudication adequately addressed the significant issues and was based on a reliable investigation; however, it contained errors or omissions that raise concerns about the thoroughness of the management review or lack of attention to detail. Non-critical deficiencies include failure to ensure that all witnesses are identified, but an explanation is provided for anyone who was not interviewed; a thorough explanation is provided if the supervisor conducting the investigation was also present during the incident; failure to identify and adjudicate a minor allegation of misconduct; and failure to ensure that all pertinent aspects of the incident were recorded accurately on the UOF form and in PRMS.
- c. **Satisfactory Investigation:** The adjudication was complete, adequately addressed the significant issues, and did not contain material errors and/or omissions.

The Department will be deemed in compliance when:

1. At least 95% of the Category 3 adjudications do not contain a critical deficiency.
2. At least 85% of the Category 3 adjudications do not contain a non-critical deficiency.

*Note:* Adjudication errors that are identified and corrected during the management review process will not be considered errors for these determinations provided the Department takes appropriate action to address any pattern that may arise.

b. *Monitors' Finding Objective 7: Management Oversight*

The Department is *out of compliance* with SA Paragraphs 113 (partial), 114, 115, and 116.

The adjudication was deficient in seven of the 13 cases in this audit. Four of those cases contained critical deficiencies (Audit Nos. 5, 6, 7, and 8), for a compliance rate of 69%, far below the 95% compliance threshold for critical deficiencies. Three other cases contained non-critical deficiencies (Audit Nos. 2, 3, and 9), for a compliance rate of 77%, short of the 85% compliance rate for non-critical deficiencies.

## Objective 8: Directed Training

The following Settlement Agreement paragraphs establish the Department's mandates for compliance with this objective:

- LASD and Antelope Valley unit commanders will regularly review and track "training and tactical review" related findings, recommendations, and comments to ensure that informal supervisory feedback does not replace the need for formal discipline. LASD will ensure that the supervisory feedback, including feedback documented in the "training and tactical review" portion of a Supervisor's Report on Use of Force, is documented in the PPI. (Paragraph 118)
- LASD shall completely and accurately record information regarding LASD-AV deputies' training attendance in LASD's Learning Management System (LMS) system or its successor. (Paragraph 167)

### 1. Monitor Activity

The Monitors' responsibility in this area is found in the following SA provision.

*In addition to compliance reviews and audits, the Monitor shall conduct qualitative and quantitative outcome assessments to measure whether LASD's implementation of this Agreement has eliminated practices that resulted in DOJ's finding a pattern and practice of constitutional violations. These outcome assessments shall include collection and analysis, both quantitative and qualitative, of the following outcome data: . . .*

*e. Training Measurements, including:*

- 1. deputy and agency reports of adequacy of training in type and frequency;*
- 2. responsiveness to training needs identified by reviews of deputy activity, use of force investigations, and personnel complaint investigations; and,*
- 3. documentation that training is completed as required. (Paragraph 153, partial)*

Auditors reviewed each UOF package in the audit to identify cases in which the EFRC directed that employees receive training. Auditors then requested the Department provide documentation that the training was provided within three months after the training was ordered, which auditors believed to be a reasonable amount of time to accomplish that task.

## 2. Findings

There were three UOF incidents (Audit Nos. 1, 4, and 10) in which the EFRC recommended that additional training be provided. In one of those cases (Audit No. 4), the Department was unable to provide documentation that all the recommended training was ever provided.

- *Audit Number 1.* The EFRC recommended that Training Bureau collaborate with Lancaster Station to provide unit-level foot pursuit training. On July 25, 2019, the Department provided documentation that the training was provided on February 20, 2019.
- *Audit Number 4.* The EFRC directed that the five involved employees receive training in two areas and that a Field Operations Directive be issued instructing desk personnel to ask for additional information on a request for service. One of the specified classes had been discontinued years earlier, and only four of the five employees attended the other class. The training directive was developed and issued by Field Operations Support Services.

This case was reported in the MT's November 8, 2018, UOF Audit and was one of the cases used in that audit to find the Department out of compliance in this area.

- *Audit Number 10.* The EFRC recommended Training Bureau release a "Tip of the Week" training video regarding handcuffing suspects in the backseat of a patrol vehicle. The Field Operations Training Unit published the video, which was professionally done and addressed the relevant issues.

