

REPORT OF THE INDEPENDENT MONITOR FOR THE LOS ANGELES POLICE DEPARTMENT



Kroll

*Office of the Independent Monitor
of the Los Angeles Police Department*

**REPORT FOR THE QUARTER ENDING
SEPTEMBER 30, 2005**

Issued November 15, 2005

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INTRODUCTION

The City of Los Angeles and the Los Angeles Police Department (LAPD) entered into a Consent Decree with the Department of Justice (DOJ) on June 15, 2001. The Consent Decree provides specific guidelines designed to institute new policies and procedures and to reform the conduct of the LAPD. Michael Cherkasky and Kroll Inc. have been hired as the Independent Monitor to ensure that Consent Decree reforms are implemented in an effective and timely manner. This, the Monitor's seventeenth report, covers the results of the Monitor's compliance assessments conducted during the quarter ending September 30, 2005.

For the provisions of the Consent Decree evaluated during this quarter, the Monitor assessed primary, secondary, and functional compliance with the requirements of the Consent Decree (as described in the Monitor's Report for the Quarter Ending September 30, 2002). If the Department is in non-compliance with any of these three definitions of compliance for a paragraph or subparagraph, the Department is in overall non-compliance with that paragraph or subparagraph. The nature of the non-compliance, i.e. primary, secondary or functional, is fully detailed in the applicable section of this report.

As a tool to assist the reader of this report, the Monitor has attached as Appendix A a "Report Card" that summarizes the overall grade of compliance with each paragraph or subparagraph of the Consent Decree for the last five quarters, beginning with the quarter ending September 30, 2004.¹ The "Status as of Last Evaluation" column provides the most recent evaluation made for each paragraph of the Consent Decree, whether it was made in this quarter or in a prior quarter. The quarter in which the evaluation was made is also indicated. Finally, the Report Card identifies the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. This is an estimate based on available information at the date of issuance of this Monitor's Report and Report Card. These estimates are subject to change as information develops and circumstances change.

¹ The Monitor emphasizes that the Report Card provides summary information and should be read in conjunction with this report so that the reader may obtain a thorough understanding of the level and nature of the Department's compliance with the provisions of the Consent Decree.

EXECUTIVE SUMMARY

During the quarter ending September 30, 2005, the Monitor examined 50 paragraphs or subparagraphs of the Consent Decree. Of these, the City and the LAPD successfully complied with 37,² failed to achieve compliance with 10, and, for reasons stated in the body of this report, the Monitor withheld a determination of compliance with the remaining 3 paragraphs.

Areas of concern identified during the quarter ending September 30, 2005 include:

- As described in a Focus Issue below, based on the Department's inappropriate utilization of the "Other Judicial Review" adjudication category and the misclassification of complaints identified during the quarter, the Monitor has concerns regarding the state of reforms within the complaint process.
- Delays continue to impact the implementation of the Risk Management Information System, the Use of Force System and the Complaint Management System, new systems that the City is developing in order to meet Consent Decree requirements relative to the development of the TEAMS II system.
- The Department continues to remain non-compliant with the documentation requirement related to tour of duty extensions for gang officers and the procedures for the selection of officers to the gang units; for the latter, deficiencies included TEAMS records dated after selection, lack of relevant performance evaluations and selections approved prior to an oral interview taking place.
- The Department has been unable to identify and extract meaningful data associated with its Field Training Officer program, which is symptomatic of a larger problem involving the management of Field Training Officers.
- Although there have been no indications of illegal or inappropriate activity, the Monitor, the LAPD's Audit Division and the Office of the Inspector General have all noted that the Department continues to struggle in the area of supervisory oversight of Confidential Informants. Issues identified include lack of supervisory approval on payment forms, contact forms and sign-out cards; lack of supervisory approval prior to meeting with an informant; and missing forms and inconsistencies with regard to payments made to informants.

During the current quarter, the Monitor determined that the LAPD has achieved full compliance or shown significant improvements in the following important areas, each of which is described in further detail in the body of this report:

² The paragraphs found in compliance include two for which the Monitor assigned a compliance grade of "Compliance with Intent (CWI)." Refer to an explanation of this new designation in the Current Assessment of Compliance for paragraph 113, below.

- As described in a Focus Issue below, the Office of the Inspector General continues to make significant progress and appears to have resolved staffing issues that have hampered its oversight ability in the past.
- The Department continues to conduct its investigations of Non-Categorical Uses of Force in full compliance with Consent Decree requirements.
- Except for the deficiencies noted above in connection with certain procedures for the selection of officers to the gang units, the Department is complying with Consent Decree requirements relating to the eligibility criteria for the selection of gang unit officers.
- With this report, the Monitor is introducing a new report card category, “Compliance with Intent,” which will be utilized in situations where the Consent Decree requires a one-time effort that upon initial review did not meet the a paragraph’s compliance requirements, but has since been found to meet the functional intent of the paragraph. The Monitor has concluded that the Department has complied with the intent of Consent Decree paragraphs requiring an *Audit of Police Contact with the Mentally Ill* (paragraph 113) and a *Skeletal Fractures Audit* (paragraph 134).
- Based on the continued high quality of Audit Division’s work, the Monitor continues to rely on the majority of the findings in the LAPD's audits.

I. FOCUS ISSUES

A. IMPROPER ADJUDICATION AND CLASSIFICATION OF COMPLAINTS

Under paragraph 85 of the Consent Decree, whenever sufficient evidence exists to allow for adjudication of a complaint against an LAPD officer, that complaint must be adjudicated with one of seven findings: "sustained," "sustained-no penalty," "not resolved," "unfounded," "exonerated," "duplicate," or "no Department employee." It appears that the Department has significantly deviated from this mandate with the utilization of an adjudication category of "Other Judicial Review" (OJR).

The Monitor recognizes that there are circumstances where there exists a common question of fact in both a complaint against a police officer and a judicial review of an evidentiary question. In such instances, it may be appropriate to allow the judicial review to serve as an evidentiary finding of fact. Thus where a complaint against a police officer alleges an illegal search or seizure and a court has held a hearing on the question of the legality of that specific search or seizure, for example, the finding of the court should be able to substitute for a de novo Department determination of the legality of that search. In such a case, OJR would not and should not be an adjudication, but rather a designated method of determining specific relevant facts. Such a substitution should be allowed only in circumstances where there exists complete commonality of the factual question that has been judicially determined. Nonetheless, we have found the Department has been regularly utilizing OJR not only as an adjudication, but in totally inappropriate circumstances, which in some instances serve to insulate complaints from appropriate scrutiny.

In addition to the issue of inappropriate adjudications, it appears that a significant number of complaints against officers have been misclassified upon initial review by the Review and Classification Unit within the LAPD's Professional Standards Bureau, in some cases, for instance, classifying alleged perjury as "Unbecoming Conduct". Such misclassifications not only result in investigations being conducted at the Command level, as opposed to the Professional Standards Bureau level, but also serve to insulate officers against serious misconduct findings. Taken together, the uncovering of these two related issues is extremely troubling and calls into question the state of reforms within the complaint process. We do note, however, that the Office of the Inspector General was the first to identify concerns regarding the OJR classification, and the LAPD is currently reviewing its policy and procedures relative to the application of OJR as an appropriate adjudication. Our findings are detailed below.

B. IMPROVEMENTS AT THE OFFICE OF THE INSPECTOR GENERAL

In previous quarterly reports, the Monitor expressed concerns regarding the Office of the Inspector General's (OIG) resource constraints, which were hampering its ability to effectively

oversee the LAPD. During the quarter ending September 30, 2004, the Monitor highlighted its concerns in a focus issue which described the Monitor's concerns about the timeliness and quality of the OIG's reviews and audits. Since then, the OIG implemented a restructuring plan to address its resource challenges and is making progress in this area, most notably with the addition of an Assistant Inspector General, who is focusing on improving the quality and timeliness of the OIG's audits and audit reviews. In addition, by hiring 4 new staff members for its Audit Section, each of whom has significant auditing experience, the OIG has largely completed its hiring requirements. The OIG's Audit Section has also developed and implemented a number of important process improvements, including reporting templates for its audit reviews, standardized review work plans, staff training bulletins, in-house training, and a formal quality control review process by OIG management for all of its reviews and audits. Additionally the OIG has hired 4 new staff members in the Complaints section and 3 new staff members in the Use of Force Section, each of whom has extensive investigative and/or legal experience.

The Monitor commends the OIG for these changes in its staffing and the programs it has implemented. The Monitor believes that these procedures, along with the revised management oversight, establish a solid framework that will enable the OIG to not only meet the requirements of the Consent Decree but also to fulfill its role, along with the LAPD's Audit Division, as a cornerstone in the reform process for the entire Department.

II. MANAGEMENT AND SUPERVISORY MEASURES TO PROMOTE CIVIL RIGHTS INTEGRITY

A. TEAMS II [COMPUTER INFORMATION SYSTEM]

The Consent Decree mandates that the City develop an early warning system, termed TEAMS II, with the purpose of promoting professionalism and best policing practices as well as identifying and modifying at-risk behavior.³ In order to meet this requirement, the City is developing four new systems: the Complaint Management System (CMS), the Use of Force System (UOFS), the STOP database,⁴ and the Risk Management Information System (RMIS). The RMIS will gather data from the new systems, as well as numerous legacy systems, in order to produce relevant information for risk management analysis.

The ability to conform to the original timeline for completion of the TEAMS II project has, from the inception of the Monitorship, been very much in question. The Monitor has always recognized the numerous challenges presented by the scope of the TEAMS II project; therefore, the failure of the City to meet the deadlines set forth in paragraphs 50c and 50d, while disappointing, is not surprising.

That being said, the City has made strides in both Deployment Period System (DPS)⁵ and UOFS. The Monitor continues to be cautiously optimistic about the success of these systems.

During the current quarter, the City and the LAPD made the following progress toward the implementation of the new system:

- As described in our Report for the Quarter Ending June 30, 2005, DPS was deployed to South Bureau on July 24, 2005. DPS was deployed to remaining LAPD entities, which are administrative in nature, between August 21 and September 30, 2005. DPS is now rolled-out Department-wide and all areas have been utilizing this system for an entire deployment period (DP).
- As described in our Report for the Quarter Ending June 30, 2005, the LAPD stopped entering data into its legacy use of force (UOF)⁶ systems on April 29, with all UOF incident data now

³ The system is being developed as a successor to the existing computerized information processing system known as the Training Evaluation and Management System (TEAMS).

⁴ The STOP database has already been developed and is currently being utilized to collect data from the Field Data Reports regarding pedestrian and motor vehicle stops.

⁵ DPS lies at the heart of TEAMS II, providing information relative to officers' attendance and the command structure, which is utilized for a variety of purposes within the TEAMS II framework.

⁶ Throughout this report, the acronym UOF will be used as a substitute for both "use of force" and "uses of force."

captured in the UOFS; the UOFS was then deployed to the Northeast Division and Central Division on May 8, 2005, and to the Force Investigation Division (FID) on May 15, 2005. UOFS deployment was again delayed due to the necessity of upgrading and installing IBM work products and issues with the latest release of the UOFS. These changes have now been made and the City has rolled-out UOFS beyond the Pilot group, beginning with Newton Division on October 20, and Hollenbeck and Central Traffic Divisions on November 3. With no further unanticipated problems, the City hopes to complete Department-wide rollout in February 2006.

- As described in our Report for the Quarter Ending June 30, 2005, the City completed the initial readiness testing of RMIS during July 2005. However, due to problems with various report functions and other fixes needed, readiness testing review has been extended. Due to this delay, the City anticipates rollout of the TEAMS Individual Report in January 2006. Other RMIS reports are anticipated to be deployed in late February 2006. RMIS action items will be deployed in phases by subject area. Initial RMIS action item deployment is planned for April 2006.
- As described in our Report for the Quarter Ending June 30, 2005, user acceptance testing has been largely completed for the first two stages of the complaint process for CMS; many bugs were identified during this testing. After fixing these bugs and reviewing the remaining stages of the complaint process, the City is now looking at the data conversion issues from CMS to RMIS. To ensure that complaint information is still available for RMIS, the City has requested that an interim CMS capability be developed. An amendment to the CMS contract has been finalized to deliver the Phase 1 CMS in late January 2006. The Department hopes to rollout the full CMS in the second quarter of 2006.

In addition to monitoring the progress made towards the development of the TEAMS II system during the current quarter, the Monitor assessed the Department's compliance with selected provisions of paragraph 51, which requires the LAPD to utilize existing databases, information and documents to make certain key personnel decisions until TEAMS II is implemented. The results of our current assessment follow.

Paragraph 51 – Use of Existing Databases to Make Certain Decisions until TEAMS II is Implemented

Paragraph 51 requires the LAPD to utilize existing databases, information and documents to make specified decisions until TEAMS II is implemented.

The decisions specified in paragraph 51 are included in three discrete subparagraphs (51a, b and c); a fourth subparagraph (51d) addresses additional documentation requirements that pertain to

the other subparagraphs. The Monitor has elected to break out its compliance assessments for each subparagraph. Our current assessments of subparagraphs 51b and d follow.⁷

Subparagraphs 51b and d – Selection of Officers as Field Training Officers or for Gang Units; Document Consideration of Sustained Administrative Investigations, Adverse Judicial Findings or Discipline

Paragraph 51b requires that when an officer is selected as a Field Training Officer (FTO) or to a gang unit, the LAPD shall review the officer's applicable TEAMS I record.

Subparagraph 51d requires that when an officer is selected to the FID,⁸ a gang unit, or assigned as a PSB⁹ investigator or FTO, supervisors and managers shall document their consideration of any sustained administrative investigation, adverse judicial finding, discipline for excessive force, false arrest or charge, improper search or seizure, sexual harassment, discrimination, or dishonesty.

Background

The Monitor last assessed the LAPD's compliance with subparagraphs 51b and d during the quarter ending June 30, 2004. The Monitor found the LAPD in functional non-compliance with subparagraph 51b as it pertains to the selection of gang officers and in functional compliance as it pertains to the selection of FTOs; as a result the Monitor found the LAPD in overall functional non-compliance with subparagraph 51b. The Monitor found the LAPD in functional compliance with subparagraph 51d as it pertains to the selection of gang officers but in functional non-compliance as it pertains to the selection of FTOs; as a result, the Monitor found the LAPD in overall functional non-compliance with subparagraph 51d.

⁷ The Monitor is scheduled to assess the LAPD's compliance with subparagraphs 51a and c during the quarter ending December 31, 2005; the Monitor last assessed the LAPD's compliance with these subparagraphs during the quarter ending December 31, 2004, at which time the Monitor found the LAPD in compliance with subparagraph 51a and in non-compliance with subparagraph 51c. Regarding subparagraph 51c, the Monitor found that the TEAMS reports were included in documentation for all transferred officers reviewed; however, the documentation contained supervisors' and commanding officers' signatures, indicating review of the TEAMS reports, for only 80% of the transferred officers reviewed.

⁸ Prior to September 2004, the Division responsible for conducting CUOF incident investigations was collectively referred to as the Critical Incident Investigation Division (CIID), which was established pursuant to Special Order 39, 2001 – "Critical Incident Investigation Division – Established," approved by the Police Commission on December 11, 2001. Effective August 22, 2004, in a reorganization of the way in which CUOF are handled, CIID responsibilities were transferred to the newly created FID, a unit in the command structure of the Professional Standards Bureau (PSB).

⁹ PSB is the successor to the Internal Affairs Group (IAG).

Current Assessment of Compliance

In order to assess the LAPD's functional compliance with subparagraph 51b and d as they pertain to gang officers¹⁰ during the current quarter, the Monitor reviewed and subsequently placed reliance on Audit Division's (AD) *GED Selection Criteria Audit*, dated June 22, 2005, and related working papers. As described in the Current Assessment of Compliance for subparagraphs 106b and c, below, AD selected a sample of 62 officers (50 non-supervisory and 12 supervisory) to assess the LAPD's compliance with the requirements of subparagraphs 106b and c and 107a-c, among others.

Regarding subparagraphs 107a and 51b,¹¹ AD reviewed the TEAMS I records and performance evaluations for the 62 non-supervisory and supervisory officers selected for review and determined that 62 of 62, or 100%, of these officers had a positive evaluation of their TEAMS record prior to being selected into the respective unit. The Monitor randomly selected a sample of 20 non-supervisory officers and 9 supervisory officers from AD's samples and reviewed their TEAMS I records and performance evaluations. The Monitor concurred with AD's assessments for the officers reviewed.

Regarding subparagraphs 107c and 51d, AD found that none of the officers selected for review had sustained complaints or adverse judicial findings related to those specified in the Consent Decree during their assignment in the gang unit. The Monitor concurred with AD's assessments and finds the LAPD in compliance with subparagraph 51d.¹²

AD also reviewed officers' sustained complaints for presence of paragraph 107c¹³ matters and extended its review scope to include 'unbecoming conduct' classifications.¹⁴ This review identified 4 sustained complaints for 'unbecoming conduct' that exhibited elements of subparagraph 107c issues; AD found that a supervisor's written consideration was present, when

¹⁰ The Monitor will assess the LAPD's compliance with subparagraphs 51b and d as they pertain to the selection of FTOs during the quarter ending December 31, 2005.

¹¹ As noted in the Current Assessment of Compliance for paragraph 131b, below, AD did not report on the LAPD's compliance with subparagraphs 51b and d, even though it had done the fieldwork; the Monitor recommends that these assessments be included in future GED Selection Criteria Audits.

¹² The Monitor recognizes that this finding is based on a "null set" i.e. the Department has not actually conducted the activities required by this paragraph because there has not been a need to conduct such activities. Refer to the Current Assessment of Compliance for subparagraphs 107a-c for additional information.

¹³ Paragraph 107c requires the supervisor's written assessment of an officer's continuing suitability regarding sustained complaints and adverse judicial findings involving use of excessive force, false arrest or charge, unreasonable search or seizure, sexual harassment, discrimination or dishonesty.

¹⁴ The Monitor has identified and reported on concerns as to the appropriate classification of complaints. Refer to the related Focus Issue contained in this report.

required. However, the Monitor also reviewed 'Neglect of Duty' sustained complaints and identified four that included elements of dishonesty or excessive use of force.¹⁵

Based on the foregoing, the Monitor finds the LAPD in compliance with subparagraphs 51b and d as they pertain to gang officers.

¹⁵ Refer to the Current Assessment of Compliance for subparagraphs 107a-c for additional information and a related recommendation from the Monitor.

III. INCIDENTS, PROCEDURES, DOCUMENTATION, AND REVIEW

A. USE OF FORCE

The Consent Decree requires LAPD officers to report all incidents in which force is used and whether that force is “Categorical” or “Non-Categorical.” A Categorical Use of Force (CUOF)¹⁶ is defined by paragraph 13 of the Consent Decree. Any UOF that falls under this definition is subject to certain paragraphs of the Consent Decree.¹⁷ Administrative investigations of these incidents are the responsibility of the FID.¹⁸ All completed CUOF incident investigations must be presented to a Use of Force Review Board (UOFRB) and ultimately the Police Commission within a defined period of time.

All other UOF that do not fall under the definition of paragraph 13 are considered Non-Categorical. These are also subject to certain paragraphs.¹⁹ Non-Categorical Uses of Force (NCUOF) occur much more frequently than do CUOF, as officers often encounter resistance while performing their duties. NCUOF range from a technique as simple as the physical force used to control a resisting individual to the use of a taser or a bean-bag shotgun.

During the quarter ending June 30, 2005, the Monitor evaluated and reported on the LAPD’s compliance with this section’s requirements regarding CUOF incidents and investigations. In addition, the Monitor continued work with regard to the requirement that supervisory conduct at a CUOF be considered during performance evaluations.²⁰ This work will be reported on during the quarter ending December 31, 2005.

During the current quarter, the Monitor assessed the LAPD’s compliance with this section’s requirements regarding NCUOF investigations. The results of our current assessments follow.

¹⁶ CUOF include an Officer-Involved Shooting (OIS) with or without a hit, In-Custody Death (ICD), Law Enforcement Activity Related Death (LEARD), Law Enforcement Related Injury Incident (LERII) requiring hospitalization, Neck Restraint, Head Strike with an impact weapon and a Department canine bite requiring hospitalization.

¹⁷ Specifically, paragraphs 13, 38, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 69, 80, 82, 83, 136 and 142, as well as certain audit-related paragraphs.

¹⁸ As described above, FID is the successor to the CIID.

¹⁹ Specifically, paragraphs 13, 38, 65, 66, 68, 69, 81 and 82, as well as certain audit-related paragraphs.

²⁰ This work was related to the Monitor’s assessment of subparagraph 62a-ii, for which the Monitor withheld a determination of compliance during the quarter ending June 30, 2005.

Paragraph 65 – Requirement to Report Non-Categorical Uses of Force

Paragraph 65 requires that LAPD officers report, without delay, their involvement in a UOF using the appropriate form as required by paragraph 66 of the Consent Decree.²¹

Background

The LAPD historically required that officers self-report any UOF. Pre-Consent Decree, all UOF were categorized together and more serious UOF, such as an Officer-Involved Shooting (OIS) incident, were investigated by the Robbery Homicide Division (RHD). All other UOF were historically investigated by the Chain of Command (COC) supervisors.

