

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, 2005**

Issued August 15, 2005

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INTRODUCTION

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

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, 2004.¹ The "Status as of Last Evaluation" column provides the most recent evaluation made for each paragraph of the Consent Decree, whether it was made in this quarter or in a prior quarter. The quarter in which the evaluation was made is also indicated. Finally, the Report Card identifies the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. This is an estimate based on available information at the date of issuance of this Monitor's Report and Report Card. These estimates are subject to change as information develops and circumstances change.

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

EXECUTIVE SUMMARY

During the quarter ending June 30, 2005, the Monitor examined 60 paragraphs or sub-paragraphs of the Consent Decree. Of these, the City and the LAPD successfully complied with 35, failed to achieve compliance with 19, and, for reasons stated in the body of this report, the Monitor withheld a determination of compliance with the 6 remaining paragraphs.

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

- As described in a Focus Issue below, the Monitor is concerned about the Department's handling of sealed warrants.
- The Monitor disagrees with several of Audit Division's conclusions in its Complaint Investigations Audit.
- Delays continue to impact the implementation of the Risk Management Information System and the Complaint Management System, new systems that the City is developing in order to meet Consent Decree requirements relative to the development of the TEAMS II system.
- The Monitor is concerned with the current backlog of incomplete Force Investigation Division Categorical Use of Force incident investigations.

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

- Although the Office of the Inspector General's reorganization is not yet complete, all of its reviews completed in May and June 2005 were issued to the Police Commission on a timely basis. Each of these reviews included a meta-audit, the quality of which will be evaluated in the Monitor's next quarterly report.²
- LAPD's Audit Division achieved full compliance with the timeliness and qualitative requirements for three of the audits evaluated by the Monitor in the current quarter.
- The LAPD has considerably improved the time in which Department Command Post officers notify the Chief of Police, the Force Investigation Division, the Police Commission, and the Office of the Inspector General following the occurrence of a Categorical Use of Force incident.
- There has been a marked improvement in the accuracy and quality of the LAPD's communications with complainants, which is a direct result of a policy change implemented

² Previous OIG reviews were completed 3-7 months after LAPD completed its audits, and comprised executive summary reviews that did not adequately evaluate the quality, completeness and findings of the LAPD's audits.



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during the summer of 2003. Complaint investigations not completed within five months now require that a communication be forwarded to the complainant advising him or her that the complaint investigation remains ongoing.

I. FOCUS ISSUES

A. THE DEATH OF SUZIE MARIE PEÑA

The July 10 death of 18-month-old Suzie Marie Peña during a hostage incident can only be classified as a tragedy. From all indications, the child was put in harm's way by her father who, with no regard for the child's well-being, used Suzie Marie as a shield while firing upon police. These actions provoked a police response during which both the father and Suzie Marie were killed by police bullets. A question has been raised as to whether different tactics might have been employed, by both initial officers at the scene and the LAPD SWAT Unit, which would have better protected not only the child hostage, but also responding officers. Hindsight is, of course, always 20/20. But post-action reviews of such incidents can provide valuable lessons for future encounters. We will closely monitor the LAPD's review of the incident and will report on our analysis of its findings.

B. SEALED WARRANTS

During the current quarter, the Monitor reviewed Audit Division's *Warrant Applications and Supporting Affidavits Audit* dated February 10, 2005, which included a review of sealed warrants, as previously recommended by both the Office of the Inspector General and the Monitor.³ Prior to this, although sealed warrants were included in Audit Division's audit sample, Audit Division only reviewed the public portion of such warrants.

The Monitor's review of this audit revealed that sealed warrants are not handled consistently within the LAPD:⁴

- 5 warrants were identified as sealed when in fact they were not sealed.
- For 2 warrants, there were unexplained delays between the dates of the orders to seal the warrants and the dates that the seals were actually placed on the warrants.
- There were inconsistencies in the type of information sealed within each warrant – from very general to quite specific. For example, some warrants sealed all indications that a confidential informant had been used, while others sealed only the identity of the informant.

³ Sealed warrants are those warrants where all or a portion of a warrant has been sealed to ensure that information within the warrant (e.g. the identity of an informant) is not made public. Warrants with information about an informant are referred to as Hobbs warrants, in reference to *People v. Hobbs* (1994) 7 Cal. 4th 948, where the California Supreme Court ruled that all or part of the information within a warrant may be sealed to protect an informant's identity.

⁴ The issues identified relate to how sealed warrants are handled, which is not addressed by the Consent Decree.

- Some LAPD staff did not understand who could access a sealed warrant.

Audit Division did not identify these issues, as the scope of their review related only to the content of the sealed warrants rather than how such warrants were handled. As a result, the Monitor held discussions with Audit Division personnel related to these points, and is pleased to report that Audit Division has taken action, which led the LAPD to revise and enhance its procedures and oversight relating to sealed warrants. In addition, Audit Division will adjust its future review of sealed warrants to ensure risk management issues related to the handling of such warrants are properly evaluated in future audits.