### 3. Compliance Metric: Directed Training

There is no established metric for these SA paragraphs, but such a metric should have been included in the definition of critical deficiency.

**Recommendation No. 8: The parties should agree to add “failure to provide training as directed in the management review of a UOF” in the definition of a critical deficiency.**

**That would amend critical deficiency to read:**

- *Critical Deficiency:* The adjudication contained errors or omissions that quantitatively or qualitatively rendered it unreliable to adjudicate the incident. Critical deficiencies include basing the adjudication on an investigation containing a critical error; failure to adjudicate a case based on a preponderance of the evidence; failure to recognize and adjudicate a substantive allegation of misconduct; failure to hold deputies accountable for uses of force that violate policy or law; failure to hold supervisors accountable for not detecting, adequately investigating, or responding to force that is unreasonable or against LASD policy; failure to provide training as directed in the management review of a case; and failure to ensure that important information is recorded accurately on the UOF forms and in PRMS (additions underlined).

Meanwhile, the Monitors need to evaluate how stations respond to the EFRC’s directions regarding remedial training. In order to do that, the MT used the following standards in this audit to determine compliance.

- *Out of Compliance:* The Department is not complying with an SA provision to the extent that it would not meet any reasonable qualitative and quantitative standard that may be established in the final work plans.
- *Unable to Determine:* Insufficient data has been provided or the Parties must resolve substantive issues regarding the compliance measures.

- *In Preliminary Compliance:* The Department is complying with an SA provision to the extent that it meets or exceeds reasonable qualitative and quantitative standards that may be established in the final work plans; however, until such time as the Parties and MT finalize compliance measures and come to resolution on the scope of UOF audits, full compliance cannot be determined nor can the 12-month compliance period begin (SA Paragraph 205).

#### 4. Monitors' Findings Objective 8: Directed Training

The Department is out of compliance with SA Paragraphs 118 (review and track training) and 167 (record training in LMS). In three cases, the EFRC recommended specific training. That training was provided in two cases for a compliance rate of 67%, which is below any standard that may be agreed to by the Parties and MT. (The case in which directed training was not provided, Audit No. 4, was first reported in the MT's November 2018 UOF Audit).

#### **Objective 9: Recordation of UOF Data**

The following Settlement Agreement paragraph establishes the Department's mandate for compliance with this objective:

*Following the investigation, each supervisor shall continue to complete a supervisory investigation documented in a "Supervisor's Report on Use of Force." This Report shall include . . . [d]ocumentation of any training or tactical concerns, and/or corrective action taken or recommended. (Paragraph 112)*

*LASD-AV will ensure that [PRMS] data is accurate and hold Antelope Valley personnel accountable for inaccuracies in any data entered. (Paragraph 142 partial)*

1. Monitor Activity

The IAB investigator completing a UOF investigation is required to complete UOF report forms. Those forms are reviewed and approved by the investigator's IAB lieutenant. The completed forms then become part of the IAB investigative package.

The Department's policy, as specified in MPP 3-10/140.00 Executive Force Review Committee, states: "All appropriate databases shall be updated based upon the information contained within the IAB Force/Shooting Response Team case file." However, MPP does not fix responsibility for doing that.

**Recommendation Number 9: MPP should be amended to specify the entity responsible for ensuring that Category 3 UOF data is forwarded to the Discovery Unit for input into PRMS.**

Objective 9.1: Use of Force Data on Report

Auditors reviewed the Supervisor's UOF report completed by the IAB investigators for the Category 3 uses of force they investigated. Auditors separated the data into high-risk and low-risk or ministerial segments. High-risk factors, such as identifying all deputies involved, the type(s) of force used, and any injuries, require a greater degree of accuracy than lower-risk areas.

In all but one case, the data entered on the form by the IAB investigators was completely accurate for both high- and low-risk data. The one exception (Audit No. 12) mixed up the data on which deputies used what force.

