

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
JUNE 30, 2004**

Issued August 16, 2004

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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 Associates 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 Twelfth Report, covers the quarter ending June 30, 2004.

For the provisions of the Consent Decree evaluated in 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 sub-paragraph of the Consent Decree for the last five quarters, beginning with the quarter ending June 30, 2003.¹ 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, or before the *Methodologies to Aid in Determination of Consent Decree Compliance*² (the Methodologies) were finalized. 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.

² Assessment of the Department's compliance with Consent Decree paragraphs utilizing the *Methodologies to Aid in Determination of Consent Decree Compliance* did not commence until the quarter ending June 30, 2002. Report Card "grades" were not assigned in prior quarters.

EXECUTIVE SUMMARY

During the quarter ending June 30, 2004, the Monitor examined 75 paragraphs or sub-paragraphs of the Consent Decree. Of these, the City and the LAPD successfully complied with 49, failed to achieve compliance with 22, and, for reasons stated in the body of this report, the Monitor withheld a determination of compliance for the remaining 4 paragraphs or sub-paragraphs.

Areas of concern identified during the quarter ending June 30, 2004 include:

- The Department continues to struggle with the documentation and administration of gang unit officers' requests for extensions and transfers. In response, the Department is shifting to a database system, which they believe will assist in the resolution of these issues.
- Oral interviews of gang unit candidates, an important component of the gang unit selection criteria, are either not taking place or are not being properly documented.

During the current quarter, the Monitor determined that the LAPD has achieved full compliance or shown significant improvements in the following important areas:

- The Monitor is pleased with improvements the LAPD has made in complying with many Consent Decree requirements relative to gang units. This is the first quarter since the inception of the Consent Decree that the LAPD has achieved compliance with requirements regarding the role of gang unit supervisors and area managers and the requirements concerning the Vehicle and Equipment Assignment Sheets.
- Although the LAPD has not achieved functional compliance relative to the review of transferred officers' TEAMS I records, significant progress was documented this quarter.
- The Monitor observed a gang training seminar, led by Deputy Chief Hillman, for all Gang Enforcement Detail supervisors on July 6, 2004. The Monitor was impressed with the training's format and comprehensive agenda.
- In this quarter, Audit Division reached a significant milestone by achieving full compliance with the qualitative requirements for all five of the audits evaluated by the Monitor.
- With the exception of its audits and reviews, which continue to be a problem area, the Office of the Inspector General again complied with all Consent Decree provisions reviewed regarding its operations.

I. FOCUS ISSUES

A. THE STANLEY MILLER INCIDENT

On June 23, 2004, after a televised pursuit of a stolen vehicle that lasted approximately 33 minutes, followed by a brief foot pursuit, Stanley Miller was arrested on a variety of charges, including the theft of the vehicle he was driving. In effecting the arrest, a range of force was employed by LAPD officers, including the repeated use of a metal flashlight as an impact weapon by one officer. From accounts, including a review of the videotape of the incident, it appears that Mr. Miller was in the process of complying with the orders of the police when the force was utilized. The incident immediately conjured up images of Rodney King and reignited the emotions that had surrounded that incident a decade earlier.

That such an incident could happen again in Los Angeles came as no surprise to anyone in the criminal justice system. Regardless of the quality of the Department's Early Warning System, training or disciplinary system, there are no guarantees that an organization of over 9,000 men and women will not have individuals who deviate from the norms of acceptable conduct. The Monitor has recognized from the onset of this assignment that the Department would be confronted with questionable uses of force during the Monitor's tenure. Indeed, the Monitor has always recognized that it was not a question of whether such incidents would occur, but rather a question of what the Department was doing to minimize the number of such incidents and how the Department would investigate and deal with those incidents when they did occur.

While the outcome of the Stanley Miller incident remains to be seen, we are pleased to say that at least the initial stages of the Department's reaction to the event have been commendable. Protocols envisioned by the Consent Decree were followed, including notification and involvement of both the Office of the Inspector General and the District Attorney's Office. It appears that the investigation by Professional Standards Bureau was extremely thorough and well-thought-out. The civilian overseers of the Department, the Police Commission and the Office of the Inspector General, have been deeply engaged in the process. Lastly, it appears that the relationship between the community and the Department encouraged by the Consent Decree, and enhanced by the current police administration, has also paid dividends. The vast majority of the community has adopted a "wait and see" approach in determining the ultimate appropriateness of the Department's full response to the incident. The Monitor will closely follow all aspects of this matter and will continue to report on the progress of the process.

B. MISCONDUCT IN THE CLASSROOM

Demonstrative of the fact that reform has not universally trickled down into the Supervisor and rank and file level is an incident that was observed by both the Monitor and the Department of Justice during mandated supervisor training. While attending a training session on June 8, 2004,

snide and inappropriate comments relative to the training and the required performance of their duties were overheard being made by several Supervisors.

As distressing as these incidents were, the Departmental response to the complaints of the Monitor and DOJ was again admirable. Upon learning of these remarks, the Department sent a clear and resounding message to its members that the sentiments expressed during these classes would not be tolerated. Specifically, on June 10th, two days after the incident occurred, training coordinators were re-trained and made to understand that the comments expressed by the offending Supervisors reinforced the perceptions of those on the 'outside' that the culture of LAPD has not changed and completely overshadowed all of the efforts made by the Department in training and toward reform. The need for trainers to take responsibility for their classrooms and establish a professional environment was reinforced, and the trainers were assured that they would have the support of the command staff, training group, the Civil Right Integrity Division, and Office of Human Resources should they need to 'take on' a difficult student, especially one of a higher rank. In addition, the Chief of Police became personally involved in the issue and held a meeting with all of the Command staff on June 15th, reiterating his requirement of professionalism and respect, in the field, as well as in the classroom. The Chief also circulated a letter on June 29th, and a video in the beginning of August, to all members of the Department, in which he stated that the behavior described to him was "unnecessary and unacceptable"... and that "openness and transparency to the community must be reflected both inside the confines of our organization, including the classroom, as well in our field contacts." The remaining training sessions took on a new air, free from the distracting and destructive comments of jaundiced Supervisors.

While both the Miller incident and the training incident are disturbing, in and of themselves, the Departmental response to these two incidents is encouraging to the Monitor. Clearly, in order to effect the change in the Department envisioned by the Consent Decree, a firm commitment at the top of the Department is required. We are convinced that this firm commitment is in place. The challenge remains to imbue that commitment throughout both mid-level management and the Department as a whole. The process is ongoing and constantly evolving, but there is reason to believe that it will ultimately be successful.

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).⁵ 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. As noted in our last report, because the current timetable does not provide the requisite two years of compliance before the scheduled end of the Monitorship, the slippage in schedule may very well necessitate an extension of the Monitorship.

That being said, it is nonetheless the Monitor's belief that, at this point in the process, the City is moving forward in as expeditious a manner as possible, with the proper attention to the details so important in projects of this magnitude.

During the current quarter, the following progress was made towards the development of the new system:

- Sierra Systems continued work under the RMIS/UOFS contract.⁶ The RMIS Prototype (Beta) is scheduled for delivery in early August, one month ahead of schedule.⁷ The DOJ

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 Although the Consent Decree does not require the development of CMS, UOFS, or the STOP database, the City has decided to develop these systems in conjunction with the RMIS, which is required under the Consent Decree, to further facilitate best management practices in the LAPD.

⁶ The Monitor notes that the RMIS prototype exceeds the requirements established for the Beta version in the Consent Decree, as the City concluded that additional functionality was desirable.

⁷ The RMIS Prototype (Beta) was scheduled to be completed by September 2, 2004. RMIS Department-wide deployment is still scheduled for June 27, 2005.

and the Monitor will participate in a demonstration of the RMIS Prototype on August 12, 2004.

- As described in previous reports, there were delays relative to the UOFS. A revised schedule has been produced and the UOFS project is currently on track with this revised schedule. Although these delays will impact the timeline for deployment of the UOFS,⁸ they will not impact the deployment of RMIS.
- The Deployment Period System (DPS), a critical component of RMIS and UOFS operations, is scheduled for completion in February 2005. For UOFS testing, an interim DPS with limited functionality is scheduled for use until the DPS is completed in early 2005. The interim DPS is currently 10-days behind schedule and any further delay could impact the UOFS development.
- The CMS design development is six weeks behind schedule. To minimize delay, the CMS design has been spilt into two separate build phases. The design of phase 1 has been completed by BearingPoint and approved by the City. The design of phase 2 is scheduled to be completed in late September 2004.
- The City submitted Part 1 of the RMIS Use Protocols and Action Item Thresholds to DOJ for review and approval on April 27, 2004. These were returned back to the City with comments from DOJ on July 6, 2004.⁹ A meeting between the City and DOJ to discuss these protocols is scheduled for the week of August 9, 2004. The implementation of Use Protocols and Thresholds, which will alert Risk Management to potential issues, requires the Department to “meet and confer” with the Police Protective League (PPL). Although formal “meet and confer” cannot commence before the City has presented its implementation plan to DOJ and DOJ has approved the plan, the Department, much to its credit, has included the PPL in the committee dealing with Thresholds and related issues. Part 2 of the RMIS Use Protocols has been approved by the Police Commission and is currently being prepared by the City for submission to DOJ for review and approval.

In addition to monitoring the progress made towards the development of the TEAMS II system during the current quarter, the Monitor evaluated the Department’s compliance with paragraph 51 of the Consent Decree, 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.

⁸ The UOFS was originally scheduled to be deployed on August 13, 2004; the revised deployment date is November 5, 2004.

⁹ The Consent Decree mandates that the City present its implementation plan to DOJ by April 30, 2004. The DOJ must approve the plan within 60 days of submission.

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, c and d follow.¹⁰

Subparagraph 51b – Selection of Officers as Field Training Officers or for Gang Units

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.

Background

The Monitor last evaluated compliance with subparagraph 51b during the quarter ending December 31, 2003, at which time the LAPD was found in primary compliance but in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's functional compliance with subparagraph 51b as it relates to the selection of gang unit officers during the current quarter, the Monitor requested and reviewed the selection and personnel packages for four supervisors¹¹ and 14 non-supervisory officers¹² selected to a gang unit during the period January 11, 2004 to April 3, 2004. The Monitor identified the following regarding the requirement to review TEAMS I reports:

- 94% of the selection packages reviewed had a TEAMS I report included. However, 18% of the TEAMS I reports were dated after the gang personnel was selected to the gang unit.

¹⁰ The Monitor is scheduled to assess the LAPD's compliance with subparagraph 51a during the quarter ending December 31, 2004; the Monitor last evaluated compliance with this subparagraph during the quarter ending December 31, 2003, at which time the LAPD was found in compliance.

¹¹ As explained in the Current Assessment of Compliance for paragraph 106c, below, this was the total population of supervisors selected to gang units during the period.

¹² As explained in the Current Assessment of Compliance for paragraph 106b, below, this was the total population of non-supervisory officers selected to gang units during this period.

- 94% of the selection packages reviewed had a TEAMS Evaluation Report included.¹³ However, 12% of the TEAMS Evaluation Reports did include either a supervisor or Commanding Officer's (CO) signature and 6% indicated that they were completed after the personnel were selected to the gang unit.

In order to assess the LAPD's functional compliance with subparagraph 51b as it relates to the selection of Field Training Officers (FTOs) during the current quarter, the Monitor requested and reviewed the FTO selection packages from October 1, 2003 through December 31, 2003. In total, the Monitor reviewed 22 selection packages, the entire population from this time period. The Monitor determined that all 22 of the FTO selection packages reviewed contained references that indicated TEAMS I reports had been reviewed prior to selection.

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with subparagraph 51b as it relates to the selection of gang officers and in functional compliance as it relates to the selection of FTOs. As a result, the Monitor finds the LAPD in overall functional non-compliance with subparagraph 51b.

Subparagraph 51c – Officers Transferred into New Divisions or Areas

Subparagraph 51c requires that when an officer transfers into a new division or area, the Commanding Officer (CO) shall promptly require the watch commander or supervisor to review the transferred officer's TEAMS I record.

Background

The Monitor last assessed the LAPD's compliance with subparagraph 51c during the quarter ending December 31, 2003, at which time the Monitor found the LAPD in primary compliance but in functional non-compliance.

Current Assessment of Compliance

In order to assess functional compliance with subparagraph 51c during the current quarter, the Monitor requested and reviewed a list of officers who were transferred to a new division or area during Deployment Period (DP) 1 – DP3, 2004¹⁴. The Monitor then selected a stratified sample of transferred officers from this list and requested and reviewed materials related to Special Order 23, including TEAMS I reports and TEAMS Evaluation Reports. The Monitor found the following regarding subparagraph 51c's requirements regarding transferred officers:

¹³ The Teams Evaluation Report documents the review of the entire selection process, including a review of the TEAMS I report.

¹⁴ Deployment Periods 1-3, 2004 encompass January 11-April 3, 2004.

- A TEAMS I report was included in the documentation provided for 93.8% of the transferred officers reviewed. However, for 20% of the transferred officers reviewed, the TEAMS I reports were dated more than one month after the transfer.¹⁵
- A TEAMS Evaluation Report (indicating review of the TEAMS I report) was included in the documentation provided for 93% of the transferred officers reviewed. However, the watch commander or supervisor's signature was not included on the TEAMS Evaluation Report for 13% of the transferred officers reviewed; the CO's signature was not included on the TEAMS Evaluation Report for 7% of the transferred officers reviewed; and, for those Teams Evaluation Reports that had all required signatures, 13% were dated more than ten working days after the transfer.¹⁶

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with subparagraph 51c.

Subparagraph 51d – Document Consideration of Sustained Administrative Investigations, Adverse Judicial Findings or Discipline

Subparagraph 51d requires that when an officer is selected to the Critical Incident Investigations Divisions (CIID),¹⁷ a gang unit, or assigned as a Professional Standards Bureau (PSB)¹⁸ 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 evaluated compliance with subparagraph 51d during the quarter ending December 31, 2003, at which time the LAPD was found in primary and functional compliance.

Current Assessment of Compliance

In order to assess the LAPD's functional compliance with subparagraph 51d as it relates to the selection of gang unit officers during the current quarter, the Monitor reviewed the selection and personnel packages for supervisors and non-supervisory officers selected to a gang unit during

¹⁵ Overall, for 25% of the transferred officers reviewed, either a TEAMS I report was not included or the TEAMS I report that was included was dated more than one month after the transfer.

¹⁶ Although subparagraph 51(c) states that this TEAMS I review shall take place promptly after the officer is transferred, Special Order 23 specifically states that 'promptly' shall be within ten working days from the date of transfer order or notification of loan.

¹⁷ CIID was formally known as the Operations Headquarters Bureau (OHB) Unit.

¹⁸ PSB is the successor to the Internal Affairs Group (IAG).

the period January 11, 2004 to April 3, 2004, as described above in connection with the current assessment of compliance with subparagraph 51b. The Monitor determined that none of the officers selected and reviewed had a sustained administrative investigation, adverse judicial finding or instance of discipline that met the criteria established in this subparagraph.

In order to assess the LAPD's functional compliance with subparagraph 51d as it relates to the selection of FTO officers during the current quarter, the Monitor reviewed the 22 FTO selection packages described above in connection with the current assessment of compliance with subparagraph 51b. The Monitor determined that sustained complaints were reviewed by the managers and/or supervisors.¹⁹ However, in one instance, an officer selected had a sustained complaint for "neglect of duty" and "filing a false report." The Monitor determined that although the complaint was reviewed, the decision to select the officer was clearly faulty -- the officer received a 22-day suspension for behavior the Monitor considers reprehensible for any officer, let alone an FTO.²⁰ As such, the Monitor determined that the complaint was not adequately considered.²¹

Based on the foregoing, the Monitor finds the LAPD in functional compliance with subparagraph 51d as it relates to the selection of gang officers but in functional non-compliance as it relates to the selection of FTOs. As a result, the Monitor finds the LAPD in overall functional non-compliance with subparagraph 51d.

¹⁹ The Monitor determined that 20 of the 22 officers had sustained complaints.

²⁰ The officer was asked to return to court for a preliminary hearing in the prosecution of a third time felony offender who was rescheduled for the afternoon. The officer told the District Attorney that he would not be returning because of child care responsibilities. Upon returning to the station, the officer filled out a form, which indicated that the District Attorney had given him permission to leave. The officer's relative who serves as the childcare provider failed to corroborate the officer's story and instead stated that she was available at that time. Without the officer's presence at the preliminary hearing, the felony offender was allowed to walk.

²¹ Although the Consent Decree only requires consideration of sustained complaints, it is the Monitor's contention that such consideration must be reasonable, especially given the important role FTO officers have in the development of trainees. In the instance cited, the Monitor contends that the decision to select the officer as an FTO was not reasonable.

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)²² 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.²³ Administrative investigations of these incidents are the responsibility of the CIID.²⁴ 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.²⁵ Non-Categorical Use 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 December 31, 2003, the Monitor assessed the LAPD’s compliance with a number of Consent Decree requirements relative to CUOF investigations, including the notification process, and the required psychological evaluation of officers involved in a deadly CUOF. In addition, the Monitor reviewed the merits of NCUOF incident investigations, noting a significant improvement in the quality and consistency of such investigations.

During the quarter ending March 31, 2004, the Monitor concentrated its efforts on reviewing the LAPD’s compliance with CUOF incident investigations largely based on issues noted during the quarter ending September 30, 2003. The Monitor is scheduled to again assess compliance with several Consent Decree requirements relative to both CUOF and NCUOF during the quarter ending September 30, 2004..

²² CUOF include an Officer-Involved Shooting with or without a hit, In-Custody Death, Law Enforcement Activity Related Death, Law Enforcement Related Injury requiring hospitalization, Neck Restraint, Head Strike with an impact weapon and a Department canine bite requiring hospitalization.

²³ 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.

²⁴ The Department is currently reorganizing the responsibility for investigations of CUOF. This reorganization is subject to the approval of DOJ and the Monitor.

²⁵ Specifically paragraphs 13, 38, 65, 66, 68, 69, 81 and 82 as well as certain audit related paragraphs.

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.

In the Monitor's Report for the Quarter Ending March 31, 2004, the Monitor assessed both supervisory review of warrants and supervisory review of warrant logs.

The Monitor is scheduled to again assess compliance with Consent Decree requirements relative to search and arrest procedures during the quarter ending September 30, 2004.

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.

In the Monitor's Report for the Quarter Ending December 31, 2003, the Monitor assessed compliance relative to officers receiving citizen complaints, as well as the requirement to report officer misconduct.

During the current quarter, the Monitor reassessed compliance with Consent Decree requirements relative to the initiation of complaints that arose out of lawsuits, arrests and/or litigation. The results of our current assessment follow.

Paragraph 76 – Civil Lawsuits Alleging Misconduct of LAPD

Paragraph 76 requires the City to notify the LAPD whenever a person serves a civil lawsuit on or files a claim against the City alleging misconduct by an LAPD officer or other employee of the LAPD.

Background

The LAPD's Risk Management Division (RMD) regularly receives Initial Litigation Reports, Quarterly Reports, and Final Reports from the Los Angeles City Attorney's Office for lawsuits filed with the City against the LAPD. The RMD also receives notification on all newly filed claims from the City Attorney's Office. The lawsuit and claim information is entered into the RMD's Claim/Lawsuit Information System (CLIS) database. The RMD forwards a report weekly to PSB, listing all claims and lawsuits for the generation of complaint investigations.

The Monitor last evaluated paragraph 76 during the quarter ending June 30, 2003, at which time the LAPD was found in compliance.

Current Assessment of Compliance

During the current quarter, the Monitor requested and received from the City a listing of all pending lawsuits and claims for the period October 1, 2003 through March 31, 2004. In total, the City identified 83 lawsuits as listed on the “Open Police Department Cases for the Police Litigation Unit Report” and 172 separate claims as listed on the “Claim Detail Report” applicable to the LAPD.²⁶

For the same time period, the Monitor requested and received from the LAPD its CLIS report. The Monitor compared the RMD’s CLIS report to the City’s report and determined that the CLIS report included all claims and all but one²⁷ lawsuit listed in City reports. The Monitor noted that RMD’s CLIS report included several claims not listed on the City’s Claim Detail Report.

The Monitor independently queried public records and reviewed all civil lawsuits filed in the Los Angeles Superior Court naming the LAPD as a party. The period reviewed was January through March 2004. The Monitor concluded that the CLIS database included all relevant lawsuits.

Based on the foregoing, the Monitor finds the LAPD in continued functional compliance with paragraph 76.

Paragraph 77 – Arrest / Litigation Involving Officer

Paragraph 77 mandates that the LAPD continue to require all officers to notify without delay the LAPD whenever the officer is arrested or criminally charged for any conduct, or the officer is named as a party in any civil suit involving his or her conduct while on duty or otherwise while acting in an official capacity. Additionally, the LAPD must require notification from any officer who is named as a defendant in any civil suit that results in a temporary, preliminary, or final adjudication on the merits in favor of a plaintiff complaining of off-duty physical violence, threats of physical violence, or domestic violence by the officer.

Background

The Monitor last evaluated paragraph 77 during the quarter ending June 30, 2003, at which time the LAPD was found in compliance.

²⁶ The City’s report included several lawsuits in classifications that did not allege any misconduct, including traffic, disability and medical related lawsuits.

²⁷ This lawsuit involved a traffic collision and the Department was not notified by the City’s Attorney Office. According to RMD documentation, and a review of Los Angeles Superior Court records, neither the LAPD nor any officers were served with the lawsuit. The lawsuit was filed on September 23, 2003 and dismissed with prejudice on May 14, 2004.

Current Assessment of Compliance

During the current quarter, the Monitor requested and received from the LAPD a listing of all officers known to have been arrested during the time period April 1, 2003 through March 31, 2004. In total, 24 officers²⁸ were identified by the LAPD.²⁹ The Monitor also requested and received complaint face sheets for the incidents identified, which provided summaries of the incidents leading to the officers' arrests and the nature of any allegations.

For 24³⁰ of the 25 complaints reviewed, the PSB of the LAPD concluded that the officers either self-reported their arrests or identified themselves as LAPD officers, thereby causing the arresting officers or agency to report their arrests.³¹ For the remaining incident, the LAPD reported that the officer did not self-report his arrest or identify himself as an LAPD officer.³² The Monitor concurred with the LAPD's conclusions.