The Monitor last assessed the LAPD's compliance with paragraph 65 during the quarter ending December 31, 2003, at which time the Monitor found the LAPD in primary and functional compliance.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed LAPD policy that addresses paragraph 65 requirements and determined that it reasonably and substantially meets the primary compliance requirements of the paragraph.²²

In order to assess functional compliance with paragraph 65 during the current quarter, the Monitor requested and received a listing of all NCUOF incidents that occurred during the period April 1, 2005 through June 30, 2005. The LAPD provided a listing of approximately 508 incidents, of which the Monitor randomly selected a statistical sample of 81 incidents for review to test compliance with paragraphs 65, 66, 68, 69, 81 and 82 of the Consent Decree.

The Monitor reviewed the NCUOF forms and underlying investigations for the 81 incidents selected and determined that for all investigations reviewed the involved officer(s) self-reported, without delay, their involvement in a NCUOF. The Monitor also noted that for all investigations the NCUOF incident was documented using the most recently issued NCUOF reporting form.

²¹ Pursuant to paragraph 66 of the Consent Decree, the LAPD developed and implemented a revised UOF report form. The Monitor determined that the LAPD was in compliance with paragraph 66 during the current quarter -- refer to the Current Assessment of Compliance for paragraph 66, below. The appropriate form is dated May 2004, the month it was issued, pursuant to Special Order 13.

²² The following policy addresses the requirements of paragraph 65: LAPD Manual Section 4/245.10; Special Order 27, *Investigation and Adjudicating Non-Categorical Use of Force Incidents*, approved by the Police Commission, September 25, 2001; Special Order 18, *Revisions to Special Order No. 27, 2001 – Investigating and Adjudicating Non-Categorical Use of Force Incidents*, approved by the Police Commission, May 7, 2002; Special Order 13, *Non-Categorical Use of Force Reporting – Revised*, approved by the Police Commission, June 8, 2004.

Based on the foregoing, the Monitor finds the LAPD to be in primary and functional compliance with paragraph 65.

Paragraph 66 – Modified Use of Force Report Form

Paragraph 66 requires the LAPD to modify its use of force report form to include data fields that require officers to:

- Identify, with specificity, the type of force used for the physical force category
- Record the body area impacted by such physical use of force
- Identify fractures and dislocations as a type of injury
- Include the bean bag shot gun as a type of force category

Background

The Monitor last assessed the LAPD's compliance with paragraph 66 during the quarter ending June 30, 2002, at which time the Monitor found the LAPD in functional compliance.²³

Current Assessment of Compliance

During the current quarter, the Monitor reviewed Special Order 13, *Non-Categorical Use of Force Reporting – Revised*, published May 26, 2004 and approved by the Police Commission on June 8, 2004. The Special Order includes a revised UOF form, which the Monitor determined continues to meet the requirements of paragraph 66.

Based on the foregoing, the Monitor finds the LAPD in continued functional compliance with paragraph 66.

Paragraph 68 – Non-Categorical Use of Force Investigations

Paragraph 68 requires that a supervisor²⁴ conduct a timely investigation of NCUOF incidents as required by LAPD policy and pursuant to the provisions of paragraphs 69, 81 and 82 of the Consent Decree.²⁵

²³ Under the *Methodologies*, there are no primary or secondary compliance requirements for paragraph 66.

²⁴ The LAPD defines a supervisor as an individual ranked at least a Sergeant I or Detective II.

²⁵ These paragraphs mandate that NCUOF investigations be reviewed within 14 days of the incident by management; that investigations prohibit group interviews; that investigations include interviewing on-scene supervisors when applicable; that all appropriate evidence be collected and preserved with the burden of collection

Background

Paragraph 68 is a “shall continue to” requirement and references pre-Consent Decree LAPD policy. Since implementation of the Consent Decree, the LAPD has issued three Special Orders that provide additional guidance on investigating and adjudicating NCUOF incidents.²⁶

The Monitor last assessed the LAPD’s compliance with this paragraph during the quarter ending December 31, 2003, at which time the Monitor found the LAPD in primary and functional compliance.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed LAPD policy, including the Special Orders described above, and determined that it reasonably and substantially meets the primary compliance requirements of paragraph 68.

In order to assess functional compliance with paragraph 68 during the current quarter, the Monitor reviewed the UOF report forms and underlying investigations for 81 NCUOF incident investigations that occurred during the period April 1, 2005 through June 30, 2005.²⁷ For all 81 NCUOF incident investigations reviewed, the Monitor noted that a supervisor conducted a timely and appropriate investigation.

Based on the foregoing, the Monitor finds the LAPD in primary and functional compliance with paragraph 68.

Paragraph 69 – Review of Uses of Force

Paragraph 69 addresses both CUOF and NCUOF incident investigations. With regard to NCUOF incidents, LAPD Division Management²⁸ is required to review each NCUOF within 14 calendar days of the incident, unless a deficiency in the investigation is detected, in which case the review shall be completed within a reasonable time period. Department Bureau Management must also review each incident.

on the LAPD; and, that should the investigator suspect misconduct unrelated to the incident, a complaint investigation will be initiated.

²⁶ Special Order 27, *Investigating and Adjudicating Non-Categorical Use of Force Incidents*,” approved by the Police Commission on September 25, 2001; Special Order 18, *Revisions to Special Order 27, 2001 – Investigating and Adjudicating Non-Categorical Use of Force Incidents*, approved by the Police Commission on May 7, 2002; and Special Order 13, *Non-Categorical Use of Force Reporting – Revised*, approved by the Police Commission on June 8, 2004.

²⁷ As described in the Current Assessment of Compliance for paragraph 65, this is the same sample selected to test compliance with paragraphs 65, 66, 69, 81 and 82.

²⁸ Defined by paragraph 29 of the Consent Decree as an LAPD supervisor at the rank of captain or above.

Background

The Monitor last assessed the LAPD's compliance with paragraph 69 as it relates to NCUOF incident investigations during the quarter ending December 31, 2003,²⁹ at which time the Monitor found the LAPD in primary and functional compliance.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed LAPD policy, including the Special Orders described above,³⁰ and determined that it reasonably and substantially meets the primary compliance requirements of paragraph 69.

In order to assess functional compliance with paragraph 69 during the current quarter, the Monitor reviewed completed NCUOF incident investigations for 81 NCUOF incidents that occurred during the period April 1, 2005 through June 30, 2005.³¹ For all but three incidents, LAPD Division Management reviewed the incident within 14 days and the investigations were completed within a reasonable time period thereafter.

Based on the foregoing, the Monitor finds the LAPD in primary and functional compliance with the provisions of paragraph 69 that apply to NCUOF incident investigations.

B. SEARCH AND ARREST PROCEDURES

The Consent Decree requires the LAPD to establish and/or continue to implement policies and procedures regarding searches and arrests.

During the quarter ending December 31, 2004, the Monitor assessed LAPD compliance with this section's requirements regarding supervisory review of booking recommendations and Watch Commander inspections of all detainees and arrestees. During the quarter ending June 30, 2005, the Monitor assessed the LAPD's compliance with requirements regarding supervisory review of warrants and warrant logs.

The Monitor is scheduled to assess the LAPD's compliance with requirements regarding Watch Commander inspections of all detainees and arrestees during the quarter ending December 31,

²⁹ The Monitor last assessed paragraph 69 as it relates to CUOF incident investigations during the quarter ending June 30, 2005; the Monitor is scheduled to again assess compliance with this requirement during the quarter ending June 30, 2006.

³⁰ Refer to Current Assessment of Compliance for paragraphs 65 and 68.

³¹ As described in the Current Assessment of Compliance for paragraph 65, this is the same sample selected to test compliance with paragraphs 65, 66, 68, 81 and 82.

2005. The Monitor is scheduled to assess the LAPD's compliance with the remaining requirements of this section during the quarter ending March 31, 2006.

C. INITIATION OF COMPLAINTS

The Consent Decree directs the LAPD to ensure the public unfettered ability to lodge complaints against police officers. The Decree provides specific requirements relative to the intake of complaints, including the continuation of a 24-hour toll-free complaint hotline.

During the quarter ending June 30, 2005, the Monitor assessed the LAPD's compliance with this section's requirement that a complaint investigation be initiated against any officer who allegedly fails to inform any civilian who indicates a desire to file a complaint of the means by which a complaint may be filed; attempts to dissuade a civilian from filing a complaint; or refuses to accept a complaint. The Monitor is scheduled to again assess compliance with most of this section's requirements during the quarter ending March 31, 2006.

During the current quarter, the Monitor assessed the LAPD's compliance with one of this section's requirements regarding the receipt and maintenance of complaints. The results of our current assessment follow.

Paragraph 74h – Waiver of Right to File a Lawsuit

Paragraph 74 outlines the methods by which the LAPD must receive complaints, maintain required complaint materials and continue the operation of a 24-hour toll free telephone complaint hotline.

Specifically, the Department must continue to provide for the receipt of complaints as follows:

- a. in writing, verbally, in person, by mail, by telephone (of TDD), facsimile transmission, or by electronic mail;
- b. anonymous complaints;
- c. at LAPD headquarters, any LAPD station or substation, or the offices of the Police Commission or the Inspector General;
- d. distribution of complaint materials and self-addressed postage-paid envelopes in easily accessible City locations throughout the city and in languages utilized by the city in municipal election ballot materials;
- e. distribution of the materials needed to file a complaint upon request to community groups, community centers, and public and private service centers;
- f. the assignment of a case number to each complaint; and

- g. continuation of a 24-hour toll-free telephone complaint hotline. Within six months of the effective date of this Agreement, the Department shall record all calls made on this hotline.
- h. In addition, the Department must prohibit officers from asking or requiring a potential complainant to sign any form that in any manner limits or waives the ability of a civilian to file a police complaint with the LAPD or any other entity. The Department must also prohibit officers, as a condition for filing a misconduct complaint, from asking or requiring a potential complainant to sign a form that limits or waives the ability of a civilian to file a lawsuit in court.

Background

Historically, the Monitor reported on the LAPD's overall compliance with paragraph 74, with the last assessment of compliance conducted during the quarter ending September 30, 2004. At that time, the Monitor found the LAPD in functional non-compliance with paragraph 74 based on the results of the LAPD's Ethics Enforcement Section (EES) audits conducted to assess whether officers are receiving complaints and not dissuading the reporting of misconduct; the EES concluded that officers failed to comply in 5 of 32 audits conducted.

During the quarter ending March 31, 2005, the Monitor elected to separately report on the LAPD's compliance with the various subparagraphs of paragraph 74. The Monitor reported on compliance with subparagraphs 74d, f and g during that quarter, finding the LAPD in functional compliance with subparagraphs d and f and functional non-compliance with subparagraph g. During the current quarter, the Monitor is reporting on compliance with subparagraph h.

Current Assessment of Compliance

In order to assess compliance with subparagraph 74h during the current quarter, the Monitor reviewed and subsequently relied on AD's *Complaint, Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.³² In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations that were completed during the month of August 2004.³³ AD concluded that the LAPD was in compliance with subsection 74h. During its meta-audit, the Monitor randomly selected 26 investigations for review and concurred with AD's conclusions.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with subparagraph 74h.

³² The Monitor conducted a meta-audit of the *Complaint Form 1.28 Investigations Audit*, ultimately concluding that the audit was non-compliant. However, the Monitor elected to rely on many of the conclusions reached by AD. Refer to the Monitor's Report for the Quarter Ending June 30, 2005, dated August 15, 2005.

³³ AD randomly selected the 53 complaint investigations out of a total of 113.

D. CONDUCT OF INVESTIGATIONS

The Consent Decree provides a series of specific instructions relating to the conduct of CUOF, NCUOF and complaint investigations.

During the quarter ending December 31, 2004, the Monitor assessed compliance with Consent Decree requirements regarding the conduct of CUOF investigations and the requirement that investigators immediately notify a supervisor and commence a separate complaint investigation if they uncover indications of misconduct unrelated to CUOF incidents under investigation. During the quarter ending March 31, 2005, the Monitor assessed the LAPD's compliance with Consent Decree requirements regarding the documentation and forwarding of all complaint face sheets to the PSB for review and investigative assignment. During the quarter ending June 30, 2005, the Monitor assessed the LAPD's compliance with requirements relative to the conduct of complaint investigations by both the PSB and by COC, as well as the requirement that investigators immediately notify a supervisor and commence a separate complaint investigation if they uncover information of misconduct unrelated to incidents under investigation.

During the current quarter, the Monitor assessed the LAPD's compliance with the requirement that investigators immediately notify a supervisor and commence a separate complaint investigation if they uncover indications of misconduct unrelated to incidents under investigation, as well as requirements relative to the conduct of NCUOF investigations by COC. The results of our current assessments follow.

Paragraph 81 – Non-Categorical Uses of Force

Paragraph 81 states that COC administrative complaint investigations and NCUOF administrative investigations must comply with subsections c, e and f of paragraph 80.

Background

The Monitor last assessed the LAPD's compliance with paragraph 81 as it relates to NCUOF investigations during the quarter ending December 31, 2003, at which time the Monitor found the LAPD in primary, secondary and functional compliance.

The Monitor last assessed the LAPD's compliance with paragraph 81 as it relates to COC complaint investigations during the quarter ending June 30, 2005, at which time the Monitor found the LAPD in functional non-compliance.³⁴

³⁴ The Monitor did not assess compliance regarding COC complaint investigations during the current quarter. This assessment is scheduled for the quarter ending June 30, 2006.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed LAPD policy, including the Special Orders described above,³⁵ and determined that it reasonably and substantially meets the requirements of paragraph 81.

The Use of Force Review Section (UOFRS) continues to track and review each completed NCUOF, as does the LAPD's Training Division. Should their reviews identify deficiencies in the investigation, the investigation is returned via an official communication with an explanation of the deficiencies. The Monitor views this process as an audit or inspection function that meets secondary compliance requirements.

In order to assess functional compliance with paragraph 81 during the current quarter, the Monitor randomly selected and reviewed completed NCUOF incident investigations for 81 NCUOF incidents that occurred during the period April 1, 2005 through June 30, 2005.³⁶ The Monitor reviewed each investigation, in totality, for the requirements of paragraph 81 and noted the following:

- For all but one NCUOF investigations reviewed, the Monitor determined no group interviews took place.³⁷ This translates into a compliance rate of 98.8%. The Monitor based its conclusion on documentation within the investigation files that specifically stated individuals were interviewed independently and/or documentation that was sufficient to conclude compliance without this self-reporting.
- For all investigations where applicable,³⁸ the supervisor responsible for conducting the investigation interviewed the on-scene supervisor regarding the on-scene supervisors' conduct. This translates into a compliance rate of 100%.
- For 74 of 81 investigations reviewed, the Monitor determined that the LAPD collected and preserved all material evidence required for a proper adjudication. This translates into a compliance rate of 91.4%. For the 7 NCUOF investigations deemed non-compliant, the Monitor noted that the LAPD failed to conduct interviews of individuals who may or may not have had relevant information, failed to preserve photos referenced in the investigation, and/or failed to preserve tape recorded interviews referenced in the investigation.³⁹

³⁵ Refer to Current Assessment of Compliance for paragraphs 65 and 68.

³⁶ As described in the Current Assessment of Compliance for paragraph 65, this is the same sample selected to test compliance with paragraphs 65, 66, 68, 69 and 82.

³⁷ It should be noted that for the one exception noted, although the LAPD attempted to conduct separate interviews, witnesses refused to be interviewed separately.

³⁸ This provision was not applicable for 62 of the 81 investigations, as a supervisor was not present at the scene of these investigations.

³⁹ Special Order No. 13 allows the categorization of NCUOF incidents as either Level 1 (for serious bodily harm not rising to the level of a CUOF and for inconsistencies in statements) or Level 2 (for less serious injuries and

Based on the foregoing, the Monitor finds that under the totality of the circumstances the LAPD is in continued primary, secondary and functional compliance with paragraph 81 as it relates to NCUOF incident investigations.

Paragraph 82 – Collateral Misconduct Investigations

Paragraph 82 requires an investigator to immediately notify a supervisor and commence a separate complaint investigation if he or she uncovers information of misconduct unrelated to the incident under investigation.

Background

The Monitor last assessed the LAPD's compliance with paragraph 82 as it pertains to NCUOF incident investigations during the quarter ending December 31, 2003, at which time the Monitor found the LAPD in primary and functional compliance.

Current Assessment of Compliance

No changes in policy were issued during the current quarter in connection with paragraph 82 requirements. The Monitor determined that the policies that were previously issued⁴⁰ reasonably and substantially meet primary compliance requirements.

In order to assess the LAPD's compliance with paragraph 82 as it pertains to NCUOF incident investigations during the current quarter, the Monitor reviewed completed NCUOF incident investigations for 81 NCUOF incidents that occurred during the period April 1, 2005 through June 30, 2005.⁴¹ The Monitor noted that the LAPD initiated a total of three complaint investigations from the sample selected for review. All three complaints were initiated by the individuals arrested by the LAPD and were promptly documented on a complaint form and

consistency among statements). For two investigations reviewed, the Monitor contends that the investigation should have been classified as Level 1. Also, in one investigation the Monitor, upon listening to a witness' taped interview, noted that the Mirandized arrestee, on multiple occasions, insisted he did not wish to be interviewed. The investigator persisted nonetheless in a tone deemed unacceptable. The Monitor also noted several instances wherein management's review did not, at least for documentation purposes, indicate whether the officer's TEAMS history was reviewed.

⁴⁰ LAPD Manual Section 3/810.20 and 3/810.30; Special Order 8, 2000, *Complaint Reporting Procedures- Revised*, February 24, 2000; Special Order 30, 2001, *Duty to Report Misconduct*, approved by the Police Commission September 6, 2001; Special Order 39, *Critical Incident Investigation Division – Established*, approved by the Police Commission December 11, 2000; Administrative Order 12, *Investigating a Personnel Complaint and Evaluating Witness Credibility*, approved by Police Commission, September 25, 2001.

⁴¹ As described in the Current Assessment of Compliance for paragraph 65, this is the same sample selected to test compliance with paragraphs 65, 66, 68, 69, and 81.

assigned a complaint file number. For the remaining 78 investigations reviewed, the Monitor did not identify any indications that a complaint investigation should have been initiated but was not.

Based on the foregoing, the Monitor finds the LAPD in primary and functional compliance with paragraph 82.

E. ADJUDICATING INVESTIGATIONS

The Consent Decree requires that misconduct complaints be adjudicated in a fair, timely and consistent fashion. The Consent Decree also provides specific requirements relative to the adjudication process, including standards for credibility determination and categories for final adjudication.

During the quarter ending June 30, 2005, the Monitor assessed the LAPD's compliance with all requirements of this section, except for requirements regarding the timeliness of complaint investigations, which were last assessed during the quarter ending March 31, 2005. The Monitor is scheduled to again assess the LAPD's compliance with the requirements of this section during the quarters ending March 31, 2006 and June 30, 2006.

During the current reporting period, predicated on concerns first expressed by the OIG and discussion and review of limited work conducted by both the DOJ and the OIG, the Monitor elected to concentrate its review of completed complaints to those adjudicated as "Other Judicial Review" (OJR).⁴² As noted in the related Focus Issue, above, the utilization of OJR as an adjudicative category contravenes the provisions of paragraph 85 specifying permissible adjudicative categories and disregards the requirement of the utilization of a "preponderance of the evidence standard" in adjudication of complaints. Nonetheless, the Monitor undertook this review to determine the nature and extent of problems related to the utilization of the category.

The Monitor requested and received a listing of all completed complaints adjudicated as OJR for the period January 1, 2003 through June 30, 2005. In total, the LAPD identified 136 investigations, from which the Monitor randomly selected and reviewed 57⁴³ investigations for an assessment of compliance with the following Consent Decree paragraphs:⁴⁴

⁴² The OJR classification was implemented to address two types of complaints. One involves criminal matters where the facts have already been adjudicated in court. The other pertains to civil matters not involving duty-related activity where no finding of criminal or civil misconduct against the employee has been made, such as an alleged violation of a temporary restraining or child custody order.

⁴³ The Monitor utilized a one-tailed sampling method with a confidence level of 95% and an acceptable error rate of plus or minus four percent.

⁴⁴ The Monitor notes that the population of OJR adjudicated complaints is not necessarily representative of the population of complaints taken as a whole. As a result, except for paragraph 85, below, the Monitor is not providing compliance assessment for these paragraphs during the current quarter.

- Paragraph 79 – Timely notification to the Internal Affairs Group (IAG) for review and classification;
- Paragraph 85 – Proper adjudication;
- Paragraph 87 – Timely completion;
- Paragraph 91 – Accurate letter to complainant regarding the outcome of the investigation; and
- Paragraph 93 – Proper assignment of investigative responsibility.

Additionally, consideration was given to whether the LAPD properly applied its own internal policies when adjudicating a complaint as OJR, namely whether the complainant, the complainant's attorney or the Deputy District Attorney was interviewed. If the complainant was not interviewed, consideration was given to documented attempts to interview. Most importantly, the Monitor attempted to conclude whether the investigation as a whole was an adequate investigation.

Summary of Findings

- 98.3% (56 of 57) investigations met the requirements of paragraph 79.
- 49.1% (28 of 57) investigations were completed within five months of being reported to the LAPD.⁴⁵
- 87.7% (50 of 57) investigations were properly assigned to either COC or the IAG. However, only 39 investigations were accurately classified for the purposes of assigning investigative responsibility. The remaining 18 investigations included allegations of serious misconduct as defined by paragraph 93;⁴⁶ however, for the most part they were classified as either Unbecoming Conduct or Neglect of Duty. For 11 investigations, although they were properly assigned to Internal Affairs for investigative responsibility, it appears that the allegations, most of which were false statements or perjury in court, were not properly memorialized within the accused officers' TEAMS reports. This suggests that although the allegations were not considered serious for classification purposes, they were considered serious for investigative purposes.