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.⁵ 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,⁶ and the Risk Management Information System (RMIS). The RMIS will gather data from the new systems, as well as numerous legacy systems, in order to produce relevant information for risk management analysis.

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

That being said, the City has made tremendous strides in both Deployment Period System (DPS)⁷ and UOFS, and the Monitor would like to commend City personnel for their achievements. DPS is now currently being deployed in each Deployment Period (DP) to a different area or bureau throughout the Department; this will continue until Department-wide implementation has been achieved. The Monitor continues to be cautiously optimistic about the success of these systems.

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

- DPS was deployed to remaining Operations Central Bureau Divisions on April 3, 2005; to Operations Valley Bureau on May 1, 2005; and to Operations West Bureau, West Valley Division, Metropolitan Division, Narcotics Division and the new Mission area on May 29,

⁵ The system is being developed as a successor to the existing computerized information processing system known as the Training Evaluation and Management System (TEAMS).

⁶ 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.

⁷ DPS lies at the heart of TEAMS II, providing information relative to officers' attendance and the command, structure which is utilized for a variety of purposes within the TEAMS II framework.

2005. DPS was deployed to the Office of Support Services (OSS),⁸ the Police Commission, the Office of the Inspector General (OIG), and the Force Investigation Division (FID) on June 26, 2005, and to South Bureau on July 24, 2005. DPS will be deployed to remaining LAPD entities, which are administrative in nature, between August 21 and September 30, 2005.

- Sierra Systems continued work under the RMIS/UOFS contract. The LAPD stopped entering data into its legacy use of force systems on April 29, with all use of force incident data now captured in the UOFS. The UOFS was then deployed to the Northeast Division and Central Division on May 8, 2005, and to the FID on May 15, 2005. The City currently anticipates deploying the UOFS to the remaining Operations Central Bureau entities in mid-August, with completion of the Department-wide phased deployment of the UOFS anticipated by the end of 2005. UOFS deployment could be delayed if needed UOFS fixes and enhancements are not completed in early August 2005 as scheduled, or if additional system issues are identified.
- The City completed the initial readiness testing of RMIS during July 2005; however, due to problems with various report functions and other fixes needed, readiness testing review will be extended for an additional five weeks. Due to this delay, implementation of RMIS for report functionality is planned for fall 2005, and action item functionality is anticipated for some time prior to December 2005.
- User acceptance testing has been largely completed for the first two stages of the complaint process for CMS. Many bugs were identified during this testing. After fixing these bugs and reviewing the remaining stages of the complaint process, the Department hopes to roll out CMS at the beginning of 2006. To ensure that complaint information is still available for RMIS, the City has requested that an interim system be developed; a solution had not been finalized as of the date of this report.

⁸ OSS includes non-patrol organizations, such as communication dispatch, crime lab, and records.

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)⁹ is defined by paragraph 13 of the Consent Decree. Any use of force (UOF)¹⁰ that falls under this definition is subject to certain paragraphs of the Consent Decree.¹¹ Administrative investigations of these incidents are the responsibility of the FID.¹² 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.¹³ Non-Categorical Uses of Force (NCUOF) occur much more frequently than do CUOF, as officers often encounter resistance while performing their duties. NCUOF range from a technique as simple as the physical force used to control a resisting individual to the use of a taser or a bean-bag shotgun.

During the quarter ending December 31 2004, the Monitor assessed the LAPD’s compliance with certain Consent Decree requirements regarding CUOF incident investigations and the execution of search warrants. The Monitor is scheduled to evaluate and report on compliance with requirements regarding NCUOF during the quarter ending September 30, 2005.

During the current quarter, the Monitor again evaluated and reported on compliance with this section’s requirements regarding CUOF incidents and investigations. The results of our current assessments follow.

⁹ CUOF include an Officer-Involved Shooting (OIS)with or without a hit, In-Custody Death (ICD), Law Enforcement Activity Related Death (LEARD), Law Enforcement Related Injury Incident (LERII) requiring hospitalization, Neck Restraint, Head Strike with an impact weapon and a Department canine bite requiring hospitalization.

¹⁰ Throughout this report, the acronym UOF will be used as a substitute for both “use of force” and “uses of force.”

¹¹ 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.

¹² Prior to September 2004, the Division responsible for conducting CUOF incident investigations was collectively referred to as the Critical Incident Investigation Division (CIID), which was established pursuant to Special Order 39, 2001 – “*Critical Incident Investigation Division – Established*,” approved by the Police Commission, December 11, 2001. Effective August 22, 2004, in a reorganization of the way in which CUOF are handled, CIID responsibilities were transferred to the newly created FID, a unit in the command structure of the Professional Standards Bureau (PSB).