The LAPD also provided the Monitor with listings of lawsuits and claims for the comparable period. The Monitor reviewed these listings and related complaint face sheets and determined that they were in compliance with paragraph 77. Normally an officer identified as party to a lawsuit or claim would first learn of it from the PSB. Given the reporting requirements pursuant to paragraph 76, the likelihood of a claim or a lawsuit going unreported to the Department is minimal.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 77.

D. CONDUCT OF INVESTIGATIONS

The Consent Decree provides a series of specific instructions relating to the conduct of complaint investigations. These instructions are published in the LAPD Guide for Supervisors dated October 2000.

In past quarterly reports, the Monitor reported that the LAPD was in functional compliance with many provisions in this section, most notably in the conduct of CUOF incident investigations and with some of the requirements related to complaint investigations. However, in the Monitor's Reports for the Quarters Ending September 30, 2003 and March 31, 2004 it was

²⁸ One officer was identified in two separate complaints. In total, 25 complaints were reviewed by the Monitor.

²⁹ In response to the Monitor's request, the LAPD included 6 arrested employees who were excluded from the population in determining compliance: four civilian employees, one detention officer and one reserve officer.

³⁰ PSB effectuated the arrests of two officers after their arrival at the incident scenes.

³¹ The LAPD has established agreements with adjacent law enforcement agencies to disclose whenever an officer in their jurisdictions arrests an LAPD officer. Of the 25 arrests, 14 were made by an outside agency and 11 were made by LAPD officers.

³² The officer was arrested by the California Highway Patrol.

reported that serious deficiencies were noted in CUOF incident investigations. Specifically, the Monitor identified instances in which the LAPD failed to preserve evidence, failed to identify and report inconsistencies in officer and witness statements, failed to prohibit group interviews and failed to report possible misconduct.

In the most recent quarterly report, the Monitor's evaluation was focused on thoroughly reviewing CUOF incident investigations.

During the current quarter, the Monitor's evaluation entailed a review of completed Chain of Command (COC) and Collateral Misconduct Investigations. The results of our current assessment follow.

Paragraph 79 – PSB Review of Complaint Face Sheets

Paragraph 79 requires the LAPD to document and forward all complaints to the PSB for review and investigative assignment within ten days of receipt to determine whether or not criteria as defined in paragraphs 93, 94 and 95 apply.

Background

The Monitor last evaluated paragraph 79 during the quarter ending September 30, 2003, at which time the LAPD was found in non-compliance.

Current Assessment of Compliance

During the current quarter, the Monitor requested and received a listing of all complaints initiated during the period January 1, 2004 through February 29, 2004. A total of 1,266 complaints were identified.³³ The information provided included the date the complaint was reported to the LAPD, the Division responsible for completing the form, the date the complaint face sheet was completed and the date the face sheet was received by the PSB for review and classification.

For 118 of the 1,266 complaints listed, the face sheets were provided to the LAPD's PSB in excess of ten days of receipt.³⁴ This translates into an overall compliance rate of 90.7%. The PSB directly received, and was responsible for processing, 76 of the 118 complaints. Had the PSB processed the complaints on or near the date received, the LAPD would have significantly reduced those in non-compliance.

³³ As in previous reports, LAPD-generated administrative complaints alleging Failure to Qualify (firearms), Failure to Appear (in court) and Preventable Traffic Collision were excluded from calculating compliance as the LAPD identifies them only after generating monthly reports.

³⁴ The range in which the PSB processed these 118 complaint face sheets was from 1 day late to 445 days late, with an average of 59 days late.

Based on the foregoing, the Monitor finds the LAPD in continued functional non-compliance with the provisions of paragraph 79.

Paragraph 80ii – PSB Investigations of Complaints

Paragraph 80 defines specific investigative requirements that apply to all CUOF incident investigations and all administrative complaint investigations in which the underlying alleged misconduct falls under the definition of paragraphs 93 and 94. Paragraph 80 contains seven subsections requiring conformance as follows:

- a. Tape record or videotape interviews of complainants, involved officers, and witnesses
- b. Canvass a scene, interview complainants and witnesses at sites and times convenient for them
- c. Prohibit group interviews
- d. Notify involved officers and the supervisors of involved officers, except when the LAPD deems the complaint to be confidential under the law
- e. Interview all supervisors with respect to their conduct at the scene during the incident
- f. Collect and preserve all appropriate evidence, including canvassing the scene to locate witnesses
- g. Identify and report all inconsistencies in officer and witness interview statements gathered during the investigation

For reporting purposes, the Monitor has broken paragraph 80 down into two subparagraphs: 80i, which relates to CUOF investigations, and 80ii, which relates to PSB investigations of administrative complaint investigations.

Background

The Monitor last assessed the LAPD's compliance with subparagraph 80ii during the quarter ending September 30, 2003, at which time the Monitor found the LAPD in primary compliance with the entire subparagraph, in functional compliance with subsections (b) through (g), and in functional non-compliance with subsection (a).

Current Assessment of Compliance

In order to assess functional compliance with subparagraph 80ii during the current quarter, the Monitor requested and received a listing of closed complaint investigations for the period January 1 through February 29, 2004. A total of 1,556 complaints were identified. Using

statistical sampling, a random sample of 90 complaints was selected for review by the Monitor, all of which were located and provided by the LAPD.³⁵

The Monitor determined that 31 of the 90 investigations selected for review were completed by the PSB. The Monitor reviewed all 31 investigations completed by the PSB and determined that the LAPD was in compliance with subsections (b) through (e) and (g) of subparagraph 80ii. However, the Monitor noted the following instances of non-compliance:

- Regarding subsection (a), tape-recording statements of the complainant, officer, witness or on-scene supervisor, the Monitor identified three incidents in which the complainant was not taped, two incidents in which an officer was not taped, two incidents in which a witness was not taped, and one incident in which an on-scene supervisor was not taped. This translates in a compliance rate of 87.1%.³⁶
- Regarding subsection (f), collecting and preserving all appropriate evidence and canvassing the scene to locate witnesses, the Monitor identified three incidents in which all appropriate evidence was not collected and/or preserved.³⁷ This translates in a compliance rate of 90.3%.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with subsections (b) through (e) and (g) of subparagraph 80ii, but in functional non-compliance with subsections (a) and (f).

Paragraph 81ii – COC Investigations of Complaints

Paragraph 81 states that COC administrative complaint investigations and NCUOF administrative investigations must comply with subsections c, e and f of paragraph 80. For reporting purposes, these requirements are relabeled for paragraph 81 as follows:

- a. Prohibit group interviews (as required under paragraph 80c);
- b. Interview all supervisors with respect to their conduct at the scene during the incident (as required under paragraph 80e); and
- c. Collect and preserve all appropriate evidence, including canvassing the scene to locate witnesses (as required under paragraph 80f).

For reporting purposes, the Monitor has also broken paragraph 81 down into two subparagraphs: 81i, which relates to NCUOF investigations,³⁸ and 81ii, which relates to COC investigations of administrative complaints.

³⁵ The Monitor reviewed this sample of closed complaint investigations in assessing compliance with paragraphs 80ii, 81ii, 82, 84, 85, 86, 90 and 91.

³⁶ All instances of non-compliance occurred in 4 of the 31 incidents.

³⁷ Evidence not collected or preserved consisted of handwritten complainant letters, photos and interviews of officers deemed to be essential to the investigation.

Background

The Monitor last evaluated paragraph 81 as it relates to COC complaint investigations (subparagraph 81ii) during the quarter ending September 30, 2003, at which time the LAPD was found in functional non-compliance.

Current Assessment of Compliance

In order to assess compliance with subparagraph 81ii during the current quarter, the Monitor selected and reviewed 90 completed complaint investigations from the period January 1, 2004 through February 29, 2004.³⁹ The Monitor determined that 59 of the 90 complaints selected for review were conducted by COC investigators.

The Monitor reviewed the investigation reports for all 59 investigations completed by COC investigators to determine whether or not the investigators canvassed the scene for witnesses, conducted separate interviews, and collected and preserved all evidence. The Monitor noted the following:

- The Monitor either determined that a group interview was not conducted, or was unable to make a determination because the investigation file did not adequately document interviews, for three of the 59 completed complaint investigations reviewed. This translates into a compliance rate of 94.92%.
- The Monitor determined that the LAPD either failed to preserve or collect evidence in four of the 59 completed complaint investigations reviewed. This translates into a compliance rate of 93.22%. Evidence not preserved included photographs of alleged injuries and written statements provided by the complainant. Evidence not collected included interviews of officers or third parties identified at the scene.
- The Monitor could not determine whether investigators canvassed the scene for witnesses in one of the 59 completed complaint investigations reviewed. This translates into a compliance rate of 98.31%.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with subsections a and c of paragraph 81ii, but in functional non-compliance with subsection b.

³⁸ The Monitor did not assess compliance regarding NCUOF administrative investigations this quarter.

³⁹ This was the same statistical sample selected for review in connection with the assessment of several paragraphs during the current quarter. Please refer to the Current Assessment of Compliance for paragraph 80ii for additional information.

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 evaluated paragraph 82 during the quarter ending September 30, 2003, at which time the LAPD was found in functional non-compliance.

Current Assessment of Compliance

In order to assess compliance with subparagraph 81ii during the current quarter, the Monitor selected and reviewed 90 completed complaint investigations from the period January 1, 2004 through February 29, 2004.⁴⁰ Of the 90 investigations reviewed, the Monitor identified nine instances in which the facts indicated that additional complaint investigations were warranted. The LAPD correctly initiated investigations in five of these instances, resulting in a compliance rate of 95.6%.

The Monitor concluded that the LAPD should have initiated additional complaint investigations for the following four investigations reviewed:

- For two investigations there simply was not enough information contained within the investigation file or the investigation was pre-maturely halted⁴¹ and there is no way to determine whether additional unrelated complaint investigations should have been initiated.
- One investigation failed to address an officer's improper reporting of an arrest.
- One investigation failed to identify and address false statements and neglect of duty.

Notwithstanding these four issues, the Monitor finds the LAPD in primary⁴² and functional compliance with paragraph 82.

⁴⁰ This was the same statistical sample selected for review in connection with the assessment of several paragraphs during the current quarter. Please refer to the Current Assessment of Compliance for paragraph 80ii for additional information.

⁴¹ The Monitor noted that a manager requested that the officer against whom the complaint was lodged be characterized as a witness. The same manager then interjected his own prior experience with the complainant and officer and ceased any further investigation of the complaint.

⁴² The following policy specifically addresses and meets the requirements of paragraph 82: 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.

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.

The Monitor last evaluated all aspects of the adjudication phase of the complaint process during the quarter ending September 30, 2003.

During the current quarter, the Monitor reassessed all aspects of the adjudication phase of the complaint process. The results of our current assessment follow.

Paragraph 84 – Standards for Credibility Determinations

Paragraph 84 requires that when adjudicating a completed complaint investigation, the following apply:

- Use of Standard California Jury Instructions to evaluate credibility;
- Consideration of the accused officer's history and disciplinary records where relevant and appropriate;
- Consideration of the civilian's criminal history, where appropriate;
- No automatic preference of an officer's statement over the statement of any other witness, including the complainant;
- No automatic judgment of insufficient information to make a credibility determination when only conflicting statements exist; and,
- No automatic rendering of a witness statement as biased or untruthful given a familial or social relationship.

Background

The Monitor last evaluated paragraph 84 during the quarter ending September 30, 2003, at which time the LAPD was found in functional non-compliance.

Current Assessment of Compliance

In order to assess compliance with paragraph 84 during the current quarter, the Monitor selected and reviewed 90 completed complaint investigations from the period January 1, 2004 through

February 29, 2004.⁴³ The Monitor noted the following instances of non-compliance with the standards required under paragraph 84:

- For eight of the 90 investigations reviewed, either the Monitor could not ascertain whether an officer's complaint history was considered during the adjudication process or the review that was documented was insufficient.
- For three of the 90 investigations reviewed, the Monitor concluded that preference was given to the statements made by officers over the statements provided by witnesses and/or complainants; a familial or social relationship appears to have been the primary factor.
- For two of the 90 investigations reviewed, the Monitor concluded that automatic judgments were made based upon insufficient information and documentation⁴⁴.
- For four of the 90 investigations reviewed, either the Monitor concluded that the jury standard was not applied or insufficient information was contained within the investigative file to reach such a conclusion.

Based on the foregoing, the Monitor finds the LAPD in continued functional non-compliance with the provisions of paragraph 84.

Paragraph 85 – Preponderance of the Evidence

Paragraph 85 requires that all complaints be adjudicated using a preponderance of the evidence standard⁴⁵ and, wherever supported by evidence, collected complaints shall be adjudicated as follows:⁴⁶

- Sustained
- Sustained – no penalty
- Not resolved

⁴³ This was the same statistical sample selected for review in connection with the assessment of several paragraphs during the current quarter. Please refer to the Current Assessment of Compliance for paragraph 80ii for additional information.

⁴⁴ One investigation was ended prematurely and another was closed without any supporting documentation

⁴⁵ Per 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."

⁴⁶ The LAPD also adjudicates complaint investigations as "Insufficient Evidence to Adjudicate," "Other Judicial Review" and "Withdrawn by the Chief of Police." These additional dispositions represent a continuation of LAPD policy and new policy released in October 2001.

- 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 Office of the Inspector General (OIG). At any one of these levels, the evidence collected during the investigation may be reviewed and critiqued.

The Monitor last evaluated paragraph 85 during the quarter ending September 30, 2003, at which time the LAPD was found in functional non-compliance.

Current Assessment of Compliance

In order to assess compliance with paragraph 85 during the current quarter, the Monitor selected and reviewed 90 completed complaint investigations from the period January 1, 2004 through February 29, 2004.⁴⁷ For five of the 90 complaint investigations reviewed, the Monitor concluded that the LAPD failed to apply the preponderance of the evidence standard during the adjudication phase. This translates into a compliance rate of 94.44%.

Based on the foregoing, the Monitor finds the LAPD in primary and functional compliance with paragraph 85.

Paragraph 86 – Complaint Withdrawal, Unavailability of Complainant, Anonymous Complaint and Third Party Complaints

Paragraph 86 requires the LAPD to use reasonable efforts to investigate complaints to determine whether they can be corroborated in instances where complaints are withdrawn, the complainant is unavailable to make a statement, or the complaint was filed anonymously or by a person other than the victim of misconduct. Such circumstances shall not be a basis for adjudicating a complaint without further investigation.

⁴⁷ This was the same statistical sample selected for review in connection with the assessment of several paragraphs during the current quarter. Please refer to the Current Assessment of Compliance for paragraph 80ii for additional information.

Background

The Monitor last evaluated paragraph 86 during the quarter ending September 30, 2003, at which time the LAPD was found in functional compliance.

Current Assessment of Compliance

In order to assess compliance with paragraph 86 during the current quarter, the Monitor selected and reviewed 90 completed complaint investigations from the period January 1, 2004 through February 29, 2004.⁴⁸ Of the 90 complaints reviewed, two were filed anonymously and ten were filed by third parties. All complaints were investigated as thoroughly as could be expected based on the information contained in the complaint and the availability of the complainants and witnesses. The LAPD adjudicated all 12 complaints appropriately.

Based on the foregoing, the Monitor finds the LAPD in primary⁴⁹ and functional compliance with paragraph 86.

Paragraph 87 – Timeliness of Complaint Investigations

Paragraph 87 defines the time period in which most investigations must be completed. Taking into consideration the complexity of an investigation, the availability of evidence or other extenuating circumstances, the LAPD is required to complete most investigations within five months.

Background

The Monitor last evaluated paragraph 87 during the quarter ending September 30, 2003, at which time the LAPD was found in non-compliance.

Current Assessment of Compliance

During the current quarter, the Monitor requested and received a listing of all complaint investigations initiated during the period September 15, 2003 through December 15, 2003.⁵⁰ In

⁴⁸ This was the same statistical sample selected for review in connection with the assessment of several paragraphs during the current quarter. Please refer to the Current Assessment of Compliance for paragraph 80ii for additional information.

⁴⁹ The following policy specifically addresses and meets the requirements of paragraph 86: Administrative Order 12, "Investigating a Personnel Complaint," approved by the Commission September 25, 2001; Special Order 36, "Complaint Reporting Procedures – Revised," approved by Police Commission November 13, 2001 establish policy responsive to paragraph 86.

⁵⁰ This period was selected because all complaints from the period were received more than 150 days (5 months) prior to the Monitor's evaluation of compliance.

total, 1,305 investigations were identified, of which 486 were assigned to the PSB and 819 were assigned to the COC for investigation. The Monitor requested and received information regarding each of these investigations, including the complaint file number, investigating entity, date completed (if applicable), the date closed (if applicable) and the underlying allegation(s). The following results were noted:

- Of the 1,305 investigations identified, 945 were completed and 360 remained pending at the time of analysis. Of the 945 completed investigations, 758 were completed in less than 151 days and 187 were completed in excess of 150 days. As a result, for the 1,305 complaint investigations initiated during the period selected for review, the LAPD completed 758, or 58.08%, within 150 days. On average, the LAPD completed complaint investigations in 104 days.
- Of the 819 COC investigations identified, 670 were completed. Of those 670 completed investigations, 578 were completed in less than 151 days and 92 were completed in excess of 150 days. As a result, for the 819 COC complaint investigations initiated during the period selected for review, the LAPD's COC completed 578, or 70.57%, within 150 days. On average, the LAPD's COC completed complaint investigations in 93 days.
- Of the 486 PSB investigations identified, 275 were completed. Of those 275 completed investigations, 180 were completed in less than 151 days and 95 were completed in excess of 150 days. As a result, for the 486 PSB complaint investigations initiated during the period selected for review, the PSB completed 180, or 37.04%, within 150 days. On average, the LAPD's PSB completed complaint investigations in 131 days.

The Monitor noted the occurrence of delays in entering closed cases into CMS. Of the 945 completed investigations reviewed during this quarter, it took the LAPD, on average, approximately 60 days to enter the cases into the CMS. For supervisors and managers querying the CMS to identify patterns in an officer's history, this could result in the review of stale and inaccurate information.

Finally, a query of pending investigations since the commencement of the Consent Decree noted that two investigations from calendar year 2001 remain open, 33 investigations from calendar year 2002 remain open and 89 investigations from the period January 1, through January 30, 2003 remain open. For the majority of these investigations, the underlying allegations require investigation by the PSB pursuant to paragraph 93.⁵¹

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 87.⁵² However, despite this overall compliance finding, the Monitor is concerned that the PSB is

⁵¹ As of the date of this report, it was unknown whether any of these investigations will result in referrals to either the District Attorney's Office or the City Attorney.

⁵² Under the Methodologies, the LAPD is in compliance if greater than 50% of all complaint investigations are completed within 150 days.

not completing investigations more timely. Also of concern is the lag time between the closing of cases and their input into CMS.

Recommendations

The Monitor recommends that the LAPD refocus its efforts on inputting the results of complaint investigations more timely and explore all avenues to provide additional staffing to the PSB.

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 March 31, 2004, the Monitor again reviewed the Chief of Police's discipline report and the IG's and Commission's reviews of this report, as well as their reviews of the Department's anti-retaliations policy and its implementation.

During the current quarter, the Monitor's evaluation entailed an assessment of managerial review of Complaint Form 1.28 Investigations, and notifications to the complainants of complaint resolutions. The results of our current assessment follow.

Paragraph 90 – Manager Review of Complaint Form 1.28 Investigations

The LAPD is required to continue its practice of having managers⁵³ evaluate all complaint investigations and identify any underlying problems and/or training needs. Recommendations or actions, if any, shall be implemented by the manager or referred to the appropriate entity for implementation.

Background

The Monitor last evaluated paragraph 90 during the quarter ending September 30, 2003, at which time the LAPD was found in primary⁵⁴ and functional compliance.

⁵³ Paragraph 29 of the Consent Decree defines a manager as an LAPD supervisor at the rank of captain or above.

⁵⁴ The Monitor determined that LAPD Manual Section 3/830.20 and the LAPD's "Department Guide to Discipline" meet the primary compliance requirements for paragraph 90; these continue to meet the paragraph's primary compliance requirements.

Current Assessment of Compliance

In order to assess compliance with paragraph 90 during the current quarter, the Monitor selected and reviewed 90 completed complaint investigations from the period January 1, 2004 through February 29, 2004.⁵⁵ In order to ascertain whether management reviewed the investigation, the Monitor reviewed the face sheets, summaries of interviews, chronological logs and other documentation, as well as evidence contained within individual investigation packages. The Monitor noted evidence of a manager's review for all 90 complaint investigations reviewed. However, the Monitor noted four instances in which the reviewing manager either failed to identify an incomplete investigation or withdrew the investigation based on their own interpretation of the facts and knowledge of the officers against whom the complaint was alleged:

- Allegations of harassment by one officer of a former officer were not fully investigated because a high-ranking manager familiar with the situation and past complaints elected to change the status of the accused officer to a witness. The face sheet clearly identifies the accused officer whose name was covered with liquid paper and written in as a witness. An informal, undocumented meeting occurred between the manager and the accused officer that was not memorialized. No other investigative steps appear to have been completed
- Allegations of sexual misconduct by one officer against another officer included virtually no investigation. The investigation that did take place was not initiated until nearly 11 months had passed and spanned approximately 13 days. The complainant was notified that a full investigation was completed.
- Allegations of what clearly appears to be a false statement were investigated as neglect of duty. In reviewing the accused officer's TEAMS report, the officer had a prior sustained complaint with the underlying allegation of a false statement. Upon reviewing the officer's complaint history, the manager's review failed to document a pattern of behavior.
- Allegations of invidious discrimination were referred to the Ombudsman's office.⁵⁶ However, prior to referral the investigation identified unrelated misconduct not addressed by the investigation or adjudicated by management, yet the investigation was completed and closed.

In summary, the Monitor determined that the LAPD complied with the requirements of paragraph 90 in 86 of the 90 investigations reviewed, for a 95.6% compliance rate.

⁵⁵ This was the same statistical sample selected for review in connection with the assessment of several paragraphs during the current quarter. Please refer to the Current Assessment of Compliance for paragraph 80ii for additional information.

⁵⁶ The LAPD permits internal complaints involving solely officers to be referred to the Ombudsman's office for resolution only if the complainant and the accused agree to do so. Confidentiality provisions preclude the LAPD and the Monitor from reviewing any related interviews or other means to resolve the complaint.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 90.