Objective 9.2: Use-of-Force Data in PRMS

Eight of the 13 cases reviewed in this audit have not been entered into PRMS, other than to generate the initial URN/Event Number. In some cases, the incident occurred more than four years before the time of this report. In seven cases, the EFRC adjudicated the case more than a year before. This completely defeats the value of the PRMS system and inhibits any effort at early warning and intervention. Our findings in previous UOF and complaint audits showed that Discovery generally enters information within about six to seven months of receiving the investigative package. The delays identified here strongly indicate the Category 3 UOF packages may not be making their way to Discovery.

Table 5					
Timeline for PRMS Entry					
Audit No.	Date of:		In PRMS	If not in PRMS, months since:	
	Occurrence	ERFC		Occurrence	ERFC
1	12/09/17	11/15/18		21	9
2	07/12/17	06/28/18	Yes		
3	05/01/17	04/12/18		28	16
4	02/15/17	01/11/18		30	20
5	09/14/16	09/07/17		35	23
6	09/11/16	09/07/17	Yes		
7	07/21/16	03/15/18		25	17
8	03/30/16	03/09/17		41	17
9	03/08/16	02/23/17		41	16
10	12/20/15	10/04/18		45	10
12	09/15/15	07/07/16	Yes		
13	09/09/15	08/25/16	Yes		
14	03/08/15	02/18/16	Yes		

**Recommendation Number 10: The Compliance Unit needs to review the system for forwarding AV Category 3 UOF packages to Discovery to find out why it is taking years for them to be entered into PRMS.**

We also found one case (Audit No. 4) that was investigated by IAB and adjudicated by the EFRC as a Category 3 UOF, but it is shown in PRMS as a Category 2 UOF. While it does not affect the audit outcomes, auditors brought this situation to the attention of the Compliance Unit, and they are checking on the matter.

**Recommendation Number 11: The Compliance Unit needs to determine why Audit No. 4 is shown in PRMS as a Category 2 when it is a Category 3.**

a. *Compliance Metric: Recordation of Data*

The Department, DOJ, and Monitors have not established a compliance measure for capturing data on the UOF form or entering that data into PRMS. Meanwhile, the MT needs to evaluate the Department's compliance with the SA paragraphs requiring accurate completion of those items. In order to do that, the MT used the following standards in this audit to determine compliance:

- **Out of Compliance:** The Department is not complying with an SA provision to the extent that it would not meet any reasonable qualitative and quantitative standard that may be established in the final work plans.
- **Unable to Determine:** Insufficient data has been provided or the Parties must resolve substantive issues regarding the compliance measures.
- **In Preliminary Compliance:** The Department is complying with an SA provision to the extent that it meets or exceeds reasonable qualitative and quantitative standards that may be established in the final work plans; however, until such time as the Parties and MT finalize compliance measures and come to resolution on the scope of UOF audits, full compliance cannot be determined nor can the 12-month compliance period begin (SA Paragraph 205).

b. *Monitors' Finding Objective 9: Use of Force Data*

The Department is in preliminary compliance with SA Paragraph 112 requiring the investigating supervisor to accurately complete a Supervisor's Report on UOF. That report was completed accurately on 12 of the cases, and on the 13th, the investigator mixed up which deputies used which holds. But all the involved deputies were accounted for using force, and the particular holds were similar in nature.

The Department is out of compliance with SA Paragraph 142 (partial) requiring accurate data entry into PRMS. Half the Category 3 Uses of Force have not been entered into PRMS, which is unacceptable.

## **XII. CONCLUSION**

The use of force, particularly when it results in serious injury or death, understandably receives more public scrutiny than any other law enforcement action. In many respects, that scrutiny has improved the policing profession around the country as managers review those incidents mindful of the public's watchful eye. Equally important, the public has become more cognizant of the split-second decisions officers must make when faced with very real life-threatening dangers.

Antelope Valley deputies, like all peace officers, are only allowed to use force that is objectively reasonable in the performance of their duties. To ensure that this occurs in the Antelope Valley, this Settlement Agreement requires LASD supervisors, managers, and executives to judiciously investigate and adjudicate the use of force by deputies. This audit tested those standards against the most serious uses of force that occurred in the Antelope Valley over a three-year period. In most of the cases, deputies conducted themselves in a professional and disciplined manner while facing very dangerous situations. In others that was not the case, however, and the audit found the Department deficient. Those cases included two incidents in which the force used was not objectively reasonable. Even more troubling, while the SA and Department policy require that every allegation of misconduct arising from a use of force be thoroughly investigated and adjudicated, those mandates were routinely overlooked by

Internal Affairs investigating officers. Internal Affairs investigating officers should function as a cornerstone of the Department's discipline process; and yet, they did not investigate any of the deputies' misconduct that was alleged to have occurred. That failure was compounded when IAB supervisors and managers who approved those investigations never questioned those failures. Further, when each case was presented to high-level Department executives comprising the Executive Force Review Board, they too failed to question why Department policy and the SA were not being followed.