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

Paragraph 55 – CUOF Investigations / FID Responsibilities

Paragraph 55 requires the LAPD to create a unit whose main responsibility is to conduct administrative investigations of CUOF incidents.¹⁴ Investigators assigned to this unit shall be Detectives, Sergeants or other officers of supervisory rank. The Commanding Officer (CO) of the unit cannot have direct line supervision for any LAPD geographic bureau. Finally, all investigators assigned to the unit must be trained in conducting administrative investigations as specified in paragraph 80 of the Consent Decree.

Background

On July 25, 2003, the LAPD issued Special Order No. 30, *Selection and Assignment to Critical Incident Investigation Division*. This Special Order established the criteria for selection, retention and de-selection of investigators and supervisors to the FID.

In November 2003, as part of its reorganization, the FID was re-assigned to report to the Chief of the PSB. The Chief of the PSB does not maintain direct line supervision for any geographic Bureau.

The Monitor last assessed the LAPD's compliance with paragraph 55 during the quarter ending September 30, 2004, at which time the LAPD was found in primary, secondary and functional compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 55 during the current quarter, the Monitor reviewed Audit Division's (AD) *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers. This audit was required by paragraph 129i and was designed by AD to assess compliance with paragraphs 55, 56, 58, 59, 61 – 65, 67, 69, 83 and 147, among others, all of which relate to the handling of CUOF.¹⁵ For paragraph 55, which is beyond the requirements of paragraph 129i, AD reviewed the FID's staffing during deployment period 11.¹⁶ AD's working papers included the FID organizational chart, TEAMS reports for all investigators, attendance rosters, curricula outlines and Special Orders related directly to the FID.

¹⁴ As described above, the Division responsible for conducting CUOF incident investigations is now referred to as the FID.

¹⁵ Some of these provisions are beyond the requirements of a paragraph 129i audit.

¹⁶ DP11 comprised October 17 through November 13, 2004.

The Monitor conducted a meta-audit of the audit report and related working papers, but disagreed with AD's conclusion relative to the adequacy of the training.¹⁷ AD determined that all investigators assigned to the FID for the deployment period tested were at or above the rank of a detective, sergeant or a supervisor. The Monitor's review of select supporting documentation concurred with this finding. AD further determined the following with respect to the 37 FID investigators required to have training:

- 15 of the 37 investigators attended formal training when assigned to the FID, or its predecessor, the CIID.
- An additional 14 investigators attended relevant training during December 2004.
- The remaining eight investigators received informal training i.e. "on-the-job" training.

Although the AD concluded 100% compliance with the training requirements of paragraph 55, the Monitor disagrees with this conclusion because the Methodologies require training curricula, examination and testing processes, and other related training documentation. Although the informal training administered to investigators may meet the minimum requirements of the Consent Decree, the lack of documentation of its contents, coupled with the lack of documentation supporting attendance, prohibits the Monitor from assessing its adequacy.

Finally, through interviews and knowledge gained from prior assessments of this paragraph, the Monitor confirmed that the FID remains a separate entity and its CO continues to not have any direct line supervision of a geographic bureau.

Based on the foregoing, the Monitor finds the LAPD in primary and functional compliance but in secondary non-compliance with paragraph 55.

Paragraph 56 – CIID to Attend All Categorical Use of Force Incidents

Paragraph 56 requires that the Operations Headquarter Bureau (OHB) Unit, defined by LAPD directives to be the FID,¹⁸ have the capability to "roll out" to all CUOF incidents 24 hours a day. Additionally, the Department requires immediate notification to the Chief of Police, FID, the Police Commission and the Office of the Inspector General (OIG) whenever there is a CUOF.

Background

Following the occurrence of a CUOF incident, LAPD protocol requires that the Watch Commander notify the Department Command Post (DCP). Once notified, DCP officers

¹⁷ The Monitor's review and assessment of the CUOF Systems audit is described in detail under the Current Assessment of Compliance for paragraph 129i, below.

¹⁸ As described above, the CIID is now referred to as the FID.

concurrently notify the Chief of Police, the FID, the Police Commission, the OIG and, if applicable, the District Attorney's Office (DAO).

The Monitor last assessed the LAPD's compliance with paragraph 56 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in primary and secondary compliance but in functional non-compliance. To its credit, the LAPD identified a deficiency in the LAPD's reporting process involving its Blackberry e-mail devices. It was determined that for some incidents, although e-mails were sent, they were not instantaneously released from the LAPD's system. This resulted in some individuals either not receiving notification or receiving notification hours later. The DCP subsequently adopted additional procedures that require notification and, in those instances when notification involves either utilizing e-mail or a pager, acknowledgement of notification.

Current Assessment of Compliance

No changes in policy were issued during the current quarter in connection with paragraph 56 requirements. The Monitor determined that the policies that were previously issued continue to adequately meet the paragraph's primary compliance requirements.

In its *Categorical Use of Force Systems Audit*,¹⁹ AD identified 23²⁰ CUOF incidents requiring FID response and notifications to the DCP, the Chief of Police and the OIG.²¹ The following summarizes AD's review and findings:

¹⁹ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD's compliance with a number of paragraphs, including paragraph 56, the Monitor conducted a meta-audit of AD's *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers. After conducting the meta-audit, the Monitor elected to place reliance on the audit's analysis and findings regarding the LAPD's compliance with paragraph 56.