Paragraph 91 – Complaint Resolution Notification

Paragraph 91 requires that once a complaint investigation is completed, the LAPD must inform the complainant, in writing, of the investigation's significant dates, general allegations and disposition.

Background

The Monitor last reviewed paragraph 91 during the quarter ending September 30, 2003, at which time the Monitor found the LAPD in non-compliance.

Current Assessment of Compliance

In order to assess compliance with paragraph 91 during the current quarter, the Monitor selected and reviewed 90 completed complaint investigations from the period January 1, 2004 through February 29, 2004.⁵⁷ All complaint investigation packages were reviewed in their entirety in order to understand the exact complaint, significant dates of the investigation, investigative steps undertaken by either COC investigators or PSB investigators and, finally, the disposition. Once these steps were completed, correspondence⁵⁸ with complainants was reviewed and assessed for adequacy.⁵⁹

For all 90 complaint investigation packages reviewed, the Monitor determined that the LAPD sent response letters to all complainants. However, for 10 of the 90 packages reviewed, the Monitor determined that at least one prong of paragraph 91 was not satisfied. The area where non-compliance was most prevalent was the Department's failure to adequately document the general allegations of the complaint.

Based on the foregoing, the Monitor finds the LAPD in continued non-compliance with paragraph 91.

⁵⁷ This was the same statistical sample selected for review in connection with the assessment of several paragraphs during the current quarter. Please refer to the Current Assessment of Compliance for paragraph 80ii for additional information.

⁵⁸ Virtually all correspondence with complainants involved the mailing of a letter. In some instances, letters were mailed return receipt.

⁵⁹ For "Department" initiated complaint investigations, paragraph 91 was deemed not applicable. However, if a specific Department employee initiated the complaint, paragraph 91 was deemed applicable.

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. The Consent Decree 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.

The Monitor last assessed compliance with regard to the PSB during the quarter ending December 31, 2003.

During the current quarter, the Monitor's evaluation comprised a review of Consent Decree requirements relative to the reallocation of complaint investigations between PSB and COC, the requirement that certain misconduct complaints be completed solely by the PSB, the requirement that misconduct complaints filed against the Chief of Police be directed by the Police Commission (rather than by PSB), and requirements regarding terms of duty and evaluations of PSB personnel. The results of our current assessment follow.

Paragraph 93 – Complaint Investigations Handled by PSB

Paragraph 93 requires the City to reallocate investigative responsibility from COC supervisors to the PSB for the following misconduct investigations:

- Civil suits or claims for damages involving on duty conduct by LAPD officers or civil suits and claims involving off-duty conduct required to be reported under paragraph 77;
- Unauthorized UOF, other than administrative CUOF investigations;
- Invidious discrimination including improper ethnic remarks and gender bias;
- Unlawful search;
- Unlawful seizure;
- Dishonesty;
- Domestic violence;
- Improper behavior involving narcotics or drugs;
- Sexual misconduct;
- Theft; or
- Any act of retaliation or retribution against an officer or civilian.

Background

The Monitor last evaluated paragraph 93 during the quarter ending September 30, 2003, at which time the Monitor found the LAPD in primary, secondary and functional compliance.

Current Assessment of Compliance

In order to assess functional compliance with paragraph 93 during the current quarter, the Monitor received from the LAPD a listing of all complaints initiated during the period January 1, 2004 through March 31, 2004.⁶⁰ In total, the LAPD provided a listing of 1,481 complaints. A random sample of 90 complaints was selected and submitted to the LAPD for the production of complaint face sheets and attachments, which provided the Monitor with a summary of the complaint allegations as well as the assigned investigative entity.

The Monitor reviewed the documentation provided for the 90 complaints selected in order to determine if they were properly assigned. The Monitor concluded that 86 of the 90 complaints, or 95.5%, were appropriately assigned. The Monitor concluded that the remaining four investigations were incorrectly classified and erroneously assigned to the COC. The Monitor contends that one complaint should have been classified as racial profiling⁶¹ and another as invidious discrimination.⁶² The third complaint was misclassified as discourtesy instead of sexual misconduct.⁶³ The fourth complaint was an anonymous call to the CO of PSB alleging misconduct by officers at one of the divisions.⁶⁴

In addition to the above, the Monitor noted one complaint that was appropriately listed as being investigated by PSB but the allegations were misclassified as “unbecoming conduct,” rather than “dishonesty.”⁶⁵

The Monitor also notes that PSB continues to select samples of complaints to audit. In part, the audit is performed to ascertain whether complaints are properly classified and assigned to PSB or COC.

⁶⁰ Information requested and received from the LAPD included the unique complaint file number, the date reported to the LAPD, the investigating entity and the date received by the PSB.

⁶¹ This complaint involved a traffic stop in which the complainant alleged racial profiling based on the clothing he was wearing. He did not receive a citation. This complaint was classified as “unbecoming conduct.”

⁶² This complaint was made in connection with a traffic collision. The complainant alleged that she was not given the same courtesy as the other driver, who was a white male, because she was a “minority woman.” This complaint was not classified.

⁶³ This complaint involved an unknown officer who was alleged to have made a pass at a woman who stopped to ask for directions.

⁶⁴ The complaint was classified as “unbecoming conduct” and investigated by COC. The Monitor realizes that there is little information to go on, but contends that the complaint should have been investigated by PSB.

⁶⁵ The complaint was initiated by the Department, alleging that a Department employee was identified as being involved in the sale of illegal product.

Based on the foregoing, the Monitor finds the LAPD in continued primary,⁶⁶ secondary and functional compliance with paragraph 93. However, the Monitor is concerned that two complaints that clearly allege “racial profiling” or “invidious discrimination” were misclassified and erroneously assigned to the COC.

Paragraph 94 – Additional Complaint Investigations Handled by the PSB

Paragraph 94 requires that the PSB, and not COC supervisors, investigate the following:

- a. All incidents in which both a civilian is charged by an officer with interfering with a police officer, resisting arrest, or disorderly conduct, and the prosecutor's office notifies the LAPD either that it is dismissing the charge based upon officer credibility or a judge dismissed the charge based upon officer credibility;
- b. All incidents in which the LAPD has received written notification from a prosecuting agency in a criminal case that there has been an order suppressing evidence because of any constitutional violation involving potential misconduct by an LAPD officer, any other judicial finding of officer misconduct made in the course of a judicial proceeding or any request by a federal or state judge or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. The LAPD shall request that all prosecuting agencies provide them with written notification whenever the prosecuting agency has determined that any of the above has occurred;
- c. All incidents in which an officer is arrested or charged with a crime other than low grade misdemeanors, as defined in the LAPD manual, which misdemeanors shall be investigated by chain-of-command supervisors; and,
- d. Any request by a judge or prosecutor that a misconduct investigation be initiated pursuant to information developed during the course of an official proceeding in which such judge or prosecutor has been involved

Background

The Monitor last evaluated paragraph 94 during the quarter ending September 30, 2003, at which time the LAPD was found in primary, secondary and functional compliance.

Current Assessment of Compliance

In order to assess functional compliance with paragraph 94 during the current quarter, the Monitor requested from the LAPD a listing of all complaints initiated during the period October

⁶⁶ As previously reported, the LAPD issued Special Order 17, “Complaint Investigation Procedures – Revised,” September 18, 2001 and IAG notice, “Internal Affairs Investigation Transition Plan,” dated March 12, 2002. Both adequately address the requirements of paragraph 93, thus the LAPD is in primary compliance with paragraph 93.

1, 2003 through March 31, 2004 that met the criteria stipulated in paragraph 94. The LAPD queried its CMS database and provided the results of its query to the Monitor.

There were no complaints initiated during the period selected for review that met the criteria delineated in items a b and d,⁶⁷ above. The LAPD provided a listing of all complaints in which officer(s) had been charged with a crime other than a low grade misdemeanor (item c., above). The Monitor reviewed each complaint face sheet and determined that all of the identified complaints were investigated by the PSB.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 94.

Paragraph 96 – Misconduct Complaints Filed Against the Chief of Police

Paragraph 96 states that investigative duties mandated in paragraphs 93 and 94 shall not apply to investigations of misconduct complaints lodged against the Chief of Police and that such investigations shall be directed by the Police Commission as set forth in paragraph 145.

Background

The Monitor last evaluated paragraph 96 during the quarter ending June 30, 2003, at which time the Department was found in functional compliance.⁶⁸

Current Assessment of Compliance

In order to assess compliance during the current quarter, the Monitor interviewed PSB personnel and verified that the PSB had not conducted any investigations of misconduct against the Chief of Police for the time period January 1, 2003 through June 30, 2004.⁶⁹ It was further represented that, given the coding of complaints, it was not technically possible to run an automated database search to further verify the absence of such complaints.

⁶⁷The LAPD provided a listing of 11 complaints initiated during the selected time period that it classified as either initiated at the request of a prosecutor or via the request of a judicial proceeding (item d. above). However, the Monitor reviewed the related complaint face sheets and determined that all 11 were misclassified

⁶⁸ The Monitor originally found the LAPD in non-compliance with paragraph 96 in its Report for the Quarter Ending June 30, 2003. However, in its Report for the Quarter Ending December 31, 2003, the Monitor issued a correction as, in fact, the Police Commission (through the IG), and not the PSB, was conducting investigations of complaints against the Chief of Police during the quarter ending June 30, 2003. Accordingly, the Monitor's Report and Report Card for the Quarter Ending June 30, 2003, and the Monitor's Report Card for the Quarter Ending September 30, 2003, were amended to reflect a finding of compliance with paragraph 96 for the quarter ending June 30, 2003.

⁶⁹ Please refer to paragraph 145 for information regarding the Commission's investigation of complaints against the Chief.

Based on the forgoing, the Monitor finds the Department in functional compliance with paragraph 96.

Paragraph 99 – PSB Terms of Duty

Paragraph 99 requires the LAPD to establish a term of duty of up to three years for PSB Sergeants, Detectives and Lieutenants responsible for conducting investigations. The LAPD may reappoint an officer to a new term of duty only if that officer has performed in a competent manner. Such PSB investigators may be removed during their term of duty for acts or behaviors that would disqualify them from selection to PSB or under other personnel authority available to the Department.⁷⁰

Background

The Monitor last evaluated paragraph 99 during the quarter ending June 30, 2003, at which time the LAPD was found in compliance.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the “Limited Tour Assignment Report,” furnished by PSB, to identify those officers currently assigned to PSB that have requested an extension in their term of duty.⁷¹

Six months prior to the end of an officer’s current term, the officer is required to complete a Notification/Request form, which allows officers assigned to PSB to request: 1) a new assignment in a different section⁷² within PSB for 3 years; 2) an extension in the same assignment for 1 or 2 years; or 3) a transfer at the end of a 3 year assignment out of PSB.

The Monitor noted 11 investigating officers who requested reappointment in an investigative capacity once their current term had expired or was expected to expire. For all 11 officers, the Monitor noted that all appropriate approvals or denials were timely obtained and documented.

The Monitor determined that there were no PSB personnel removed for cause during the time period reviewed nor were any PSB personnel subject to a sustained complaint investigation for any disqualifying behavior during the same time period.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 99.

⁷⁰ Disqualifying behavior is defined in paragraphs 93 and 94.

⁷¹ The period reviewed was April 1, 2003 through March 31, 2004.

⁷² An investigator may elect assignment to either the Support Section or Advocate Section, both of which perform duties within PSB that do not involve the completion of investigations.

Paragraph 100 – PSB Evaluations

Paragraph 100 requires the Commanding Officer, PSB to evaluate investigators based on their competency in following the policies and procedures for Complaint Form 1.28 investigations. The PSB must provide regular periodic re-training and re-evaluation on topics relevant to their duties as investigators.

Background

The Monitor last evaluated paragraph 100 during the quarter ending June 30, 2003, at which time the LAPD was found in functional non-compliance.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the requirement of periodic re-training and re-evaluation on topics relevant to investigators assigned to the PSB during the period April 1, 2003 through March 31, 2004. The Monitor also reviewed course outlines,⁷³ timesheets and rosters of the ongoing training provided to PSB investigators during the same period.

The PSB provided four quarterly training sessions during the 12-month period selected for review. The Monitor determined that all 109 investigators assigned to PSB attended at least one training session for the review period. The Monitor noted that attendance was well documented. When an officer was not in attendance there was sufficient documentation supporting the absence.

Based on the foregoing, the Monitor finds the LAPD in secondary and functional compliance with the requirements of paragraph 100.

Recommendation

The Monitor reiterates its previous recommendation that a standard roster or attendance form be developed and used for all training courses, including a list of all officers who were not in attendance and the reason for their absence. In addition, the Monitor recommends that each officer sign his or her own name on the training attendance roster.⁷⁴

⁷³ A partial list of the Training Sessions for the period reviewed included the following subject matters: Access to Background Investigations presented by the City Attorney, Civilian Guide to Discipline, Civil Service Hearings, BSS Services, Search Warrant Protocol, CLETS Database, Investigative Techniques, Civil Rights Statutes presented by the DOJ, Miranda Rights, Workers Compensation Fraud presented by the District Attorney's Office, Duty Room Protocol, and Complaint Interview Representatives presented the Police Protective League.

⁷⁴ Several attendance rosters evidenced officer attendance through the use of a checkmark beside the officers' names. In one instance, an officer was shown to be in attendance even though another roster indicated that he was on vacation.

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 last assessed the LAPD's non-discrimination policy during the quarter ending March 31, 2004.

During the current quarter, the Monitor continued its assessment of the Department's compliance with its non-discrimination policy. The results of our current assessment follow.

Paragraphs 102 and 103 – Non-Discrimination Policy

Paragraph 102 requires that the Department continue to prohibit discriminatory practices in the conduct of law enforcement activities, specifically stops and detentions. Paragraph 103 requires adherence to LAPD policy prohibiting biased policing and allowing officers, when conducting stops or detentions or activities following stops or detentions, to take into consideration the race, gender, ethnicity, or national origin of (an) individual(s) only when engaging in suspect-specific activity.

Background

The Monitor last evaluated paragraphs 102 and 103 during the quarter ending March 31, 2004, at which time the Monitor withheld a determination of secondary and functional compliance with the provisions of the paragraphs. In its Report for the Quarter Ending March 31, 2004, the Monitor noted that until the propriety of the stops being made by LAPD is adequately determined, it remains difficult for both the Monitor and the Department to fully assess compliance with this paragraph.

Current Assessment of Compliance

As reported in the Monitor's previous quarterly reports, the data collected in the field and posted on the LAPD website for the periods July 1, 2002 through June 31, 2003 and July 1, 2003 through December 31, 2003 indicate that African Americans and Hispanics are much more likely than Caucasians to be patted down and subjected to a search after being stopped. The Monitor continues to acknowledge that the disparate treatment reflected in the statistics may be explained other than as an indication of biased policing and that additional analysis is required.

As reported previously, to facilitate further analysis, the Department has selected a vendor, Analysis Group, Inc. (Analysis Group) to develop a methodology to analyze the field data. During the current quarter, Analysis Group submitted its first deliverable, the Project Work Plan. The Plan was submitted timely and met the requirements of the Department, as defined by the Professional Services Agreement. The Monitor will report on the next project deliverables during the quarter ending September 30, 2004.

As in previous quarters, the Monitor withholds a determination of functional compliance for paragraphs 102 and 103 pending further analysis of the field data.

Paragraphs 104 and 105 – Motor Vehicle and Pedestrian Stops

Paragraphs 104 and 105 mandate that by November 1, 2001, officers are to collect field data each time they conduct a motor vehicle or a pedestrian stop.

Background

The Monitor last evaluated paragraphs 104 and 105 during the quarter ending March 31, 2004, at which time the Monitor found the Department in secondary compliance, but withheld a determination of functional compliance.

Current Assessment of Compliance

As reported in the Monitor's Report for the Quarter Ending March 31, 2004, the Monitor completed the first of a two-phase review of Daily Field Activity Reports (DFAR), Field Data Reports (FDR), citations, field interview cards, watch commander logs, sergeants logs, detention logs and any corresponding arrest paperwork from one watch from each of the 18 Areas and Metropolitan Division.⁷⁵ The purpose of this review was to assess whether officers are collecting field data when required, whether the collections are complete and whether the data accurately reflect field activity. The Monitor collected the paperwork prior to Supervisory review.

During the current quarter, the Monitor completed the second phase of this review, which involved determining whether errors and/or omissions identified by the Monitor were detected by the FDR coordinators or Supervisors during their respective reviews.

⁷⁵ The Monitor collected DFARs and related paperwork from all 18 areas and Metropolitan Division for Watch 3 on three different days. The Monitor selected three separate days so that collection of the paperwork, which the Monitor's representative personally handled, could occur immediately following the officers' shifts in order to prevent paperwork from being misplaced.

In total, the Monitor collected and reviewed 139 DFARs, the total number of DFARs completed for the third watch on the days selected by the Monitor.⁷⁶ The 139 DFARs produced 294 FDRs. The Monitor determined that, in general, FDRs are being completed as required. The review identified 13 instances⁷⁷ in which FDRs should have been completed but were not, resulting in a completion rate 96%.⁷⁸

Of the 294 FDRs completed, the Monitor identified 3 that contained inaccuracies and 6 that could not be located,⁷⁹ resulting in an accuracy/completion rate of 97%. Since the first phase of the Monitor's review identified 30 FDRs that contained errors, 21 of these FDRs were flagged and fixed subsequent to being processed through the STOP database⁸⁰. Accordingly, the second phase of the Monitor's review established that the supervisory review process in place is sufficient.

The Monitor's findings are consistent with the Department's calculation of the gross error rate for processed FDR forms, another component of functional compliance. The current Department-wide error rate is 1%. If the six FDRs that were misplaced and are considered missing contained no errors once processed through the STOP database, the FDR accuracy/completion rate would equal 99%.

Based on the foregoing, the Monitor finds the Department in functional compliance with paragraphs 104 and 105.

⁷⁶ The Monitor's review of the 139 DFARs was complicated by inconsistencies in the method by which officers complete the forms. The review was further hindered by poor penmanship.

⁷⁷ The Monitor identified several instances in which officers, in response to a radio call for a situation that was considered exempt from completing an FDR, encountered a different situation upon arrival at the scene, one that required completion of an FDR. The Monitor also identified instances in which the reverse occurred i.e. a call indicated a situation that would require completion of an FDR, but when an officer responded, the situation did not require the completion of an FDR. The Monitor's review established that there are no clear policies in place regarding whether the radio call or the situation, as identified by the responding officer, should take precedence in determining whether an FDR should be completed.

⁷⁸ The completion rate was calculated as the number of FDRs completed (294) / the number of FDRs that should have been completed (294 + 13, or 307).

⁷⁹ The hard copy FDRs, gathered by the Monitor, had errors or inadequate information. The Monitor requested the electronic/scanned version of these forms to check whether or not appropriate corrections had been made. The Department was unable to find the electronic/scanned version of these specific FDRs. Currently, the Department is investigating this issue.

⁸⁰ All corrected errors were caught by the STOP database; the 3 that were not corrected contained inconsistent information in comparison to the DFAR, field interview card and/or logs, which might have been detected with a more careful supervisory review.

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. The units, called Special Enforcement Units (SEU),⁸¹ report to the command staff in the stations where they are assigned, and receive support from Special Operations Support Division (SOSD),⁸² which has responsibility for monitoring gang units Department-wide.

The Department also established new monitoring procedures and instituted minimum eligibility requirements for SEU 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 SEU personnel.

In the Monitor's Report for the Quarter Ending December 31, 2003, the Monitor's assessment of the management of gang units focused on the selection process of SEU officers and supervisory review of sustained complaint or adverse judicial findings during an officer's assignment tour in the SEU.

During the current quarter, the Monitor again assessed the LAPD's management of gang units. The results of our current assessment follow.

Paragraphs 106a and 106h – Gang Coordination

Paragraph 106a mandates that all LAPD units primarily responsible for monitoring or reducing gang activity shall be assigned to an Area or Bureau, and managed and controlled by the Area or Bureau command staff. The Citywide and Bureau Gang Coordinators direct the bureau-wide and citywide activities of these units, provide training and technical assistance, and are involved in coordinating and providing information for the audits of these units.

Paragraph 106h requires Bureau Gang Coordinators to monitor and assess the operation of all units in their respective bureaus that address gang activity.

⁸¹ SEUs are now referred to as Gang Enforcement Details.

⁸² 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. Whenever the DSD is referred to in the Consent Decree and in this report, SOSD should generally be substituted.

Background

The Monitor last evaluated paragraphs 106a and h during the quarter ending September 30, 2003, at which time the LAPD was found in secondary and functional non-compliance.

Current Assessment of Compliance

In order to assess secondary and functional compliance with paragraphs 106a and h during the current quarter, the Monitor requested and reviewed the Bureau Gang Coordinator Inspections 1 and 10-12, 2004.

Civil Rights Integrity Division (CRID) provided the bureaus with a matrix and methodology, including sample size, to provide guidance prior to commencing the inspections and facilitate the review of the gang unit documentation.

Bureau Gang Coordinator Inspection 1, "Watch Commander Oversight of Arrest and Detention," was conducted in order to assess Gang Enforcement Details' (GED) compliance with paragraph 106e(i) regarding arrest and detention procedures. The Monitor found there was 92.4% accuracy when comparing the related work papers of these inspections to the arrest reports, booking recommendations and detention logs.

Bureau Gang Coordinator Inspection 10, "Arrest Reports (Quality)," was conducted in order to determine GED's compliance with paragraphs 70 and 106e(i) regarding procedures for arrests and inspections of detainees. The Monitor found there was 96.1% accuracy when comparing the related work papers of these inspections to the arrest reports, booking approvals, daily work sheets and Watch Commander's Daily Reports.

Bureau Gang Coordinator Inspection 11, "GED Supervisory Oversight," was conducted in order to determine GED's compliance with paragraphs 106e and 106f regarding gang unit procedures and supervisory oversight. The Monitor found there was 97.7% accuracy when comparing the related work papers of these inspections to the Supervisor's Daily Reports, GED's Daily Worksheet and Watch Commander's Daily Reports.

Bureau Gang Coordinator Inspection 12, "GED Tour Extensions," was conducted in order to determine GED's compliance with paragraphs 106a and d regarding tour limitations. The Monitor found there was 91.0% accuracy when comparing the related work papers of these inspections to the TEAMS Evaluation Report Forms and Personnel Tracking Forms. The Monitor notes that Bureau Gang Coordinators not only coordinate and provide information for the audit, but review and approve GED tour extensions, as required by 106d. The LAPD was in non-compliance with paragraph 106d due in part to the failure of Bureau Gang Coordinators and their command staff to obtain approval prior to extensions.