Discussions with sworn PSB personnel suggest that the LAPD's policy has always been to classify any allegation of perjury or false statements during a court proceeding as Unbecoming

⁴⁵ The Monitor noted that several complaints were not properly classified for investigative responsibility and elected not to calculate completion rates by IAG versus COC.

⁴⁶ In most instances the allegations involved false imprisonment, false statements, perjury and evidence tampering. Whether the allegations appeared on the original face sheet or were identified during the course of the investigation, they were most often classified as Unbecoming Conduct and/or Neglect of Duty.

Conduct. This issue was discussed with the Chief of PSB, who denied that such policy, at least written, existed.

In 20 investigations, the LAPD did not follow its own internal policy. The investigative files were devoid of documentation that the complainant, the complainant's attorney or the prosecuting attorney were interviewed or approached for interview. Similarly, for some of the investigations reviewed, although LAPD policy requires that OJR apply post-conviction, the OJR adjudication was based on preliminary or suppression hearings wherein there was no subsequent conviction.⁴⁷ Indeed, most of the investigations reviewed had no evidentiary hearing or any other documented review of the facts alleged in the complaint. Also, in most investigations reviewed, the file was devoid of any specific court transcripts or dockets that would support whether the matter was addressed at any proceeding leading to a conviction. Based on these findings, the Monitor concludes that the majority of the investigations were not complete.

Overall the Monitor is concerned that the OJR adjudication is a mechanism that permits the LAPD, whether intentionally or not, to quickly and abruptly render a decision on a complaint investigation in an effort to meet compliance requirements of the Consent Decree. The Monitor is also concerned that the OJR adjudication increases the likelihood that a sustainable complaint will go undetected and the involved officers not disciplined. By its very nature, an OJR adjudication in its current mode will never result in a sustained complaint.

Recommendations

The LAPD is currently reviewing and revising its policy and procedure relative to the application of OJR as an appropriate adjudication. The Monitor recommends that because of the mandates of paragraph 85, the use of OJR as an adjudicative category should be immediately discontinued. Nonetheless, in situations where there exists a common question of fact between a complaint and a judicial proceeding that has been specifically decided by a judicial determination, that determination may substitute for evidence with respect to the specific fact decided. For example, where a complaint alleges an illegal search, the determination by a court of the legality of the search could be substituted for a full de novo factual review by the Department. In such a circumstance, where the search was found to be legal, the complaint would be adjudicated as "Exonerated" (by OJR). On the other hand, where the search was found to be illegal, the complaint would be adjudicated as "Sustained" (by OJR).

The Monitor reviewed only a sample of completed investigations. No doubt there remain open and incomplete complaint investigations that were either improperly classified and/or improperly assigned for investigation. The LAPD should identify and correct any misclassified and inappropriately assigned investigations as soon as possible.

⁴⁷ A conviction, for purposes of this discussion, is considered a finding of guilty by either a judge or jury or a plea of guilty or nolo contendere by the defendant.

For completed investigations containing improper classifications, the LAPD should undertake action to expeditiously identify misclassifications and make appropriate corrections to officers' TEAMS' histories. Failure to do so may result in a pattern or practice of high risk behavior going undetected.

Paragraph 85 – Preponderance of the Evidence

Paragraph 85 requires that all complaints be adjudicated using a preponderance of the evidence standard⁴⁸ and, wherever supported by evidence, collected complaints shall be adjudicated as follows:

- Sustained
- Sustained – no penalty
- Not resolved
- Unfounded
- Exonerated
- Duplicate
- No Department employee.

Paragraph 85 also specifies that no Complaint Form 1.28 investigation be closed without a final adjudication.

Background

After a complaint investigation is completed and enters the adjudication stage, it can be subject to review by LAPD management, the Review and Evaluations Section of the PSB, the Administrative Division of the PSB, and the OIG. At any one of these levels, the evidence collected during the investigation may be reviewed and critiqued.

The Monitor last assessed the LAPD's compliance with paragraph 85 during the quarter ending June 30, 2005, at which time the LAPD was found in functional non-compliance based on the

⁴⁸ According to the LAPD's *Management Guide to Discipline*, dated January 2002, preponderance is defined using the *Black's Law Dictionary* as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but opportunity from knowledge, information possessed, and manner of testifying determines the weight of testimony."

fact that the Monitor concluded four complaints out of 53 reviewed were not adjudicated using the preponderance of evidence standard.

Current Assessment of Compliance

As described immediately above, during its review of completed complaints adjudicated as OJR, the Monitor determined that the utilization of OJR as an adjudicative category contravenes the provisions of paragraph 85 specifying permissible adjudicative categories and disregards the requirement of the utilization of a “preponderance of the evidence standard” in adjudication of complaints.

Based on the foregoing, the Monitor finds the LAPD in non-compliance with paragraph 85.⁴⁹

F. DISCIPLINE & NON-DISCIPLINARY ACTION

The Consent Decree provides specific requirements regarding the imposition and reporting of disciplinary and non-disciplinary action. The Chief of Police must report to the Police Commission his imposition of discipline during each calendar quarter. The Inspector General (IG) must review, analyze and report to the Police Commission on the Chief’s actions, and the Police Commission must assess the appropriateness of his actions.

During the quarter ending June 30, 2005, the Monitor assessed the Department’s compliance with requirements relative to managers’ evaluation of complaint investigations and notification to complainants regarding complaint dispositions; the Monitor also evaluated whether the Police Commission’s assessment of the appropriateness of discipline imposed by the Chief of Police was considered as part of the Chief’s annual evaluation.

During the current quarter, the Monitor assessed the Department’s compliance with requirements relative to the Department’s anti-retaliation policy, as well as the Chief of Police’s discipline report and the IG’s and Commission’s reviews of that report. The results of our current assessments follow.

⁴⁹ In previous assessments of paragraph 85, the Monitor did not raise the issue of the Department’s utilization of adjudications other than those called for in paragraph 85, including OJR. The number of such adjudications in the sample size that was previously examined was de minimis and it appeared, at that time, that the use of the category was limited to that which we suggest herein would be permissible (although not as an adjudicative category) i.e. as a substitution for evidence when a judicial authority has made a finding of specific facts. However, based upon the findings from the review conducted during the current quarter, the Monitor has concluded that the evolution of the utilization of the OJR adjudication significantly and negatively impacts Department compliance with paragraph 85.

Paragraph 88 – Chief of Police Report on Discipline

Paragraph 88 requires the Chief of Police to report to the Police Commission, with a copy to the IG, on the imposition of discipline during each quarter, no later than 45 days following the end of the quarter.

Background

The Monitor last assessed the LAPD's compliance with paragraph 88 during the quarter ending March 30, 2005, at which time the Monitor found the LAPD in functional compliance.

Current Assessment of Compliance

During the current quarter, the Monitor received and reviewed the Quarterly Discipline Reports (QDRs) for the first and second quarters of 2005, dated May 6, 2005 and July 22, 2005, respectively. The Monitor determined that the QDR for the first quarter was submitted to the Police Commission on May 6, 2005, with a copy to the IG provided on May 9, 2005 and the QDR for the second quarter was submitted to the Police Commission on July 27, 2005, with a copy to the IG provided on July 29, 2005. Accordingly, the LAPD provided the Police Commission with the QDR for the first quarter 36 days after the end of the quarter, and provided the QDR for the second quarter 27 days after the end of the quarter, both of which comply with the 45-day requirement of this paragraph.

As the Monitor has indicated in previous quarterly reports, in order for the Police Commission and the OIG to utilize these QDRs to their fullest extent, the reports should be user-friendly and provide appropriate statistical data to reflect the outcome of discipline imposed during the relevant quarter. The Monitor reviewed the QDRs for the first and second quarters to determine whether they accurately captured and reported on relevant information. The Monitor found that they provide appropriate statistical data to reflect the outcome of the discipline imposed during the respective quarter and are adequate in their current format.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 88.

Paragraph 89 – IG and Police Commission Review of QDR

Paragraph 89 requires the IG to review, analyze and report to the Police Commission on each QDR. The Police Commission shall review the QDR no later than 75 days⁵⁰ after its receipt and assess the appropriateness of the Chief of Police's actions, specifically with respect to CUOF.

⁵⁰ Paragraph 89 originally had a 45-day requirement; this requirement was changed to 75 days after the Court approved the City and DOJ's Joint Request to Amend the Consent Decree Pursuant to Paragraph 180 of the Consent Decree on June 2, 2005.

Such assessment must be considered as part of the Chief's annual evaluation as provided in paragraph 144.

For ease of reporting, the Monitor has split its reporting on paragraph 89 into three components:

- Subparagraph 89a, IG Review of QDR
- Subparagraph 89b, Commission Review/Assessment of QDR
- Subparagraph 89c, Commission's Assessment Considered Part of Chief's Annual Review

Background

The Monitor last assessed the LAPD's compliance with subparagraphs 89a and b during the quarter ending March 31, 2005 at which time the Monitor found the LAPD in functional compliance.⁵¹

Current Assessment of Compliance

Subparagraphs 89a, IG Review of QDR, and 89b, Police Commission Assessment of QDR

During the current quarter, the Monitor received and reviewed the IG's review of the QDRs for the first quarter and second quarters of 2005; the IG's reviews were dated June 30, 2005 and October 7, 2005, respectively.⁵² The Police Commission received the IG's review of the QDR for the first quarter of 2005 on July 1, 2005, 53 days after the QDR was received by the IG and 56 days after the report was received by the Commission. The Police Commission approved the QDR on July 12, 2005, 67 days after receipt of the QDR and within the 75-day requirement. The Police Commission received the IG's review and assessment of the QDR for the second quarter of 2005 on October 7, 2005, 70 days after the QDR was received by the IG and 72 days after the report was received by the Commission. The Police Commission approved the QDR on October 11, 2005, 76 days after receipt of the QDR. As October 10, 2005, the 75th day after receipt of the QDR, was a public holiday, the Monitor concludes that the Commission complied with the requirements of paragraph 89.

Based on the foregoing, the Monitor finds the Department in functional compliance with subparagraphs 89a and b.

⁵¹ During the quarter ending June 30, 2005, the Monitor withheld a determination of compliance with subparagraph 89c pending its review of the Police Commission's next evaluation of the Chief of Police; this review is currently scheduled for the quarter ending December 31, 2005.

⁵² As described in the Current Assessment of Compliance for paragraph 88, above, the QDRs were dated May 6, 2005 and July 22, 2005, respectively. The QDR for the first quarter was submitted to the Police Commission on May 6, 2005, with a copy to the IG provided on May 9, 2005. The QDR for the second quarter was submitted to the Police Commission on July 27, 2005, with a copy to the IG provided on July 29, 2005.

Paragraph 92 – Review of Anti-Retaliation Policy

Paragraph 92 requires the City and the LAPD to prohibit retaliation against any employee for reporting misconduct. The Police Commission is required to annually review the Department's anti-retaliation policy and its implementation. The Commission is required to make modifications as appropriate to protect officers from reprisals for reporting misconduct. The Commission's review of such policy and its implementation shall consider the discipline imposed for retaliation and supervisors' performance in addressing and preventing retaliation.

Background

The Monitor last assessed the City and the LAPD's compliance with paragraph 92 during the quarter ending March 31, 2005, at which time the Monitor found them in non-compliance. Although the revised retaliation policy had been approved by the Chief of Police and submitted to the Police Commission, it was still awaiting approval by the Commission. In addition, the Monitor reviewed the IG's February 11, 2005 memorandum report entitled "Office of the Inspector General's Annual Retaliation Policy Review," which was submitted by the OIG pursuant to paragraph 92. The report, which covered retaliation complaint investigations closed between the third quarters of 2003 and 2004 and is used to assist the Police Commission in its annual review of the LAPD's anti-retaliation policy, identified various deficiencies in retaliation investigations.

Current Assessment of Compliance

As reported during our previous assessment of paragraph 92, the Department was in the process of implementing a revised anti-retaliation policy. The revised policy was published and distributed during the current quarter. A training bulletin, which more fully details the revised policy, is scheduled to be distributed in November 2005. Training related to the new policy is scheduled to be provided live to Command staff on November 22, 2005, and scheduled to be made available to the entire Department via e-learning in December 2005. However, the training curriculum was not finalized as of the end of the current quarter.

The Police Commission approved Special Order No. 16 during the current quarter, which replaced the existing anti-retaliation policy with the new revised policy. Among other things, the new policy specifically defines "protected activities" and sets forth the "employee's responsibility" to report retaliation. The Police Commission also approved Special Order No. 15, which added to the new revised anti-retaliation policy by including a section entitled "Prohibited Acts that Contribute to Retaliation." Such prohibited behavior now includes "creating a dangerous working environment" and "spreading rumors impugning the character or reputation of a complainant or an accused."

Given that the revised anti-retaliation policy has only recently been approved and distributed, and related training is under development, the Monitor withholds a determination of the City and LAPD's compliance with paragraph 92.

G. PROFESSIONAL STANDARDS BUREAU

The Consent Decree mandates that certain categories of cases -- including unauthorized UOF; unlawful search or seizure; dishonesty; domestic violence; and discrimination -- be handled directly by the PSB. It also outlines certain best practices with respect to complaint procedures and provides for a transition period to accomplish the reassignment of personnel to the PSB. In addition, the Consent Decree provides specific requirements regarding integrity/sting audits and outlines various requirements regarding the staffing of the PSB, including the selection and evaluation of PSB officers.

During the quarter ending December 31, 2004, the Monitor assessed the LAPD's compliance with this section of Consent Decree's requirements relative to staffing and personnel management within IAG and the hiring criteria for IAG investigators. During the quarter ending March 31, 2005, the Monitor assessed the LAPD's compliance with requirements regarding the assignment of complaint investigation responsibility, including complaints filed against the Chief of Police; the assignment of investigator positions; and the reappointment of personnel within the IAG. During the quarter ending June 30, 2005, the Monitor assessed the LAPD's compliance with requirements relative to integrity/sting audits

During the current quarter, the Monitor assessed compliance with the requirement that the LAPD appropriately refer to prosecutorial authorities all incidents involving LAPD officers with facts indicating criminal conduct.⁵³ The results of our current assessment follow.

During the current quarter, the Monitor also undertook a review of Gang Enforcement Detail (GED) complaints investigated solely by COC officers.⁵⁴ The Monitor requested, obtained and reviewed a listing of all GED COC investigations for the period January 1, 2003 through June 30, 2005.⁵⁵ In total, 720 investigations were identified.

Of the 720 investigations listed, the Monitor identified 42 (5.83%) for which the complaint classification, alone, indicated that the investigation should have been assigned to the IAG and not COC.⁵⁶ To date, the Monitor has reviewed 17 of these 42 investigations; for all 17, the

⁵³ The Monitor is scheduled to assess compliance with the remaining requirements of this section – that IAG investigators be evaluated based on their competency in following policies and procedures for complaint investigations and that the LAPD provide regular and periodic re-training and re-evaluations on topics relevant to investigators' duties – during the quarter ending December 31, 2005.

⁵⁴ During the course of meeting with and reviewing material provided by the OIG with regard to OJR investigations, the Monitor noted an instance in which a GED manager rightfully requested the re-assignment of investigative responsibility to IAG. The IAG Review and Classifications Unit rejected the request, indicating that the Consent Decree was not applicable to GED complaint investigations.

⁵⁵ Information requested included the complaint file number (CF#), the date initiated, the date completed, the accused officer's name and the complaint classification.

⁵⁶ The majority of the allegations were for false imprisonment, false statements, unlawful search or unauthorized force. Also noted were allegations of discrimination and sexual misconduct.

Monitor concluded that either at inception or during the course of the investigation, investigative responsibility should have been assumed by the IAG, not COC.

In order to conduct further testing in this area, the Monitor randomly selected an additional 85 GED complaint investigations for review. To date, the Monitor has reviewed 46 of the 85 investigations; for all but one, the Monitor concurs with the assignment of responsibility for the investigation. The Monitor is continuing its review to assess the completeness of investigations and whether appropriate adjudications occurred.

These complaint misclassification issues described above relate to paragraphs 93 and 94. The Monitor last assessed compliance with these paragraphs during the quarter ending March 31, 2005 and found the Department in compliance with each. Given that the samples reviewed during the current quarter involved only GED complaints, they are not representative of the entire population of complaints. As a result, these findings do not impact the previous findings of compliance. Nonetheless, the findings do raise substantial concerns, as certain types of investigations have been designated for IAG rather than COC review for specific reasons: IAG investigators have gone through a vetting process, are intrinsically more experienced, will generally have an unblemished record and are totally dedicated to complaint investigations, whereas COC investigators must be on the street, may also conduct NCUOF investigations and may also serve as FTOs. Paragraph 95 mandates adequate staffing for IAG. Corrective measures undertaken by the LAPD will result in an additional investigative burden for the IAG that, in turn, may result in substandard investigations and the inability to timely complete investigations as mandated by the Consent Decree.

Paragraph 101 – Referral of Possible Criminal Misconduct to Prosecutors

Paragraph 101 requires the LAPD to refer to the appropriate prosecutorial authorities⁵⁷ all incidents involving LAPD officers with facts indicating criminal conduct.

Background

The Monitor last assessed the LAPD's compliance with paragraph 101 during the quarter ending December 31, 2003, at which time the Monitor found the LAPD in primary and functional compliance.

Current Assessment of Compliance

No changes in policy were issued during the current quarter in connection with paragraph 101 requirements. The Monitor determined that the policies that were previously issued⁵⁸ reasonably and substantially meet primary compliance requirements.

⁵⁷ Deemed to be the Los Angeles County District Attorney's Office or the Los Angeles City Attorney's Office.

In order to assess functional compliance with paragraph 101 during the current quarter, the Monitor reviewed and subsequently relied on AD's *Complaint Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.⁵⁹ In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations that were completed during the month of August 2004.⁶⁰

Of the 53 complaint investigations selected for review, 16 involved allegations of criminal misconduct. Five investigations were referred to either the District Attorney or City Attorney for filing consideration. The remaining 11 were not referred as they lacked prima facie evidence. The Monitor concurred with AD's conclusions for all 16 investigations.

Based on the foregoing, the Monitor finds the LAPD in primary and functional compliance with paragraph 101.

H. NON-DISCRIMINATION POLICY AND MOTOR VEHICLE AND PEDESTRIAN STOPS

The LAPD prohibits discriminatory conduct. As mandated by the Consent Decree, LAPD officers may not make pedestrian or vehicle stops based solely on race, color, ethnicity or national origin. Race, color, ethnicity or national origin can only be utilized as part of a basis for police activity when such activity is based on subject-specific information. The Consent Decree directs the LAPD to enforce these policies and mandates data collection with the ultimate goal of determining whether racially biased stops are being made.

The Monitor is currently scheduled to assess the Department's compliance with its non-discrimination policy (paragraphs 102 and 103) during the quarter ending March 31, 2006, at which time the City's analysis of stop data collected in the field will be available.⁶¹

⁵⁸ LAPD Manual Section 2/214.22; District Attorney Special Directive 01-10, *Referral of Allegations of Criminal Misconduct to the Justice System Integrity Division*, November 7, 2001; District Attorney *Protocol for the Referral of Allegations of Criminal Misconduct by Law Enforcement Personnel to the Los Angeles District Attorney*, November 7, 2001; Office of the Chief of Police Notice, *Departmental Criminal Filing Review Procedures for Employees Accused of Prima Facie Misconduct*, approved by the Chief of Police on October 25, 2001; OCOP Notice, March 27, 2002, *Department Criminal Filing Procedures for Employees Accused of Prima Facie Misconduct*, approved by the Police Commission April 8, 2003.

⁵⁹ The Monitor conducted a meta-audit of the *Complaint Form 1.28 Investigations Audit*, ultimately concluding that the audit was non-compliant. However, the Monitor elected to rely on many of the conclusions reached by AD. Refer to the Monitor's Report for the Quarter Ending June 30, 2005, dated August 15, 2005.

⁶⁰ AD selected the 53 complaint investigations out of a total of 113.

⁶¹ As described in prior Monitor reports, the Analysis Group, Inc. was selected by the Department to develop a methodology to analyze the field data in order to determine if disparate treatment reflected in the stop data can be explained and, if so, what those explanations are.

During the quarter ending June 30, 2005, the Monitor assessed the LAPD's data collection processes and its compliance with Consent Decree requirements relative to the collection of field data. The Monitor is scheduled to again assess compliance with these requirements during the quarter ending June 30, 2006.

IV. MANAGEMENT OF GANG UNITS

In the wake of the Rampart Scandal, the LAPD conducted an audit of its internal operations and in March 2000 reorganized the units that police gang-related crime into Special Enforcement Units (SEU). The SEUs, which were subsequently reorganized into GEDs,⁶² report to the command staff in the stations where they are assigned, and receive support from Special Operations Support Division (SOSD),⁶³ which has responsibility for monitoring gang units Department-wide.

The Department also established new monitoring procedures and instituted minimum eligibility requirements for GED personnel before the Consent Decree was finalized or adopted. The Consent Decree directs the LAPD to continue these practices and provides for the adoption of additional requirements in the selection of GED personnel.

During the quarters ending September 30, 2004 and December 31, 2004, the Monitor assessed the LAPD's compliance with all Consent Decree requirements regarding the management of gang units. During the quarter ending March 31, 2005, the Monitor followed up on its compliance assessment related to gang unit procedures and also assessed compliance with requirements related to the monitoring and assessment of gang units by Bureau Gang Coordinators (BGCs). In addition, the Monitor attended a Gang Symposium given by SOSD, which covered different gang histories, surveillance, arrest report writing, search warrants, and gun laws.