²⁰ AD reviewed all 23 CUOF incidents that occurred during the period October 1 to November 30, 2004 in order to assess compliance with paragraphs 56, among others.

²¹ Notification to the OIG also constitutes notification to the Police Commission, a requirement of paragraph 56.

Average Notification Times	3 ICD incidents	1 Canine Bite	5 LERII Incidents	9 OIS With Hits	5 OIS No Hits	23 Incidents Total
Field to DCP	101 minutes	25 minutes	84 minutes ²²	27 minutes ²³	23 minutes	47 minutes
DCP to FID	0 minutes	0 minutes	0 minutes	4 minutes	6 minutes	3 minutes

The OIG received notification for all 23 incidents. On average, notification time from the DCP to the OIG was approximately seven minutes. For all 23 incidents, the Chief of Police, or his designee, was notified, on average, within approximately four minutes.

In its report, AD concluded that the DCP was notified on a timely basis for 21 of 23 CUOF incidents. For one of the two incidents for which timely notification did not occur, the FID, for risk management purposes, elected to investigate an ICD despite the decedent not being in custody at the time of death. This also accounted for a significant increase in the average number of minutes for field notification to the DCP. Excluding this incident, on average, notification to the DCP for the remaining two ICD incidents averaged 19 minutes. For the other incident for which timely notification did not occur, a LERII, there was no explanation for the delay in notification.

In addition to the two untimely notifications, there were three incidents for which notification from the field to the DCP occurred more than 30 minutes after the incident.²⁴ Since the Monitor's last review, the average notification time to the DCP for all incidents has increased by approximately 21 minutes. However, when excluding the two incidents for which notification times were 265 and 330 minutes, respectively, the average notification time was approximately 23 minutes. Once the DCP is notified, the LAPD has considerably improved its average time to notify the Chief and the OIG, when compared to prior assessment periods.

Based on the foregoing, the Monitor finds the LAPD in primary, secondary and functional compliance with paragraph 56.

²² For one incident, the DCP was not notified for approximately 330 minutes. No explanation was provided. Excluding this incident, for the remaining four incidents, the DCP was notified on average within 23 minutes.

²³ This is the only category for which LAPD's internal policy requires notification of the incident within 15 minutes of its occurrence. For one of the nine incidents, DCP was notified within 15 minutes.

²⁴ As previously discussed, the Monitor contends one incident was not a CUOF and therefore should be excluded from the population when assessing compliance.

Paragraph 58 – LAPD to Notify District Attorney of OIS and ICD Incidents

The LAPD is required to notify the Los Angeles DAO whenever an LAPD officer, on or off-duty, shoots and injures any person during the scope and course of employment. In addition, the LAPD is required to notify the DAO whenever an individual dies while in the custody or control of an LAPD officer or the LAPD, and a UOF by an officer may be the proximate cause of death.

Background

Notification to the DAO was a practice of the LAPD prior to the Consent Decree. As discussed in the Monitor’s prior quarterly reports, the LAPD has established a protocol for first reporting CUOF incidents to its DCP, which in turn makes appropriate notifications to other individuals and/or entities, including the DAO. Notifications are documented in daily 24-hour occurrence logs maintained by the DCP.

The Monitor last assessed the LAPD’s compliance with paragraph 58 during the quarter ending December 31, 2003, at which time the Monitor found the LAPD in functional compliance.

Current Assessment of Compliance

In its *Categorical Use of Force Systems Audit*,²⁵ AD identified nine CUOF incidents requiring DAO notification.²⁶ For all nine incidents, AD found the LAPD to be in functional compliance. The Monitor randomly selected four of the nine incidents and reviewed supporting documentation contained within AD’s working papers. For all incidents reviewed, the Monitor compared notification times, as memorialized within DCP logs to notification documentation prepared by the DAO.²⁷ On average, once the DCP was notified of an incident, the DCP notified the DAO within approximately six minutes. Notification times ranged from three to ten minutes. The DAO responded to eight of the nine incidents.

Based upon the foregoing, the Monitor finds the LAPD in continued functional compliance with paragraph 58.

²⁵ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD’s compliance with a number of paragraphs, including paragraph 58, the Monitor conducted a meta-audit of AD’s *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers. After conducting the meta-audit, the Monitor elected to place reliance on the audit’s analysis and findings regarding the LAPD’s compliance with paragraph 58.

²⁶ AD reviewed all 23 CUOF incidents that occurred during the period October 1 to November 30, 2004. Nine of these incidents required notification to the DAO.

²⁷ The DAO refers to this documentation as a “snap sheet.”

Paragraph 59 – LAPD to Cooperate with District Attorney at Scene of Incident

Paragraph 59 requires the LAPD to cooperate with Los Angeles DAO personnel who arrive at a CUOF incident pursuant to the required notifications required under paragraph 58.