The Monitor also attended COMSTAT meetings in which the areas are held accountable for the discrepancies found in these Bureau Gang Coordinator Inspections. Supervisors are asked what

is being done to correct such deficiencies and to report at the following meeting with the results of such corrections.

Although two of the four Bureau Gang Coordinator Inspections reviewed were found to be in non-compliance, the Monitor commends LAPD for the great strides made in these inspections. The Monitor also commends the accountability process at the COMSTAT meetings, which is not a Consent Decree requirement. The Monitor acknowledges the initiative taken by the LAPD to hold their supervisors accountable for deficiencies.

Based on the foregoing, the Monitor finds the LAPD in secondary and functional non-compliance with the provisions of paragraphs 106a and h.

Paragraph 106b – Eligibility Criteria for Selection of Gang Non-Supervisory Officers

Paragraph 106b provides eligibility criteria for the selection of non-supervisory officers.

Background

The Monitor last evaluated compliance with paragraph 106b during the quarter ending December 31, 2004, at which time the LAPD was found in functional compliance.

Current Assessment of Compliance

In order to assess functional compliance with paragraph 106d during the current quarter, the Monitor requested and received a listing of non-supervisory officers selected to a gang unit during the period January 11, 2004 to April 3, 2004. In total, 14 non-supervisory officers were selected to a gang unit during that period. The Monitor reviewed the selection and personnel packages for all 14 non-supervisory officers. The Monitor determined that all 14 personnel packages and 13 selection packages⁸³ reviewed contained TEAMS I reports, Performance Evaluation Reports (PERs) and TEAMS Evaluation Reports, which demonstrated that each officer met the eligibility criteria required by this paragraph.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 106b.

Paragraph 106c – Eligibility Criteria for Selection of Gang Supervisors

Paragraph 106c establishes the eligibility criteria for selection of a supervisor in a gang unit.

⁸³ One non-supervisory selection package was misplaced.

Background

The Monitor last evaluated compliance with paragraph 106c during the quarter ending December 31, 2004, at which time the LAPD was found in functional compliance.

Current Assessment of Compliance

In order to assess functional compliance with paragraph 106c during the current quarter, the Monitor requested and received a listing of supervisors selected to a gang unit during the period January 11, 2004 to April 3, 2004. In total, 4 supervisors were selected to a gang unit during that period. The Monitor reviewed the selection and personnel packages for all 4 supervisors. The Monitor determined that the selection and personnel packages contained the officers' TEAMS I reports, PERs and TEAMS Evaluation Reports, which demonstrated that each supervisor met the eligibility criteria required by this paragraph.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 106c.

Paragraph 106d – Gang Unit Tour of Duty Limitations

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

Background

The Monitor last evaluated compliance with paragraph 106d during the quarter ending December 31, 2004, at which time the LAPD was found in functional non-compliance.

Current Assessment of Compliance

In order to assess functional compliance with paragraph 106d during the current quarter, the Monitor requested and received the SOSD tracking roster for officers' assignments to gang units through April 3, 2004. In total, 80 officers required extensions or transfers. The Monitor reviewed the documentation for all 80 officers, and determined that 100% of the officers who required approval signature by the Bureau CO for a 3-DP extension had such approval. However, the Monitor identified the following regarding documentation relating to extensions or transfers:

- 17% of the gang officers reviewed had not received approval for their extensions prior to the end of their tour.
- 12% of the gang officers reviewed did not have a TEAMS Evaluation Report as required for extension of a tour assignment and 9% did not have a TEAMS Evaluation Report as required for a transfer.

- 10% of the gang officers reviewed did not have the required approval signature by the Chief of Police for a 13-DP extension.
- 5% of the gang officers reviewed who transferred out of a gang unit failed to provide a Transfer 1.40 Form as required.

In addition to the aforementioned material issues regarding extension and transfer documentation, the Monitor identified the following administrative issues in connection with the TEAMS Evaluation Reports and SOSD tracking roster:

- 20% of the gang officers reviewed had a TEAMS Evaluation Report that was not accurately and completely filled out (e.g. employee due out and transfer dates not filled out on extension request, boxes checked for both transfer and selection when requesting extension, etc.).
- 7% of the gang officers reviewed had incorrect due out dates or extension dates, or their extensions were documented on the SOSD tracking roster prior to approval.

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with paragraph 106d.⁸⁴

Paragraph 106e(i) – Gang Unit Procedures

Paragraph 106 sets forth a series of requirements for officers who work within the SEU units. Paragraph 106e(i) mandates that unit supervisors and non-supervisory officers continue to be subject to existing procedures regarding detention, transportation, arrest, processing and booking of arrestees.

Background

The Monitor last evaluated paragraph 106e(i) during the quarter ending September 30, 2003, at which time the LAPD was found in secondary and functional compliance.

Current Assessment of Compliance

In order to assess functional compliance with paragraph 106e(i) during the current quarter, the Monitor requested and received materials relating to gang unit activities for a stratified sample of dates from DP 1-3, 2004.⁸⁵ Materials included Arrest Reports, Daily Worksheets, Daily Field

⁸⁴ The LAPD is in the process of developing a new computerized-tracking system to assist in tracking terms of duty for GED personnel. The Monitor has reviewed screen categories and reports for this system, but has not reviewed it for accuracy or functionality. The Monitor is scheduled to review this system during the quarter ending September 30, 2004.

⁸⁵ Deployment Periods 1-3, 2004 comprise January 11-April 3, 2004.

Activity Reports (DFARs), GED Supervisors' Daily Reports, Vehicle & Equipment Assignment Sheets, and Adult and Juvenile Detention Logs.

The Monitor reviewed the documentation provided to determine if officers were subject to existing procedures regarding detention, transportation, arrest processing and booking of arrestees. The Monitor determined that officers followed existing procedures and the Monitor determined that the Inspection Rate⁸⁶ for the sample reviewed was 94%.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 106e(i).

Paragraph 106e(ii), (iii) – Gang Unit Uniforms / Vehicles

Paragraphs 106e(ii) and (iii) mandate that unit supervisors and non-supervisory officers continue to wear Class A or C uniforms and use marked police vehicles for all activities.

Background

The Monitor last evaluated paragraphs 106e(ii) and (iii) during the quarter ending September 30, 2003, at which time the LAPD was found in secondary and functional compliance.

Current Assessment of Compliance

In order to assess secondary and functional compliance with paragraphs 106e(ii) and (iii) during the current quarter, the Monitor requested and received the materials described in the Current Assessment of Compliance for paragraph 106e(i) for a stratified sample of dates from DP 1-3, 2004. The Monitor reviewed Arrest Reports, GED Supervisors' Daily Reports and DFARs for language indicating whether the GED officers were in uniform and using marked police vehicles for all activities. The Monitor determined that the GED officers were in compliance 100% of the time.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraphs 106e (ii) and (iii).

Paragraph 106e(iv) – Gang Unit Kit Room

Paragraph 106e(iv) mandates that unit supervisors and non-supervisory officers continue to check out and return all field equipment from the Area kit room on a daily basis.

⁸⁶ The Inspection Rate is calculated as the number of arrestees or detainees inspected in accordance with paragraph 73 requirements / number of arrestees or detainees identified in the sample.

Background

The Monitor last evaluated paragraph 106e(iv) during the quarter ending September 30, 2003, at which time the LAPD was found in primary compliance, but in secondary and functional non-compliance.

Current Assessment of Compliance

In order to assess functional compliance with paragraph 106e(iv) during the current quarter, the Monitor reviewed selected material described in the Current Assessment of Compliance for paragraph 106e(i) for a stratified sample of dates from DP 1-3, 2003. The Monitor determined that 100% of the officers working in the field were accounted for on the Vehicle & Equipment Assignment Sheets for the deployment days selected for review. In addition, the Monitor compared the Vehicle and Equipment Assignment Sheets with the DFARs for officers' assignment and equipment numbers and determined that the records were consistent 94% of the time. In addition, 94% of the Assignment Sheets reviewed included the time equipment was returned,⁸⁷ as well as the employee's signature. Finally, 100% of the Assignment Sheets reviewed contained a supervisor's signature.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 106e (iv).

Paragraph 106e(v) – Gang Unit Patrol Roll Calls

Paragraph 106e(v) mandates that unit supervisors and non-supervisory officers continue to attend scheduled patrol roll calls.

Background

The Monitor last evaluated paragraph 106e(v) during the quarter ending September 30, 2003, at which time the LAPD was found in secondary and functional compliance.

Current Assessment of Compliance

In order to assess secondary and functional compliance with paragraph 106e(v) during the current quarter, the Monitor requested and received the materials described in the Current Assessment of Compliance for paragraph 106e(i) from a stratified sample of dates from DP 1-3, 2004. The Monitor reviewed DFARs and GED Supervisors' Daily Reports and determined that 100% of SEU officers attended scheduled patrol roll calls or received approval from appropriate managers for any deviation from this requirement.

⁸⁷ This established that the equipment was returned by end of watch.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 106e(v).

Paragraphs 106e(vi) and (vii) – Gang Units / Area Station Activities

Paragraphs 106e(vi) and (vii) mandate that unit supervisors and non-supervisory officers continue to base unit activities out of Area stations and not hold arrestees or interview witnesses at off-site locations at night.

Background

The Monitor last evaluated paragraphs 106e(vi) and (vii) during the quarter ending September 30, 2003, at which time the LAPD was found in secondary and functional compliance.

Current Assessment of Compliance

In order to assess secondary and functional compliance with paragraphs 106e(vi) and (vii) during the current quarter, the Monitor requested and received the materials described in the Current Assessment of Compliance for paragraph 106e(i) from a stratified sample of dates from DP 1-3, 2003. The Monitor reviewed Arrest Reports, DFARs and GED Supervisors' Daily Reports and determined that 100% of SEU officers based their unit activities out of their respective Area stations and did not hold arrestees or interview witnesses at off-site locations at night during the reviewed DPs.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraphs 106e(vi) and (vii).

Paragraphs 106f and 106g – Role of Gang Unit Supervisors and Area Managers

Paragraph 106f addresses the daily activities of gang unit supervisors, including providing a daily field presence and maintaining an active role in unit operations. Paragraph 106g requires Area managers to ensure that supervisors exercise proper control over these units and provide oversight over planned tactical operations.

Background

The Monitor last evaluated paragraphs 106f and g during the quarter ending September 30, 2003, at which time the LAPD was found in secondary and functional non-compliance.

Current Assessment of Compliance

In order to assess secondary and functional compliance with the paragraphs 106f and 106g during the current quarter, the Monitor requested and received the materials described in the

Current Assessment of Compliance for paragraph 106e(i) from a stratified sample of dates from DP 1-3, 2004. The Monitor reviewed selected materials and found the following regarding the daily activities of gang unit supervisors:

Material Findings

- Supervisors provided a field presence in 100% of the deployment days reviewed.
- Total supervisor field presence time was 48% of the possible field presence time reviewed.⁸⁸
- 100% of the entries on DFARs for gang officers listed specific details⁸⁹ of their activities rather than “gang suppression” or “did so.”
- Supervisors provided the required signature for the end of watch on 94% of the DFARs reviewed.

Administrative Findings

- 100% of the pedestrian stops recorded on the DFARs reviewed listed the corresponding field data report number.
- Officers initialed the last entry as required on 100% of the DFARs reviewed.
- 94% of the GED Supervisors’ Daily Reports contained the required supervisory signatures; 94% were approved and signed by the CO within a week of the deployment date.⁹⁰
- 100% of the DFARs reconciled with the corresponding GED Supervisors’ Daily Reports with regard to the amount of time supervisors spent in the field.
- Only 19% of the officers’ time spent on individual activities reconciled with the total watch time worked on the DFARs.⁹¹

Based on the foregoing, the Monitor finds the LAPD in secondary⁹² and functional compliance with paragraphs 106(f) and 106(g).

⁸⁸ The Monitor notes that there is no requirement for the minutes spent in the field, just a “daily active field presence,” which was found in 100% of the deployment days reviewed in this sample.

⁸⁹ The Monitor has previously noted that the blanket categorization of time as “gang suppression” or “did so” raises concern about officer accountability.

⁹⁰ Although there is no compliance requirement regarding when the supervisors’ daily reports must be approved, the Monitor recommends that for supervisory oversight of unit activities, a CO should review and approve these reports no later than 7 working days. The Monitor found one supervisors’ daily report that was approved 13 days later.

⁹¹ Although this percentage is low, the Monitor feels this administrative error is a matter of gang officers adding up their time worked more carefully and that this is something that can be reconciled quite easily by informing those officers of this issue in roll call.

Paragraph 107a and c – Gang Unit Eligibility Criteria

Paragraph 107a of the Consent Decree 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.

Paragraph 107c of the Consent Decree 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 evaluated compliance with paragraphs 107a and c during the quarter ending December 31, 2004, at which time the Monitor found the LAPD in functional non-compliance with paragraph 107a and withheld a determination of compliance with paragraph 107c.

Current Assessment of Compliance

In order to assess functional compliance with paragraphs 107a and c during the current quarter, the Monitor requested and reviewed the selection and personnel packages for four supervisors and 14 non-supervisory officers selected to a gang unit during the period January 11, 2004 to April 3, 2004.⁹³ The Monitor reviewed the documentation in the packages to determine whether the eligibility criteria for selection of officers included a positive evaluation based upon the officers' relevant and appropriate TEAMS I record. None of the supervisors and non-supervisory officers selected to gang units during this time period had a sustained administrative investigation, adverse judicial finding or discipline for the types of behavior delineated in these paragraphs. However, as described in the Current Assessment of Compliance for subparagraphs 51b, above, and 107b, below, 22% of TEAMS I reports were either not included in the packages or were dated after the respective officers were selected to a gang unit.

The Monitor also reviewed the officers' and supervisors' personnel packages and TEAMS I records from the time of selection to the gang unit through the end of this quarter, June 30, 2004, to assess the requirements of paragraph 107c. The Monitor found that none of the officers' had

⁹² The Secondary compliance finding is a result of training issues being regularly reinforced during roll calls and attendance at gang officer training meeting Consent Decree requirements.

⁹³ These were the same packages selected and reviewed in connection with the compliance assessments for paragraphs 106b and c, above.

any sustained complaint, adverse judicial finding or discipline for the types of behavior delineated in these paragraphs that would require a supervisory review of the incident and a written determination as to whether or not the officer should remain in the unit.

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

Paragraph 107b – Selection Process for Gang Unit Personnel

Paragraph 107b of the Consent Decree 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.

Background

The Monitor last evaluated compliance with paragraph 107b during the quarter ending December 31, 2003, at which time the LAPD was found in functional non-compliance.

Current Assessment of Compliance

In order to assess functional compliance with paragraph 107b during the current quarter, the Monitor requested and reviewed the selection and personnel packages for four supervisors and 14 non-supervisory officers selected to a gang unit during the period January 11, 2004 to April 3, 2004.⁹⁴

The Monitor's review established that 100% of the selection packages included the most recent Performance Evaluation report and a Transfer Application Data sheet, which is a formal, written application completed by the applicant. However, the Monitor found the following regarding the requirement of oral interviews and review of TEAMS I reports:

- 94% of the selection packages reviewed included a TEAMS I report. However, 18% of the TEAMS I reports were dated after gang personnel were selected to a gang unit.⁹⁵
- 94% of the selection packages reviewed included a TEAMS Evaluation Report. However, 12% of the TEAMS Evaluation Reports did not include either a supervisor or COs' signature and 6% indicated that they were completed after gang personnel were selected to a gang unit.

⁹⁴ These were the same packages selected and reviewed in connection with the compliance assessments for paragraphs 106b and c and 107 a and c, above.

⁹⁵ Overall, 22% of the selection packages reviewed either failed to include a TEAMS I report or included a TEAMS I report that was dated after selection.

- The selection packages for 17% of the supervisor and non-supervisory officers reviewed did not contain documentation that an oral interview took place.

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with paragraph 107b.

V. CONFIDENTIAL INFORMANTS

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

The Monitor last evaluated the Department's management of confidential informants (CI) and assessed compliance with the CI-related provisions of the Consent Decree during the quarter ending March 31, 2004.

The Monitor will again assess compliance with the Consent Decree's requirements regarding confidential informants during the quarter ending September 30, 2004.

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. In addition, the Department is 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 will track and report on the Department's progress with its Mental Illness Program during the quarter ending September 30, 2004. During the current quarter, the Monitor reviewed the status of the Department's Audit of Police Contact with the Mentally Ill. The results of our current assessment follow.

Paragraph 113 – Audit of Police Contact with Mentally Ill

Paragraph 113 requires the Department to complete an 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,⁹⁶ or within 32 months after the effective date of the Consent Decree. This audit shall evaluate any new policies, procedures and training methods implemented pursuant to paragraph 112, and specify any additional modifications in the Department's policies, procedures or training to meet the objectives in paragraph 112.

Background

No audits have been submitted related to paragraph 113.

Current Assessment of Compliance

The LAPD's initial report to the Police Commission concerning the Mental Illness Project was submitted by July 15, 2002, which means that the Department was required to complete an audit by February 15, 2004 (32 months after the effective date of the Consent Decree). Although the fieldwork for this audit has apparently been completed, the report was not finalized by June 30, 2004.⁹⁷

Based on the foregoing, the Monitor finds the Department in non-compliance with paragraph 113.

⁹⁶ As required by paragraph 112.

⁹⁷ The audit was completed in July 2004 and the audit report was submitted to the Monitor in early August. The Monitor is scheduled to evaluate the audit during the quarter ending September 30, 2004. The Department has indicated that additional compliance measures were recently taken in connection with paragraph 113, including changes to the mental illness program that were approved by the Police Commission on May 18, 2004 and the June 2004 expansion of the System-wide Mental Assessment Response Team and the Mental Evaluation Unit. The Monitor will also evaluate these efforts during the quarter ending September 30, 2004.

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, who are assigned to work with a probationary officer out of academy throughout the probationary period. Consent Decree requirements are intended to ensure that the officers chosen to be FTOs, who are essentially responsible for the professionalism, skill and quality of the future Department, are, themselves, qualified and appropriately trained to educate newer members of the LAPD.

In the Monitor's Report for the Quarter Ending September 30, 2003, the Monitor assessed the quality of training provided to FTOs, as well as the process in place for FTO de-selection.

The Monitor is scheduled to again evaluate the provisions of the Consent Decree relating to the FTO program during the quarter ending September 30, 2004.

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.

During the quarter ending March 31, 2004, the Monitor continued its assessment of the Department's police integrity training, as well as the training of the public members who serve on the Board of Rights and the communication of training suggestions to the LAPD Training Group.

During the current quarter, the Monitor again assessed the Department's training of the public members who serve on the Board of Rights. The results of our current assessment 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

A training program was delivered by PSB on January 15, 2004 for all civilian and sworn members of the Board of Rights. In its Report for the Quarter Ending March 31, 2004, the Monitor withheld a determination of compliance with paragraph 118 pending a review of the training curriculum.

Current Assessment of Compliance

During the current quarter, the Monitor assessed the training curriculum for the public members on the Board of Rights. The Monitor determined that the curriculum does not provide the level of detail necessary to adequately train a civilian. Civilian members, unlike their sworn member counterparts, do not have prior knowledge of the law, investigations, or LAPD policies and procedures. The curriculum fails to take this into account.

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

Proposed Recommendation

The Monitor recommends that the LAPD develop a formal curriculum to provide more detailed and extensive training to civilians pursuant to paragraph 118.

C. SUPERVISORY TRAINING

The Consent Decree mandates that all officers promoted to supervisory positions receive training prior to assumption of their new responsibilities.⁹⁸ Once promoted, supervisors should continue to receive regular training on key issues, including incident control, UOF Investigations, Complaint Investigations, and ethical decision-making. The Consent Decree also requires the Department to ensure that supervisors who conduct investigations receive relevant training.

During the quarter ending September 30, 2003, the Monitor assessed the Department's compliance with the Consent Decree requirements to provide regular supervisory training and to provide supervisory investigations training. The Monitor found the Department in compliance with the former requirement but in non-compliance with the latter requirement. The Monitor assessed the Department's compliance with supervisory training requirements for officers promoted to supervisory positions during the quarter ending December 31, 2003, at which time the Monitor found the Department in compliance.

⁹⁸ 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.

During the current quarter, the Monitor again reviewed the Department's compliance with supervisory investigations training requirements. The results of our current assessment follow.

Paragraph 123 – Supervisory Investigations Training

Paragraph 123 mandates that the Department 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 evaluated paragraph 123 during the quarter ending September 30, 2002, at which time the Department was found in functional non-compliance due the fact that it had not yet developed the training curriculum required by the paragraph.

Current Assessment of Compliance

During the current quarter, the Department's Continuing Education Division (CED) completed the development of the NCUOF Training, incorporating the Department's new NCUOF policy,⁹⁹ as well as training on the investigation of personnel complaints.

In order to assess functional compliance with paragraph 123 during the current quarter, the Monitor reviewed the training curriculum and found it to be thorough, timely and relevant.¹⁰⁰ In order to measure consistency in content and quality of instruction, the Monitor attended seven different training sessions, each of which was taught by a different team of instructors.¹⁰¹ Through attendance at the training sessions, the Monitor determined that the quality of the NCUOF training improved over time as a result of the Department's finalization¹⁰² of its NCUOF order. While it was ill advised to begin training on a policy that had not been finalized and that could not be provided to the officers in hard copy,¹⁰³ once the policy was finalized, the changes to the training were minimal. As a result, and despite the problems identified in the

⁹⁹ The Department's new NCUOF policy streamlines the Supervisor's investigation writing process to four pages by incorporating the Officer's arrest report into the Supervisor's review. Because the arrest report is integrated into the Supervisor's NCUOF report, Supervisors are spending more time reviewing Officers' arrest packages. Another positive result of the new policy is that Supervisors are freed up to spend more time supervising their officers in the field.

¹⁰⁰ The fact patterns for the table top exercises were developed from real issues and/or incidents that have arisen in the field and were problematic for officers and supervisors.

¹⁰¹ The training was typically taught in teams of two; in some instances, the training was taught by one instructor.

¹⁰² The policy was finalized on June 11, 2004.