During the current quarter, the Monitor again assessed compliance with many of this section's requirements, including the eligibility criteria for and the selection process of GED officers and supervisors; tour of duty limitations; supervisory review of sustained complaint or adverse judicial findings during an officer's assignment tour in the GED; and the monitoring and assessment of gang units by BGCs. During the quarter ending December 31, 2005, the Monitor will assess the requirements of this section that were not assessed during the current quarter. The results of our current assessments follow.

⁶² GEDs are part of Gang Impact Teams, which also include Community Law Enforcement and Recovery (CLEAR) units.

⁶³ SOSD was formerly known as Detective Support Division (DSD). Under a March 2003 Department reorganization, SOSD was mandated to assume many of DSD's responsibilities.

Subparagraphs 106b and c – Eligibility Criteria for Selection of Gang Non-Supervisory Officers and Gang Supervisors

Subparagraphs 106b and c provide eligibility criteria for the selection of non-supervisory officers and gang supervisors.

Background

The Monitor last assessed the LAPD's compliance with subparagraphs 106b and c during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional compliance with each.

Current Assessment of Compliance

In order to assess the LAPD's functional compliance with subparagraphs 106b and c during the current quarter, the Monitor reviewed and subsequently placed reliance on AD's *GED Selection Criteria Audit*, dated June 22, 2005, and related working papers. In this audit, AD identified a total population of 362 GED officers for DP 5, March 6 to April 2, 2005. From this audit population, AD selected a sample of 62 officers, 50 non-supervisory and 12 supervisory personnel, to assess compliance with the requirements of subparagraphs 106b and c and 107a-c, among others. In assessing Department-wide compliance regarding eligibility criteria, AD reviewed the TEAMS I records and performance evaluations for the 50 non-supervisory officers and 12 supervisory officers selected for review.

Regarding subparagraph 106b, AD found that the eligibility criteria⁶⁴ were adequately addressed for 48, or 96%, of the 50 non-supervisory personnel reviewed.⁶⁵ The Monitor randomly selected a sample of 20 non-supervisory officers from AD's sample of 50, and reviewed their TEAMS I records and performance evaluations. The Monitor concurred with AD's assessments for the officers reviewed.

Regarding subparagraph 106c, AD found that the eligibility criteria⁶⁶ were adequately addressed for all 12 supervisors, resulting in 100% compliance. The Monitor randomly selected a sample of 9 supervisory officers out of the 12 that AD reviewed, and reviewed their TEAMS I records

⁶⁴ Eligibility criteria include the minimum experience required and demonstrated proficiency in law enforcement activities, interpersonal and administrative skills, cultural and community sensitivity, and commitment to police integrity prior to being selected into the respective unit.

⁶⁵ AD found that two of the selection packages reviewed had no indication of Chief of Police approval for reassignment prior to the required 13 DP break.

⁶⁶ Eligibility criteria for supervisors include one year experience as a patrol supervisor, have been wheeled from their probationary Area of assignment, and have demonstrated outstanding leadership, supervisory and administrative skills.

and performance evaluations. The Monitor concurred with AD's assessments for the officers reviewed.

In addition to the above, AD recognized that revised Department policy requires the presence of the two most recent Performance Evaluation Reports (PERs), whereas subparagraph 107c requires the use of "annual performance evaluations." These PERs are often used to assess eligibility criteria for subparagraphs 106b and c, as well as subparagraphs 107a and b. AD recommended that Planning and Research Division further revise policy to clarify the minimum period of time to be covered in PERs being assessed for gang officer selection. The Monitor concurs with this recommendation.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with subparagraphs 106b and c.

Subparagraph 106d – Gang Unit Tour of Duty Limitations

Subparagraph 106d provides mandated limitations on the amount of time that officers can spend working in the gang units.

Background

The Monitor last assessed the LAPD's compliance with subparagraph 106d during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's functional compliance with subparagraph 106d during the current quarter, the Monitor reviewed the gang tour limitation listing used by SOSD of non-supervisory and supervisory officers selected to a gang unit from inception of the Consent Decree, July 2001 to May 1, 2005. The Monitor then selected those officers who were up for extensions from January 1, 2004 to May 1, 2005 and identified 112 officers who had a tour assignment that exceeded 39 DPs as of May 2005. The Monitor then reviewed the tour extensions for a sample of 14 of the 112 officers identified. The Monitor found that the extensions for 10 of 14, or 71%, of the officers selected were in compliance. The extensions for the remaining 4 officers were not approved until after the end of their tour assignment in a gang unit. Two of these four extensions had late approval signatures and two extensions had no BGC or Chief of Police approval signatures.

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with paragraph 106d.

Subparagraphs 107a-c – Gang Unit Eligibility Criteria; Selection Process for Gang Unit Personnel

Subparagraph 107a mandates that eligibility for selection of an officer into the gang units shall require a positive evaluation of the officer's TEAMS II record. Supervisors shall be required to document in writing their consideration of any sustained complaint, adverse judicial finding, discipline for use of excessive force, false arrest or charge, improper search and seizure, sexual harassment, discrimination, and/or dishonesty in determining selection of an officer in these units.

Subparagraph 107b mandates that the procedures for the selection of all officers to the gang units shall include a formal, written application process, oral interview(s), and the use of TEAMS II and annual performance evaluations to assist in evaluating the application.

Subparagraph 107c mandates that during an officer's assignment in the gang units, any sustained complaint or adverse judicial finding for use of excessive force, a false arrest or charge, an unreasonable search or seizure, sexual harassment, discrimination, or dishonesty, shall result in supervisory review of the incident and a written determination as to whether or not the officer should remain in the unit.

Background

The Monitor last assessed the LAPD's compliance with subparagraphs 107a-c during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional non-compliance with subparagraphs 107a and b, and in functional compliance with subparagraph 107c.

Current Assessment of Compliance

In order to assess the LAPD's functional compliance with subparagraphs 107a-c during the current quarter, the Monitor reviewed and subsequently placed reliance on AD's *GED Selection Criteria Audit*, dated June 22, 2005, and related working papers. As described in the Current Assessment of Compliance for subparagraphs 106b and c, above, AD selected a sample of 62 officers, 50 non-supervisory and 12 supervisory personnel, to assess the LAPD's compliance with the requirements of subparagraphs 107a-c, among others.

AD reviewed the TEAMS I records, performance evaluations and, where appropriate, written applications and evidence of an oral interview for the 62 non-supervisory and supervisory officers selected for review. The Monitor randomly selected a sample of 20 non-supervisory officers and 9 supervisory officers from AD's samples, and reviewed their TEAMS I records, performance evaluations and, where appropriate, written applications and evidence of an oral interview.

Regarding subparagraph 107a, AD determined that 62 of 62, or 100%, of these officers had a positive evaluation of their TEAMS record and written consideration of sustained complaints related to those activities specified in paragraph 107a prior to being selected into the respective unit. The Monitor concurred with AD's assessments for the officers reviewed.

Regarding subparagraph 107b, AD determined that 37 of 62, or 60% of the officers reviewed had a formal, written application process, oral interview(s), and the use of TEAMS II and annual performance evaluations considered and documented in their selection packages, as required by the subparagraph. Of the 35 in non-compliance, issues included TEAMS records dated after selection, lack of relevant performance evaluations and selections approved prior to the oral interview taking place.⁶⁷ The Monitor concurred with AD's findings regarding the instances of non-compliance.

Regarding subparagraph 107c, AD found that none of these officers had sustained complaints or adverse judicial findings related to those specified in the Consent Decree during their assignment in the gang unit.⁶⁸ As a result, AD withheld a determination of compliance for this paragraph. The Monitor concurred with AD's assessments that none of the officers had sustained complaints or adverse judicial findings related to those specified in the Consent Decree during their assignment in the gang unit. As a result, the Monitor finds the Department in compliance with subparagraph 107c, noting that this finding is based on a "null set" i.e. the Department has not actually conducted the activities required by this paragraph because there has not been a need to conduct such activities. This finding is consistent with the Monitor's conclusion from the quarters ending June 30, 2004 (during which the Monitor reviewed the selection and personnel packages for supervisors and non-supervisory officers selected to a gang unit during the period January 11, 2004 to April 3, 2004) and September 30, 2004 (in which the Department had not actually conducted the activities required by this paragraph because there has not been a need to conduct such activities).

AD also reviewed officers' sustained complaints for presence of paragraph 107c matters and extended its review scope to include 'unbecoming conduct' classifications.⁶⁹ This review identified 4 sustained complaints for 'unbecoming conduct' that exhibited elements of

⁶⁷The Monitor identified several supervisory and non-supervisory selection packages that did not have sufficient documentation to meet the oral interview and suitability interview requirements of Special Order No. 7, "Gang Impact Teams-Established," dated February 25, 2004.

⁶⁸ AD identified that selection packages were missing for two non-supervisory officers included in the population selected to test objective 6. AD chose replacement packages for these two missing packages to arrive at a population of 121 packages. Although the missing packages were not included in the compliance calculation for subparagraph 107c, AD reviewed the officers' TEAMS records and noted that they did not have any sustained complaints or adverse judicial findings related to those specified in the Consent Decree during their assignment in the gang unit.

⁶⁹ Refer to Focus Issue A. and the related write-up included in the introduction to section III.G. (Professional Standards Bureau), above, for information regarding the Monitor's concerns with the appropriate classification of complaints.

subparagraph 107c issues; AD found that a supervisor's written consideration was present, when required. However, the Monitor also reviewed 'Neglect of Duty' sustained complaints and identified 4 that identified elements of dishonesty or excessive use of force.⁷⁰ See related recommendation, below.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with subparagraphs 107a and c, and in functional non-compliance with subparagraph 107b.

Proposed Recommendations

The oral interview and suitability interview requirements of Special Order No. 7, "Gang Impact Teams-Established," dated February 25, 2004 need to be met when conducting non-supervisory and supervisory selections to the gang units.

In light of ongoing concerns regarding the Department's classification of complaint allegations, the Monitor recommends that gang supervisors be required to provide written assessment as to the continuing suitability of all gang officers with sustained complaints *of any classification* during their gang tour until the classification of complaints is addressed.

⁷⁰ As described above, paragraph 107c requires the supervisor's written assessment of an officer's continuing suitability regarding sustained complaints and adverse judicial findings involving use of excessive force, false arrest or charge, unreasonable search or seizure, sexual harassment, discrimination or dishonesty.

V. CONFIDENTIAL INFORMANTS

The use of informants is among the more sensitive areas of police work. The Consent Decree requires the LAPD to use strict controls in the use and handling of informant information.

The Monitor last assessed compliance with the Consent Decree's requirements regarding Confidential Informants (CIs) during the quarter ending September 30, 2004. The Monitor again assessed compliance with these requirements during the current quarter. The results of our current assessments follow.

Paragraph 108 – Procedures for the Handling of Confidential Informants

Paragraph 108 requires the LAPD to continue to implement and follow procedures for the handling of informants. These procedures include completing an informant control package, submitting the package to COC for review and approval and numerous additional requirements for the managing of informants.

Background

The Monitor last assessed the LAPD's compliance with paragraph 108 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's functional compliance with paragraph 108 during the current quarter, the Monitor reviewed AD's *Confidential Informant Control Package Audit, Fourth Quarter-Fiscal Year 2004/2005*, and related working papers. Overall, AD indicated that 8 active informant packages and one inactive package were out of compliance.⁷¹ Of the 8 active packages, AD reported that 7 of the active packages had anomalies associated with paragraph 128 and one package had two substantive errors associated with paragraph 108.

The Monitor reviewed a random sample of the active informant packages that were reviewed by AD to determine whether they were compliant with the requirements of paragraph 108. The Monitor contends that the anomalies identified in connection with paragraph 128 should also have been reported under paragraph 108. In addition, despite reporting the anomalies, AD did not assess compliance with paragraph 108. In sum, while AD reported only one package out of

⁷¹ AD identified 6 anomalies associated with paragraph 108 and 32 anomalies associated with the supervisory oversight requirement of paragraph 128(5). The Methodologies call for finding a package out of compliance if it has two or more substantive errors or anomalies.

compliance with paragraph 108, the Monitor concluded that 8 packages were non-complaint with paragraph 108.⁷²

AD reported that the one inactive package was secured with the active, rather than inactive, packages and, because the informant was being utilized by other agencies, it should have been handled as a “shared” package; the Monitor concurs with these findings.

The Monitor also noted a significant delay, of up to 12 weeks, in filing the Confidential Informant Contact sheets. Many of the sheets that were available at the time of the Monitor’s fieldwork did not appear to be in the file at the time of AD’s fieldwork.

The Monitor also identified additional reporting issues, including: an instance in which AD held a package out of compliance even though the issues identified by AD occurred prior to the audit period; an informant’s photograph in one package was not current; and a package for which AD erroneously reported that the informant was on parole or probation.

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with paragraph 108.

Paragraph 109 – Confidential Informant Database

Paragraph 109 mandates that a permanent Department-wide confidential informant database be established to include all LAPD confidential informants except those listed by the Anti-Terrorist Division and those used in conjunction with another agency. This database should include the informant number, name, aliases and date of birth.

Background

The Monitor last assessed the LAPD’s compliance with paragraph 109 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD’s functional compliance with paragraph 109 during the current quarter, the Monitor reviewed AD’s *Confidential Informant Control Package Audit*, conducted by AD during Fourth Quarter, Fiscal Year 2004/2005, and related working papers. During its audit, AD reviewed all active informants and a random sample of inactive informant packages and determined that the information in the database and the information reflected in the informant package matched for 100% of the packages selected for review.

⁷² The anomalies found by AD regarding supervisory oversight issues with these 8 packages include lack of supervisory approval on payment forms, contact forms and sign-out cards, lack of supervisory approval prior to meeting with an informant and missing forms and inconsistencies with large payments to informants which also require supervisory oversight.

The Monitor reviewed the listing used by AD of active informant packages maintained in the Confidential Informant Tracking System Database (CITSD) from March 1, 2005 to May 15, 2005. The Monitor then reviewed the CITSD and a random sample of the active and inactive informant packages that were selected for review by AD. The Monitor determined that the information in the database and the informant packages matched and, accordingly, the Monitor concurred with AD's assessments.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 109.

VI. DEVELOPMENT OF PROGRAM FOR RESPONDING TO PERSONS WITH MENTAL ILLNESS

The Consent Decree mandates that the Department evaluate successful programs in other law enforcement agencies across the United States for responding to persons who may be mentally ill. The Department is also required to evaluate LAPD training, policies, and procedures for dealing with persons who may be mentally ill. The Consent Decree further mandates that the Department prepare a report for the Police Commission detailing its findings and recommending changes in policies, procedures, and training relative to police contact with persons who may be mentally ill. The Police Commission, in turn, is to forward its reports and actions regarding new or revised policies, practices, or training to the City Council and Mayor. In addition, the Department is expected to complete an audit of the LAPD's handling of calls and incidents involving persons who appear to be mentally ill, no more than 32 months after the effective date of the Consent Decree.

The Monitor last evaluated the progress of the Department's Mental Illness Program during the quarter ending March 31, 2005, and is scheduled to do so again during the quarter ending March 31, 2006.

The Monitor evaluated the Department's *Audit of Police Contact with the Mentally Ill* during the quarter ending September 30, 2004, and is providing an update to that assessment in the current report.

Paragraph 113 – Audit of Police Contact with Mentally Ill

Paragraph 113 requires the Department to complete a one-time audit within one year of the date of issuance of the report to the Police Commission on the LAPD's handling of calls and incidents involving persons who appear to be mentally ill,⁷³ or within 32 months after the effective date of the Consent Decree. It is required that this audit evaluate any new policies, procedures and training methods implemented pursuant to paragraph 112, and that it specify any additional modifications in the Department's policies, procedures or training needed to meet the objectives in paragraph 112.

Background

The LAPD's initial report to the Police Commission concerning the Mental Illness Project was submitted by July 15, 2002, which therefore required the Department to complete an audit by February 15, 2004 (32 months after the effective date of the Consent Decree). Although the

⁷³ As required by paragraph 112.

fieldwork for this audit was apparently completed during the quarter ending June 30, 2004, the report was not issued by the end of that quarter. As a result, the Monitor found the Department in non-compliance with paragraph 113 in its Report for the Quarter Ending June 30, 2004.

Detective Bureau submitted the audit report dated June 10, 2004 to the Police Commission on July 9, 2004.⁷⁴ The Department acknowledged it was out of compliance relative to the timeliness of this audit. In its review of the audit during the quarter ending September 30, 2004, the Monitor found that although comprehensive in some respects, the audit did not, for a variety of reasons, meet strict audit standards. Notwithstanding admitted technical non-compliance, both the DOJ and the City have requested that the Monitor determine whether the Department's audit and subsequent actions in response to the audit's conclusions have met the intent of the Consent Decree to bring about best practices relative to police dealings with the mentally ill.

Current Assessment of Compliance

The Monitor has determined that the intent of this paragraph was to essentially compel the City to assess its policies and procedures and make recommendations relative to LAPD dealings with the mentally ill. As detailed in previous reports under paragraph 112, the Monitor has been impressed with the steps that the Department has taken since the completion of the audit. As such, we believe that the intent of paragraph 113 has been met. In light of this belief, with this report we are introducing, and assigning to the Department's paragraph 113 compliance efforts, a new report card category of "Compliance with Intent (CWI)." The CWI designation will be utilized in situations where the Decree requires a one-time effort that upon initial review did not meet a paragraph's compliance requirements, but has since been found to meet the functional intent of the paragraph.

⁷⁴ This audit evaluated the new policies, procedures and training methods that have been implemented pursuant to paragraph 112.

VII. TRAINING

A. FIELD TRAINING OFFICERS PROGRAM

The Consent Decree requires the LAPD to continue to implement formal training and establish eligibility criteria for FTOs. Consent Decree requirements are intended to ensure that the officers chosen to be FTOs, who are responsible for the professionalism, skill and quality of the future Department, are themselves qualified and appropriately trained to educate newer members of the LAPD.

During the quarter ending September 30, 2004, the Monitor assessed the LAPD's eligibility criteria for FTOs and attempted to assess the training of FTOs and the process for their de-selection. The Monitor assessed the LAPD's compliance with the requirements relative to the FTO de-selection process during the quarter ending March 31, 2005.

During the current quarter, the Monitor again assessed the LAPD's eligibility criteria for FTOs and its training of FTOs. The Monitor is scheduled to again assess the LAPD's compliance with the requirements relative to the FTO de-selection process during the quarter ending March 31, 2006. The results of our current assessments follow.

Paragraph 114 – Eligibility Criteria for FTO

Paragraph 114 requires the Department to continue implementing formal eligibility criteria during the FTO selection process. The candidate must demonstrate analytical skills, interpersonal and communication skills, cultural and community sensitivity, diversity and commitment to police integrity.

Background

The Monitor last assessed the Department's compliance with paragraph 114 during the quarter ending September 30, 2004, at which time the Monitor found the Department in non-compliance based on the Monitor's finding that 1 of 4 officers selected as FTOs during the period October 1 through December 31, 2003 had a sustained complaint for "neglect of duty" and "filing a false report." The Monitor concluded that although the complaint was reviewed, the decision to select the officer was clearly faulty.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 114, the Monitor sought to identify all officers who were selected to serve as FTOs during the period October 1, 2004 through August 31, 2005. Although the LAPD was able to identify the total number of officers who are or have

once served as FTOs,⁷⁵ it was unable to identify the officers selected to serve as FTOs for the period requested.⁷⁶ This inability to identify meaningful data is symptomatic of a larger problem involving the management of FTOs. The LAPD is currently reviewing its administration of the FTO program, including potential revisions to the system it utilizes to manage it.⁷⁷

Based on the foregoing, the Monitor withholds a determination of the LAPD's compliance with paragraph 114.⁷⁸

Proposed Recommendation

The LAPD should centralize the administration of the FTO program so that LAPD management can more effectively identify, supervise and train FTOs.

Paragraph 116 – FTO Training Plan

Paragraph 116 requires FTOs to receive sufficient training in LAPD policies and procedures and training on how to be an instructor. The paragraph also requires periodic re-training on these topics.

Background

The Monitor last assessed the LAPD's compliance with paragraph 116 during the quarter ending September 30, 2004, at which time the Monitor withheld a compliance determination, as the actual FTO population was not identified by the LAPD.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 116 during the current quarter, the Monitor requested and received from the LAPD a list of 845 officers assigned as FTO's from October 1, 2004 through August 31, 2005. From that list, the Monitor selected a random sample of 76 FTOs and reviewed their training records. The Monitor determined that all 76 FTOs

⁷⁵ Currently there are 735 officers in the field who are currently or have once served as an FTO.

⁷⁶ The Department provided the requested data to the Monitor after the end of the quarter. The Monitor will review and report on the data during the quarter ending December 31, 2005.

⁷⁷ The Department has recognized the need to centralize the monitoring and management of FTOs throughout the Department. To provide a solution, it is budgeting for additional employees to be assigned to the FTO Unit, Training Division. In the interim, the Quality Assurance Unit, Training Division, monitors transfers and contacts each geographical division monthly to identify all Police Officer III position that are actually FTOs.

⁷⁸ The Monitor will assess the LAPD's compliance with paragraph 114 during the quarter ending December 31, 2005 when it reviews the data recently provided by the LAPD.

selected had completed FTO School, but only 64 had completed the FTO Update, resulting in a compliance rate of 84.2%.