Background

The Monitor last assessed the LAPD's compliance with paragraph 59 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in primary, secondary and functional compliance.

Current Assessment of Compliance

No changes in policy were issued during the current quarter in connection with paragraph 59 requirements. The Monitor determined that the policies previously issued by the LAPD continue to adequately meet the paragraph's primary compliance requirements.

In its *Categorical Use of Force Systems Audit*,²⁸ AD identified nine CUOF incidents requiring DAO notification.²⁹ AD determined that the DAO was timely notified in connection with all nine incidents. The Monitor randomly selected four of the nine incidents and reviewed supporting documentation contained within AD's working papers, concurring with AD's conclusions. Additionally, during January 2005, AD personnel directly contacted and interviewed the Head Deputy District Attorney, who confirmed that LAPD officers at CUOF incident scenes continue to be cooperative.

Based on the foregoing, the Monitor finds the LAPD in primary, secondary and functional compliance with paragraph 59.

Paragraph 61 – Separation of Officers at OIS Incidents

Paragraph 61 of the Consent Decree requires that all officers involved in and all officers witness to an OIS be separated immediately and remain separated until such officers have provided statements, whether voluntary or compelled.

²⁸ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD's compliance with a number of paragraphs, including paragraph 59, the Monitor conducted a meta-audit of AD's *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers. After conducting the meta-audit, the Monitor elected to place reliance on the audit's analysis and findings regarding the LAPD's compliance with paragraph 59.

²⁹ AD reviewed all 23 CUOF incidents that occurred during the period October 1 to November 30, 2004. Nine of these incidents required notification to the DAO.

Background

The Monitor last assessed the LAPD's compliance with paragraph 61 during the quarter ending September 30, 2004. At that time, the Monitor placed reliance on the AD's *Categorical Use of Force Interim Audit* dated May 27, 2004 and found the LAPD in primary, secondary and functional compliance.

Current Assessment of Compliance

In its *Categorical Use of Force Systems Audit*,³⁰ AD identified and reviewed 14 OIS incidents that occurred during the period October 1 to November 30, 2004.³¹ There were 68 officers involved in or witness to these 14 incidents. AD concluded that proper separation occurred in all instances. The Monitor reviewed 7 of the 14 incidents, concurring with AD's determination that involved and/or witness officers were properly separated either at the scene or while being transported to the station.³²

Based on the foregoing, the Monitor finds the LAPD in primary, secondary and functional compliance with paragraph 61.

Paragraph 62 – Analyses of CUOF and Search Warrants

Paragraph 62 requires that managers³³ analyze the circumstances surrounding the presence or absence of a supervisor at (a) a CUOF incident, and (b) the service of a search warrant. The review and analysis is required to occur within seven calendar days of the occurrence of the incident or service to determine if the supervisor's response to the incident or service was appropriate. Such supervisory conduct must be taken into account in each supervisor's annual personnel performance evaluation.

For reporting purposes, the Monitor has broken paragraph 62 down into two subparagraphs: 62a, which relates to supervisory oversight of CUOF incidents, and 62b, which relates to supervisory oversight of search warrants.

³⁰ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD's compliance with a number of paragraphs, including paragraph 61, the Monitor conducted a meta-audit of, AD's *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers. After conducting the meta-audit, the Monitor elected to place reliance on the audit's analysis and findings regarding the LAPD's compliance with paragraph 61.

³¹ AD reviewed all 23 CUOF incidents that occurred during the period October 1 to November 30, 2004. Fourteen of these incidents were OIS incidents.

³² In one instance, two involved officers, one of whom was injured, were transported together via ambulance during an ongoing tactical situation. Separation subsequently occurred.

³³ Paragraph 29 of the Consent Decree defines a manager as an LAPD supervisor at the rank of captain or above.

Background

The Monitor and DOJ agreed with the LAPD that the requirements of this paragraph would apply to the actions of the first responding supervisor.³⁴

The Monitor last assessed the LAPD's compliance with subparagraph 62a (regarding CUOF incidents) during the quarter ending September, 30, 2004, at which time the Monitor found the LAPD in functional non-compliance. The Monitor last assessed the LAPD's compliance with subparagraph 62b (regarding search warrants) during the quarter ending December 31, 2004, at which time the Monitor found the LAPD in functional non-compliance.³⁵

Current Assessment of Compliance

In its *Categorical Use of Force Systems Audit*,³⁶ AD divided this paragraph into two subsections, the seven-day review of supervisory response and supervisory conduct considered for performance evaluations. The Monitor considers these subsections as separate requirements and, beginning with this quarterly report, will report on them separately as:

- 62a-i: Seven-day requirement regarding review of supervisory response to a CUOF, and
- 62a-ii: Supervisory conduct at a CUOF considered during performance evaluations.