¹⁰³ Prior to the order being finalized, instructors hesitated to be definitive in their instruction regarding the new policy.

early training sessions, the Monitor concludes that, overall, the training complied with Consent Decree requirements.

In order to determine whether Supervisors were attending the training required by paragraph 123, the Monitor requested and received a list of 2,417 Supervisors¹⁰⁴ who are required to attend the training. Using statistical sampling, the Monitor selected for review a random sample of 129 Supervisors. The Monitor determined that 128 supervisors had received the NCUOF Training, resulting in a compliance rate of 99%.

The Monitor notes that while attending two training sessions in early June, Monitor staff and DOJ personnel overheard several Supervisors making snide and inappropriate comments relative to the training and the required performance of their duties. Upon notice of these remarks, the Department not only dealt with the specific situations,¹⁰⁵ but the Chief and other senior officers sent a clear and resounding message to the members of the Department that the sentiments expressed during these classes would not and should not be tolerated by any member of the LAPD.¹⁰⁶ The Monitor commends the Department on its efforts to comprehensively address these issues. The efforts made by the Department and the Chief of Police clearly demonstrate their commitment to reform.

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

¹⁰⁴ Supervisors include the following ranks: DII, DIII, Sgt I, Sgt. II, Lt. I, Lt. II, Capt. I, Capt. II, Capt. III, Commanders, Deputy Chiefs, Assistant Chiefs and the Chief.

¹⁰⁵ For example, the Chief met privately with a Supervisor who made one of the comments.

¹⁰⁶ LAPD leadership's efforts in this regard included holding two meetings with all training coordinators and all NCUOF instructors on the issues raised by the Monitor and DOJ. He first meeting was held on June 10th. During these meetings, trainers were instructed that they must take responsibility for their classrooms, establish a professional environment and address unprofessional behavior directly. Members of the command staff also agreed to attend the remaining training sessions so that they may have a hand in setting the tone and standard of professionalism. In addition, a strict class size policy of 30-35 was enforced, providing instructors with the ability to hear what is going on in the classroom. Finally, the Chief held a meeting on this issue with all of the Command staff on June 15th and circulated a letter on June 29th and a 'Code 20' video on August 4th to all members of the Department reiterating his commitment to the principle that all members of the Department must demonstrate professionalism and respect, in the field, as well as in the classroom. The Chief clearly stated that the behavior described to him was "unnecessary and unacceptable" and that "openness and transparency to the community must be reflected both inside the confines of our organization, including the classroom, as well in our field contacts."

VIII. INTEGRITY AUDITS

The audit processes of both the LAPD and the OIG are important components 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 search warrants, arrests, UOF, racially biased policing, CIs, complaints, gang units, financial disclosure, and police training. Each audit examines a variety of issues, but a common theme among all 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.

In the first two years of the Consent Decree, the LAPD struggled with the requirement to complete quality audits on a timely basis. Although the LAPD continues to struggle with insufficient audit resources, during the last few quarters, the Monitor noted improvements in both the quality and timeliness of the Department's audits, and the Department has now completed a total of 11 quality audits, as set out below:

<i>Timing of Monitor's Evaluation</i>	<i>"Quality" Audits Completed by the LAPD¹⁰⁷</i>	<i>Paragraph Reference(s)</i>
Sept. 30, 2002	Warrant Applications & Affidavits Audit	CD128(1)
Dec. 31, 2002	ABC Reports Audit	CD128(2)
Sept. 30, 2003	CI Control Packages Audit	CD128(5)
Dec. 31, 2003	MV&PS Audit	CD128(4)
Dec. 31, 2003	GED Work Product Audit	CD131a
Mar. 31, 2004	GED Work Product Audit	CD131a
June 30, 2004	Warrant Applications & Affidavits Audit	CD128(1)
June 30, 2004	ABC Reports Audit	CD128(2)
June 30, 2004	NCUOF Reports/Investigations Audit	CD128(3) & CD129ii
June 30, 2004	Complaints Investigations Audit	CD129iii
June 30, 2004	GED Work Product Audit	CD131a

In previous quarters, the Monitor expressed concern about the OIG's untimely and deficient reviews/independent audits. The Monitor is pleased to report that the OIG has stepped up its efforts to eliminate the backlog of required reviews and independent audits; however, the Monitor's concerns over the quality of the OIG's work persist.

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 was subsequently incorporated into the Consent Decree. The Consent Decree mandates that prior to the beginning of each fiscal year, the Chief of Police is required to submit to the Police Commission, with a copy to the IG, a listing of all scheduled audits to be conducted by the LAPD in the upcoming fiscal year, other than sting audits.

The Monitor evaluated the Department's 2002-03 Annual Audit Plan during the quarter ending September 30, 2002 and assessed the LAPD's progress relative to that plan during the quarter ending March 31, 2003. The Monitor evaluated the Department's 2003-04 Annual Audit Plan

¹⁰⁷ Although the GED Work Product Audits were quality audits, they were non-compliant because they were performed by Audit Division rather than by the SOSD. Although the Monitor endorses Audit Division performing such audits, until the Consent Decree is amended, the Monitor must find the Department in non-compliance for such audits. The City and DOJ are currently working on modifying the Consent Decree to effectuate this change.

during the quarter ending September 30, 2003. In each of these reports, the Monitor concluded that the Department was in non-compliance relative to paragraph 124.

The Monitor was originally scheduled to assess the LAPD's progress relative to the 2003-04 Annual Audit Plan during the current quarter, and to also evaluate the Department's 2004-05 Annual Audit Plan. Although the LAPD's 2004-05 Annual Audit Plan has been submitted to the Police Commission, the Monitor understands that certain aspects of this plan are being clarified. Accordingly, the Monitor is deferring assessing this paragraph until the quarter ending September 30, 2004, at which time the Monitor will fully assess the preceding year (2003-04) and also assess the Annual Audit Plan for the upcoming year (2004-05).

B. AUDITS BY THE LAPD

During this quarter, the Monitor assessed the quality and/or timeliness of the following audits:

- Paragraph 128(1) – Warrant Applications and Affidavits Audit
- Paragraph 128(2) – Arrest, Booking & Charging Reports Audit
- Paragraphs 128(3) & 129ii – Non-Categorical Use of Force Reports/Investigations Audit
- Paragraph 129iii – Complaint Form 1.28 Investigations Audit
- Paragraph 131a – Gang Unit Work Product Audit
- Paragraph 131a – Supplemental GED Work Product Patterns Audits
- Paragraphs 131c-1, c-3, c-4 and c-5 – Gang Unit Warrant Applications and Affidavits Audit, Use of Force Reports Audit, Motor Vehicle and Pedestrian Stop Audit and Confidential Informant Control Packages Audit

Paragraph 128(1) – Warrant Applications and Supporting Affidavits Audit

Paragraph 128(1) requires the Department to complete a regular, periodic audit of stratified random samples of warrant applications and supporting affidavits. 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.

Background

On June 21, 2001, Criminal Intelligence Group completed a Department-wide audit of warrants and supporting affidavits. In its Report for the Quarter Ending December 31, 2001, the Monitor concluded that this audit was deficient and was therefore non-compliant with the requirements of the Consent Decree.

Audit Division completed another warrants and supporting affidavits audit in July 2002. In its Report for the Quarter Ending September 30, 2002, the Monitor concluded that this audit was compliant with the requirements of the Consent Decree. This was Audit Division's first compliant audit.

Subsequent to this, the Monitor found the Department in non-compliance with paragraph 128(1) for two consecutive quarters from September 30, 2003 to December 31, 2003, because the Department did not complete another warrants audit on a regular, periodic basis.

Current Assessment of Compliance

In order to assess compliance with paragraph 128(1) during the current quarter, the Monitor reviewed Audit Division's Warrants Audit report submitted March 30, 2004. The Monitor also reviewed selected Audit Division working papers including work plans, crib sheets, matrices and other related documents.

Audit Division selected a stratified random sample of 76¹⁰⁸ LAPD warrants from a total population of 175 warrants issued in DP 11 (i.e., October 15 to November 19, 2003). This audit did not specifically exclude gang unit warrants, nor did it separately analyze and report on the findings from any gang unit warrants.

The Monitor obtained and reviewed a random sample of 43 warrants in Audit Division's sample.¹⁰⁹ The Monitor's findings, which have been reviewed with Audit Division, are highlighted below:

- Due to the absence of an automated tracking system, Audit Division was unable to confirm the completeness of the warrant population for DP11. However, the Monitor commends Audit Division¹¹⁰ for the procedures taken in attempting to identify the completeness of the population.
- The workplan, crib-sheet, and audit matrix questionnaire were appropriate to evaluate the requirements of paragraph 128(1).
- Audit Division's sample selection and sample replacement methodology was performed correctly and was well-documented.

¹⁰⁸ Only 75 warrants were reviewed by Audit Division. The 76th warrant was a Narcotics Division warrant, but the affiant for this warrant was not an LAPD officer, and there were no other Narcotics Division LAPD warrants issued in DP11. Accordingly, a suitable replacement for the Narcotics Division warrant was unavailable. The Monitor endorses this methodology, and agrees that a replacement was unavailable.

¹⁰⁹ This sample size was selected using a plus or minus 4% error factor.

¹¹⁰ These procedures included sending correspondence and follow up to all divisions to obtain the warrant tracking logs, and testing warrants identified in previous audits (i.e., ABC audit, and SEU Work Product audit) to ensure they were captured in the warrant tracking logs.

- Audit Division concluded that the Department is non-compliant with the objectives tested for paragraph 128(1), as only 79% of the warrants met all of the paragraph's requirements. The Monitor concurs with Audit Division's overall finding but noted two discrepancies that impact their quantitative conclusion.¹¹¹
- The resolution of discrepancies and follow-up procedures performed by Audit Division were well-documented in the audit working papers.
- Audit Division's audit report was well-written, summarized the audit findings effectively and presented appropriate actions taken and recommendations to address the deficiencies identified.

Based on the foregoing, the Monitor finds this audit in compliance with the requirements of paragraph 128(1).

Paragraph 128(2) – Arrest, Booking & Charging Reports Audit

Paragraph 128(2) requires the Department to conduct regular, periodic audits of stratified random samples of Arrest Booking and Charging (ABC) reports. Paragraph 128 further requires that such audits include completeness, authenticity and consistency of the information contained; appropriateness, legality and conformance with Department policies; and supervisory oversight of the applicable incident or post-incident review.

Background

In June 2001 and December 2001, Audit Division completed its first and second Department-wide audits of ABC reports. The Monitor concluded that both audits were non-compliant with the requirements of paragraph 128(2) because collected data was not critically analyzed in the first, and the second had several audit-related deficiencies notwithstanding Audit Division's marked improvement in identifying substantive issues.

On September 15, 2002, Audit Division completed its third Department-wide ABC reports audit, and was found to be in functional compliance as reported in the Monitor's Report for the Quarter Ending December 31, 2002. The scope of that audit did not specifically address the supervisory oversight requirements of paragraph 128(2) as related to paragraph 70b arrests,¹¹² such requirements were deferred to a supplemental audit that was completed on December 16, 2002

¹¹¹ Audit Division failed to identify one instance in which the commanding officer's documentation of the supervisor's response to the warrant service was completed more than seven days after the incident. Audit Division correctly identified another instance in which a Receipt for Property Taken into Custody Form was not issued but failed to include this finding when evaluating the completeness of the warrant package.

¹¹² Paragraph 70(b) requires the evaluation of supervisory oversight of incidents where a person is charged with interfering, resisting arrest, or assaulting a police officer, to determine if there are any issues or concerns regarding training, policy, or tactics.

and evaluated by the Monitor during the quarter ending March 31, 2003. The Monitor withheld a determination of compliance related to this supplemental audit because of interpretational issues related to the scope of that audit.¹¹³

Current Assessment of Compliance

In order to assess compliance during the current quarter, the Monitor reviewed Audit Division's ABC Reports Audit (Juvenile Detention Procedures Included) dated March 30, 2004 and a supplemental audit of ABC Reports dated June 24, 2004 relative to Form 10.10 Receipts for Property Taken Into Custody. In addition, the Monitor reviewed a correction letter to the Police Commission dated May 11, 2004, the audit workplan, matrices and cribsheet, as well as selected arrest reports and completed matrices.

Audit Division drew its audit population solely from narcotics-related arrests¹¹⁴ during the period September 1, 2003 to November 30, 2003. A query of the LAPD's arrest database identified a total of 2,775 narcotics-related arrest incidents from which Audit Division randomly selected a total of 155 arrests for review.¹¹⁵

The Monitor was initially concerned with the scope restriction associated with solely selecting narcotics-related charges, but ultimately concluded that this restricted scope resulted in a focused and efficient audit with no officer group being excluded from review, and with useful coverage of key risk management issues related to narcotics seizures and Miranda rights. Audit Division has advised that the scope of the next ABC reports audit will include all types of arrests.

Audit Division concluded that the Department was not in overall compliance with the objectives tested via paragraph 128(2) primarily because 20% of the officers tested failed to document verbatim Miranda responses and 20% of the supervisors tested failed to perform appropriate post-incident supervisory oversight. In addition, the supplemental audit revealed that 31% of the arrest packages were missing a receipt for property taken into custody (Form 10.10).

¹¹³ The Monitor's view was that paragraph 70b required Watch Commanders to review for training, policy and tactics for *all* arrests where the arrest report articulates *elements of* obstructing or interfering with an officer in the performance of their duties, resisting arrest, delaying or obstructing an officer, assaulting a police officer, or challenging a police officer to a fight; the Department's view was that paragraph 70b required such supervisory oversight for only those arrests where such charges were actually made or the probable cause to arrest was based on such charges.

¹¹⁴ Health and Safety Code sections 11350, 11351.5, 11357(B), 11359, 11377, 11378 and 11364. These cover charges for possession or sales of various narcotics or narcotics paraphernalia.

¹¹⁵ Based on a one-tail test, 95% confidence level with +/-4% error rate, a sample size of 93 arrest incidents was determined. Audit Division's final sample totaled 155 arrest reports, after consideration of multiple arrests and rounding.

In order to assess Audit Division's findings, the Monitor randomly selected a sample of 51 arrest incidents, which related to a total of 71 arrest reports, including multiple arrests.¹¹⁶ The Monitor's findings, which have been reviewed with Audit Division, are highlighted below:

- Other than a few interpretational issues that were subsequently resolved through discussions with Audit Division, the Monitor's testing did not identify any issues that were not identified by Audit Division. Accordingly, the Monitor concurs with Audit Division's findings.
- Audit Division's audit population determination and sample selection process was appropriate.
- As in its prior audit, Audit Division extended its review beyond the requirements of the Consent Decree and assessed the arrest and detention procedures of juveniles. The Monitor commends Audit Division for evaluating this topic, and concurs with Audit Division's findings.
- Although the scope of this audit included a question to test the supervisory oversight requirements of paragraph 128(2) as related to paragraph 70b arrests, there were no such arrests included in the scope of this audit.
- The findings for each audit objective were concisely and appropriately reported. A summary table clearly presented the compliance percentage findings by audit objective.
- Audit Division appropriately assessed the status of implementation of the six recommendations included in its previous audit.

Based on the foregoing, the Monitor finds this audit in compliance with the requirements of paragraph 128(2).

Paragraphs 128(3) & 129ii – 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 Non-Categorical Use of Force reports/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.

Background

Audit Division 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

¹¹⁶ Based on a +/-4% error rate.

requirements of the Consent Decree because of a flawed audit process and the failure of Audit Division 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 regular periodic NCUOF audit.

On August 22, 2003 Audit Division completed a Primary and Supplemental NCUOF Reports Audit, which reported on NCUOF incidents that occurred from January to June 2002. In light of the staleness of the audit data, the Monitor found this audit in non-compliance with Paragraphs 128(3) and 129ii, but noted that the audit was diligently completed and thorough. The Monitor indicated that, but for the staleness of the data, the audit would have been in compliance.

On December 30, 2003 Audit Division completed its third NCUOF Report Audit, which reported on 150 NCUOF incidents that occurred in February 2003. In the Monitor's Report for the Quarter Ending March 31, 2004, the Monitor withheld a determination of compliance as the Monitor's findings were based on a limited sample of 14 reports that were selected using a confidence interval of 95% and a plus or minus 10% error factor.

Current Assessment of Compliance

In order to assess compliance with paragraphs 128(3) and 129ii during the current quarter, the Monitor obtained and reviewed an additional 45 NCUOF reports that were part of Audit Division's NCUOF Reports Audit report submitted December 30, 2003, in addition to the 14 NCUOF reports reviewed by the Monitor in the previous quarter.¹¹⁷ The Monitor also reviewed selected Audit Division working papers including work plans, crib sheets, matrices and other related documents and available interview tapes.

The Monitor's general findings and findings from its review of the Monitor's first sample of 14 NCUOF reports are discussed in the Monitor's Report for the Quarter Ending March 31, 2004. The Monitor's findings relating to its review of the additional 45 NCUOF reports are highlighted below:

- The additional reports reviewed in this extended sample support Audit Division's conclusion that the Department is producing more thorough, analytical NCUOF reports.
- The Monitor identified one instance in which the witness statements in the UOF report state that all interviews were conducted independently, while, in the tape for this incident, the investigating officer begins the interviews of two non-Departmental witnesses with "Gentlemen what happened here?" and then the two witnesses simultaneously responded. Audit Division did not identify this issue as an anomaly.

¹¹⁷ The total sample size of 59 NCUOF reports was chosen using a confidence interval of 95% and a plus or minus 4% error factor.

- The Monitor identified one instance in which a supervisor who either directed or observed the UOF was involved in conducting interviews.¹¹⁸¹¹⁹ These interviews were not taped-recorded, nor were they required to be tape-recorded.
- The above two issues relate to the “adequacy of the investigation” audit objective. These issues, together with one of the issues identified in the Monitor’s previous quarterly report, represent anomalies in 3 of the 59 NCUOF incidents examined by the Monitor, or 5.1%.
- The Monitor identified one instance with inappropriate cutting and pasting.¹²⁰ The Monitor has discussed what constitutes inappropriate cutting and pasting with Audit Division on numerous occasions. Audit Division believes that given the previous lack of Department policy in this area and the fact that they have identified cutting and pasting as an issue in this and previous audit reports, they have addressed the concern. The Monitor notes that the LAPD has recently issued a revised Special Order 13 on NCUOF Reporting dated May 26, 2004 which eliminates the need for statements from officers and witnesses, thereby eliminating the need to address the topic of cutting and pasting any further.
- Overall, based on the findings described above, as well as the findings in the Monitor’s previous quarterly report, the Monitor found this audit in compliance with each of the audit objectives for this audit:
 - Completeness of NCUOF report 100% compliant
 - Authenticity 98% compliant (1/59 non-compliant)
 - Evaluation of the actions taken 100% compliant
 - Supervisory oversight 100% compliant
 - Timeliness of the investigation 100% compliant
 - Completeness of the investigation file 98% compliant (1/59 non-compliant)
 - Adequacy of the investigation 95% compliant (3/59 non-compliant)

Based on the foregoing, as well as the findings reported in the Monitor’s previous quarterly report, the Monitor finds this audit in compliance with the requirements of paragraphs 128(3) and 129ii.

¹¹⁸ The sergeant provided assistance to the officers and directed the UOF, then canvassed for witnesses and conducted 2 interviews of witnesses on his own and 2 interviews with the investigating supervisor. The Monitor believes it was appropriate for the sergeant to help canvass for witnesses but not appropriate for him to conduct the interviews. Audit Division indicated that due to the requirement for a large number of witnesses to be interviewed, it was acceptable for this sergeant to interview non-Departmental witnesses regarding what they saw during the incident.

¹¹⁹ This was in addition to the two investigations identified in the last quarterly report in which individuals who had planned and been involved in a UOF incident also conducted interviews. The interviews in question were not required to be tape-recorded. Although Audit Division did not specifically identify one of these incidents, there were other similar problems with that particular UOF incident that had already been identified by Audit Division.

¹²⁰ This is in addition to the instance of inappropriate cutting and pasting identified in the Monitor’s last quarterly report.

Paragraph 129iii – Audit of Complaint Form 1.28 Investigations

Paragraph 129iii requires the Department to conduct regular, periodic audits of random samples of all Complaint Form 1.28 investigations. This paragraph also describes the qualitative factors that should be assessed in such audits, including the requirement to assess the timeliness of completing the investigation,¹²¹ the completeness of the investigation file, the accuracy of the investigator's statement summaries, the adequacy¹²² of the investigation, and the appropriateness of PSB's determinations relative to who shall conduct the investigation.¹²³

Background

For each of the four quarters ending June 30, 2002 through March 31, 2003, the Monitor found the LAPD in functional non-compliance with paragraph 129iii because the LAPD had not completed a regular, periodic audit of Complaint Form 1.28 investigations.

On April 30, 2003, Audit Division issued an "Interim Report on the Status of the Department's Efforts to Comply with the Consent Decree Mandates for the Management of Personnel Complaint Investigations" that provided synopsis findings and recommendations related to improving certain deficiencies with the LAPD's complaint investigation process; however this was not an audit, nor was it intended to meet the requirements of paragraph 129iii. Accordingly, although Audit Division's report was useful, the Monitor concluded that the LAPD continued to be in non-compliance with paragraph 129iii for the quarter ending June 30, 2003.

Current Assessment of Compliance

In order to assess compliance with paragraph 128iii during the current quarter, the Monitor reviewed Audit Division's Complaint Form 1.28 Investigations Audit report submitted March 30, 2004, a Correction to the Complaint Investigations Audit dated June 22, 2004, planning documents related to this audit, and selected complaint investigation reports, tapes and supporting documents, and the corresponding audit matrices. The Monitor's findings, which have been reviewed with Audit Division, are highlighted below:

Scope of Review

Audit Division utilized five separate audit populations to evaluate the objectives in this audit. These multiple populations were utilized to enable Audit Division to evaluate different types of complaints separately, and to enable Audit Division to utilize more current data to evaluate certain audit objectives. The Monitor applauds this initiative to bring greater currency to its

¹²¹ As required by paragraph 87.

¹²² As required by paragraphs 80-86.