Based on the foregoing, the Monitor finds the LAPD in non-compliance with paragraph 116.

B. TRAINING CONTENT

The Consent Decree requires the LAPD to continue to provide periodic training on police integrity. Such training must include and address retaliation, the duty to report misconduct, cultural diversity, community policing, integrity in report writing, Fourth Amendment and other constitutional requirements, the Department's non-discrimination policy and interactive ethical decision-making.

The Monitor last assessed the LAPD's compliance with requirements regarding police integrity training for all LAPD personnel during the quarter ending March 31, 2005. The Monitor is scheduled to again assess the LAPD's compliance with these requirements during the quarter ending March 31, 2006.

The Monitor last assessed the LAPD's compliance with requirements related to the communication of training ideas to the LAPD Training Group during the quarter ending September 30, 2004 and with requirements regarding the training curriculum for the public members of the Board of Rights during the quarter ending June 30, 2004. The Monitor again assessed compliance with these requirements during the current quarter. The results of our current assessments follow.

Paragraph 118 – Public Members on Board of Rights

Paragraph 118 requires the Department to properly train all civilian members who sit on the Board of Rights in police practices and procedures.

Background

The Monitor last assessed the Department's compliance with paragraph 118 during the quarter ending June 30, 2004, at which time the Monitor found the Department in functional non-compliance. The Monitor determined that the training curriculum did not provide the level of detail necessary to adequately train civilian members. The Monitor elected to postpone its next review of this training curriculum, which was originally scheduled for the quarter ending June 30, 2005, in order to maintain an annual review schedule.

Current Assessment of Compliance

The training curriculum for the public members on the Board of Rights had not been finalized as of the end of the current quarter. As no finalized curriculum is available, civilian members have

not been trained. The Monitor notes that civilian members, unlike their sworn member counterparts, generally do not have prior knowledge of LAPD policies and procedures, which makes it imperative that a curriculum be finalized and utilized to train them.

Based on the foregoing, the Monitor finds the Department in functional non-compliance with paragraph 118.

Paragraph 120 – Communication of Training Suggestions

Paragraph 120 requires the Department to establish procedures for LAPD supervisors and officers to communicate to the LAPD Training Group any suggestions they may have for improving the standardized training provided to LAPD officers, and to make written referrals to the appropriate LAPD official regarding suggestions about police policies and tactics.

Background

The Monitor last assessed the Department's compliance with paragraph 120 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional compliance.

Current Assessment of Compliance

The Department continues to explore various methods for conducting outreach to garner training suggestions and lessons learned from field experiences and to encourage employees to submit their insights. Since October 1, 2004, after the initiation of the Training Suggestions and Lessons Learned program, implementation of approximately seven suggestions has been completed. Training suggestions were received mainly through Department audits such as the *GED Selection Criteria Audit* and *Initiation of Complaints Audits*. The suggestions covered topics such as OIS videos, potential e-learning topics, and accessibility to Department publications. Although the Monitor would like to see training suggestions from a wider variety of sources, the Department has made considerable progress in this area.

Based on the foregoing, the Monitor finds the Department in continued compliance with paragraph 120.

C. SUPERVISORY TRAINING

The Consent Decree mandates that all officers promoted to supervisory positions receive training prior to the assumption of their new responsibilities.⁷⁹ Once promoted, supervisors should

⁷⁹ This requirement pertains to all promoted officers, except for those officers promoted to the rank of Captain, who must at least begin their Command Development training before they assume their new positions.

continue to receive regular training on key issues, including report review, incident control, ethical decision-making, UOF and complaint investigations. The Consent Decree also requires the Department to ensure that supervisors who conduct investigations receive relevant training.

The Monitor last assessed the LAPD's compliance with supervisory investigations training requirements during the quarter ending June 30, 2004, and with the requirements for training newly promoted supervisors and for providing regular and periodic training to supervisors during the quarter ending September 30, 2004. The Monitor again assessed the LAPD's compliance with these requirements during the current quarter, and focused on implementation of supervisory training to ensure that supervisors required to be given training received it in a timely and, when required, regular and periodic basis.⁸⁰ The results of our current assessments follow.

Paragraph 121 – Supervisory Training Requirements

Paragraph 121 requires the LAPD provide all officers promoted to supervisory positions, up to and including the rank of Captain, with training to perform their new duties and responsibilities. Officers are to receive this training prior to the assumption of their new supervisory positions, except for those officers promoted to the rank of Captain, who shall have at least commenced command development training before they assume their new positions.⁸¹

Background

The Monitor last assessed compliance with Paragraph 121 during the quarter ending September 30, 2004, at which time the Monitor found the Department in non-compliance. The Monitor reviewed the training of 83 officers promoted between July 31, 2003 and August 31, 2004, the entire population of officers promoted. The Monitor determined that 12 of the 83 officers received training after they assumed their new posts (all were promoted from Detective I to Detective II) and only 8 had signed an affidavit stating that they did not assume supervisory responsibilities until they received the appropriate training.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 121 during the current quarter, the Monitor selected a random sample of 74 officers out of a total population of 845 officers promoted from October 1, 2004 through August 31, 2005. The Monitor reviewed the training

⁸⁰ For the purposes of Paragraph 122, 'regular and periodic' is defined as every 24 months.

⁸¹ Due to the fact that the promotion of a Detective I to a supervisory role as a Detective II is a pay-grade promotion, the officers rarely have enough time to attend the requisite school before they are to be promoted. Should this be the case, the Monitor requires the newly promoted Detective II to sign an affidavit stating that they refrained from performing supervisory duties until they received training.

records of the 74 officers selected and determined that 3 officers promoted from Detective I to Detective II had no record of having received training prior to assuming their new posts, nor had they signed affidavits stating that they would not assume supervisory responsibilities until they received the appropriate training. In addition, 2 newly-promoted Captain I's received training from the Chief of Police on the new "Shooting at Moving Vehicles Policy" prior to assuming their official responsibilities. Although this training was conducted outside of the Command College, the Monitor deems the training adequate for purposes of compliance with this paragraph. Consequently, the Department achieved a compliance rate of 95.95% (71 of 74).

Based on the foregoing, the Monitor finds the Department in compliance with paragraph 121.

Paragraph 122 – Regular and Periodic Supervisory Training

Paragraph 122 requires the Department to provide regular and periodic supervisory training on report review, incident control and ethical decision-making.

Background

The Monitor last assessed the Department's compliance with paragraph 122 during the quarter ending September 30, 2004, at which time the Monitor found the Department in compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 122 during the current quarter, the Monitor requested and received from the LAPD a listing of 2,435 LAPD officers who acted as supervisors between October 1, 2004 through August 31, 2005. From that list, the Monitor selected a random sample of 88 Supervisors, including officers with the rank of D-II, Sergeant, Lieutenant, Captain, Commander, Deputy Chief, Assistant and Chief of Police, and reviewed their training records to determine if they received the appropriate training in reviewing reports, ethical decision making and incident control on a regular and periodic basis. The Monitor determined that 97.7% (86 of the 88) of the Supervisors selected for review received appropriate in the three areas specified at least three times during the past two years.

Eligible training that addressed the requirements of paragraph 122 included Continuing Education Modules 7 and 7.5 (training on ethical decision making and reviewing reports), and an e-learning course entitled "PIT for Supervisors," (incident control). The Monitor reviewed the curriculum for each of these training modules and attended multiple classes of each taught by various instructors, finding the training to be sufficient.

Based on the foregoing, the Monitor finds the LAPD in compliance with paragraph 122.

Paragraph 123 – Supervisory Investigations Training

Paragraph 123 requires the Department to ensure that supervisors who perform, or are expected to perform, administrative investigations, receive training that equips them with the requisite knowledge to conduct UOF and personnel complaint investigations.

Background

The Monitor last assessed the Department's compliance with paragraph 123 during the quarter ending June 30, 2004, at which time the Monitor found the Department in functional compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 123 during the current quarter, the Monitor attended several different sessions of CEDP Module 7.5: Administrative Management, which includes training on NCUOF and Complaint Form 1.28 Investigations, and determined that the training met the requirements of the paragraph. In order to determine whether Supervisors attended the training required by paragraph 123, which for the purposes of this quarter was CEDP 7.5, the Monitor requested and received from the LAPD a list of 164 Supervisors⁸² who were promoted between October 1, 2004 and August 31, 2005. From that list, the Monitor selected a random sample of 61 Supervisors and reviewed their training records. The Monitor determined that 58 supervisors had received the required training, resulting in a compliance rate of 95.1%.

Based on the foregoing, the Monitor finds the Department in compliance with paragraph 123.

⁸² Supervisors include the following ranks: DII, DIII, Sgt I, Sgt. II, Lt. I, Lt. II, Capt. I, Capt. II, Capt. III, Commanders, Deputy Chiefs and Assistant Chiefs.

VIII. INTEGRITY AUDITS

The audit processes of both the LAPD and the OIG are important cornerstones in the reform process for the entire Department.

The Consent Decree mandates that the LAPD perform regular periodic audits of numerous aspects of policing, including warrants, arrests, UOF, stops, CIs, complaints, gang units, financial disclosure, and police training. Each audit examines a variety of issues, but a common theme among all the audits is the requirement to assess and report on compliance with other Consent Decree provisions and to identify incidents suggestive of inappropriate police behavior or a lack of supervisory oversight.

The Consent Decree also mandates that the OIG assess the quality, completeness and findings of such audits, and that the OIG perform independent audits of certain topics, namely UOF incidents and complaints.

The Success of LAPD's AD

In the first two years of the Consent Decree, the LAPD struggled with the requirement to complete quality audits on a timely basis. This was caused by the following two issues:

- LAPD's AD faced a steep learning curve regarding the standards required for the conduct of audits; and
- LAPD's AD was under-resourced.

Since then, the Department has made significant progress relative to both of these issues, including the development of a Basic Law Enforcement Performance Auditing Course covering all aspects of police performance auditing, including auditing standards, audit work plans, interviews, audit fieldwork and analysis, report writing and the review process.⁸³

These developments have resulted in the completion of a total of 26 quality audits, as set out in the table below. In light of the recognition granted to LAPD's Law Enforcement Performance Auditing Course, and the quality of the work performed by AD since 2004, in those instances in which the scope of an AD audit directly addresses the requirements of a given Consent Decree paragraph, the Monitor elected to perform meta-audits of AD's audit work and findings and, if

⁸³ This course was certified by the California Commission on Peace Officer Standards & Training and by the Michigan Commission on Law Enforcement Standards in late 2004/early 2005.

appropriate, rely on such findings in assessing compliance with that paragraph.⁸⁴ Instances of such reliance are articulated earlier in this report.

<i>Timing of Monitor's Eval'n</i>	<i>Quantity and Title(s) of "Quality" Audits Completed by the LAPD⁸⁵</i>
Sept 30, 2002	1: <i>Warrant Applications & Affidavits Audit - CD128(1)</i>
Dec 31, 2002	1: <i>ABC Reports Audit - CD128(2)</i>
Sept 30, 2003	1: <i>CI Control Packages Audit - CD128(5)</i>
Dec 31, 2003	2: <i>MV&PS Audit - CD128(4); GED Work Product Audit - CD131a</i>
Mar 31, 2004	1: <i>GED Work Product Audit - CD131a</i>
Jun 30, 2004	5: <i>Warrant Applications & Affidavits Audit - CD128(1); ABC Reports Audit - CD128(2); NCUOF Reports/Investigations Audit - CD128(3) & CD129ii; Complaints Investigations Audit - CD129iii; GED Work Product Audit - CD131a</i>
Sept 30, 2004	2: <i>CI Control Packages Audit - CD128(5) & CD131d; CUOF Systems Audit - CD129i</i>
Dec 31, 2004	7: <i>ABC Reports Audit - CD128(2); MV&PS Audit - CD128(4); CUOF Investigations Audit - CD129i; GED Work Product Audit - CD131a; GED Selection Criteria Audit - CD131b; Supplemental GED Warrants Audit - CD131c-1; Supplemental GED NCUOF Reports Audit - CD131c-3</i>
Mar 31, 2005	1: <i>Complaint Systems Audit - CD129iii</i>
June 30, 2005	3: <i>Warrant Applications and Supporting Affidavits Audit - 128(3), 131c-1; Motor Vehicle and Pedestrian Stop Audit - CD128(4), 131c-4; CUOF Systems Audit - CD129i</i>
Sept 30, 2005	2: <i>NCUOF Reports/investigations Audit - CD128(3), CD129ii & CD131c-3; GED Selection Criteria Audit - CD131b</i>

⁸⁴ This is consistent with paragraph 162 of the Consent Decree, which states, "In performing its obligations as required by the Consent Decree, the Monitor shall, where appropriate, utilize audits conducted by the LAPD for this purpose."

⁸⁵ Although the GED Audits listed in this table were quality audits, the Monitor concluded they were non-compliant during the quarters ending December 31, 2003 through June 30, 2004 because they were performed by AD rather than the SOSD. The Monitor noted that until the Consent Decree was amended to allow AD to conduct these audits, the Monitor would continue to find the Department in non-compliance for such audits. As described in the Monitor's Report for the Quarter Ending September 30, 2004, the City and the DOJ agreed upon such a modification. As a result, beginning in that quarter, the Monitor disregarded the fact that AD conducted GED audits and ultimately concluded (during the quarter ending December 31, 2004) that the GED audits listed in this table for that quarter were compliant.

The OIG's Oversight of the LAPD

For more than two years,⁸⁶ the Monitor expressed concerns regarding the OIG's resource constraints, which were hampering its ability to effectively oversee the LAPD. During the quarter ending September 30, 2004, the Monitor highlighted its concerns in a focus issue which addressed the Monitor's concerns about the timeliness and quality of the OIG's reviews and audits. Since then, the OIG implemented a restructuring plan to address its resource challenges and is making progress in this area, most notably with the addition of an Assistant IG who is focusing on improving the quality and timeliness of the OIG's audits and audit reviews. In August 2005, the Monitor was informed that the OIG had largely completed its staff hiring, with the addition of four new personnel⁸⁷ who have the expertise needed to consistently perform quality and timely audits/reviews. In addition, the OIG has developed and implemented the following process improvements:

- reporting templates for EES Sting Audit and Department audit reviews;
- standardized review work plans;
- staff training bulletins;⁸⁸
- in-house training; and
- a formal quality control review process by OIG management for all reviews / audits.

The Monitor commends the OIG for these changes in its staffing and the programs it has implemented. The Monitor believes that these procedures, along with the revised management oversight, establish a suitable structure that will enable the OIG to meet the requirements of the Consent Decree. The four reviews completed since May 2005, which were submitted on a timely basis and included meta-audits, are a reflection of these changes.

A. AUDIT PLAN

One of the significant findings of the *Board of Inquiry into the Rampart Area Corruption Incident* was the LAPD's failure to establish a meaningful system of internal audits. This finding

⁸⁶ Since the quarter ending March 31, 2003.

⁸⁷ One individual is a PPA IV, the remaining three individuals are PPA III's; each new staff member has a minimum of 5 years and as many as 20 years of auditing experience. The OIG is in the process of hiring 2 more PPA III's to reach a full complement of staff. Additionally the OIG has added 4 new staff in the Complaints section and 3 new staff in the Use of Force section, each of whom brings extensive investigative or legal experience. While these individuals are not part of the Audit Section, they serve to increase the overall knowledge and expertise available at the OIG.

⁸⁸ These training bulletins covered several topics, including newly identified issues, prior audit shortcomings, audit documentation requirements and government audit standards.

was subsequently incorporated into paragraph 124 of the Consent Decree, which requires the completion of an *Annual Audit Plan* prior to the beginning of each fiscal year, and sets out other requirements associated with establishing a meaningful and effective system of internal audits.

Paragraph 124 – Annual Audit Plan & Responsibilities

Paragraph 124 states that by June 1, 2001, and prior to the beginning of each fiscal year thereafter, the Chief of Police is required to submit to the Police Commission, with a copy to the OIG, a listing of all Consent Decree audits to be conducted by the LAPD in the upcoming fiscal year, other than sting audits. Paragraph 124 also describes:

- the primary responsibilities of AD, being the development of the Annual Audit Plan, coordinating, scheduling and conducting audits as required by the Annual Audit Plan and the Chief of Police, and ensuring the timely completion of such audits;
- the requirement to obtain sufficient resources to complete the audits required by the Consent Decree;
- other responsibilities of AD, including serving as a resource to other LAPD audit units, and performing periodic assessments of the quality of audits performed by other units;
- the topics to be addressed in each audit report;
- the topics to be addressed in each quarterly audit report, including the status of the audits listed in the Annual Audit Plan, and any significant results of such audits; and
- the review and approval process for the Annual Audit Plan and quarterly updates thereto, “provided, however, that the Annual Audit Plan shall include the specified audits to be conducted by the LAPD.”

Background

During the quarters ending September 30, 2002, September 30, 2003 and September 30, 2004, the Monitor evaluated the Department’s Annual Audit Plans for the fiscal years ended June 30, 2003, 2004 and 2005, respectively, and assessed the LAPD’s progress relative to each of the prior year’s plans. In each instance, although the Monitor noted progress relative to the requirements of paragraph 124, the Monitor ultimately concluded that the Department was in non-compliance with the paragraph.

Current Assessment of Compliance

In order to assess the Department’s compliance with paragraph 124 for the fiscal period from July 2004 through June 2005, the Monitor reviewed the following:

- the Annual Audit Plan for fiscal 2005-06⁸⁹ dated May 13, 2005, as submitted to the Police Commission on May 19, 2005 and to the OIG on May 20, 2005, and approved by the Commission on July 19, 2005;
- formal revisions to the Annual Audit Plan for fiscal 2004-05 dated December 20, 29 and 30, 2004 submitted to both the Police Commission and the OIG, proposing to revise the submission dates of the GED Selection Criteria Audit, the Warrant Applications and Supporting Affidavits Audit and the Non-Categorical Use of Force Reports Interim Audit;
- Quarterly Status Reports on the 2004-05 Annual Audit Plan submitted to the Police Commission and the OIG for the quarters ending September 30, 2004, December 31, 2004, March 31, 2005 and June 30, 2005; and
- all audit reports issued in connection with the 2004-05 Annual Audit Plan and the Consent Decree, as well as the Monitor's reports thereon.

The Monitor also held discussions with representatives of the LAPD in regard to the requirements of paragraph 124. The Monitor's findings are set out below.

Audit Completion Responsibilities

- The AD has addressed most of its primary audit responsibilities as identified in paragraph 124, including the development of the Annual Audit Plan; coordinating, scheduling and conducting audits as required by the Annual Audit Plan and the Chief of Police; and ensuring the timely completion of most of the LAPD's audits.
- The AD, under the leadership of Captains Ron Sanchez and later Captain Walter Schick, met its audit reporting deadlines for 2004-05.

Staffing Assessment

- Based on the timely completion of the audits and the quality of the audits completed during the fiscal year 2004/2005, it appears that AD has a sufficient number of staff members with the skill set required to conduct these audits. The Monitor understands that during the past two quarters, AD has lost some of its experienced staff as a result of promotions to positions within the OIG and transfers to other departments. Additionally, the Monitor understands that many of the experienced sworn auditors are in a position to be promoted within the next year. Although these staffing changes and potential staffing changes did not impact the audits completed during the past year, it remains to be seen whether they will result in staffing constraints during the 2005/2006 fiscal year. The Monitor will continue to review the level and quality of AD staff during upcoming quarters.

⁸⁹ Fiscal 2005-06 spans the period July 1, 2005 to June 30, 2006.

Audit Quality

- Most of the audits completed in 2004-05 met or exceeded the qualitative standards for Consent Decree audits. However, the fourth quarter *Complaint Forms 1.28 Investigations Audit* was found in non-compliance, as the Monitor identified problems with quality of or the adjudication determination for 3 investigations, as well as concerns with 2 problematic investigations.
- Each audit report submitted by AD documented the audit's methodology, data sources, analysis of the data and conclusions.

Completeness & Content of the Annual Audit Plan

- The Annual Audit Plan for 2005/2006 includes all of the specified audits identified in the Consent Decree, and also includes all other Consent Decree paragraphs that have a secondary requirement for an audit.
- The Annual Audit Plan for 2005/2006 contains changes in the scheduled completion quarter for a few audits (as compared to the Annual Audit Plan for 2004/2005); however, these changes will have no impact on the timeliness of the audits in question if they are submitted as scheduled. The 2005/2006 plan also includes an audit that was not included in the Annual Audit Plan for 2004/2005 (an audit of the Tours of Duty for PSB Investigators), includes two audits that are scheduled for completion pending determination of audit /system status,⁹⁰ and does not include the ASK LAPD Menu Options audit and Foreign Language / Telecommunications Devices for the Deaf Audit, two specialized audits conducted in 2004/2005.

Communications to the Police Commission Regarding Audits Scheduled on the Annual Audit Plan

- The quarterly audit reports issued to the Police Commission for 2004/2005 identified the significant findings from each of the audits submitted in 2004/2005. The quarterly reports for the first three quarters were signed by the Chief of Police and submitted to the Police Commission prior to the end of the month following the quarter end. The quarterly report for the fourth quarter was not signed by the Chief of Police and submitted to the Police Commission until October 2005, more than three months after the quarter end of June 30, 2005.⁹¹

⁹⁰ These audits include an Audit of the Department's Response to Person's with Mental Illness (paragraph 113) and Use of Teams II Data. As reported above, the Monitor has concluded that the Department has met the intent of paragraph 113 and, therefore, finds the Department in compliance with the paragraph. The audit of Teams II will only be conducted once Teams II is implemented.