Subparagraph 62a-i – Seven-Day Review of Supervisory Response

In its *Categorical Use of Force Systems Audit*, AD identified and reviewed all 23 CUOF incidents that occurred during the period October 1 to November 30, 2004 to determine whether the LAPD was in compliance with the requirements of subparagraph 62a-i. AD found the LAPD in compliance, identifying only one incident that was not in compliance with paragraph 62a-1, as there was no correspondence prepared in connection with the incident.

During its meta-audit, the Monitor reviewed 14 of the 23 incidents reviewed by AD. Although the Monitor agreed with AD's finding regarding the one non-compliant incident, the Monitor disagreed that this was the only non-compliant incident. The Monitor concluded that 6

³⁴ Special Order 35, *Duty to Assess a Supervisor's Response to a Categorical Use of Force*, issued August 26, 2003, indicates that a "supervisor" is defined as the first responding supervisor to a CUOF, and not a supervisor who was a witness or an involved party, and the analysis shall also address the response of any subsequent supervisor(s) who assumes command of the incident.

³⁵ The Monitor is scheduled to again assess the LAPD's compliance with subparagraph 62b during the quarter ending June 30, 2006.

³⁶ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD's compliance with a number of paragraphs, including paragraph 62, the Monitor conducted a meta-audit of AD's *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers.

additional incidents³⁷ contained analyses that were insufficient, in that they did not adequately address the requirements of this paragraph or the requirements of Special Order 35. In addition, for one incident, the CO concluded that the responding supervisor's actions were appropriate; however, 15 days after the incident, there was a supplemental analysis completed by the CO indicating that the supervisor who had been originally identified as responding to the incident did not, in fact, respond to the incident.

Based on the foregoing, the Monitor finds the LAPD in primary compliance but in functional non-compliance with subparagraph 62a-i.

Subparagraph 62a-ii – Supervisory Conduct Considered during Performance Evaluations

This subsection of subparagraph 62a requires that the analyses completed by COs be taken into account in each supervisor's annual personnel performance evaluation. In its audit, the AD found that for 22 of the 23 incidents reviewed, Employee Comment Sheets (comment cards) were completed and available for consideration in a supervisor's evaluation.³⁸ Based on this, AD concluded that the LAPD was in compliance with this subsection. The Monitor disagrees with this finding. The fact that comment cards were completed and available for consideration does not automatically mean that the analyses contained on the cards was considered during employee evaluations, which is the requirement of this subsection. Currently there is no indication, either on the comments cards or on a separate review form, that the comment cards were considered during supervisors' annual reviews.³⁹

Based on the foregoing, the Monitor withholds a determination of the LAPD's compliance with subparagraph 62a-ii pending a review of performance evaluations.

³⁷ In most of these incidents the CO did not include sufficient information regarding the particulars of the incident. In many instances the verbiage mirrored the language of Special Order 35, suggesting no forethought. In one analysis, the CO wrote "...the actions of the responding supervisors were reviewed and determined to be appropriate and consistent with department policy." One of the incidents failed to include an analysis for a supervisor who assumed the role for another supervisor who was incident commander. Another incident involved officers from a Metro Unit and supervisors from both Metro and another Division responded to the location. The CO of Metro Division commented on the actions of the Metro supervisors, but did not complete the analysis for the other supervisor who, according to his daily log, was the incident commander. The CO of Metro Division indicated that he had spoken with the CO of the other Division, who would complete the analysis.

³⁸ Special Order 35 requires that a Employee Comment Sheet, Form 1.77, be completed for each responding supervisor and that the analysis shall comment on the actions of the supervisor. The comment card is filed at the officer's respective Division. Both AD and the Monitor reviewed applicable comments cards.

³⁹ The Monitor notes that the LAPD must show indications that it has taken action in a way that can be monitored. In this instance, for example, comment cards could be initialed or otherwise acknowledged as reviewed by a manager when preparing a supervisor's annual evaluation. This will provide substantiation that the actions displayed by a supervisor at a CUOF were actually taken into consideration during the supervisor's evaluation. The Monitor will be following up on this issue and assessing compliance with subparagraph 62a-ii during its assessment of LAPD performance evaluations, which is scheduled for the quarter ending September 30, 2005.

Paragraph 63 – Confidential Psychological Evaluation for Officers Involved in Deadly CUOF

Paragraph 63 requires the Department to continue referring officers involved in CUOF incidents resulting in death or the substantial possibility of death to the LAPD's Behavioral Science Services (BSS) for a consultation and evaluation with a licensed mental health professional. Such officers are precluded from working in the field until such consultation has occurred and notification of fitness for duty has been discussed with their respective CO.

Background

The Monitor last assessed the LAPD's compliance with paragraph 63 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional non-compliance. The Monitor selected for review incidents that were reviewed by AD in its *Categorical Use of Force Interim Audit Report*, dated May 2004. There were six incidents in which 18 officers were referred to BSS, however 4 of those officers were returned to the field prior to the proper approvals.