¹²³ As required by paragraphs 79 and 93-95.

audit findings. The following table identifies the five audit populations and sample sizes used by Audit Division and the Monitor:

<i>Pop'n</i>	<i>Audit Population</i>	<i>Audit Objective(s)</i>	<i>Population Size</i>	<i>Audit Division Sample Size¹²⁴</i>	<i>Monitor's Sample Size¹²⁵</i>
1	All CFs ¹²⁶ (excluding FTA/FTQ/PTCs ¹²⁷) completed Aug 2003	Completeness, accuracy & adequacy of inv'n, resolution & follow-up ¹²⁸	537	30	24
2	All FTA/FTQ/PTCs completed Aug 2003	Same as for population #1	491	30	24
3	All CFs initiated Jan-Mar 2003	Timeliness of completion	987	88	47
4	All CFs (excluding FTA/FTQ/PTCs) initiated Aug 2003	Assignment of investigating entity	308	74	42
5	All CUOF CFs initiated Oct 2003 – Jan 2004	Past history review	8	8	8
				230	145

Audit Division's Conclusions

Audit Division concluded that although most complaint investigations met Department policy and Consent Decree requirements, the Department was non-compliant overall as only 85.1% of the reports met all of the requirements. Audit Division also provided specific compliance conclusions related to each of the objectives evaluated in this audit, namely that the Department was compliant with all but the following 3 areas of concern: only 31 of 88 investigations (35%)

¹²⁴ All Audit Division samples were randomly selected based on a one-tail test, a 95% confidence interval and a 94% success rate factor. Populations 1 and 2 used a +/-7% error rate and Populations 3-5 used a +/-4% error rate.

¹²⁵ With the exception of Population 5, the Monitor's samples were randomly selected based on a one-tail test, 95% confidence interval, a 94% success rate factor, and a +/-4% error rate.

¹²⁶ CFs: Complaint Form 1.28 investigation reports.

¹²⁷ FTA: Failure to Appear; FTQ: Failure to Qualify; PTC: Preventable Traffic Collisions.

¹²⁸ The audit objectives of populations 1 and 2 involved assessing the completeness of file documentation, accuracy of paraphrased statement summaries compared to taped witness interviews, adequacy of the investigation, identification of training needs, resolution sent to the complainant and referral of criminal conduct.

were completed within the 5-month guideline due to staffing shortages at IAG¹²⁹; 7 of the 60 complaint investigations (12%) covered by populations 1 and 2 had instances of inaccurate paraphrased statements and 4 (7%) had instances where a potential witness was not interviewed.

In reaching its conclusions regarding compliance, Audit Division neglected to report that its sample sizes for populations 1 and 2 were insufficient to reach a conclusion of compliance; instead, Audit Division should have withheld a determination of compliance for such audit objectives. This was clarified in Audit Division's June 22, 2004 correction report, which was issued after input from the Monitor.

Audit Fieldwork

The Monitor's findings from its testing of Audit Division's audit fieldwork are highlighted below:

- For 6 of the 47 complaint investigations tested by the Monitor (or 13%), Audit Division incorrectly reported that such investigations were not completed on a timely basis (within 5 months of the initiation of the complaint). In fact, such investigations *were* completed on a timely basis, but the investigation files were not readily available for review when Audit Division performed their testing. If Audit Division had followed up with IAG, they would have learned this, but did not do so because of resource constraints. While this means that Audit Division's 35% conclusion is understated, their overall conclusion (namely that the Department is non-compliant with the timeliness objective) remains unchanged.
- Audit Division evaluated 87 audio-tapes related to 27 complaint investigations to assess the accuracy of paraphrased statements. The Monitor's sample of complaint investigations involved listening to 67 audio-tapes to compare the contents of such tapes to the paraphrased statements. While Audit Division identified most of the inconsistencies identified by the Monitor, there were 2 tapes with paraphrasing issues that were not identified and/or addressed by Audit Division that should have been.¹³⁰
- For one complaint investigation, the investigator failed to tape-record the initial interviews of the accused officer, officer's partner and on-scene supervisor without explanation. This was

¹²⁹ Effective April 29, 2003, IAG was deactivated and renamed Professional Standards Bureau (PSB) per Administrative Order No. 2. Since then, PSB has undergone yet another reorganization with the result that IAG continues to exist as a separate division under the command of PSB.

¹³⁰ The paraphrased statement of a gang member who witnessed an incident involving an unidentified group of officers excluded several details that should have been further investigated – namely the address of another witness, and information that could assist in identifying at least one of the officers involved. In addition, the same paraphrased statement used words that tended to minimize the use of force complained of. Although none of these issues were specifically identified by Audit Division, this particular investigation was criticized by Audit Division as an investigation in which the investigating officer did not use all reasonable efforts to investigate the complaint.

The paraphrased statement of one of the officers who responded to the scene of a vicious dog attack excluded several details of the conflict between the parties. Although such details did not relate directly to the use of force or the discourtesy allegations, they could have been useful for the purposes of adjudicating this complaint

not identified by Audit Division during its audit. When Audit Division subsequently followed up with the investigating officer, the investigator explained that he understood his attendance was related to a UOF matter, not a complaint investigation, and his testimony on the incident before a Board of Rights did not cause the initiation of a neglect of duty investigation. The Monitor believes that this explanation should have been documented in the investigation file.

- No other significant issues were identified in respect of the Monitor's review of the audit fieldwork.

Audit Methodology

Audit Division's audit methodology and planning processes continue to evolve positively:

- Audit Division's audit matrix and cribsheet were complete and generally clear.
- Due to the subjective nature of certain assessments required in populations 1, 2 and 4, these populations were independently evaluated by two auditors who completed separate matrix questionnaires; any differences were appropriately followed up by the project manager for the audit. This provided increased assurance as to the quality of the audit findings related to these populations.

Audit Report

Audit Division's audit report, as amended by its June 22, 2004 correction, was well written, summarized the audit findings effectively and presented appropriate actions taken and recommendations to address the deficiencies identified. The tables included in this report and correction were useful summaries of the audit compliance findings by audit objective.

Based on the foregoing, the Monitor finds this audit in compliance with the requirements of paragraph 129iii.

Proposed Recommendations

- The Monitor's review confirmed that there were no compliance issues with Audit Division's review of Department-initiated complaints of FTAs, FTQs and PTCs but recommends that the next audit direct less focus on such complaints rather than exclude them from review as recommended by Audit Division. This would free resources to augment the full biopsy review of public-initiated complaint investigations.
- Audit Division should consider improving its audit matrix to include a specific question regarding concerns about potential bias or leading questions that could impact the quality of the interview.

Paragraphs 131a & 131c-2 – Gang Enforcement Detail Work Product Audit & GED ABC Reports Audit

Paragraph 131a requires the SOSD¹³¹ to conduct regular periodic audits of the work product of all gang units covered by paragraph 106 by auditing a random sample of the work of the unit as a whole, as well as the work of individuals whose work product appears to contain indicia of untruthfulness, other forms of misconduct, or otherwise merits further review.

Paragraph 131c-2 requires the Department to conduct regular, periodic audits of a stratified random sample of all gang unit ABC reports, and the qualitative factors that must be addressed in these audits are described in paragraphs 128 and 131e-g.

Background

From mid-2002 through September 2003, the Monitor concluded that the Department was in non-compliance with the paragraph 131a requirement to conduct regular periodic audits of this topic, as an audit of the gang unit work product had not been completed during that time period. On October 3, 2003 and January 4, 2004, Audit Division reported on its first and second audits of the gang unit work product as a whole. In its Reports for the Quarters Ending December 31, 2003 and March 31, 2004, the Monitor found that although the Gang Enforcement Detail Work Product Audits were quality audits that satisfied most of the requirements of paragraph 131a, the Department was in non-compliance with the requirements of paragraph 131a due to the fact that the audits were not conducted by the SOSD¹³².

In its Report for the Quarter Ending June 30, 2002, the Monitor found the DSD's first audit of ABC Reports, dated April 1, 2002, in non-compliance with paragraph 131c-2 because it was incomplete and deficient in quality. On March 5, 2003, the DSD completed its second audit of this topic, which the Monitor concluded was also in non-compliance with the Consent Decree primarily for deficiencies in the quality of the audit, but also because of the staleness of this audit.

Current Assessment of Compliance

In order to assess compliance with paragraph 131a and 131c-2 during the current quarter, the Monitor reviewed Audit Division's GED Work Product Audit report dated March 30, 2004, a Supplemental GED FDR Work Product Audit dated March 31, 2004,, the related audit workplan

¹³¹ SOSD is the Special Operations Support Division, formerly known as the DSD – Detective Services Division. Please refer to the footnote in Section IV of this report, Management of Gang Units, for additional information.

¹³² Paragraph 131 requires the SOSD to conduct all gang unit audits. Although the Monitor supports the Department's decision to reassign these audits to Audit Division in principle, until the parties formally change the Consent Decree, all future gang unit audits that are not completed by the SOSD will be in non-compliance with the Consent Decree. The Monitor understands that the City has requested a change to the Consent Decree in this regard, which has been submitted to the DOJ for review.

and cribsheet, and selected audit matrices and other documents included in the Monitor's sample of reports reviewed. The Monitor's findings, which have been reviewed with Audit Division, are highlighted below:

Sampling Methodology

Audit Division's audit sample comprised 100% of all gang unit work product for seven randomly chosen GED Units,¹³³ for the month of November 2003, excluding the eight GED units that were audited during the last two quarterly audits.¹³⁴ This included 144 arrest reports, 4 UOF reports, 4 search warrant packages, 2 Ramey Warrants and 2 confidential informant reports.

Audit Division plans to continue to use this sampling methodology for the remaining GED audits each quarter, choosing 4-5 GED units until all units have been audited once during the year. During the 4th quarterly audit, Audit Division will compare the results of all audited GED units for the year in order to show a Department-wide compliance rate. The Monitor concurs with this approach.

Scope of the Audit

The primary scope of Audit Division's GED work product audit related to 144 GED arrests completed in November 2003, and a supplemental audit report was prepared relating to GED FDRs associated with the 144 arrest reports. Audit Division acknowledged that the supplemental report was intended to document the Department's progress in this area, but that it was not a substitute for the comprehensive Motor Vehicle and Pedestrian Stop audit, nor was it intended to meet the requirements of paragraph 131c-4.

The Monitor notes that, as with the last 2 GED work product audits, this audit included a comprehensive evaluation of the gang unit ABC reports (as required by paragraph 131c-2), but did not meet the paragraph 131c requirements for the following topics:

- gang unit warrants audit (131c-1)
- gang unit UOF reports audit (131c-3), or
- the gang unit confidential informant control packages audit (131c-5).

¹³³ The seven GED units included West Valley Area, Van Nuys Area, West Los Angeles Area, Rampart Area, 77th Street Area, Newton Area and Operations-West Bureau.

¹³⁴ The eight excluded divisions were Devonshire, Harbor, Northeast and Wilshire from the first quarterly audit and Central, North Hollywood, Pacific and Southwest from the second quarterly audit. Operations-Valley Bureau and Operations-Central Bureau were also selected for review, but there were no GED work product from these Bureaus.

Instead, Audit Division completed overview tests¹³⁵ of such work product during this audit. Audit Division indicated that the regular periodic audits required by paragraphs 128(1), 128(3) and 128(5) would segregate out the gang issues and would therefore meet the requirements of paragraph 131c. However, the Monitor notes that the most recent Department-wide paragraph 128(1) and 128(3) audits of Warrants and UOF reports, dated March 30, 2004 and December 30, 2003 respectively, did not segregate out the results for gang units and as such did not meet the requirements of paragraph 131c. After input from the Monitor, Audit Division completed supplemental audits for these topics in an effort to meet the paragraph 131c requirements:

- On June 25, 2004, Audit Division completed a supplemental GED NCUOF Reports Audit.
- On June 29, 2004, Audit Division completed a supplemental GED Warrant Applications and Affidavits Audit.

These audits will be evaluated in the Monitor's next quarterly report.

The two confidential informant control packages included in the paragraph 131a GED work product audit were separately evaluated in the paragraph 128(5) audit that was recently completed on June 28, 2004. The Monitor will evaluate whether this audit meets the requirements of paragraph 131c-5 in the Monitor's next quarterly report.

Audit Fieldwork

The Monitor obtained and reviewed a random sample¹³⁶ of 24 of the 144 arrest reports in Audit Division's sample.¹³⁷ The Monitor's findings, which have been discussed with Audit Division, are highlighted below:

- The Audit was conducted by Audit Division rather than by the SOSD.¹³⁸
- Audit Division concluded that the Department was non-compliant with the objectives required by paragraph 131a, as only 76% of the GED work product met the standards for the

¹³⁵ The overview tests for the gang unit UOF included verifying the type of UOF investigation and that such UOF incidents were in the process of being investigated. The overview tests for the gang unit warrants included tests to ensure such warrants were conducted within the guidelines of the Department's Search Warrant Service and Procedures Guide and Special Order No 28, 2003.

¹³⁶ This sample was selected using a confidence interval of 95% and a plus or minus 10% error factor and originally included 14 reports, however due to the number of multiple arrests the Monitor reviewed 24 reports.

¹³⁷ The Monitor will review the 3 UOF reports; the 4 search warrant packages and two Ramey warrant packages and the confidential informant packages when the Monitor reviews Audit Division's reports on these topics in the next quarter.

¹³⁸ The Monitor understands the recommended changes to the Consent Decree are being reviewed; however, as explained above, until these changes are formally made, the Monitor will continue to find the Department out of compliance for this paragraph as SOSD is not completing the audit.

objectives evaluated by Audit Division.¹³⁹ Significant issues identified by Audit Division during its review related to supervisory oversight (81% compliance), whether the underlying actions of the officers were in accordance with Department policy (83% compliance) and completeness (92% compliance). Audit Division found that the GED units achieved 99% compliance in connection with the authenticity or correctness of the reports.¹⁴⁰ The Monitor concurs with Audit Division's findings.

- Audit Division reported in the Audit of FDRs Completed by GED officers that this audit revealed continued problems associated with the completeness and accuracy of FDRs. Audit Division found that 93% of the FDRs were completed as required, 96% were posted to the STOP database, 82% contained complete information, 71% were free of inconsistent information, and 95% of the FDRs posted to the stop database were reportable stops. The Monitor commends Audit Division for completing this initiative and concurs with Audit Division's findings.
- The Monitor did not identify any material areas of non-compliance in the GED Work Product audit and identified six administrative errors. The Monitor identified one material error in the Audit of Field Data Reports by GED Officers.
- The Monitor continues to endorse the sampling methods used by Audit Division because they allow Audit Division to identify and evaluate patterns in the GED work product reports. In its Q3 GED work product audit completed in March 2004, Audit Division reviewed the GED arrest reports for patterns of conduct associated with detentions and arrests. This review resulted in a supplemental audit that will be reviewed by the CO of Audit Division and forwarded confidentially to the Chief of Police, Police Commission and the Monitor when it is completed.

Although the GED Work Product Audit was a quality audit that satisfied most of the requirements of paragraph 131a and 131c-2, this audit was conducted by Audit Division rather than by the SOSD. While the Monitor endorses Audit Division performing such audits, until the Consent Decree is amended, the Monitor must find the Department in non-compliance for such audits. The City and DOJ are currently working on modifying the Consent Decree to effectuate this change.

Based on the foregoing, the Monitor finds this audit in non-compliance with the requirements of paragraph 131a and 131c-2. As the Audit of Field Data Reports Completed By GED Officers was to monitor the Department's progress and was not intended to meet any particular Consent Decree paragraph, the Monitor has not assessed compliance for this report.

¹³⁹ The Monitor notes that this is an improvement over the first and second quarterly audits, which had overall compliance rates of 61% and 70% respectively.

¹⁴⁰ In the first and second quarterly GED audits, Audit Division reported the percentage of work product that met the supervisory oversight requirements were 95% and 84% respectively, underlying actions were 83% and 78%, completeness were 77% and 68%, and authenticity were 99% and 95%.

Paragraph 131a – Supplemental GED Work Product Patterns Audits

There are now three supplemental GED work product patterns audits that have been initiated as a result of findings suggestive of inappropriate conduct from the following GED work product audits:

<i>GED WP Audit Completed</i>	<i>Supplemental Audit Completed</i>	<i>Status</i>
Q1 September 29, 2003	December 5, 2003	Sting Audit Outstanding
Q2 December 26, 2003	Fieldwork completed; report incomplete	Unresolved
Q3 March 30, 2004	Incomplete	Unresolved

The Monitor commends Audit Division for identifying the patterns that led to the need for these supplemental audits, and also commends Audit Division for its initiative in conducting these supplemental audits; however, the Monitor is concerned about the length of time being taken to resolve the issues raised by these supplemental audits.

Paragraphs 131c-1, 131c-3, 131c-4 & 131c-5 Gang Unit Audits of Warrant Applications & Affidavits, UOF Reports, MV&PS and CI Packages

Paragraph 131c requires the Department to conduct regular, periodic audits of a stratified random sample of all gang unit warrant applications and supporting affidavits, UOF reports, Motor Vehicle and Pedestrian Stops (MV&PS) and CI control packages. The qualitative factors that must be addressed in these audits are described in paragraphs 128 and 131e-g.

Background

In March 2004, Audit Division reported on its Department-wide audit of Warrant Applications and Supporting Affidavits. In August 2003 and December 2003, Audit Division reported on its Department-wide audits of NCUOF reports. In August 2003, Audit Division reported on its Department-wide audits of MV&PS reports. In July 2003, Audit Division reported on its Department-wide audit of Confidential Informants. In the Monitor's Reports for the Quarters Ending December 2003, March 2004 and/or in this quarterly report, the Monitor found that although the samples used in these reports included gang unit officers, the reports did not meet the requirements of paragraphs 131c-1, 131c-3, 131c-4, and 131c-5, as they were not conducted by SOSD, did not address specific gang unit issues, and there were no specific conclusions articulated relating to gang unit findings.

Current Assessment of Compliance

GED Warrant Applications and Supporting Affidavits Reports Audit (CD131c-1) & GED NCUOF Reports Audit (CD131c-3)

In this quarterly report, the Monitor reported on Audit Division's Warrant Applications and Supporting Affidavits report dated March 30, 2004, and on Audit Division's NCUOF audit report dated December 30, 2003. Although these were compliant audits, they did not address any GED issues. Further to input from the Monitor, Audit Division recently completed a supplemental GED Warrant Applications audit dated June 29, 2004, and a supplemental GED NCUOF audit dated June 28, 2004, which the Monitor understands are intended to meet the requirements of paragraphs 131c-1 and 131c-3. The Monitor will evaluate these supplemental audits in the Monitor's next quarterly report.

GED MV&PS Audit (CD131c-4) & GED Confidential Informant Packages Audit (CD131c-5)

Audit Division recently completed a Department-wide paragraph 128(4) Motor Vehicle and Pedestrian Stop audit dated June 30, 2004 and a Department-wide paragraph 128(5) CI audit dated June 28, 2004 that are also intended to meet the requirements of paragraphs 131c-4 and 131c-5. The Monitor will evaluate these audits in its next quarterly report.

Paragraph 133 – Police Training Audit

Paragraph 133 requires the Department to hire independent consultants who have substantial experience in police training to audit police officer and supervisory training within 18 months of the effective date of the Consent Decree. The audit must address methods in which LAPD training could be improved:

- to reduce incidents of excessive UOF, false arrests, and illegal search and seizures; and
- by making greater use of community-oriented-police training models that incorporate factors relating to cultural diversity, including training on interactions with persons of different races, ethnicities, religious groups, sexual orientations, persons of the opposite sex, and persons with disabilities.

Background

The Monitor last assessed compliance with paragraph 133 during the quarter ending March 31, 2004, at which time the Monitor withheld a determination of compliance pending further examination of the Department's new training model.

Current Assessment of Compliance

In the Monitor's Report for the Quarter Ending March 31, 2004, the Monitor reported that the Department hired Rand as the independent consultant to complete the training audit required by this paragraph. The Monitor evaluated Rand's report and determined that Rand's review was too general in its application to the LAPD, despite the City's comments and direction to Rand otherwise.¹⁴¹

Nevertheless, the LAPD reorganized its training groups by incorporating suggestions from the report, as well as additional innovative ideas. During the quarter ending March 31, 2004, the Monitor attended the Department's police integrity training, which was one of the elements that required attention under paragraph 133, and determined that the curriculum and the implementation of the new training model were effective.

During the current quarter, the Monitor continued its assessment of the new training model by attending the Department's Supervisory Investigations Training and again determined that the curriculum was well designed and that the Department had successfully implemented the new training model. However, at this point, because of the failure of the Rand Audit to fully address and assess the specific areas mandated by the Consent Decree,¹⁴² the Monitor is unable to find the City in compliance. The Monitor will continue conducting a full review of each of those specific areas during the quarter ending September 30, 2004.

Based on the foregoing, the Monitor withholds its determination of the LAPD's functional compliance with paragraph 133.

C. INSPECTOR GENERAL REVIEWS & AUDITS

During this quarter, the Monitor assessed the timeliness of transmittal of the LAPD audits to the OIG (as required by paragraph 135), and also assessed the timeliness and quality of the following OIG reviews and audits:

Paragraph 135

- OIG's review of Audit Division's Q4 02/03 NCUOF Primary and Supplemental Audit
- OIG's review of Audit Division's Q2 03/04 NCUOF Audit

¹⁴¹ "The RAND Report: Training the 21st Century Police Officer" is available on the LAPD website.

¹⁴² The audit must assess ways in which training could be improved to reduce incidents of excessive UOF, false arrests and illegal searches and seizures. The audit must also assess ways in which training could be improved by making greater use of community-oriented-policing training models that take into account factors including paragraph. 117(c).

- OIG's review of Audit Division's MV&PS Audit
- OIG's review of Audit Division's Q1 GED Work Product Audit
- OIG's review of Audit Division's Q2 GED Work Product Audit

Paragraph 136

- OIG's NCUOF Audit

Paragraph 135 – OIG Evaluation of LAPD Audits

Paragraph 135 requires the Department to provide the OIG 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 has 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.

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 Department was found in non-compliance with the requirement to transmit Departmental audits to the OIG within one week of the completion thereof. The Monitor continued to find the Department in non-compliance during the quarters ending March 31, 2003 through December 31, 2003, and found the Department in compliance during the quarter ending March 31, 2004.