⁹¹ We understand that this report was delayed because AD had a shortage of personnel to complete this report, as available staff were focused on current mandated audits and Department-initiated audits, and AD was in the progress of moving to a new location.

Despite the few deficiencies noted above, under the totality of the circumstances, the Monitor finds the Department in compliance with the requirements of paragraph 124.

B. AUDITS BY THE LAPD

During this quarter, the Monitor evaluated:

- AD's paragraph 128(3), 129ii and 131c-3 *Audit of Non-Categorical Use of Force Reports/Investigations*;
- AD's paragraph 128(5), 131c-5 and 131d *Audit of Confidential Informant Control Packages*; and
- AD's paragraph 131b *Audit of Gang Unit Selection Criteria*.

In addition, the Monitor has provided in this report updates of its assessments of compliance with paragraph 113, *Audit of Police Contact with the Mentally Ill*, and paragraph 134, *Skeletal Fractures Audit*.

Paragraphs 128(3), 129ii and 131c-3 - Audit of Non-Categorical Use of Force Reports/Investigations

Paragraphs 128(3) and 129ii require the Department to complete a regular, periodic audit of stratified random samples of all NCUOF reports and investigations. Paragraph 128 requires that this audit assess such reports for completeness, authenticity, appropriateness of action taken, compliance with the law, conformity with Department procedures and an evaluation of supervisory oversight. Paragraph 129ii requires the audit to assess the timeliness, completeness, adequacy and appropriateness of the investigations.

Paragraph 131c-3 also requires the Department to conduct similar audits of a stratified random sample of all gang unit NCUOF reports.

Background

AD completed its first NCUOF audit in the fall of 2001. In its Report for the Quarter Ending March 31, 2002, the Monitor concluded that this audit was non-compliant with the requirements of the Consent Decree because of a flawed audit process and the failure of AD to identify many substantive errors noted by the Monitor.

The Monitor found the Department in non-compliance with paragraphs 128(3) and 129ii for the three consecutive quarters from December 31, 2002 to June 30, 2003, because the Department did not complete another NCUOF audit on a regular, periodic basis after the initial audit referenced above. AD submitted its second NCUOF audit in October 2003. As described in the Monitor's Report for the Quarter Ending December 31, 2003, the Monitor found that although

AD conducted a thorough review, the Department was non-compliant due to the staleness of the data.

In its Report for the Quarter Ending June 30, 2004, the Monitor found the Department's third audit, completed in December 2003, in compliance with paragraphs 128(3) and 129ii.

An interim audit designed to assess Special Order No. 13⁹² was completed by AD on February 16, 2005 but was not intended to meet the requirements of the Consent Decree. In its Report for the Quarter Ending June 30, 2005, the Monitor withheld a determination of compliance with paragraphs 128(3), 129ii and 1c-3 pending receipt of the final NCUOF audit from AD.

Current Assessment of Compliance

In order to assess the Department's compliance with paragraphs 128(3), 129ii and 131c-3 during the current quarter, the Monitor reviewed AD's *Non-Categorical Use of Force Audit*, dated June 30, 2005, the related workplan and cribsheet, the Monitor's sample of completed matrices and supporting documents related to the audit population and sample determination.

AD's sample comprised 124 NCUOF investigations, 13 of which involved GED personnel, selected from November 2004, the calendar month with the most recently completed investigations available at the time of the audit. The Monitor randomly selected and reviewed a sample of 35 of the NCUOF reports included in AD's sample⁹³ (10 which involved GED personnel). The Monitor's findings, which have been discussed with AD, are highlighted below:

- Although the audit report indicates that the requirements of paragraph 65⁹⁴ were included as evaluation objectives, the Monitor observed that AD neither covered this paragraph nor did it provide an explanation as to why it was not addressed in the audit.
- The Monitor noted that AD provided well-developed matrices, including responses available in electronic format.
- The Monitor did not identify any concerns with the UOF packages within its sample.

⁹² Special Order No. 13, *Non-Categorical Use of Force Reporting – Revised*, approved by the Police Commission on June 8, 2004, includes significant changes to NCUOF reporting procedures whereby certain UOF were de-categorized and no longer required to be reported. In addition, a new more detailed Level I investigation incorporated additional investigative requirements.

⁹³ The Monitor's sample size was selected using a 95% confidence interval and an error rate of +/- 7%.

⁹⁴ Paragraph 65 states that "The Department shall continue to require officers to report to the LAPD without delay the officer's own use of force." AD staff indicated that they considered this paragraph and sought to identify any instances in which an officer had possibly failed to report a UOF during their review of the various documents used to identify the population; however, they agreed that they did not assess the paragraph in the report.

- The Monitor noted that AD included two missing tapes in its assessment of the Department's compliance with the completeness requirement of paragraph 129; however, AD did not include these two missing tapes in the assessment of compliance under paragraph 80f (collect and preserve evidence).⁹⁵
- The Monitor identified a minor discrepancy in the reporting of compliance results in AD's report, involving reversed reporting of rates of compliance regarding two objectives. The discrepancy did not impact overall compliance reporting.

Based on the foregoing, the Monitor finds the Department in compliance with paragraphs 128(3), 129ii and 131c-3.

Paragraph 128(5), 131c-5, and 131d – Confidential Informant Control Packages Audit

Paragraph 128(5) requires AD to complete a regular periodic audit of stratified random samples of CI control packages. This audit requires, at a minimum, an assessment for completeness, authenticity, appropriateness of action taken, conformity with Department procedures and quality of supervisory oversight of the CI control packages and compliance with the requirements for handling CIs as noted in paragraphs 108 and 109.

Paragraph 131c-5 requires the Department to conduct an audit of the type set forth in paragraph 128(5) on CIs utilized by gang units.

Paragraph 131d requires the Department to audit the use of CIs by gang units to assess compliance with paragraph 108.

Background

During the quarter ending September 30, 2003, the Monitor reviewed AD's *CI Control Packages Audit* dated July 14, 2003; the Monitor was informed that this audit was intended to address the requirements of paragraphs 131c-5 and 131d, in addition to paragraph 128(5). In the Monitor's Report for the Quarter Ending September 30, 2003, the Monitor identified a few areas that could be improved upon, but ultimately determined that the audit was compliant with the requirements of paragraph 128(5). However, the Monitor found AD in non-compliance with paragraphs 131c-5 and 131d, as there was no mention in the audit report covering memoranda that this audit was

⁹⁵ It is the Monitor's understandings that the Department's policy is to exclude photographs and cassette tape interviews as evidence under paragraph 80f. As indicated in prior reports, the Monitor disagrees with this policy and considers the evidence as essential to the investigation.

meant to address paragraphs 131c-5 and 131d, and no specific gang-related issues were addressed or concluded upon for the active and inactive packages.⁹⁶

In the Monitor's Report for the Quarter Ending September 30, 2004, the Monitor determined that AD's *CI Control Packages Audit Report* dated June 28, 2004 was compliant with the requirements of paragraphs 128(5), 131c-5, and 131d.

Current Assessment of Compliance

In order to assess the Department's compliance with paragraphs 128(5), 131c-5 and 131d during the current quarter, the Monitor reviewed AD's *CI Control Packages Audit Report* dated June 29, 2005, the Monitor's sample of completed audit matrices for active and inactive CI packages, and other audit working papers, including documents relating to audit population and sample determination. The Monitor was not provided with an audit workplan or cribsheet.⁹⁷

AD's sample comprised 100% of the active CI packages and a stratified random sample of inactive informant packages for the period July 1, 2004 to March 1, 2005 as selected from the CITSD's total population⁹⁸ during the period March 1, 2005 to May 15, 2005. Additionally, AD reviewed all active packages that became inactive during the audit period, as well as selecting grab samples of inactive packages from 2002 and 2003 and shared inactive informants.

The Monitor randomly selected samples of active and inactive CI packages from packages reviewed by AD and, for each CI package, completed responses to the appropriate active and inactive audit matrix questions.⁹⁹ Additionally, the Monitor evaluated the security measures

⁹⁶ Although the Monitor had assessed previous audit reports in connection with these paragraphs, this was the first audit report which purportedly addressed the three related paragraphs (128(5), 131c-5 and 131d); it was also the first audit report that the Monitor found in compliance with any of these paragraphs.

⁹⁷ The Monitor understands that a new work plan was required as a result of changes made by the CO of the Consent Decree Bureau in the methodology and reporting of the CI audit process. However, due to staffing shortages and current workload, AD personnel did not have the opportunity to amend the workplan to include the directed charges. Additionally, a crib sheet was not developed. AD indicated that a cribsheet was not necessary, as the only individuals assessing the package were the project manager and one other experienced auditor.

⁹⁸ During the audit review period of March 1, 2005 to May 15, 2005, AD reviewed various CITSD runs in order to obtain the most recent totals of active informant packages. As the number of active and inactive CIs changes from day to day, and the CITSD is unable to re-create a report at a historical date, the Monitor could not confirm the total population of active and inactive informants during the period March 1, 2005 to May 15, 2005.

⁹⁹ The Monitor received the OIG's sample and the methodology used by the OIG to select their sample. The OIG randomly selected a sample of active and inactive informant packages using a 95% confidence interval and an error rate of +/- 7%. This sample included packages for informants that were used by members of gang units. The Monitor identified that several of the active informant packages selected by the OIG were shared informant active packages. While the OIG has access to these shared informant packages, the Monitor cannot review the details of the packages. Therefore, the Monitor randomly selected replacement packages, which were reviewed in their entirety. The Monitor completed a cursory review of the shared informant packages to ensure they were identified as shared packages and treated as such, and reviewed AD's matrix to confirm information included in the report.

utilized at the five divisions¹⁰⁰ covered by its sample. The Monitor's findings, which have been discussed with AD, are highlighted below:

- The audit report clearly defined how compliance was measured; specifically, packages that contained two or more substantive errors were considered to not meet the audit standards,¹⁰¹ and a totality of the circumstances standard was utilized relative to the use of informants.
- AD's matrix clearly identified questions related to assessing paragraphs 108 and 109, and included questions that assist AD in reviewing and assessing each CI package for the paragraph 128(5) objectives of completeness, authenticity, underlying actions, supervisory oversight and accuracy of the CITSD. However, while AD personnel used this matrix to assess each objective and the report states that paragraph 128 anomalies identified were supervisory oversight issues,¹⁰² the report does not include the findings for the paragraph 128 objectives of completeness, authenticity, and underlying actions. Instead, the report lists packages with two or more paragraph 128 or 108 anomalies and describes those anomalies. In the prior year CI audit report, AD clearly identified each objective for paragraph 128 and reported the identified anomalies or the lack of anomalies associated with each objective.
- AD appropriately identified CI packages that were controlled by members of gang units and reviewed and reported on these packages to ensure they met the requirements of paragraph 108.
- Although AD stated that the anomalies in the 8 packages with two or more substantive errors were related to supervisory oversight, the Monitor concluded that AD should also have found these eight packages non-compliant with the underlying actions objective, as the identified substantive issues were those that were not in conformance with LAPD procedures and policies. Additionally, the Monitor identified that two of the eight packages were missing either part of the package or documents within the package; as a result, the Monitor concluded that AD should have found these packages non-compliant with the completeness objective. The Monitor notes that in other audits, AD concluded that anomalies relating to completeness, authenticity or underlying actions resulted in non-compliance with these objectives, in addition to the supervisory oversight objective. Therefore, holding these packages out of compliance for only supervisory oversight is inconsistent with AD's methodology for reporting findings in other audits.

¹⁰⁰ The five divisions covered in the Monitor's sample were Narcotics Division, 77th, Southeast, Rampart, and OCVD.

¹⁰¹ This measurement of two or more substantive errors is consistent with how the Monitor assesses the CI packages for paragraph 108, as called for in the *Methodologies*. The Monitor also will assess a package as non-compliant if there is one error that is so egregious that it results in the Monitor questioning the entire package. AD indicated they also used this standard.

¹⁰² In the report, AD indicated that it did not identify anything that appeared to be illegal or inauthentic.

- The Monitor determined that 6 of the 8 packages that AD identified as non-compliant with the paragraph 128 supervisory oversight objective¹⁰³ should also have been classified as non-compliant with the supervisory oversight requirement of paragraph 108. Additionally, for 2 packages in which AD only identified one paragraph 108 anomaly, the Monitor concluded that the identified anomalies were sufficiently egregious that the packages should have been classified as non-compliant.
- For the one package that AD found non-compliant with paragraph 108,¹⁰⁴ the Monitor noted that the anomalies occurred in 2002 and 2003. As these anomalies occurred prior to the audit period, which began in June 2004, they were outside the scope of the audit period; as a result, this package should not have been held out of compliance with paragraph 108.
- The Monitor identified one package that contained an informant's photograph from a prior period that had been dated as a current photo; AD did not identify this anomaly.
- The Monitor identified one package for which AD erroneously indicated that the informant was on probation or parole.
- The Monitor identified a number of packages in which there were delays in filing the informant contact forms in the packages.¹⁰⁵ While some delay is reasonable, as an officer may keep an informant contact form to record the results of an investigation, several packages had delays of greater than 6 weeks before the informant contact forms were filed, and multiple contact forms were not filed within this 6 week period.

Based on the foregoing, the Monitor finds the LAPD in non-compliance with paragraphs 128(5) and 131c-5, but in compliance with paragraph 131d.

Proposed Recommendation

The Monitor understands that a final audit workplan and a cribsheet were not prepared for this specific audit for the reasons described above; however, the Monitor contends that a well-prepared workplan, with clearly defined objectives, would have helped AD in reporting its findings and assisted the Monitor in assessing the rationale behind AD's reporting of its findings. Additionally, while a cribsheet was not required by the current project manager, one should be prepared for future paragraph 128(5) audits for the benefit of other auditors who may become involved in the audit.

¹⁰³ These 8 packages contained two or more substantive anomalies related to supervisory oversight.

¹⁰⁴ This package contained two or more substantive anomalies.

¹⁰⁵ AD could not have identified the delays, as the contact forms were added to the files subsequent to AD's fieldwork. While this issue does not impact the Monitor's assessment of AD's audit, it is a Departmental issue that hinders AD's ability to assess CI packages by preventing AD from having full access to documentation that should be contained within the CI package.

Paragraph 129i – Categorical Use of Force Investigations Audit

Paragraph 129i requires the Department to conduct regular, periodic audits of random samples of all CUOF investigations, and describes the qualitative factors that should be assessed in such audits, including the timeliness, completeness, adequacy and appropriateness of the investigations. Paragraph 129i also requires the Department to evaluate compliance with paragraphs 67, 69, 80, and 82 to 83; in addition, paragraphs 55 to 59 and 61 to 65 are related to this audit.

Background

During the quarter ending December 31, 2003, the Monitor concluded that AD's *CUOF Audit Report* dated August 22, 2003 was in non-compliance due to audit scope limitations and the extent of material issues missed by AD.

During the quarters ended September 30, 2004 and December 31, 2004, the Monitor determined that AD's *CUOF Systems Audit Report* dated June 9, 2004 and *CUOF Investigations Audit Report* dated August 13, 2004 were compliant with paragraph 129i requirements.¹⁰⁶

For the fiscal year 2004/05, AD again decided to split CUOF investigations into two audits: an interim audit report that assessed systems-related issues and a final audit report that assessed the quality of the CUOF investigations. For reporting purposes, the Monitor split its evaluation of paragraph 129i into two separate evaluations as follows:

- 129i - CUOF Interim Systems Audit, and
- 129i - CUOF Investigations Audit.

The Monitor reviewed the CUOF Interim Systems Audit during the quarter ended June 30, 2005 and found the Department in compliance.

Current Assessment of Compliance

The Consent Decree requires the LAPD to conduct regular, periodic audits of this topic. The Monitor was informed by AD that due to the small population of CUOF investigations completed by FID, completion of the audit would be deferred from the quarter ending June 30, 2005 to the quarter ending September 30, 2005. The Monitor received the *CUOF Investigations*

¹⁰⁶ For fiscal year 2003/2004, AD bifurcated its review of CUOF investigations into interim and final audit reports. The CUOF interim systems audit report assessed the requirements of 13 paragraphs: 55, 56, 58, 59, 61 – 65, 67, 69, 83 and 147. Additionally, it assessed portions of paragraphs 128(3) and 129i(a) relating to completeness of information contained and timeliness of completing the investigation respectively. The CUOF final investigations audit report assessed the requirements of paragraphs 57, 80 and 82 and the remaining requirements of 128(3) and 129i.

Audit report on September 29, 2005. The Monitor will evaluate the quality of this audit during the quarter ending December 31, 2005.

Based on the foregoing, the Monitor has not yet evaluated the Department's compliance with paragraph 129i.

Paragraph 131b – GED Selection Criteria Compliance Audit

Paragraph 131b requires AD to complete regular periodic audits to assess compliance with the GED selection processes and eligibility criteria set forth in paragraphs 106 and 107¹⁰⁷ for supervisors and officers. Paragraphs 106 and 107 establish the specific audit criteria to be evaluated in selecting gang supervisors and officers, including number of years required as a supervisor/police officer, skills required, information/documentation required for review and limits to assignment to GEDs.

Background

During the quarters ending June 30, 2002 to June 30, 2003 the Monitor found the Department non-compliant with paragraph 131b, as DSD did not complete a Gang Selection Criteria Audit as required. During the quarter ended September 30, 2003, the Monitor found the Department in non-compliance, as the audit was not submitted on a timely basis and it lacked an audit workplan, cribsheet, documentation supporting the audit findings, and the report did not adequately address certain findings.

In its Report for the Quarter Ending December 31, 2004, the Monitor reported that AD's *Gang Selection Criteria Audit* dated June 25, 2004 was a quality audit that was compliant with the requirements of paragraph 131b.

Current Assessment of Compliance

In order to assess compliance with paragraph 131b during the current quarter, the Monitor reviewed AD's *GED Selection Criteria Audit* dated June 22, 2005, the related audit workplan and matrix questionnaires, a sample of completed audit matrices for the GED selection packages, and audit working papers relating to the audit population and sample determination.

¹⁰⁷ The Consent Decree originally called for DSD/SOSD to conduct these audits. As reported in the Monitor's Report for the Quarter Ending Sept 30, 2004, by agreement of the parties, the Consent Decree was amended to allow AD to assume the responsibility for conducting the audits. AD appropriately noted in its current report that paragraphs 106a, e, f, g and h do not address selection processes or eligibility criteria and were not assessed during the course of this audit.

AD identified a total population of 362 GED officers for DP 5, March 6 to April 2, 2005.¹⁰⁸ From this audit population, AD selected 3 sample groups, each covering both non-supervisory and supervisory personnel, to assess the 6 audit objectives identified in AD's workplan.¹⁰⁹ AD reported the following compliance percentages for the 6 audit objectives:

OBJECTIVE NO.	OBJECTIVE DESCRIPTION	CD¶	COMPLIANCE %
1	Minimum Eligibility Requirements – Non-Supervisors	106b	96%
2	Minimum Eligibility Requirements – Supervisors	106c	100%
3	Limited Tour Assignments – approvals for extensions beyond tours of 39 DPs	106d	100%
4	Positive Evaluation Using TEAMS and Written Consideration of Certain Sustained Complaints, Adverse Judicial Findings, or Discipline Received Before the Officer's Selection	107a	100%
5	Evaluation of Selection Process	107b	60%
6	Continuing Suitability - Written Consideration of Certain Sustained Complaints or Adverse Judicial Findings Received During the Officer's Tour of Assignment	107c	N/A ¹¹⁰

The following table identifies AD's and the Monitor's sample selections taken from the audit population for assessing the various audit objectives:

¹⁰⁸ The population contained 321 non-supervisory officers and 41 supervisory officers.

¹⁰⁹ The first sample group, comprising 50 officers and 12 supervisors, tested objectives 1, 2, 4 and 5 (new officer selections). The second sample group, comprising 26 non supervisory officers and 2 supervisory officers, tested objective 3 (GED tour extensions). The third sample group, comprising 121 officers, tested objective 6 (current suitability). For objectives 1 through 5, these sample groups comprised only those gang officers newly selected into a gang tour assignment or whose tour assignment came up for extension through the period March 6, 2004 to April 2, 2005.

¹¹⁰ As no instances of sustained complaints or adverse judicial findings relating to paragraph 107c issues were evident in AD's sample, no written assessments were available for review. AD withheld a compliance determination.

<u>Audit Objective</u>		<u>Non-Supervisory</u>	<u>Supervisory</u>	<u>Total</u>
	AD Population	321	41	362
Objectives 1,2,4 and 5: Selection suitability	AD Sample ¹¹¹	50	12	62
	Monitor Sample ¹¹²	20	9	29
Objective 3: Tour extensions	AD Sample	26	2	28
	Monitor Sample	15	2	17
Objective 6: Continuing suitability	AD Sample	82	39	121
	Monitor Sample ¹¹³	15	10	25

The Monitor's findings, which have been discussed with AD, are highlighted below:

- Appropriate and extensive analysis was conducted by AD to provide confidence that the audit population of gang officers was complete.
- AD's audit workplan, which was consistent with its prior audit, was appropriate to assess the audit objectives and requirements of paragraphs 106 and 107, and incorporated coverage of Department policy in its assessments.
- This was a quality audit, summarized by an audit report that was well-structured and clearly presented the audit objectives, procedures and findings.
- For gang officer selection purposes, AD recognized that revised Department policy requires the presence of the 2 most recent PERs, whereas Paragraph 107c requires the use of 'annual performance evaluations.' AD appropriately recommended that Planning and Research Division further revise policy to clarify the minimum period of time to be covered in PERs being assessed for gang officer selection.
- The Monitor identified additional 'canned' language in PERs for three successful officer candidates in addition to the canned language that AD identified.¹¹⁴
- AD reported that two non-supervisory selection packages were missing from the population for objective 6. To provide impact to its concern, AD replaced the non-supervisory selection

¹¹¹ AD's samples were stratified between supervisors and non-supervisors and were randomly selected using a 95% confidence level, a success rate factor of 94% and error rate of +/-4%, with the exception that the objective 3 sample was 100% of the population.