Current Assessment of Compliance

In its *Categorical Use of Force Systems Audit*,⁴⁰ AD identified and reviewed all 23 CUOF incidents that occurred during the period October 1 to November 30, 2004 in order to determine whether the LAPD was in compliance with the requirements of paragraph 63. AD found the LAPD in compliance with the paragraph, identifying only one incident in which an officer was returned to field duty prior to his BSS appointment.⁴¹

During its meta-audit, the Monitor reviewed 14 of the 23 incidents, identifying four incidents in which 14 officers were involved in an OIS and referred to BSS, and one ICD in which five officers were also referred to BSS. In total there were 19 officers referred to BSS. The Monitor agreed with AD's finding that one officer was returned to field duty prior to his BSS appointment. However, the Monitor also determined that for another incident, the documentation failed to provide any information regarding the date and time four officers were evaluated by the BSS and the date another officer returned to the field.

In addition to the incidents reviewed during its meta-audit, the Monitor reviewed seven additional applicable CUOF involving eight officers. The Monitor determined that the LAPD

⁴⁰ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD's compliance with a number of paragraphs, including paragraph 63, the Monitor conducted a meta-audit of AD's *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers.

⁴¹ For this incident, the CO of the Division identified in a 15.2 that the officer had been returned to field duty for one partial day and steps had been taken to address the oversight. The Monitor commends the CO for identifying and documenting this.

adequately addressed the paragraph's requirements in all seven incidents and for all eight officers.

In total, the Monitor evaluated 27 officers, involved in 12 incidents, who were referred to BSS; non-compliance was noted for six of the 27 officers, resulting in a compliance rate of 78%.

Based on the foregoing, the Monitor finds the LAPD in primary compliance, but in functional non-compliance with paragraph 63.

Paragraph 64 – Officer History Considered for Disciplinary and Non-Disciplinary Actions

Paragraph 64 requires a manager⁴² to consider an officer's work history, including information contained in the TEAMS II system,⁴³ the officer's CUOF history and prior tactics, when reviewing and/or making recommendations regarding discipline or non-disciplinary action as a result of a CUOF.

Background

Once FID has completed a CUOF investigation, and prior to the UOFRB, the Use of Force Division (UOFD)⁴⁴ reviews the investigation and prepares a form entitled, "*Officer Work History Review*."⁴⁵ At the conclusion of the Board, an involved officer's CO is questioned as to whether or not his/her review identified a pattern regarding tactics of the involved officer.

As previously identified by AD, TEAMS reports do not accurately reflect officers' UOF work history other than OIS incidents. On July 9, 2004, the LAPD published a notice that was sent to all COs that "encouraged" COs to contact the UOFD for information on CUOF incidents that are not reported in TEAMS whenever it was necessary to review an officer's TEAMS record.

The Monitor last assessed the LAPD's compliance with paragraph 64 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional compliance.

⁴² As previously noted, paragraph 29 defines a "manager" as an LAPD supervisor ranked captain or above. In interpreting the requirements of this paragraph, the Monitor noted that although it requires a manager's review, it does not specifically require the involved officer's manager. The UOFRB is comprised of at least 4 participants who qualify as a manager according to the Consent Decree definition.

⁴³ Until the TEAMS II system is developed, the Monitor will base compliance on the LAPD's use of its current TEAMS system.

⁴⁴ The UOFD is the successor to the Use of Force Review Section (UOFRS).

⁴⁵ This form documents disciplinary history; lethal UOF, non-lethal UOF, and other.

Current Assessment of Compliance

In its *Categorical Use of Force Systems Audit*,⁴⁶ AD assessed compliance with this paragraph by separately assessing the following subparagraphs: officer history considered for disciplinary actions⁴⁷ and officer history considered for non-disciplinary actions.

In order to assess compliance with the requirement that officer history is considered for disciplinary actions, AD selected all out-of-policy CUOF incidents that were initiated and closed in 2004.⁴⁸ In total, there were 7 out-of-policy CUOF, and the associated complaints were forwarded to PSB. AD concluded that the LAPD was in non-compliance with this requirement, as evidence of consideration of officer's work history was not documented for 1 of the 7 incidents.⁴⁹ The Monitor was not furnished with the individual complaints associated with the out-of-policy CUOF incidents, but relied on the working papers furnished by AD. Upon reviewing these working papers, the Monitor concurred with AD findings.

In order to assess compliance with the requirement that officer history is considered for non-disciplinary actions, AD reviewed all CUOF incidents presented to the UOFRB during the period October 1 to November 30, 2004.⁵⁰ During this period, there were a total of 14 incidents, involving 43 officers, presented before the Board. AD reviewed relevant documentation, including TEAMS reports, and determined that the UOFRB received accurate information for all 43 officers.⁵¹ The Monitor reviewed AD's working papers, along with the officers' TEAMS reports, and concurred with AD's findings.

⁴⁶ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD's compliance with a number of paragraphs, including paragraph 64, the Monitor conducted a meta-audit of AD's *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers. After conducting the meta-audit, the Monitor elected to place reliance on the audit's analysis and findings regarding the LAPD's compliance with paragraph 64.