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 June 30, 2004, 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>
CD106h	CRID's Bureau Gang Coordinator Inspection Review	May 11, 2004	May 20, 2004	9 X
CD127	Ethics Enforcement Section Quarterly Sting Report	May 18, 2004	May 20, 2004	2 ✓
CD129i	Categorical Use of Force Interim Audit Report	May 27, 2004	Jun 10, 2004	14 X
CD129iii	Correction to Complaint Investigations Audit	Jun 22, 2004	July 2, 2004	10 X
CD131a	GED Work Product Audit – 4th Quarter	Jun 24, 2004	July 2, 2004	8 X
CD128(2)	Supplemental ABC Reports Audit – Property Receipts	Jun 24, 2004	July 2, 2004	8 X
CD131b	GED Selection Criteria Audit	Jun 25, 2004	July 2, 2004	7 ✓
CD131c-3	Supplemental GED NCUOF Work Product Audit	Jun 28, 2004	July 9, 2004	11 X
CD128(5)	Confidential Informant Control Packages Audit	Jun 28, 2004	July 2, 2004	4 ✓
CD131c-1	Supplemental GED Warrant Applications & Affidavits Work Product Audit	Jun 29, 2004	July 2, 2004	3 ✓
CD106a	GED Training Audit	Jun 29, 2004	July 2, 2004	3 ✓
CD128(4)	Motor Vehicle and Pedestrian Stop Data Collection Audit	Jun 30, 2004	July 2, 2004	2 ✓

✓ = Compliant: X = Non-Compliant

Based on the foregoing, the Monitor finds the Department in non-compliance with the provision of paragraph 135 that requires the transmittal of certain audit reports to the OIG within seven days of completion.

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

Background

With the exception of the quarters ending June 30, 2002, December 31, 2002 and June 30, 2003, the Monitor has found the OIG's reviews of specified and other audits to be non-compliant with

the requirements of paragraph 135b.¹⁴³ The assessments of non-compliance resulted either from shortcomings in the quality of OIG's review or the failure of the OIG to present its reviews in a timely manner to the Police Commission, as noted in the following table:

<i>Monitor's Report for the Quarter Ending</i>	<i>Monitor's Determination</i>	<i>Basis</i>
March 31, 2002	Non-compliant	Deficient quality
June 30, 2002	Not assessed	N/A
September 30, 2002	Non-compliant	Further improvements to quality required
December 31, 2002	Compliant	Improved quality
March 31, 2003	Non-compliant	Evaluation not timely
June 30, 2003	Determination Withheld	All reviews compliant except 1 which is subject to interpretation
September 30, 2003	Non-compliant	Deficient quality and lack of timeliness
December 31, 2003	Non-compliant	Deficient quality and lack of timeliness
March 31, 2004	Non-compliant	Deficient quality for 3 of 4 reviews conducted

Current Assessment of Compliance

During the current quarter, the Monitor assessed the OIG's reviews of the following four audits:

- OIG's review, dated February 18, 2004, of Audit Division's NCUOF Primary and Supplemental Audits completed August 22, 2003 and October 10, 2003, respectively (CD128(3), CD129ii) – these audits were evaluated by the Monitor during the quarter ending December 31, 2003;
- OIG's review, dated March 8, 2004, of Audit Division's MV&PS Audit completed August 20, 2003 (CD128(4)) – this audit was evaluated by the Monitor during the quarter ending December 31, 2003;
- OIG's review, dated March 12, 2004, of Audit Division's Q1 GED Work Product Audit completed September 29, 2003 (CD131a) – this audit was evaluated by the Monitor during the quarter ending December 31, 2003; and
- OIG's review, dated March 30, 2004, of Audit Division's Q2 GED Work Product Audit completed December 26, 2003 (CD131a) – this audit was evaluated by the Monitor during the quarter ending March 31, 2004.

¹⁴³ 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 determination of compliance during the quarter ending June 30, 2003.

The Monitor found the OIG in non-compliance with the qualitative requirements for paragraph 135b because of quality deficiencies in all four reviews described above. Further details are described below.

The OIG's Review of the Non-Categorical Use of Force Reports Audit (Primary and Supplemental) (CD128(3)/129ii)

In order to assess compliance with the qualitative provisions of paragraph 135b for the current quarter relative to Audit Division's CD128(3)/129ii audit, the Monitor reviewed the OIG's report dated February 18, 2004 on its review of Audit Division's NCUOF audit (primary and supplemental) dated August 22, 2003 and October 10, 2003 respectively, and selected OIG audit working papers. The Monitor also considered the Monitor's findings arising from its previous review of a sample of 10 NCUOF investigations¹⁴⁴ and 5 additional NCUOF investigations randomly selected from reports reviewed by both Audit Division and the OIG.¹⁴⁵

The OIG's review comprised 107 investigations, which included a stratified¹⁴⁶ random sample of 101 NCUOF investigations completed between January 1, 2002 and June 30, 2002 as covered in Audit Division's paragraph 128(3)/129ii audit reports (primary and supplemental) and an additional 6 investigations previously reviewed by Audit Division in its UOF-Skeletal Fractures (UOF-SF) audit dated January 8, 2003.¹⁴⁷

The Monitor's findings, which have been discussed with the OIG, are as follows:

- The OIG's review was not completed until almost six months after Audit Division's primary audit report was completed.
- The OIG appropriately evaluated the quality, completeness and findings of Audit Division's NCUOF primary and supplemental audits, but its reporting did not adequately address the OIG's findings related to each of these objectives.
- The OIG's overall finding was that Audit Division's review of the NCUOF investigations was thorough and complete. In the body of the OIG's report, the OIG also identified an additional 28 issues that were not identified by Audit Division, plus a further 38 administrative issues were listed in appendices to the OIG's report. The Monitor commends the OIG for identifying so many issues that were not identified by Audit Division. Although the OIG indicated that none of these issues would have had an impact on the adjudication of

¹⁴⁴ This sample had been previously reviewed by the Monitor during its review of Audit Division's Audit of NCUOF reports for paragraphs 128(3)/129ii; the Monitor's findings were included in the Monitor's Report for the Quarter Ending December 31, 2003.

¹⁴⁵ The Monitor's sample was selected using an error rate of +/-10%.

¹⁴⁶ The OIG is not required to review a stratified random sample when performing paragraph 135 evaluations (i.e. review of Department audits); rather, stratification is only required when the OIG performs "primary" audits (i.e. paragraph 136 audits).

¹⁴⁷ Audit Division indicated in the UOF-SF audit report that a more complete review for quality would be completed and the findings would be incorporated into its next NCUOF audit.

the investigation, nor did they present a potential risk management problem for the Department,¹⁴⁸ the Monitor considers that the OIG should have reported the impact of such issues on the quality of the audit relative to each audit objective, and such conclusions should have been reported in a statistically valid manner.

- One issue described in the OIG's report involved an inconsistency that was identified through a review of the tape-recorded interview of the suspect compared to the paraphrased statement. This resulted in the Department initiating a complaint investigation against the involved and investigating officers. The Monitor commends the OIG for its initiative in examining and following up on this incident, but questions whether this incident represents an exception to the OIG's conclusions expressed above.
- The OIG appropriately reported that Audit Division's primary audit was not completed as scheduled on the Department's Annual Audit Plan due to flaws in the audit methodology and inadequate staffing levels, and that the supplemental audit took approximately six months to complete. However, the OIG failed to comment on the staleness of the audit findings.
- The OIG extended the scope of its review to include evaluating NCUOF incidents for compliance with Department policy relative to juvenile arrestees; this issue was not evaluated by Audit Division. While the Monitor commends the OIG for this initiative, this went beyond the scope required of the OIG, and the Monitor considers that the OIG should have simply recommended that the Department perform such additional procedures in the future.
- The Monitor noted five instances in which the OIG correctly identified issues in its working papers (i.e. matrices), but failed to appropriately reflect such findings in its audit report.
- The OIG's working papers identified numerous inconsistencies that were not, in fact, inconsistencies, but were instead technical errors made by the OIG's audit staff. These errors were not corrected; as a result, the OIG's report did not match its detailed audit working papers.
- The OIG prepared adequate working papers to substantiate the completeness of Audit Division's population, but did not adequately document its sampling process at the time of its review. While this meant that the OIG's original audit working papers were deficient, the OIG was able to justify its sample selection process after the fact.
- The OIG appropriately concluded that the matrix developed and used by Audit Division in both the primary and supplemental audits contained questions that were unclear and at times generated inconsistent responses among auditors. This contributed to the administrative discrepancies identified by the OIG relative to Audit Division's findings.

Based on the foregoing, the Monitor finds the OIG in non-compliance with the qualitative provisions of paragraph 135b in connection with its review of Audit Division's NCUOF

¹⁴⁸ The Monitor concurs with this conclusion for those investigations reviewed by both the Monitor and the OIG.

Investigations Audits (primary and supplemental) dated August 22, 2003 and October 10, 2003 respectively.

The OIG's Review of the Motor Vehicle and Pedestrian Stop Audit (CD128(4))

In order to assess compliance with the qualitative provisions of paragraph 135b for the current quarter relative to Audit Division's CD128(4) audit, the Monitor reviewed the OIG's report dated March 8, 2004 on its review of Audit Division's MV&PS audit dated August 27, 2003, and selected OIG working papers. The Monitor also considered the Monitor's findings from its previous review of a sample of 10 DFARs.¹⁴⁹

The OIG's final sample comprised 27 DFARs, 55 incidents that required FDRs and a total of 91 FDRs for February 21, 2003 included in Audit Division's paragraph 128(4) audit.¹⁵⁰

The Monitor's key findings, which have been discussed with the OIG, are as follows:

- The OIG's review was not completed on a timely basis, as it was approximately 6½ months after the completion of Audit Division's audit.
- The OIG did not specifically comment on the quality, completeness and findings of Audit Division's MV&PS audit. Instead, the OIG reviewed the audit objectives evaluated by Audit Division, namely completeness, authenticity, appropriateness of underlying actions, and supervisory review and indicated whether or not they identified any anomalies for each objective. The OIG did not provide any conclusions as to whether or not it agreed with Audit Division's findings for each objective.
- The OIG appropriately concluded that the AD conducted a comprehensive and meticulously planned audit that was based upon well-designed audit matrices.
- When selecting its sample of 27 DFARs, the OIG inappropriately excluded 13 of the 50 DFARs used in Audit Division's sample that did not have any "FDRable" incidents; this meant that the OIG's sample was inappropriately restricted to 27 instead of 34 DFARs.
- The Monitor identified a reference to an FDR on a DFAR that was not tested by either Audit Division or the OIG, even though this incident should have been included in both Audit Division's and the OIG's sample.

¹⁴⁹ The Monitor's sample for its review of AD's audit report dated August 27, 2003 was 13 DFARs and 12 complaints. Seven of the DFARs included in the Monitor's sample for AD's audit report overlapped with OIG's sample. Three additional DFARs were chosen from OIG's sample. The Monitor's findings were included in the Report for the Quarter Ending December 31, 2003.

¹⁵⁰ The DFAR details the respective officers' activity for the day. On the DFAR each activity is reported on separate lines and these may contain a motor vehicle or pedestrian stop that requires completion of a Field Data Report. The OIG uses the term incident to refer to those motor vehicle or pedestrian stops that result in one or more FDRs.

- The OIG's reported sampling methodology was inconsistent with the actual methodology used; the OIG's report indicated its sample selection was based on the DFARs, when in fact "FDRable" incidents were used as the basis for the OIG's sample.
- The OIG reviewed all 55 (100%) of the complaints reviewed by Audit Division. The OIG could have reduced its work by reviewing only 13 complaints.¹⁵¹
- The OIG concluded that the discrepancies identified in its review were administrative in nature and had no bearing on the validity of the audit.¹⁵² The main body of the OIG's report identified 4 incidents and 2 complaints where the OIG did not agree with Audit Division's assessment related to the completeness objective. The OIG also provided a list of administrative issues related to completeness in Appendix A of the OIG report. It is unclear why the OIG highlighted some issues in the main body of its report and listed other issues in the Appendix; this suggests the issues raised in the main body of the OIG's report were more than administrative in nature.
- There are eight interpretational differences identified by the Monitor between the evaluations by the OIG and Audit Division that the Monitor considers to be administrative in nature.

Based on the foregoing, the Monitor finds the OIG in non-compliance with the provisions of paragraph 135b related to its review of Audit Division's MV&PS audit dated August 27, 2003.

OIG's Review of GED Work Product Audit for Q1 (CD131a)

In order to assess compliance with the qualitative provisions of paragraph 135b for the current quarter relative to Audit Division's CD131a audit, the Monitor reviewed the OIG's report dated March 12, 2004 on its review of Audit Division's Q1 GED Work Product Audit completed September 29, 2003, and selected OIG audit working papers. The Monitor also considered the Monitor's findings arising from its previous review of a sample of 13 arrest reports, 2 UOF reports, and 1 search warrant package.¹⁵³

The OIG's review comprised a random sample of 56 of the 111 arrests included in Audit Division's sample and the 2 search warrant packages from the sample period June 1-30, 2003. Due to resource constraints, the OIG did not review the 2 UOF reports evaluated by Audit Division.

The Monitor's findings, which have been discussed with the OIG, are as follows:

¹⁵¹ The OIG examined 100% of the complaints as it felt the time required to review the face sheets was minor, since the documentation required to perform this review was readily available.

¹⁵² The OIG also noted that some of the information contained in the DFAR was subjective which may result in different audit findings.

¹⁵³ Seven of the thirteen reports were previously reviewed by the Monitor during its review of Audit Division's report for Q1 of GED Work Product for paragraph 131a; the Monitor's findings were included in the Report for the Quarter Ending December 31, 2003.

- The OIG recognized in its report that it was out of compliance for timeliness.
- The OIG noted in its report that the Consent Decree requires the SOSD to conduct the GED work product audit, and that the audit had been done by Audit Division. The OIG did not address in its report whether this reassignment to Audit Division impacted whether or not Audit Division's Q1 GED Work Product report complied with the Consent Decree.
- The OIG did not specifically comment on the quality, completeness and findings of Audit Division's Q1 GED work product audit. Instead, the OIG reviewed the audit objectives evaluated by Audit Division, namely completeness, authenticity, underlying actions, and supervisory oversight and other related matters, and identified one or more anomalies for each objective. The OIG did not provide any conclusions as to whether or not it agreed with Audit Division's findings for each objective.
- The OIG evaluated Audit Division's overall findings and assessed its recommendations, sampling methodology, audit plan, matrix and crib sheet, but the OIG did not clearly articulate how such findings related to the OIG's paragraph 135b objectives of evaluating the quality, completeness and findings of Audit Division's GED work product audit.
- Although the OIG indicated that it reviewed the 2 search warrants evaluated by Audit Division in this audit, the OIG did not provide any information regarding the basis for this assessment. Further, the OIG did not identify that Audit Division failed to address the requirements of paragraph 128(1)/131c-1.
- Although the OIG identified only 7 anomalies in its report, a review of its schedule comparing OIG's findings to Audit Division's findings indicates there were approximately 33 anomalies. The OIG indicated that this schedule was initially used to summarize the differences in responses but was not utilized to analyze the OIG's final results. The Monitor suggests that this schedule, or a similar version thereto, was an excellent tool for analyzing its responses and the OIG should use a similar analysis to initially evaluate and ultimately conclude on future audit reviews.
- There was one domestic violence incident that Audit Division and the Monitor considered was problematic; this incident was overlooked by the OIG. In addition, the Monitor identified two administrative issues that were not identified by the OIG.

Based on the foregoing, the Monitor finds the OIG in non-compliance with paragraph 135b in connection with its review of Audit Division's CD131a Q1 GED Work Product Audit.

OIG's GED Work Product Audit for Q2 (CD131a)

In order to assess compliance with the qualitative provisions of paragraph 135b for the current quarter relative to Audit Division's CD131a audit, the Monitor reviewed the OIG's report dated March 30, 2004 on its review of Audit Division's Q2 GED Work Product Audit completed December 26, 2003, and selected OIG audit working papers. The Monitor also considered the

Monitor's findings arising from its previous review of a sample of 12 arrest reports, 3 UOF reports, the 4 search warrant packages and the 2 Ramey warrants.¹⁵⁴

The OIG's review comprised a random sample of 55 of the 102 arrests included in Audit Division's sample from the period August 1-31, 2003, the 4 search warrant packages and 2 Ramey warrant investigations. In addition, the OIG included the 3 UOF reports in its paragraph 136ii audit.

The Monitor's key findings, which have been discussed with the OIG, are as follows:

- The OIG appropriately found that the Department did not comply with the timeliness provisions of paragraph 135 which mandated that the OIG be provided with copies of all reports of specified audits within one week of the completion thereof.
- The OIG noted in its report that the Consent Decree requires the SOSD to conduct the GED work product audit, and that the audit had been done by Audit Division. The OIG did not address in its report whether this reassignment to Audit Division impacted whether or not Audit Division's Q2 GED Work Product report complied with the Consent Decree.
- The OIG did not specifically comment on the quality, completeness and findings of Audit Division's Q1 GED work product audit. Instead, the OIG appropriately concurred with Audit Division's findings that the Department was out of compliance for the completeness, underlying actions and supervisory oversight objectives, and that the Department was in compliance for the authenticity objective.
- The OIG concurred with Audit Division's intention to evaluate all work products of selected GED Units each quarter and endorsed Audit Division's sampling methodology. The Monitor agrees with OIG's findings.
- Although the OIG identified problems with two of the search warrants, the OIG did not identify that Audit Division failed to address the requirements of 131c-1 and 128(1) and only tested to ensure that the appropriate documents were included in each package and were appropriately signed.
- The OIG reviewed the search warrants and Ramey warrants and identified two 2 search warrants with anomalies, one was missing a signature on the Return to Search Warrant and on the second search warrant the Return to Search Warrant was not reported to the Court within 10 days after the issuance of the Warrant. The Monitor agrees with OIG's findings.
- The Monitor notes that although OIG evaluated Audit Division's finding on each of the objectives assessed by Audit Division, as well as assessed Audit Division's recommendations, sampling methodology, audit plan, matrix and crib sheet, the OIG did not

¹⁵⁴ This sample had been previously reviewed by the Monitor during its review of Audit Division's report for Q2 of GED Work Product for paragraph 131a; the Monitor's findings were included in the Report for the Quarter Ending March 31, 2004.

clearly articulate how these findings related to the 135b objectives of quality, completeness and findings.

Based on the foregoing, the Monitor finds the OIG in non-compliance with the requirements of paragraph 135b in connection with its review of Audit Division's CD131a Q2 GED Work Product Audit.

Recommendations

The Monitor recommends that the OIG's future reports include a conclusion relative to each of its objectives of quality, completeness and findings, and that each conclusion include quantitative findings as to the number and percentage of incidents that meet each objective.¹⁵⁵

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

Paragraph 136i requires the OIG to conduct a regular, periodic audit and review of a stratified random sample of all NCUOF investigations. This paragraph further requires the OIG to issue a report to the Police Commission on his assessment of the quality, completeness, and findings of the investigations, the timeliness of such 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 functional 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 functional non-compliance due to the failure to complete this audit on a "regular, periodic" basis, as the audit was required to be completed by August 15, 2003.

Current Assessment of Compliance

In order to assess compliance with paragraph 136i for the current quarter, the Monitor reviewed OIG's NCUOF Reports Audit report dated March 24, 2004.¹⁵⁶ The Monitor also reviewed

¹⁵⁵ If any discrepancies are identified by the OIG that were not identified in the underlying audit, the OIG should also comment on the impact (if any) of such discrepancies on the audit's conclusions regarding the Department's compliance with each objective evaluated.

¹⁵⁶ Given that the Monitor already commented on the timeliness of this audit in its previous report, the current review is limited to evaluating the quality of the audit.

selected OIG working papers including a workplan, crib sheet, matrices and other related documents.

The OIG reviewed a sample of 99 NCUOF reports involving 87 NCUOF incidents that occurred in July 2003, nine completed NCUOF investigations involving skeletal fractures and three NCUOF investigations identified in Audit Division's Gang Enforcement Detail (GED) Work Product Audit.¹⁵⁷ The OIG excluded three incidents from its population, as they documented accidental taser discharges.

The Monitor obtained and reviewed a random sample of 16¹⁵⁸ of the NCUOF reports in the OIG's sample.¹⁵⁹ The Monitor's findings, which have been discussed with the OIG, are highlighted below:

Sample Selection

- The Monitor commends OIG for the significant improvement noted relative to identifying its population/sample.¹⁶⁰ The Monitor tested the completeness of the OIG's population by comparing OIG's sample to Access and Paradox reports¹⁶¹ generated on or about May 26, 2004. This comparison revealed one additional NCUOF incident not reflected in the OIG's population.¹⁶²
- The OIG selected a statistically-valid sample of NCUOF incidents that occurred during the month of July 2003, as this was the most recent period available that had a sufficient number of completed investigations available for review. This also allowed for implementation of skills developed in the UOF training that was conducted the previous month.

¹⁵⁷ OIG notes that the Audit Division did not evaluate the three NCUOF incidents involving GED because those incidents had not completed the UOF review process and were therefore not available for review.

¹⁵⁸ Including 2 incidents involving multiple suspects against which UOF occurred; these UOF were evaluated separately, as required.

¹⁵⁹ This sample size was selected using a 95% confidence level, with a +/- 10% error factor.

¹⁶⁰ As discussed in prior quarterly reports, there were deficiencies in the method used for tracking NCUOF investigations. The OIG verified the completeness of the NCUOF population by obtaining all of the Areas' UOF Summary Logs, or Tracking Logs, and comparing them against the UOFRS records. As a result of that process, the OIG identified three incidents that were recorded in the UOFRS database that were not included in the Areas' Tracking Logs; however, there was no follow-up by the OIG to address this discrepancy. In addition, the OIG queried the IAG's complaint database to identify all allegations of unauthorized force that were reported with a date of occurrence in July 2003; no unreported UOFs were identified from this process.

¹⁶¹ The Access system tracks NCUOF reports from the point at which such reports are received by the UOFRS, while Paradox is used to assign the NCUOF key numbers to reports once packages have completed the review cycle. Audit Division has noted in prior audits that NCUOF reports can surface 6 months after the incident occurred.

¹⁶² This investigation was included on the March 5, 2004 listing of UOF provided by the UOFRS, but did not have a UOF number; therefore, the OIG presumed the investigation was not closed. The Monitor's follow-up procedures revealed that this investigation was closed prior to March 5, 2004 and therefore should have been included by the OIG in its population.