This Settlement Agreement is limited to the Antelope Valley, a small part of the much larger area served by the Los Angeles County Sheriff's Department. The findings in this audit suggest that the practice of failing to investigate public complaints is likely a Department-wide systemic failure rather than unique to the Antelope Valley. Hopefully, the Department will, with a sense of urgency, address this issue.

### **XIII. SUMMARY OF COMPLIANCE FINDINGS**

#### **Objective 1: The Use of Force**

The Department is in compliance with the SA Paragraphs 106g (recording law enforcement activity) and 107 (head strikes with an impact weapon). Auditors did not identify any cases that violated these SA provisions.

The Department is out of compliance with SA Paragraphs 102 (use of objectively reasonable force) and 104 (force used for resistive behavior). In two cases (Audit Nos. 5 and 7), the force used was in violation of these paragraphs. The shortcomings in these two cases

resulted in a compliance rate of 85% (11 compliant cases out of 13), which is below the 95% standard agreed upon by the Parties.

The Department is out of compliance with SA Paragraph 105, which states the "LASD agrees to explicitly prohibit the use of retaliatory force." In one case (Audit No. 6), the suspect clearly alleged the deputy used force in retaliation for having to chase the suspect on foot. The Department completely ignored that allegation to the point that the IAB investigator told the deputy's attorney there were no allegations of misconduct. Whether or not the allegation was true, ignoring it hardly constitutes "explicitly prohibit[ing] the use of retaliatory force."

### **Objective 2: De-Escalation**

The Department is out of compliance with the requirements of SA Paragraph 103 (de-escalation). In two of the 13 cases (Audit Nos. 5 and 7), at least one deputy failed to use advisements, warnings, and verbal persuasion when it was available, and in those same two cases at least one deputy failed to decrease the UOF as resistance decreased. The shortcomings in these two cases resulted in a compliance rate of 85% (11 compliant cases out of 13), which is below the 95% standard agreed upon by the Parties.

### **Objective 3: Reporting Uses of Force**

The Department is in compliance with the requirements of SA Paragraphs 108 (partial) and 110, which require timely notification to a supervisor whenever an employee is involved in or witness to a reportable UOF. In every case (100%), a field supervisor was notified as soon as was practical.

*Note:* There were no cases in the audit population where a deputy failed to report that he or she used force, observed force by another deputy, or were informed of an allegation of unreasonable force. Thus, the portion of Paragraph 110 requiring the imposition of discipline for such cases could not be evaluated at this time.

#### **Objective 4: Completion of Reports**

The Department is out of compliance with the requirements of SA Paragraphs 108 (partial) and 109. The substantial errors in the reports prepared by deputies in two cases (Audit Nos. 5 and 7) were determined to be critically deficient because they rendered those reports unreliable. Those shortcomings should have been addressed by Department managers, but they were not. The reports in this audit achieved an 85% compliance rate (11 of 13 cases complied), which is below the 95% agreed-upon standard for Category 3 uses of force.

#### **Objective 5: Use-of-Force Investigations**

The Department is in compliance (100%) with the requirements of SA Paragraph 111a, which requires that a supervisor respond to the scene and ensure the subject received medical care.

The Department is in compliance (100%) with the requirements of SA Paragraph 111b, c, and d, which require that the investigator collect evidence, canvas and interview witnesses and collect statements from witness deputies.

The Department is out of compliance with the requirements of SA Paragraph 111e, which required that the investigator review all deputy UOF statements for adequacy, accuracy, and completeness. In Audit No. 5, the deputy's statement that he may have been losing control of the suspect is inconsistent with the video of the incident, and he was not confronted with that

inconsistency. In Audit No 7, the deputy's statement is likewise inconsistent with the video, and he too was not confronted with that inconsistency. These shortcomings resulted in an 85% compliance rate (11 of 13 cases complied), which is below the agreed-upon compliance standards.