¹¹² The Monitor's samples were randomly selected from AD's samples using a +/-7% error rate.

¹¹³ For objective 6, the Monitor's sample was not stratified between non-supervisory and supervisory personnel.

¹¹⁴ AD agreed with the Monitor's finding and has indicated that it will follow-up with the relevant CO. In addition, AD plans on incorporating a test in its CAPA audits to ensure this is not a systemic problem.

packages in the sample and separately reported the missing packages; AD also notified the respective Bureau COs for action.¹¹⁵ The Monitor understands that AD reviewed the TEAMS records of the two officers for whom the LAPD could not locate the selection packages and noted that they did not have any sustained complaints or adverse judicial findings related to those specified in the Consent Decree during their assignment in the gang unit.

- During its selection suitability review, AD reviewed officers' sustained complaints for the presence of paragraph 107c matters and extended its review scope to include 'unbecoming conduct' classifications.¹¹⁶ This review identified 4 sustained complaints for 'unbecoming conduct' that exhibited elements of paragraph 107c issues. AD noted that, in all four instances, the selection packages included a supervisor's written assessment of the finding and the officer's suitability for GED selection. The Monitor commends AD for making this necessary extension in the audit scope; however, the Monitor noted that AD's extended review did not include other classifications. For example, the Monitor identified 3 sustained complaints that were classified as Neglect of Duty for which preliminary narratives of complaint circumstances provided by PSB identified elements of dishonesty or excessive use of force. AD acknowledged that its review omitted consideration of sustained Neglect of Duty adjudications. See related recommendation, below.

Based on the foregoing, the Monitor finds the Department in compliance with paragraph 131b.

Proposed Recommendation

In light of ongoing concerns regarding the Department's classification of complaint allegations, the Monitor recommends that gang supervisors be required to provide written assessments as to the continuing suitability of all gang officers in connection with all classifications of sustained complaints during their gang tour.

Although AD's procedures included coverage of subparagraph 51b and 51d requirements, related findings were not reported for these subparagraphs. As AD is including this review in its fieldwork, the Monitor recommends that the next GED Selection Criteria audit include an assessment of the Department's compliance with the requirements of subparagraphs 51b and d.

¹¹⁵ The two packages that the LAPD was unable to locate were not part of the population selected for testing objectives 1, 2, 4 and 5.

¹¹⁶ Paragraph 107c requires the supervisor's written assessment of an officer's continuing suitability regarding sustained complaints and adverse judicial findings involving use of excessive force, false arrest or charge, unreasonable search or seizure, sexual harassment, discrimination or dishonesty. However, due to problems regarding the appropriate classification of complaints (Refer to Focus Issue A. and the related write-up included in the introduction to section III.G. (Professional Standards Bureau), above, for information), it is possible that paragraph 107c type conduct could be included in other classifications of conduct

Paragraph 134 – Skeletal Fractures Audit

Paragraph 134 required the Department to complete a one-time audit of all known UOF resulting in skeletal fractures within 18 months of the effective date of the Consent Decree. The audit was required to review and evaluate the frequency of skeletal fractures, the circumstances and types of force that led to such fractures, the timeliness and suitability of the medical care provided, the adequacy of the COC investigation, and any patterns related to complaints.

Background

During the quarter ending March 31, 2003, the Monitor assessed the quality of the Department's *Skeletal Fractures Audit* completed on January 8, 2003, finding the Department in non-compliance as the audit did not address all of the requirements of paragraph 134.

During the quarter ending March 31, 2005, pursuant to a request by the DOJ, the Monitor conducted a review of all skeletal fractures that occurred between September 1, 2002 and December 31, 2004¹¹⁷ in order to determine if skeletal fractures that occurred as a result of NCUOF were subjected to sufficient oversight by the Department. The Monitor specifically assessed the quality of the UOF investigation in relation to inconsistencies between witness statements and types of force used; the timeliness of the CO and Bureau CO's review; and timeliness of medical care, and otherwise reviewed for any areas of concern and the effectiveness of Special Order No. 13.¹¹⁸ Although investigative problems were identified in two of the seven post Special Order No. 13 incidents reviewed, the Monitor withheld a determination of compliance because of the relatively small number of incidents that occurred after the issuance of Special Order No. 13, which made it difficult to conclude whether the underlying requirements of paragraph 134 were adequately addressed via the implementation of Special Order No. 13. Following that finding, both the City and the Department of Justice requested that the Monitor determine whether the intent of this paragraph and its requirement of the one-time audit had been met.

Current Assessment of Compliance

The Monitor has determined that the intent of this paragraph was to ultimately aid in a determination as to whether all skeletal fractures resulting from any type of UOF should

¹¹⁷ This is the timeframe subsequent to that covered in the last skeletal fractures audit.

¹¹⁸ As described in the Background section for the assessment of paragraphs 128(3), 129ii and 131c-3, above, Special Order No. 13, *Non-Categorical UOF Reporting-Revised* segregates NCUOF incidents into two levels. Level I NCUOF incidents include those incidents where the force used results in serious injuries, including skeletal fractures and dislocations, that do not require hospitalization. Level II incidents include all remaining UOF incidents. Interviews of witnesses of Level I NCUOF incidents are required to be tape-recorded; interviews are not required to be tape-recorded for Level II incidents.

automatically be treated as a CUOF with that category's attendant Department scrutiny.¹¹⁹ We have determined that because of the higher level of scrutiny required by Special Order No. 13, and because of the nature of NCUOF fractures, the intent of the paragraph has, indeed, been met and NCUOF fractures are, by policy, receiving an appropriate degree of scrutiny. As such, we find "Compliance with Intent (CWI)" for this paragraph. It should be noted, however, that such finding is not meant to determine whether investigations of NCUOF skeletal fractures are being properly classified and conducted. This determination will be made in conjunction with our periodic reviews of NCUOF investigations.

C. INSPECTOR GENERAL REVIEWS & AUDITS

During this quarter, the Monitor assessed:

- the timeliness of transmittal of LAPD's audits to the OIG (paragraph 135a);
- the timeliness and quality of the OIG's audit review process in general and of its reviews of specific Department audits, including AD's *Warrant Applications and Supporting Affidavits Audit* (CD 128(1), 131c-1), *Motor Vehicle and Pedestrian Stop Audit* (CD128(4) and 131c-4), *CUOF Systems Audit* (CD129i) and *Complaint Form 1.28 Investigations Audit* (CD129iii); and,
- the timeliness of the OIG's NCUOF Audit and Audit of Complaint Form 1.28 Investigations (paragraphs 136i and 136ii).

Paragraph 135 – OIG Evaluation of LAPD Audits

Paragraph 135 requires the OIG to be provided with copies of certain audit reports within one week of completion so that OIG staff may evaluate all such audits to assess their quality, completeness, and findings. For ease of reporting, the Monitor split its reporting on paragraph 135 into two components:

- Paragraph 135a assesses the timeliness of the transmittal of LAPD audits to the OIG, and
- Paragraph 135b assesses the timeliness and quality of the OIG's review of such audits.

¹¹⁹ Since the inception of the Consent Decree all skeletal fractures requiring hospitalization or sustained as a result of (i) an incident involving the use of deadly force by an LAPD officer ("OIS"); (ii) the use of an upper body control hold; (iii) the use of a head strike with an impact weapon; or (v) otherwise resulting in death, have been treated as a Categorical Use of Force.

Paragraph 135a – Timeliness of Transmittal of LAPD Audits to the OIG

Background

The Monitor first assessed the timeliness of the audits received by the OIG during the quarter ending December 31, 2002, at which time the Monitor found the Department in non-compliance with the requirement to transmit Departmental audits to the OIG within one week of their completion. Since then, the Monitor has continued to find the Department in non-compliance, with the exception of the quarter ending March 31, 2004 and the quarter ending June 30, 2005, which was the most recent assessment, during which the Department was found in compliance.

Current Assessment of Compliance

In order to assess compliance with the timeliness provisions of paragraph 135 during the current quarter, the Monitor reviewed details of the timing of the Department’s transmittal of the audits issued during the quarter ending September 30, 2005, as listed in the table below, and communicated directly with the OIG to confirm the dates of receipt.

<i>CD ¶</i>	<i>Audit Description</i>	<i>Date of Approval of Audit Report by Chief of Police</i>	<i>Date Audit Report Received by OIG</i>	<i># Days to OIG Receipt</i>
CD127	<i>Ethics Enforcement Section 2nd Quarterly Report 2005</i>	Aug 1, 2005	Aug 4, 2005	3 ✓
CD128(2), 131c-2	<i>Arrest Booking and Charging Reports Audit</i>	Sep 27, 2005	Oct 4, 2005	7 ✓
CD129i	<i>Categorical Use of Force Investigation Reports Audit</i>	Sep 29, 2005	Oct 4, 2005	5 ✓
CD131a	<i>GED Work Product Audit</i>	Sep 29, 2005	Oct 4, 2005	5 ✓

✓ = Compliant X = Non-Compliant

Based on the foregoing, the Monitor finds the Department in compliance with the provision of paragraph 135 that requires the Department’s audit reports to be provided to the OIG within one week of completion.

Paragraph 135b – Evaluation of the OIG’s Reviews of LAPD’s Audits

Background

Since the quarter ending March 31, 2002, when the OIG was first found to be non-compliant with the requirements of paragraph 135b, with few exceptions,¹²⁰ the Monitor has continued to find the OIG’s reviews to be non-compliant. The assessments of non-compliance resulted either from shortcomings in the quality of the OIG’s reviews or the failure of the OIG to present its reviews in a timely manner to the Police Commission.

For the quarters ending December 31, 2004¹²¹ to June 30, 2005, the Monitor generally restricted the scope of its review of OIG’s paragraph 135b reviews to assessing the timeliness of the completion of the reviews and determining whether they included meta-audits or were instead executive level reviews that did not assess the quality, completeness and findings of the underlying audits.¹²² The exceptions to this limited review were the Monitor’s assessment of the OIG’s reviews of AD’s *Warrant Applications and Affidavits Audit* (CD 128(1), 131c-1) dated March 30, 2004, AD’s *ABC Reports Audit* (CD128(2)) dated October 13, 2004 and two *EES Sting Audit Reports* (CD97 & CD127) dated December 8, 2004 and February 8, 2005. The Monitor determined that the OIG’s review of AD’s *Warrant Applications and Affidavits Audit* was not performed on a timely basis and contained several problems with quality of the review. The Monitor found the OIG’s review of AD’s *ABC Reports Audit* and the two *EES Sting Audit Reports* to be thorough reviews.

The OIG advised the Monitor that subsequent to May 2005, its paragraph 135b reviews of Department audits would include meta-audits suitable for the Monitor to provide its required assessment.

Current Assessment of Compliance

During the quarter ending September 30, 2005, the OIG prepared timely review reports of the following Department audits:

¹²⁰ The Monitor did not assess compliance during the quarter ending June 30, 2002, found the OIG in compliance during the quarter ending December 31, 2002, and withheld a determination of compliance during the quarter ending June 30, 2003.

¹²¹ Prior to the quarter ending September 30, 2004, it was the Monitor’s process to conduct a detailed evaluation of the quality of each of the OIG’s reviews of Department audits during the previous quarter.

¹²² Through this period, the OIG experienced staff re-organization and shortages that limited the OIG’s ability to conduct quality reviews on a timely basis as required by paragraph 135b. Most of the OIG reviews did not include a meta-audit: the OIG reviews encompassed an ‘executive level’ review of only the audit report and planning documents. Such reviews did not adequately evaluate the quality, completeness and findings of such audits. This finding alone caused the OIG to be non-compliant with the requirements of paragraph 135b.

CD128(1) and 131c-1	Warrant Applications and Supporting Affidavits Audit
CD128(4) and 131c-4	Motor Vehicle and Pedestrian Stop Audit
CD129i	CUOF Systems Audit
CD129iii	Complaint Form 1.28 Investigations Audit

The OIG's Review of AD's Warrant Applications & Supporting Affidavits Audit (CD128(1) and 131c-1)

The Monitor reviewed the OIG's report dated May 27, 2005 on its review of AD's *Warrants Application & Supporting Affidavits Audit*, which was received by the OIG on March 1, 2005, and noted the following:

- The OIG appropriately found that AD had conducted a complete and quality audit and the findings were well supported.
- The OIG correctly identified several discrepancies regarding the overall reporting of compliance rates in AD's Executive Summary Tables and Table Nos 1 & 2 within the report when compared to the audit report details. This resulted in AD issuing an amended Executive Summary and Tables 1 & 2 summarizing the Department's compliance rates.
- The OIG appropriately identified that AD was not consistent in how it reported the findings for paragraph 62 when compared to AD's *Categorical Use of Force Systems Audit* issued during the same quarter.
- The OIG identified four additional findings related to warrant packages, three of which were Other Related Matters and one package that did not include all supporting documents.
- The OIG provided useful summaries related to three key areas of the audit, including sealed warrants, implementation of AD's audit recommendations and concerns related to supervisor reviews.

The OIG's Review of AD's Motor Vehicle and Pedestrian Stop Audit (CD128(4) and 131c-4)

The Monitor reviewed the OIG's report dated June 10, 2005 on its review of AD's *Motor Vehicle & Pedestrian Stop Audit* dated March 25, 2005, and noted the following:

- The OIG appropriately found that AD had conducted a complete and quality audit and the findings were well supported.
- The OIG identified some anomalies regarding the reporting of compliance statistics, as well as two small components of the overall population that were not included in AD's audit population and were therefore excluded from the sample selection. Although these findings

did not affect the audits overall compliance and statistical reporting, they demonstrate the thoroughness of the OIG's review.

The OIG's Review of AD's Categorical Use of Force Systems Audit (CD129i)

The Monitor reviewed the OIG's report dated June 30, 2005 on its review of AD's *CUOF Systems Audit Report*, which was received by the OIG on March 30, 2005, and noted the following:

- The Monitor commends the OIG for identifying issues with AD's audit report relating to two paragraphs (paragraphs 56 and 69). Paragraph 56 requires notifications of CUOF incidents to the Department Command Post (DCP) for onward notification to the Chief of Police, Police Commission and OIG. The non-compliance criteria for 'unjustified' delays in notification of CUOF incidents to the DCP was increased from 20 minutes to 60 minutes without explanation in AD's report. The OIG appropriately concluded that the delay in reporting 3 DCP notifications that exceeded 20 minutes from the time of the CUOF incident was not justified, contrary to AD's reported findings. For paragraph 69, the OIG appropriately concluded that AD's procedure to assess whether all CUOF investigations are presented to the UOFRB was deficient in scope, although it was determined that all CUOF incidents in the sample were in fact presented to the UOFRB.
- The Monitor noted that OIG did not report on issues identified by the Monitor regarding paragraphs 55c, 62 and 63 requirements.¹²³ However, this did not impact compliance, as assessments of these paragraphs are not specific requirements of the paragraph 129i audit.

The OIG's Review of AD's Complaint Form 1.28 Investigations Audit (CD129iii)

The Monitor reviewed the OIG's report dated June 30, 2005 on its review of AD's *Complaint Form 1.28 Investigations Phase 2 Audit Report*, which was received by the OIG on March 31, 2005, and noted the following:

- The OIG reported a concern that AD's sampling methodology resulted in a small sample of complaint investigations being reviewed and a possible bias that would likely increase the number of command investigations included in the sample, as opposed to higher-risk, more complex IAG investigations.¹²⁴ The Monitor commends the OIG for this finding and agrees with OIG's assertion of bias risk, although the extent, if any, has not been assessed.

¹²³ Paragraph 55c relates to required training for CIID supervisors conducting CUOF investigations, paragraph 62 covers management's assessment of supervisors' actions at the scene of CUOF incidents and paragraph 63 covers referrals for BSS evaluation of officers involved in a CUOF incident resulting in death or the substantial possibility of death.

¹²⁴ AD's main audit population comprised all complaint investigations completed and closed in August 2004.

- The OIG appropriately determined that AD should have withheld a determination of the LAPD's compliance with paragraph 75,¹²⁵ rather than finding the LAPD in compliance. As AD's sample did not identify any indications of officers hindering the complaint process, there was no basis to assess such conduct.
- The OIG appropriately noted that AD's workplan did not call for an assessment of whether the complaint adjudication was appropriate and consistent with the findings of the investigation report.
- In the Monitor's Report for the Quarter Ending June 30, 2005, the Monitor identified an issue with the quality of or the adjudication reached for three complaint investigations and found further concerns with two 'problematic investigations' already referred to PSB for further review as reported by AD. Neither AD's audit report nor the OIG's review of the audit report identified these concerns.¹²⁶ OIG staff acknowledged this deficiency during discussions with the Monitor and indicated that they have incorporated these steps in their current audit of Complaint Form 1.28 investigations.

In sum, the Monitor found all four OIG review reports to be well-written, concise and generally responsive to the paragraph 135b requirements to assess the completeness, quality and findings of each of the Department audits. Each review report followed a structured format that aided the reports' clarity, included an assessment of the timeliness of receipt from AD and was submitted to the Police Commission on a timely basis.¹²⁷ Each review was based on findings resulting from the OIG's appropriate meta-audit of a random sample of AD auditor matrix responses and an assessment of AD's audit workplan.¹²⁸ These review reports were indicative of a strong effort by the OIG to establish its oversight role under paragraph 135b and provide quality reviews of AD audits.

While the Monitor has concerns that the OIG's review of AD's *Complaint Form 1.28 Investigation Audit* failed to identify several deficiencies in connection with the proper adjudication of complaint allegations, the Monitor notes that this was the only major deficiency

¹²⁵ Paragraph 75 requires that a complaint investigation be initiated against any officer who allegedly: fails to inform any civilian who indicates a desire to file a complaint of the means by which a complaint may be filed; attempts to dissuade a civilian from filing a complaint; or refuses to accept a complaint.

¹²⁶ These concerns arose with the Monitor's findings relating to paragraph 80f(c) the collection and preserving of evidence, paragraph 84(a) witness credibility assessment, paragraph 84(b) automatic preference of officer statement in absence of other evidence, and paragraph 85(a) preponderance of evidence standard.

¹²⁷ All OIG reviews were completed and submitted to the Police Commission within three months of the date of completion of the Department audit. The OIG acknowledges that reviews submitted more than three months after the audit completion date will generally be found stale.

¹²⁸ The OIG meta-audits included appropriate random sampling methodologies, usually based on a 95% confidence interval, 94% success rate factor and +/-7% error rate.

in all four reviews.¹²⁹ Given this, and the overall high quality of the reviews conducted by the OIG, the Monitor finds the OIG in compliance with paragraph 135b.

Paragraph 136i – OIG Review of Non-Categorical Uses of Force

Paragraph 136i, as amended, requires the OIG to conduct a regular, periodic review¹³⁰ of a random sample of all NCUOF investigations, and issue its reports thereon to the Police Commission. Such reviews are required to assess any areas of concern identified by the OIG, and at least one of the following issues related to the quality and/or outcome of the investigations: the accuracy of the statement summaries/transcripts, the completeness of the evidence collected and analyzed, and whether the investigation was properly adjudicated.

Background

On August 15, 2002, the OIG completed its first Department-wide audit of NCUOF. In its Report for the Quarter Ending December 31, 2002, the Monitor found this audit in non-compliance, as the OIG's methodology, fieldwork and reporting were all deficient.

In the Monitor's Report for the Quarter Ending December 31, 2003, the Monitor found the OIG to be in non-compliance due to the OIG's failure to complete this audit on a "regular, periodic" basis by August 15, 2003.

The Monitor evaluated the OIG's next audit, dated March 24, 2004, which was submitted approximately seven months late, in its Report for the Quarter Ending June 30, 2004. The Monitor found the OIG in non-compliance, as the audit did not adequately address the quality, completeness and findings of the NCUOF investigations included in the scope of the audit; in addition, the audit failed to identify certain substantive issues and did not have a viable audit trail to allow assessment by the Monitor.

Current Assessment of Compliance

The Consent Decree requires the OIG to complete "regular, periodic" reviews of this topic. As a result, this review must be completed on at least an annual basis, by March 24, 2005. However, this review had not been conducted as of the end of the current quarter. The Monitor understands that it will be conducted by the OIG in December 2005, with completion anticipated in February or March 2006.

¹²⁹ The OIG has recognized this deficiency and has incorporated pertinent changes in the paragraph 136ii Complaints Audit that it is currently conducting.

¹³⁰ The OIG was previously required to submit an audit.

Until this review is completed, the Monitor will continue to find the Department in non-compliance with the requirements of paragraph 136i. When completed, the Monitor will evaluate the audit's quality; timeliness will not be evaluated at that time.

Paragraph 136ii – OIG's Complaint Form 1.28 Investigations Audit

Paragraph 136ii requires the OIG to conduct a regular, periodic review of a stratified random sample of Complaint Form 1.28 investigations to assess the quality, completeness and findings of the investigations, including determining whether the investigations were completed in a timely manner, statement summaries accurately reflected the audio recorded witness statements, all evidence was considered and the adjudication process was proper.