Audit Findings

- The OIG concluded that the Department has made significant progress toward improving the quality of NCUOF investigations, particularly relative to Use of Force Review Section (UOFRS) oversight. Further, none of the investigations audited were found deficient in legal basis or adjudication. The OIG identified a number of NCUOF investigations that contained inconsistent reporting of the suspect's/officer's actions; conflicting witness statements; inaccurate completion of the UOF reports; conflicting entries on the TEAMS reports; lack of supervisory evaluation of the incident; and/or deficient paraphrased statements. While the Monitor generally concurs with the OIG's overall findings, certain issues were not identified by the OIG that should have been, as discussed below.
- The OIG found that the overall quality of NCUOF investigations improved dramatically as a result of revised Department procedure (although certain identified areas require further improvement). The Monitor concurs with the OIG's observation, noting the significant improvement in the quality and completeness of the NCUOF reports it reviewed during this audit as compared to prior NCUOF audits.
- The OIG identified ten instances in which the officers' actions were inconsistent within the report package. However, the OIG failed to identify five¹⁶³ additional inconsistencies that were identified by the Monitor.
- The OIG identified that in 17 instances in which the hobble restraint was used, the force applied was correctly documented, with the applicable officer appropriately listed as having used force. However, the OIG failed to identify one instance in which the force used to apply the hobble device was neither documented in the UOF package nor reflected in the officer's TEAMS.¹⁶⁴
- The OIG identified 46 out of 71 NCUOF incidents that included non-Department witnesses in which the investigating officer failed to include either a Social Security Number or California driver's license number, or if applicable, the fact that the witness did not have one. However the OIG failed to identify two further instances identified by the Monitor in which this information was omitted without explanation.
- The OIG noted that in 65% of the incidents reviewed, there was no documentation that the suspect was specifically asked how or she was injured, pursuant to Department policy and procedure. However, the OIG failed to identify three further such omissions identified by the Monitor.
- The OIG identified 38 out of 99 NCUOF incidents reviewed that did not include an evaluation of the supervision (or comment on the lack thereof). However, the Monitor noted

¹⁶³ Consisting of three inconsistencies relative to the officers' actions and two related to errors in the administrative sections of the UOF package.

¹⁶⁴ The Monitor recognizes that the force used to apply the hobble restraint is often subject to interpretation and is largely impacted by the level of articulation in the UOF report.

two instances in which the OIG concluded incorrectly, in that the evaluation of the supervision was articulated in the UOF narrative.

- The OIG failed to identify one instance in which an individual who witnessed the UOF¹⁶⁵ was not interviewed as part of the investigation. Similarly the OIG improperly concluded that there were no independent witnesses to another UOF incident, whereas the UOF report articulates that an individual witnessed a portion of the UOF.
- The OIG failed to identify two instances in which the suspect had visible injuries, which was articulated in the UOF narrative.
- The OIG incorrectly concluded for one investigation that the suspect did not receive medical treatment because he/she did not sustain any injuries; the Monitor considers that the UOF narrative articulates that the suspect was injured, but refused medical treatment.
- The OIG incorrectly concluded for one investigation that there was no supervisor present at the scene when the UOF occurred; the Monitor considers that the UOF narrative refers to the officer/supervisor that "...was the first [to arrive] on scene".
- The OIG failed to identify one investigation in which the officer's TEAMS report appropriately listed a UOF incident, but was erroneous relative to the UOF tactics reflected therein.
- Although the OIG's methodology included evaluating whether the incident was accurately documented on the involved employee's TEAMS reports, the OIG failed to identify and report on all discrepancies relative to the types of force attributed to specific officers, except as reported above. The OIG advised the Monitor that it did not consider it necessary to identify and report such discrepancies, as this is an ongoing problem that is widely known across the Department. The Monitor considers that the OIG should minimally have reported that the known problems with TEAMS have not been adequately addressed to-date.

Audit Methodology and Scope

- The OIG has improved the quality of its audit matrices and crib sheets, although the Monitor identified certain questions that appeared to be subjective;¹⁶⁶ these have been addressed with the OIG. However, the OIG did not finalize a workplan for this audit, and the objectives to be evaluated in the latest draft work plan provided to the Monitor were not consistent with the findings set out in the OIG's audit report.
- The OIG conducted procedures that exceeded the scope requirements of paragraphs 136i; although such procedures enabled the OIG to identify several areas for improvement in

¹⁶⁵ Based on information reflected in the arrest report narrative.

¹⁶⁶ Given the discrepancies identified in the responses between auditors.

connection with NCUOF policy and procedures,¹⁶⁷ the OIG must consider the benefits of such additional findings compared to the need to conduct reliable and timely audits of issues required by the Consent Decree.

Audit Report

- The OIG's audit report was generally well written, summarized the audit findings and presented appropriate actions taken and recommendations to address the deficiencies identified, including an appropriate use of appendices setting out the OIG's detailed findings. However, the Monitor suggests that the recommendations be included at the end of the section evaluating each objective. In addition, the OIG should conclude on compliance with each objective evaluated and reflect its findings in a manner that is congruent with the sampling method.¹⁶⁸
- The OIG failed to report on the status of recommendations made in its prior NCUOF audit report.

In summary, although the OIG addressed numerous deficiencies identified by the Monitor relative to its first NCUOF audit, the Monitor considers that the OIG did not adequately address the quality, completeness, findings and other criteria set out in paragraph 136i.

Based on the foregoing, the Monitor finds the OIG in non-compliance with the requirements of paragraph 136i.

Proposed Recommendations

- The OIG should revise its audit matrix and crib sheet in regards to the specific questions identified by the Monitor that appear to elicit subjective responses.
- The OIG should finalize its audit workplan prior to commencing its audits, as this is a critical planning tool that provides auditors with direction relative to the audit. In addition, the OIG's audit report should specifically address the Department's compliance with the objectives set out in the workplan.
- The OIG should report on all discrepancies identified, regardless of whether such problems are widely known within the Department (e.g. errors in TEAMS reports). At a minimum, the OIG should report that the problems are ongoing and summarize the actions already taken by the Department, if any, to address such problems.

¹⁶⁷ These included the Taser malfunctions, SEUs in unmarked vehicles (involved in UOFs), Complaints, and patterns regarding multiple NCUOF incidents.

¹⁶⁸ All discrepancies identified should be reflected as an absolute number of errors and as a percentage of all reports reviewed. In addition, the OIG should summarize and report on the Department's compliance with each objective evaluated, based on the percentage of reports that achieved compliance out of the total number reviewed.

The OIG should ensure that all significant deficiencies identified during the audit are appropriately followed up (e.g. NCUOF investigations reflected in the UOFRS database that were missing from the Tracking Logs).

Paragraph 139 – Recording and Investigating Retaliation Complaints by OIG

Paragraph 139 requires the IG to record and track allegations of retaliation for reporting possible misconduct or at-risk behavior in complaints received from LAPD employees. If the IG “determines that such complaints indicate possible retaliation in the Police Department’s handling of complaints,” the IG is required to conduct an investigation and report its findings to the Police Commission.

The Police Commission must work with the IG to develop and implement retaliation complaint investigation protocols that protect the identity of complainants.

Background

The Monitor last evaluated paragraph 139 during the quarter ending June 30, 2003, at which time the Department was found in functional compliance.

Current Assessment of Compliance

In order to assess compliance with paragraph 139 during the current quarter, the Monitor met with OIG staff, reviewed the IG’s existing Policies and Procedures for handling retaliation complaints, and undertook a review of the IG’s investigative files for each of the retaliation complaints received since June 1, 2003.

The OIG identified 17 retaliation complaints/contacts received since June of 2003, of which 13 were “employee-initiated” and 4 “OIG-initiated.” The OIG-initiated complaints/contacts represent allegations brought to the IG’s attention from a source other than the complainant.¹⁶⁹

The Monitor determined that, in general, existing OIG protocols were being followed, and the investigative files reviewed appeared to be uniform, well-documented and well-investigated. Furthermore, OIG findings were forwarded to the Commission as required.

However, the Monitor identified two instances in which the OIG’s investigative efforts appeared to be lacking, even if they did not rise to the level of non-compliance:

- failure to address a false statement claim raised by a complainant, and
- allowing a complainant to review and make changes to the statement prepared by the IG.

¹⁶⁹ Examples of such sources include an anonymous e-mail and a “cc’d” letter to the Chief of Police from an employee’s attorney.

Historically, the OIG had screened complaints for indicators of possible retaliation through its “management analyst of the day (“MAD”). In approximately February 2004, the OIG informally revised its complaint intake policy in response to concerns about the ability of MADs to effectively recognize indicators of retaliation. The MADs now inquire upon first contact with a complainant whether the complainant is a Department employee, and those who answer affirmatively are referred directly to OIG senior investigators.

The OIG staff advises complainants that by the very nature of the complaint they may be identified, and that the IG is not afforded an absolute privilege protecting conversations with them as a matter of law.

Based on the foregoing, the Monitor finds the Department in functional compliance with paragraph 139.

IX. OPERATIONS OF THE POLICE COMMISSION & INSPECTOR GENERAL

A. OPERATIONS OF THE POLICE COMMISSION

The Consent Decree requires that the Police Commission 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 September 30, 2003, the Monitor reviewed current performance appraisal criteria for the Chief of Police's annual evaluation and the format for that evaluation. In addition, the Monitor assessed the Police Commission's review of Consent Decree audits and the Commission's review and approval of new/changed policies and procedures. During the quarter ending December 31, 2003, the Monitor evaluated the Police Commission's annual review of the Chief of Police and the Commission's review of the LAPD budget.

During the current quarter, the Monitor assessed the Police Commission's, and the IG's, review and evaluation of CUOF, as well the related reporting requirement.

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 evaluated 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, 2003, at which time the Department was found in functional compliance.

The Monitor last evaluated 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, 2003, at which time the Department was found in functional non-compliance.

Current Assessment of Compliance

CD 142a IG and Commission Review of All CUOF

Currently, the OIG is tracking 44 open CUOF cases, which are in various stages of investigation by the LAPD. The IG assigns a member of his staff to attend the UOFRB hearing for each case tracked. Administrative statute dates are also tracked. In order to assess compliance with subparagraph 142a during the current quarter, the Monitor reviewed 9 CUOF packets recently submitted to the Police Commission.

Of these 9 packets, 3 were Officer-Involved Shootings (OIS), 3 were Law Enforcement Related Injury Incidents (LERII) , two were dog bites and 1 was a Law Enforcement Activity Related Death (LEARD).

The Monitor found 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 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 9 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.

CD 142b Annual Report on CUOF Incidents

During the current quarter, the Monitor was informed by the IG that the 2002 Annual CUOF Report was issued on February 25, 2004. The IG further advised that the 2003 Annual CUOF Report was not yet completed.

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

Paragraph 145 – Police Commission Investigation of Misconduct Complaints Filed Against the Chief of Police

Paragraph 145 states that the Police Commission shall investigate all misconduct complaints against the Chief of Police and may use its staff, the IG, or authorized contractors to conduct such investigations.

Background

The Monitor last evaluated paragraph 145 during the quarter ending June 30, 2003, at which time the Department was found in functional non-compliance.

Current Assessment of Compliance

Due to the sensitive nature of complaints filed with the IG¹⁷⁰ against the Chief of Police, the City will only provide documentation directly to the Chief Monitor or his Deputy. The Deputy Monitor is scheduled to review complaints filed against the Chief during the period January 1, 2003 to June 30, 2004 and report on them in the Monitor's Report for the Quarter Ending September 30, 2004.

Based on the foregoing, the Monitor withholds a determination of compliance with paragraph 145 until misconduct complaints filed against the Chief of Police have been reviewed.

B. OPERATIONS OF THE INSPECTOR GENERAL

The Consent Decree affirms that the OIG shall review and evaluate all CUOF incidents and provides that he shall be notified of all such incidents in a timely manner. In addition, he may observe all CUOF "roll outs" and may attend UOF Review Board 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 the quarter ending September 30, 2003, the Monitor assessed the IG's acceptance of complaints lodged by LAPD officers. During the quarter ending December 31, 2003, the Monitor assessed the IG's presence at UOFRB meetings, the LAPD's prompt forwarding of documents and information to the IG, as well as the IG's timely notification to the Police Commission of pending investigations and audits.

During the current quarter, the Monitor assessed the Department's compliance the majority of Consent Decree provisions regarding the operations of the IG. The results of our current assessment follow.

¹⁷⁰ As described in previous reports, the OIG conducts investigations concerning misconduct complaints filed against the Chief of Police and maintains files pertaining to each investigation. At the conclusion of each investigation the IG makes a recommendation to the Police Commission as to the appropriate disposition of the complaint. The Commission may adopt the recommendation of the IG or determine a different disposition.

Paragraph 147 – Notification and Observance of CUOF “Roll-outs”

Paragraph 147 requires that the IG be notified in a timely manner of all CUOF and be entitled to be present as an observer on all CUOF “roll-outs.” The IG must report to the Police Commission any observations regarding conformance with LAPD policies, procedures, and the requirements of the Consent Decree.

Background

The Monitor last evaluated compliance with paragraph 147 during the quarter ending June 30, 2003, at which time the Department was found in functional compliance.

Current Assessment of Compliance

In order to assess compliance during the current quarter, the Monitor compared CUOF incident information independently obtained from Department Command Post logs for the period October 1, 2003 through March 31, 2004 to the IG’s CUOF Notification Log/Index for the same period. The Monitor’s review confirmed that the IG was notified of all CUOF incidents. The IG received 55 CUOF notifications during this period.¹⁷¹ The Monitor also noted that the IG attended, as an observer, 27 CUOF roll-outs during this period.

The IG continues to document all CUOF incident notifications from the Department. In addition, OIG staff members reviewed the CIID case tracking logs to identify all CUOF investigations initiated during the period reviewed.

The Monitor found that observations concerning conformance, and incidents of non-conformance, with LAPD policies, procedures, and the requirements of the Consent Decree are reported to the Police Commission by OIG staff on an ongoing basis. This involves not only observations at the scene, but during the investigative process.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 147.

Paragraph 148 – Inspector General Attendance at UOFRB Meetings

Paragraph 148 states that the IG may attend any UOFRB meeting and may interview any participant in such hearing after the conclusion of the hearing.

¹⁷¹ Two separate notifications sent on November 12, 2003 were not received immediately by the IG due to the IG’s malfunctioning Blackberry messaging device.

Background

The Monitor last evaluated paragraph 148 during the quarter ending December 31, 2003, at which time the Department was found in functional compliance.

Current Assessment of Compliance

In order to assess compliance with paragraph 148 during the current quarter, the Monitor met with OIG staff to determine the level of access the OIG has to UOFRB meetings.

The IG and his staff confirmed that they continue to have unfettered access to UOFRB meetings. The IG advised that he, or his deputy, attends every UOFRB meeting, and is “well accepted.” The IG further advised that not only is he able to, and has, raised issues, but that the OIG representative is now specifically asked by the Chair at the end of each meeting whether the OIG representative has any additional questions.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 148.

Paragraph 149 – Promptly Providing Documents and Information to the IG

Paragraph 149 requires the LAPD to promptly provide the IG with any documents or other information requested by the IG related to the IG’s responsibilities under the Consent Decree. The IG shall provide the LAPD with a list of reports, complete with time frames and frequency of production, that the LAPD shall provide to the IG on a specified schedule in order for the IG to fulfill his or her responsibilities under the Consent Decree. This list may be updated from time to time by the IG.

Background

The Monitor last evaluated paragraph 149 during the quarter ending December 31, 2003, at which time the Department was found in functional compliance.

Current Assessment of Compliance

In order to assess compliance with paragraph 149 during the current quarter, the Monitor met with OIG staff to discuss the IG’s access to LAPD information, documentation and reports.

It was represented to the Monitor that the Department continues to provide the IG with timely responses to requests for information and documents, and that reports requested by the IG are forwarded by the LAPD to the OIG in compliance with the IG’s original letter requesting such reports. OIG staff further represented that the OIG gets “anything they ask for, including pictures and videotape,” and that OIG “analysts are now able to make requests themselves.”

Based on the foregoing, the Monitor finds the Department in functional compliance with paragraph 149.

Paragraph 150 – IG Acceptance of Complaints from LAPD Officers

Paragraph 150 requires the IG to accept complaints from LAPD officers regarding matters that the IG has authority to investigate. The IG is also required not to disclose the identity of complainants except under certain circumstances.

Background

The Monitor last evaluated paragraph 150 during the quarter ending September 30, 2003, at which time the OIG was found in functional compliance.

Current Assessment of Compliance

In order to assess compliance with paragraph 150 during the current quarter, the Monitor met with OIG staff and reviewed procedures for the acceptance of complaints by the IG.

The Monitor also reviewed complaints received by the IG for the period September 16, 2003 through May 15, 2004. Of the 234 complaints received by the IG, 15 were filed by Department employees. The review established that the OIG continues to track complaints and maintains records of the complaints brought to its attention by LAPD personnel. Complaints are forwarded to PSB as required.

The OIG staff properly advises complainants that by the very nature of the complaint they may be identified, and that the IG is not afforded an absolute privilege protecting conversations with them as a matter of law. According to OIG staff, for the eight months since the last review, no request was made by the Police Commission for a confidential complainant's identity, nor was there any need to identify a confidential complainant to the Commission. The OIG staff further advised that for the period reviewed, there were no complainants who requested confidentiality.

Based on the foregoing, the Monitor finds the Department in functional compliance with paragraph 150.

Paragraph 153 – Informing the Police Commission of Pending Investigations and Audits

Paragraph 153 requires the IG to keep the Police Commission informed of the status of all pending investigations and audits to be performed by the IG pursuant to the Consent Decree.

Background

The IG keeps the Police Commission informed about the status of all pending IG investigations and audits through periodic activity reports, which cover investigations and audits to be performed under the requirements of the Consent Decree, as well as other matters of concern to the Police Commission.

The Monitor last evaluated paragraph 153 during the quarter ending December 31, 2003, at which time the OIG was found in functional compliance.

Current Assessment of Compliance

During the current quarter, the Monitor assessed the various methods by which the IG communicates with the Police Commission, including monthly activity reports, which discuss significant activities and events occurring within the OIG.

The Monitor reviewed the IG's monthly activity reports for the period October 2003 through April 2004. The reports were placed for discussion on the Commission's meeting agenda in a timely manner. The Monitor found the reports to be informative and thorough.

Another method by which the IG communicates with the Police Commission is the placement of special interest items on the Police Commission's meeting agenda when reviews are completed and reports are ready for submission, including special reports, audit reports, reviews of Quarterly Discipline Reports, reviews of CUOF incidents, reports concerning retaliation complaints, and reviews of LAPD audits. In many instances, details of these reports and reviews are discussed in closed session, allowing for the exchange of sensitive information between the IG and the Police Commission.

Based on the foregoing, the Monitor finds the Department in functional compliance with paragraph 153.

C. GENERAL

Paragraph 154 of the Consent Decree requires the City and the Department 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. The Monitor is scheduled to conduct similar assessments during the quarter ending September 30, 2004.

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. Additionally, the Consent Decree mandates the establishment of a media advisory working group to facilitate information dissemination to the predominant ethnicities and cultures in Los Angeles.

In the Monitor's Report for the Quarter Ending December 31, 2003, the Monitor reviewed the Department's compliance with Consent Decree requirement to prepare and post certain semiannual reports on its website and to hold a quarterly Media Advisory Group meeting. During the current quarter, the Monitor assessed the Department's compliance with the 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 results of our current assessment follow.

Paragraph 155 – Public Meetings Annually

Paragraph 155 requires the LAPD to hold quarterly community meetings within each geographic area for the first year of the Consent Decree, and one meeting in each Area annually thereafter, to inform the public about the provisions of the Consent Decree, and the various methods of filing a complaint against an officer.

At least one week prior to such meetings, the City is required to publish notice of the meeting (i) in public areas; (ii) in at least one newspaper covering the City of Los Angeles; (iii) in one or more local community newspaper(s) that services the Areas, taking into account the diversity in language and ethnicity of the area's residents; (iv) on the City and LAPD website; and (v) in the primary languages spoken by the communities located in such area.

Background

The Monitor last evaluated paragraph 155 during the quarter ending June 30, 2003, at which time the LAPD was found in compliance.

Current Assessment of Compliance

During the current quarter, the Monitor determined that all 18 Areas held their community meetings within the relevant annual period of July 1, 2003 through June 30, 2004. The meetings in each of the 18 areas were publicized on the LAPD website.

The Department provided the Monitor with materials from 12 Areas relating directly to their community meetings. The other 6 Areas provided ancillary materials, including photocopies of newspaper advertisements, which identified the meetings' dates, times and locations.

Based on the foregoing, the Monitor finds the Department in compliance with paragraph 155.

XI. CORRECTIONS TO PREVIOUS QUARTERLY REPORTS

The Monitor issues the following corrections to the Monitor's previous quarterly reports.

Paragraph 128(3) – Audit of Non-Categorical Use of Force Reports

Paragraph 128(3) requires the Department to complete a regular, periodic audit of stratified random samples of all Non-Categorical Use of Force reports. The audit must assess such reports for completeness, authenticity, appropriateness of action taken, compliance with the law, conformity with Department procedures and an evaluation of supervisory oversight.

Background

In its Report for the Quarter Ending March 31, 2004, the Monitor withheld its determination of compliance with paragraph 128(3) due to the fact that the sample of UOF reports selected for review was not large enough to support a conclusion regarding compliance.¹⁷² However, the accompanying Report Card (Appendix A to the report) did not include a notation indicating that a determination of compliance was withheld, and the Status as of Last Evaluation column included a notation indicating non-compliance.

Correction

The Report Card accompanying this report has been amended to reflect that for paragraph 128(3) the LAPD received a "DW," indicating that the Monitor withheld its determination of compliance, for the quarter ending March 31, 2004. The Status as of Last Evaluation has also been updated to indicate that a "DW" was assigned.

¹⁷² The Monitor requested additional reports to review in order to conclude whether or not Audit Division is in compliance with the Consent Decree.

XII. CONCLUSION

Despite the challenges faced by TEAMS II in meeting its deadlines, the Monitor continues to be pleased with the progress being made by the Department in meeting the requirements for full compliance with the Consent Decree. The incidents outlined in our Focus Issues this quarter evidence the dedication of the Department Command Staff to the underlying premises of the Consent Decree. However, the question remains as to whether this dedication can be filtered down to mid-level supervisors and the rank and file. In addition, both of these focus incidents were observed essentially firsthand by the Monitor and the Department of Justice. The true testament of the Decree and the Department's reaction to such incidents lies in analogous treatment of officer misconduct when there is no videotape or firsthand observation of the incident.