### **Objective 6: Uses of Force With Alleged Misconduct**

The Department is out of compliance with the requirements of SA Paragraphs 127, 130, 131, 133, and 142 which require the intake, investigation, adjudication, and recordation of all personnel complaints made by the public. Three UOF cases (Audit Nos. 5, 6, and 8) contained public complaints of misconduct, none of which was addressed in the investigations. One case contained alleged misconduct that was investigated (Audit No. 7). The remaining nine cases did not contain allegations of misconduct. This resulted in a compliance rate of 77% (three of four cases complied), well below any reasonable standard that may be established.

### **Objective 7: Management Oversight**

The Department is out of compliance with SA Paragraphs 113 (partial), 114, 115, and 116. The adjudication was deficient in seven of the 13 cases in this audit. Four of those cases contained critical deficiencies (Audit Nos. 5, 6, 7, and 8), for a compliance rate of 69%, which is below the agreed-upon compliance standard of 95%. Three other cases contained non-critical deficiencies (Audit Nos 2, 3, and 9), for a compliance rate of 77%, which is below the agreed-upon standard of 85%.

### **Objective 8: Directed Training**

The Department is out of compliance with SA Paragraphs 118 (review and tract training) and 167 (record training in LMS). Training was received in two of the three cases in which the EFRC directed deputies to receive training. This represented a compliance rate of 67%, which is below any standard that may be agreed to by the Parties and MT. (The instance in which training was not delivered was first reported in the Monitors' November 2018 UOF audit.)

### **Objective 9: Use of Force Data**

The Department is in compliance with SA Paragraph 112 requiring that the investigating supervisor accurately complete a Supervisor's Report on UOF. That report was completed accurately for 12 of the cases, and on the 13th, the investigator mixed up which deputies used which holds—all of the involved deputies were accounted for using force, however, and the particular holds were similar in nature.

The Department is out of compliance with SA Paragraph 142, requiring accurate data entry into PRMS. Half the Category 3 uses of force had not been entered into PRMS.

#### **XIV. SUMMARY OF SIGNIFICANT FINDINGS**

##### **Significant Finding Number 1**

None of the Category 3 uses of force in this audit sample began with a deputy's decision to arrest or detain someone for obstructing, interfering, resisting, or assaulting an officer.

##### **Significant Finding Number 2**

Six of the 13 use-of-force subjects (46%) sustained orbital fractures.

#### **XV. SUMMARY OF RECOMMENDATIONS**

##### **Recommendation Number 1**

As the auditors recommended in the first UOF audit, the Parties to the Settlement Agreement need to resolve the issue of whether the SA provisions apply to auditable events occurring in the AV involving deputies from non-AV commands.

##### **Recommendation Number 2**

The Compliance Unit should conduct a comprehensive review of AV Category 3 UOF data in PRMS and resolve any discrepancy between that data and the AV incidents reported to the California Department of Justice for their URSUS data base.

### **Recommendation Number 3**

The Palmdale supervisor(s) and deputies involved in Audit No. 13 are to be commended for their patience, professionalism, and extraordinary effort in dealing with a person undergoing a mental health crisis.

### **Recommendation Number 4**

The Parties should establish a metric to determine compliance with the SA requirement that deputies notify a supervisor immediately following a reportable UOF.

### **Recommendation Number 5**

The officer-involved-shooting investigation done by Homicide Bureau investigators assigned to Audit No. 10 was exceptionally well done. The investigators and their supervisors are to be commended for the quality of this investigation.

### **Recommendation Number 6**

The Department needs to remedy the length of time it is taking to complete Category 3 UOF investigations. Most AV investigations are being completed within weeks of the statute running.

### **Recommendation Number 7**

Internal Affairs investigators, their supervisors, and their managers should receive training and be held accountable for thoroughly documenting and investigating public complaints of misconduct that arise during their investigations.