Background

The Monitor first assessed the Department's compliance with paragraph 136ii during the quarter ending March 31, 2004, at which time the Monitor found the Department in non-compliance primarily due to the staleness and lack of timeliness of the OIG's first audit.

During the quarter ending September 30, 2004, the Monitor found the Department in non-compliance with this paragraph due to problems with sampling interview tapes and insufficient analysis of information within the tapes, as well as numerous clerical discrepancies within the report and six substantive issues that the OIG failed to find.

Current Assessment of Compliance

The Consent Decree requires the OIG to complete "regular, periodic" reviews of this topic. As a result, this review must be completed on at least an annual basis, by July 27, 2005. This review remained incomplete as of the end of the quarter. The Monitor understands the OIG is currently completing this audit, and it will be issued in two parts, an interim report to be issued during the middle of the second quarter of fiscal year 2005/2006, and a final report to be issued at the end of that quarter.

Until this review is completed, the Monitor will continue to find the Department in non-compliance with the requirements of paragraph 136ii. When completed, the Monitor will evaluate the audit's quality; timeliness will not be evaluated at that time.

Paragraph 140 – Police Commission Requested Audits

Paragraph 140 requires the LAPD or the IG to conduct audits as directed by the Police Commission, and to report the audit results to the Commission within the time frames established by the Commission.

Background

With the exception of the quarter ending December 31, 2004, the Monitor has not assessed compliance with paragraph 140, as the Monitor was informed that no audits were requested by the Police Commission.

During the quarter ending December 31, 2004, the Monitor found the Department in non-compliance with paragraph 140. Documentation did not exist to determine if the *Foreign Language / Telecommunications Device for the Deaf (TDD) Audits of specific Bureaus* was completed in the timeframes established by the Commission and supporting tapes were not available to allow the Monitor to conduct a meta audit of the reports and the findings.

Current Assessment of Compliance

The Monitor has not been informed of any requests made by the Police Commission to the LAPD or the OIG to complete any audits since the quarter ending December 31, 2004.

IX. OPERATIONS OF THE POLICE COMMISSION & INSPECTOR GENERAL

A. OPERATIONS OF THE POLICE COMMISSION

The Consent Decree requires the Police Commission to review and evaluate all CUOF to determine conformance with LAPD policies, procedures, and the requirements of the Consent Decree. The Police Commission is also charged with reviewing various audits to determine whether changes in LAPD policies are necessary; all such changes must be approved by the Police Commission. In addition, the Police Commission conducts annual reviews of the Chief of Police and is charged with investigating complaints against the Chief of Police. Finally, the Commission reviews and approves the LAPD's budget requests.

During the quarter ending December 31, 2004, the Monitor assessed compliance with the requirements regarding the Commission's review of the LAPD budget and its review and approval of LAPD policies and procedures. The Monitor is scheduled to again assess compliance with these requirements during the quarter ending December 31, 2005.

During the quarter ending June 30, 2005, the Monitor assessed compliance with requirements relative to the Commission's annual review of the Chief of Police and misconduct complaints filed against the Chief Monitor. The Monitor is scheduled to again assess compliance with these requirements during the quarters ending December 31, 2005 and June 30, 2006, respectively.

During the current quarter, the Monitor assessed the Police Commission's compliance with requirements relative to the review of and reporting on CUOF and the review of audits. The results of our current assessments follow.

Paragraph 142 – Police Commission/Inspector General Review of all CUOF

Paragraph 142 is related to paragraphs 67 and 136, which require the Police Commission and the IG to continue to review all CUOF. In addition, it requires that the Police Commission determine whether an officer's conduct conforms to LAPD policies, procedures and the requirements of the Consent Decree. Paragraph 142 also requires the Police Commission to annually issue a publicly available report detailing its findings regarding CUOF incidents.

Background

The Monitor last assessed the Department's compliance with the provision of paragraph 142 that requires the Police Commission and the IG to continue to review all CUOF (subparagraph 142a) during the quarter ending June 30, 2004, at which time the Department was found in functional compliance. The Monitor determined that the OIG was tracking 44 open CUOF cases, which were in various stages of investigation by the LAPD. The Monitor reviewed a sample of CUOF

packets submitted to the Police Commission and determined that all packets contained reports by CIID and the Chief of Police; UOFRB findings, where appropriate; and an analysis report prepared by the OIG. The reports also contained investigative findings, summaries, and recommendations. The OIG's analysis reports contained staff notes concerning observations made during the OIG's review. Any non-conformance by the LAPD with policies, procedures, or the requirements of the Consent Decree was noted, and recommendations to the Police Commission were made concerning whether the findings and recommendations of the Chief of Police should be adopted by the Commission. In all cases, the Police Commission adopted the recommendations of the Chief of Police after they were discussed with him in closed session.

The Monitor last assessed the Department's compliance with the provision of paragraph 142 that requires the Police Commission to annually issue a publicly-available report detailing its findings regarding CUOF incidents (subparagraph 142b) during the quarter ending June 30, 2004, at which time the Department was found in functional non-compliance. The Monitor was informed by the IG that the 2002 Annual CUOF Report was issued on February 25, 2004, but the 2003 Annual CUOF Report was not completed as of the end of the quarter.

Current Assessment of Compliance

Subparagraph 142a: IG and Commission Review of All CUOF

During the current quarter, the Monitor determined that the OIG was tracking 38 open CUOF cases, which were in various stages of investigation by the LAPD. Consistent with the findings in our previous assessment of subparagraph 142a, the IG continued to assign a member of his staff to attend the UOFRB hearing for each case tracked, and administrative statute dates are also tracked.

In order to assess the level of review conducted by the Police Commission and IG, the Monitor reviewed CUOF packets recently submitted to the Police Commission. The Monitor found that all packets contained reports by the CIID and the Chief of Police; UOFRB findings, where appropriate; and an analysis report prepared by the OIG. The reports contained investigative findings, summaries, and recommendations. Findings were made concerning Tactics, Drawing/Exhibiting/Holstering, and UOF.

The OIG's analysis reports contained staff notes concerning observations made during the OIG's review. Any non-conformance by the LAPD with policies, procedures, or the requirements of the Consent Decree was noted. Recommendations to the Police Commission were made concerning whether the findings and recommendations of the Chief of Police should be adopted by the Commission. In all reviewed cases, the Police Commission adopted the recommendations of the Chief of Police after they were discussed with him in closed session.

Based on the foregoing, the Monitor finds the Department in functional compliance with subparagraph 142a.

Subparagraph 142b: Annual Report on CUOF Incidents

The Police Commission approved the 2004 Annual CUOF Report on August 16, 2005. The report notes, among other things, that Consent Decree paragraph 13 recently has been amended to exclude accidental discharges and animal shootings from the definition of CUOF. In 2004, 23 of the 70 OIS cases consisted of either accidental discharges (8) or animal shootings (15). In the report, the IG discussed the CUOF cases that resulted in a finding of “in policy, training,” “accidental, administrative disapproval” or “out of policy, administrative disapproval” for the use of lethal force. The OIG noted that the Commission adopted the recommendations of the Chief in 116 of the 117 cases it reviewed in 2004. In one case, the Commission adopted all of the Chief’s recommendations except the recommendation that two detectives’ use of deadly force be found out of policy, administrative disapproval. The Commission determined that the detectives’ use of force in this incident was in policy, but warranted training.

A primary concern noted by the OIG, and shared by the Monitor, is that officers receive the training that is recommended by the Chief of Police and adopted by the Board of Police Commissioners as a result of an adjudication of a UOF incident. During its review, the IG had difficulty in determining whether officers received that ordered training. Of the 25 incidents reviewed, 39 involved officers were ordered to receive training. The TEAMS records for these 39 officers identified that only 18 received relevant training. Accordingly, the OIG made the following recommendations, with which the Monitor agrees, in regard to documenting training ordered as a result of an adjudicated use of force:

1. Protocols should be immediately developed to assure that all relevant data is entered into the Training Management System (TMS) and subsequently imported to the current TEAMS report to verify that an officer receives training that is ordered as a result of an adjudication of a use of force;
2. Future designs of LAPD systems should assure that the training, both formal and informal, is captured and imported into pertinent reports for review and confirmation that the training ordered as a result of an adjudication of a use of force is received; and
3. The LAPD should audit the training that is ordered relative to an adjudication of a use of force incident to assure that the training that was ordered was provided to the officer(s).

Based on the foregoing, the Monitor finds the Department in functional compliance with subparagraph 142b.

Paragraph 143 – Police Commission Review of Audits, Policies & Procedures

Paragraph 143 requires the Police Commission and the IG to review certain Consent Decree audits, to consider the results of such audits in its annual evaluation of the Chief of Police, and to review and approve all new or changed LAPD policies and procedures. For ease of reference, the Monitor has split its reporting on paragraph 143 into three components:

- Paragraph 143a assesses the Police Commission’s review of the Consent Decree audits;
- Paragraph 143b assesses the Police Commission’s inclusion of audit results in its evaluation of the Chief of Police;¹³¹ and
- Paragraph 143c assesses the Police Commission’s review and approval of new/changed policies and procedures.¹³²

The Monitor’s assessment of paragraph 143a follows.

Paragraph 143a – Police Commission Review of Audits

Paragraph 143a requires the Police Commission and the IG to review the specified audit reports, the sting audit reports, and the audits required by paragraphs 111, 113, 125, 126, 133, and to determine whether any changes or modifications in LAPD policies are necessary.

Background

During the quarters ending December 31, 2002 and March 31, 2003, the Monitor found that the Police Commission lacked a system to track audits to ensure that they were completed and provided to the Police Commission on a timely basis, most of the audits received by the Police Commission were not being reviewed on a timely basis, and the lack of minutes/transcripts for the Police Commission’s meetings meant that the Monitor was unable to assess the Police Commission’s oversight of the impact of such audits on LAPD’s policies. As a result, the Monitor found the Police Commission in non-compliance with the provisions of paragraph 143a.

During the quarter ending September 30, 2003, the Monitor found the Police Commission in non-compliance because it had not yet developed a process to track the LAPD’s and OIG’s audits and reviews. The Monitor provided guidance to the Police Commission’s staff to assist them in developing a spreadsheet to address this.

During the quarter ending September 30, 2004 the Monitor found the Police Commission in non-compliance as although a spreadsheet had been developed for audits expected to be issued from April 1, 2004 through June 30, 2005, the analysis was incomplete,¹³³ with the result being that the Police Commission and its staff were unaware of the status of many of the audits/reviews expected to be issued by the LAPD and/or OIG.

¹³¹ This was reported in the Monitor’s Report for the Quarter Ending June 30, 2005.

¹³² This will be reported on in the Monitor’s Report for the Quarter Ending December 31, 2005.

¹³³ Several LAPD audits, OIG audits and OIG reviews were missing from this analysis.

Current Assessment of Compliance

During the current quarter, the Monitor met with staff from the Police Commission and reviewed the spreadsheets used to track audits expected to be issued from June 30, 2004 through June 30, 2005.¹³⁴ Additionally the Monitor selected a random sample¹³⁵ of 27 reports listed in the spreadsheet detailing the specified audits and compared the information in the spreadsheet to documentation within the Police Commission minutes, correspondence and audit reports/reviews issued by AD, the OIG and other LAPD Departments.

The Monitor's findings which have been discussed with the staff of the Police Commission are as follows:

- The Police Commission tracks audits using two spreadsheets¹³⁶ that detail when Audit reports are due; when they were received by the Police Commission; when the Chief of Police signed a report; whether the reports were received on a timely basis; if appropriate, when reports were forwarded, received and responded to by the OIG; and what the Police Commissions actions were in relation to each original AD report and, if applicable, OIG report.
- The Monitor confirmed that the Police Commission tracking system includes the Annual Audit Plan's specified audits and Department initiated audits. Additionally the system tracks other audits required by the Police Commission.¹³⁷ The Monitor noted that the spreadsheets appear to be updated on a regular basis and reports that require additional information are highlighted.
- In the sample of specified audit reports selected by the Monitor most of the information on the Police Commission report agreed with information contained within the Police Commission minutes or the supporting documentation. The Monitor found that all of the actions of the Police Commission were recorded correctly.
- The Monitor noted that the Commission's follow-up on issues identified in the GED audit completed during the quarter ending Sept 2003 was not included on this schedule and is still outstanding.

¹³⁴ Dates of the tracking spreadsheets were September 14, 26 and 29, 2005.

¹³⁵ The Monitor's sample size was selected using a 95% confidence interval and an error rate of +/- 7

¹³⁶ One spreadsheet provides the details for all of the Consent Decree specified audits while the second spreadsheet lists audits that are not included as specified audits but are required to be tracked by the Police Commission per the Consent Decree, including the sting audits and audits required by paragraphs 111,113,125, 126, 133 and 134.

¹³⁷ The spreadsheet included spots to track paragraphs 125, 126 and 133 but did not contain any information; this is reasonable as the audits were completed before this fiscal year.

- The Monitor identified five instances where the spreadsheet included an incorrect date for the OIG's receipt of a specified report; the Monitor confirmed the correct dates with the OIG.¹³⁸
- The Monitor identified four instances when the assessment of whether or not the OIG received the report on a timely basis was incorrect. The Police Commission assessed timeliness by comparing the OIG's date of receipt to the Commission's date of receipt; however, the Police Commission should be using the audit completion date i.e. the date it was signed by the Chief of Police.¹³⁹
- The Monitor identified a few administrative errors within the report.
- The Monitor noted that the spreadsheet tracking the non-specified audits is missing information, including dates of the OIG's receipt of reports (such as the Annual Audit Plans for 2004/2005 and 2005/2006), actions of the Police Commission as to whether or not the Annual Audit Plan or revisions were approved, and information related to the progress of the EES First Quarterly report for 2005 that was available in the Police Commission minutes.
- The Monitor identified a significant delay in the completion of the fourth quarterly status report of the Annual Audit Plan; this did not appear to have been identified or tracked by the Police Commission.

The Monitor is pleased that the Police Commission has developed a system for tracking the audits that contains most of the required information. The Monitor is continuing to assess if the Police Commission has used the information provided through this tracking system to determine if modifications to LAPD policies are necessary, and will report on this review in our next quarterly report.

Based on the foregoing, the Monitor is withholding a determination of the Department's compliance with paragraph 143a.

Proposed Recommendations

The Monitor notes that although the tracking system contains information as to when a report was received by the OIG, it does not record an assessment of whether or not the OIG review, if requested, was received on a timely basis. The Monitor recommends including this information on the spreadsheet.

¹³⁸ While the Monitor was reviewing the supporting documentation, it became apparent that the Police Commission staff were revising the process to track when the OIG received the reports by having the OIG notify them; historically, this information came from a number of sources, including verbal confirmation, dates included in the OIG's report, and memos from the OIG.

¹³⁹ A delay in the Police Commission's receipt of the report will probably result in the assessment that the OIG received the report late as well.

B. OPERATIONS OF THE INSPECTOR GENERAL

The Consent Decree requires the OIG to review and evaluate all CUOF incidents and provides that the IG shall be notified of all such incidents in a timely manner. In addition, the IG may observe all CUOF “roll outs” and may attend UOFRB meetings. The IG’s observations, reviews and evaluations are reported to the Police Commission for consideration. In addition, the IG shall accept complaints from LAPD officers and review all complaint intake information to ensure that they are being received in a manner that complies with LAPD policies and procedures, and the terms of the Consent Decree.

During quarter ending June 30, 2005, the Monitor assessed compliance with a number of requirements relative to the role of the IG, including the Department’s timely notification to the IG of all CUOF incidents, the IG’s attendance at CUOF roll outs, the IG’s attendance at UOFRB meetings, and the IG’s acceptance of complaints from LAPD officers. The Monitor is scheduled to again assess compliance with these requirements during the quarter ending June 30, 2006.

During the current quarter, the Monitor assessed compliance with the Consent Decree requirements that the LAPD provide the IG with complaint intake information on a timely basis and that the IG review complaints for compliance with LAPD policies and procedures and the terms of the Consent Decree. The results of our current assessments follow.

Paragraph 152 – Providing Complaint Intake Information to the IG

Paragraph 152 requires the LAPD to continue to provide the IG with all complaint intake information within one week after its receipt by PSB; the IG must review such information to ensure that complaints are received in compliance with LAPD policies and procedures and the terms of the Consent Decree.

Background

The Monitor last assessed the LAPD’s compliance with paragraph 152 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional compliance and commended the OIG for the establishment of a database designed to track complaint intake information.

Current Assessment of Compliance

During the current quarter, the Monitor completed its review of OIG complaint intake procedures and reviewed OIG data for the time period April 2005 through August 2005, with particular focus on the OIG’s tracking methodology and compliance with the Consent Decree’s submission requirements.

During the period reviewed, the OIG received 2,808 Complaint Form 1.28 face sheets generated by the Department. In connection with the OIG's case review process, the OIG evaluated the complaint investigations for quality and completeness, as well as the appropriateness of case findings and any resulting penalties. During the review period, the OIG's Complaint Section returned 30 investigations to IAG due to concerns identified during its case review. Among the issues identified in these "kick-backed" investigations were conflicting/inconsistent statements (3), training concerns (6) and deficient/incomplete investigations (18). The OIG continues to track and monitor the IAG's response to returned cases.

The Monitor also reviewed the OIG complaint intake procedures and log for the period January 1, 2005 through June 30, 2005. During this time period, a total of 3,257 complaint face sheets were received by the OIG.

As of August 2005, the OIG disbanded its complaint tracking database, after concluding it was duplicative of the Department's Complaint Information System (CIS). Nevertheless, the Monitor determined that a Complaint Intake Log continues to be generated within 10 – 15 days after end of the month. The log tracks the Consent Decree's 10-day requirement for submission of complaints to PSB and 7-day requirement for submission of complaint intake information to the OIG.

Additionally, a monthly Out-of-Sequence report continues to be generated showing CF numbers of complaint face sheets not received from PSB. During the period January 1, 2005 through June 30, 2005, there were no missing Complaint Forms; there were nine out-of-sequence face sheets that were subsequently reconciled by the OIG.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 152.

C. GENERAL

The Consent Decree requires the City and the Department to take appropriate timely and reasonable steps to implement recommendations and remedy deficiencies noted in reviews, audits and reports issued by the Commission, the IG, and the Department under the Consent Decree. Since the implementation of the Consent Decree, numerous reports have been issued that identify recommendations to correct deficiencies at various levels within the LAPD.

In previous quarters, the Monitor assessed the Department's progress in tracking recommendations and their implementation, and whether appropriate, timely and reasonable steps have been undertaken to implement recommendations and remedy deficiencies emanating from LAPD and OIG audits. During the quarter ending September 30, 2004, the Monitor reviewed the LAPD's recent recommendation status report. During the quarter ending December 31, 2004, the Monitor reviewed the recent *Audit Recommendations Tracking Report, Third Quarter* and the process in place to track specified audit and non-audit recommendations.

The Monitor is scheduled to next review the LAPD's compliance with the requirements of this section during the quarter ending December 31, 2005.

X. COMMUNITY OUTREACH AND PUBLIC INFORMATION

The Consent Decree includes provisions intended to enhance the interaction between officers and community members in daily policing activities. One such requirement is for the LAPD to conduct a Community Outreach program for each LAPD geographic area, including one meeting in each area on a quarterly basis the first year of the Consent Decree, and one meeting in each Area annually thereafter.

The Consent Decree also mandates that the LAPD prepare and publish on its website semiannual public reports that include aggregate statistics broken down by each LAPD geographic area and for the Operations Headquarters Bureau, and broken down by the race/ethnicity/national origin of the citizens involved, for arrests, and UOF.

During the quarter ending June 30, 2005, the Monitor reviewed the LAPD's compliance with the Consent Decree requirement to hold annual meetings in each Area to inform the public about the provisions of the Consent Decree and the various methods of filing a complaint against an officer. The Monitor is scheduled to again assess compliance with this requirement during the quarter ending June 30, 2006.

During the current quarter, the Monitor again assessed compliance with the requirement that the LAPD prepare and post certain semiannual reports on its website. The results of our current assessment follow.

Paragraph 156 – Website Reports

Paragraph 156 requires the LAPD to prepare and publish certain semi-annual reports on its website.

Background

The Monitor last assessed compliance with paragraph 156 during the quarter ending December 31, 2004, at which time the Monitor found the LAPD in compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 156 during the current quarter, the Monitor reviewed the semi-annual report for the period January 1, 2005 through June 30, 2005, which is posted on the LAPD's website. As required by the Consent Decree, the semi-annual report includes the pedestrian and traffic stop data for the period January 1, 2005 through June 30, 2005; a summary of all discipline imposed during this period; reports of audits completed

during this period; and new policies or changes in policies made by the Department during the period to address Consent Decree requirements.

Based on the foregoing, the Monitor finds the Department in continued functional compliance with paragraph 156.

XI. CONCLUSION

As we enter the fifth year of the Consent Decree, we continue to be generally pleased with the overall progress of the Department in achieving compliance in most areas of the Consent Decree. There do, however, remain significant areas of concern, including those regarding adjudication and classification of complaints, as outlined in one of this report's focus issues. This quarter also marked the beginning of a new Mayoral administration, a new Police Commission, and a change of leadership of the Public Safety Committee of the City Council. We are impressed with the commitment to the implementation of Consent Decree reforms that each has expressed and look forward to working collaboratively with them.