### **Recommendation Number 8**

The parties should agree to add "failure to provide training as directed in the management review of a UOF" to the definition of a critical deficiency. That would amend Critical Deficiency to read:

**Critical Deficiency:** *The adjudication contained errors or omissions that quantitatively or qualitatively rendered it unreliable to adjudicate the incident. Critical deficiencies include basing the adjudication on an investigation containing a critical error; failure to adjudicate a case based on a preponderance of the evidence; failure to recognize and adjudicate a substantive allegation of misconduct; failure to hold deputies accountable for uses of force that violate policy or law; failure to hold supervisors accountable for not detecting, adequately investigating, or responding to force that is unreasonable or against LASD policy; failure to provide training as directed in the management review of a case; and failure to ensure that important information is recorded accurately on the UOF forms and in PRMS. (additions underlined)*

### **Recommendation Number 9**

The Department's Manual of Policy and Procedures should be amended to specify the entity responsible for ensuring that Category 3 UOF data is forwarded to the Discovery Unit for input into PRMS.

**Recommendation Number 10**

The Compliance Unit needs to review the system for forwarding AV Category 3 UOF packages to Discovery to find out why it is taking years for them to be entered into PRMS.

**Recommendation Number 11**

The Compliance Unit needs to determine why Audit No. 4 is shown in PRMS as a Category 2 when it is a Category 3.

**Addendum A**

**Antelope Valley Category 3 Uses of Force  
January 2015 Through March 2018**

Audit No.	Date	OIS	Open			EFRC Held	As of 12/12/18 In PRMS
			Admin Inv	Criminal	Civil		
<b>Lancaster Station (Nine Cases)</b>							
14	03/08/15	No	No	No	No	02/18/16	Yes
9	03/08/16	No	No	No	No	02/23/17	No
7	07/21/16	No	Completed	Completed	No	03/15/18	No
none	02/12/16	Yes	No	No	No	Not Scheduled	No
none	10/06/16	Yes	No	Yes	No	Scheduled after 01/01/19	No
2	07/12/17	No	No	No	No	06/28/18	Yes
1	12/09/17	No	No	No	No	11/15/18	No
none	02/03/18	No	No	No	Yes	Not Scheduled	No
none	02/19/18	No	No	No	No	Scheduled after 01/01/19	No
<b>Palmdale Station (11 Cases)</b>							
13	09/09/15	No	No	No	No	08/25/16	Yes
12	09/15/15	No	No	No	No	07/07/16	Yes
11	09/15/15	No	Determined to be part of Audit No. 12, so it is addressed there				
10	12/20/15	Yes	No	No	Yes	10/04/18	No
8	03/30/16	No	No	No	No	03/09/17	No
6	09/11/16	No	No	No	No	09/07/17	Yes
5	09/14/16	No	No	No	No	<b>Not Held</b>	No
4	02/15/17	No	No	No	No	01/11/18	No
3	05/01/17	No	No	No	No	04/12/18	No
none	06/22/17	Yes	No	No	Yes	Not Scheduled	No
none	07/04/17	Yes	No	No	No	Not Scheduled	No

## **Addendum B**

### **Timelines**

Table B					
UOF Investigation and Review Timeline					
Audit No.	Occurred	Investigation Submitted	Approved By		
			IAB Lieutenant	IAB Captain	EFRC Hearing
1	12/09/17	UTD*	UTD	UTD	11/27/18
2	07/12/17	UTD	06/04/18	UTD	06/28/18
3	05/01/17	UTD	03/22/18	UTD	04/12/18
4	02/15/17	UTD	12/13/17	UTD	01/11/18
5	09/14/16	UTD	UTD	UTD	09/07/16 Cat. 2
6	09/11/16	UTD	08/28/17	UTD	09/07/17
7	07/21/16	UTD	10/31/16	UTD	03/15/18
8	03/30/16	UTD	UTD	UTD	03/09/17
9	03/08/16	UTD	UTD	UTD	02/23/17
10	12/20/15	09/01/18	09/19/18	UTD	10/04/18
11	09/15/15	Included in Audit No. 12			
12	09/15/15	05/31/16	06/06/16	UTD	07/07/16
13	09/09/15	08/12/16	08/10/16	UTD	08/25/16
14	03/08/15	01/25/16	02/04/16	02/09/16	02/18/16

\*Unable to determine