⁴⁷ When a CUOF incident is found to be out of policy by the UOFRB, it is considered misconduct and a personnel complaint is initiated by the Department. After the complaint has been investigated by the proper Departmental entity, it is forwarded to the involved officer's CO for appropriate disciplinary action; the CO completes a Letter of Transmittal articulating the rationale used in determining discipline, and should indicate that the officer's work history was considered.

⁴⁸ This population was separate from the primary population tested in the audit (all CUOF incidents that occurred during the period October 1 to November 30, 2004), and was selected specifically to test compliance with this requirement.

⁴⁹ AD noted that it reviewed the officer's work history noting two prior shooting incidents. This particular officer was also the recipient of a personnel complaint for unauthorized tactics related to the incident selected for review by AD.

⁵⁰ This population was also separate from the primary population tested in the audit (all CUOF incidents that occurred during the same period), and was selected specifically to test compliance with this requirement and with paragraph 69.

⁵¹ AD also contacted the UOFD to ensure that all CUOF were reported, including those that may not have been included in the TEAMS system.

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with paragraph 64.⁵²

Paragraph 67 – OIG and Commission Review of CUOF

Paragraph 67 requires the LAPD to submit completed administrative investigations of all CUOF incidents⁵³ to the OIG and the Police Commission at least 60 days prior to the running of any appropriate statutes. For any investigation not completed and forwarded within this timeframe, the LAPD must provide the Commission with a copy of the underlying investigative file accumulated to date, along with an explanation for its delay, the necessary investigative steps still to be completed, and a schedule for the completion of the investigation.

Background

The Monitor last assessed the LAPD's compliance with paragraph 67 during the quarter ending March 31, 2004, at which time the Monitor found the LAPD in compliance.

Current Assessment of Compliance

In its *Categorical Use of Force Systems Audit*,⁵⁴ AD identified 31 CUOF incidents that occurred during the period January 1 to March 31, 2004.⁵⁵ Of the 31 incidents identified, AD determined that only 18 were provided to the OIG and the Police Commission at least 60 days prior to the running of the statute. For the remaining 13 incidents, the LAPD did not provide copies of the underlying files, nor did it provide information on the necessary investigative steps to be completed along with an anticipated completion date. As a result, the LAPD's compliance rate was 58.1%.

Prior to this reporting period, the LAPD had maintained sustained functional compliance with this paragraph, typically providing completed investigations to the OIG and Police Commission at least 100 days prior to the running of the appropriate statutes, on average. However, as

⁵² As indicated, separate populations were reviewed in assessing compliance with the requirements of paragraph 64, and one of the populations tested consisted of only seven incidents, one of which was non-compliant. The Monitor's finding of non-compliance is based on the egregiousness of this non-compliant incident.

⁵³ As defined by paragraph 13 of the Consent Decree.

⁵⁴ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD's compliance with a number of paragraphs, including paragraph 67, the Monitor conducted a meta-audit of the AD's *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers. After conducting the meta-audit, the Monitor elected to place reliance on the audit's analysis and findings regarding the LAPD's compliance with paragraph 67.

⁵⁵ This population was separate from the primary population tested in the audit (all CUOF incidents that occurred during the same period), and was selected specifically to test compliance with paragraph 67. The time period selected is somewhat dated because later time frames would not have provided large enough populations for testing.

reported by the AD in its Audit Report, at the time the FID inherited the CIID's caseload, it became apparent that many cases were in various stages of investigation, some close to the statute, and the FID was forced to triage and dedicate resources to timely completing these investigations. The Monitor in past reports has criticized the quality of multiple CIID investigations that directly contributed to the formation of the FID and the reassignment of certain CIID investigators. The Monitor is concerned that some of the problems that occurred within the CIID will continue to impact the FID's ability to complete investigations in a timely manner.⁵⁶

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with paragraph 67.

Paragraph 69a – UOFRB Review of CUOF

The first requirement of paragraph 69⁵⁷ requires that the LAPD continue its practice of presenting all CUOF incident investigations to the UOFRB.⁵⁸

Background

The Division CO of an officer involved in a CUOF incident is required to present an overview of the incident to the Board. Each member of the Board receives a copy of the FID report prior to the Board and, theoretically, should have read it in its entirety for familiarity. During the presentation, Board members may ask the CO questions regarding the incident, what was on the involved officer's mind, and knowledge of any facts that may not have been included in the FID investigation. Involved officers may attend the Board; however, they are not permitted to speak.

After the presentation and all questions have been answered, the Board, in a closed session, discusses the incident and renders its decision. The majority determines the outcome of the incident for all categories reviewed.⁵⁹

⁵⁶ As described in the Current Assessment of Compliance for paragraph 129i, below, AD has delayed the commencement of the final CUOF investigation audit report pending the completion of a suitable population of CUOF investigations initiated and completed by FID.

⁵⁷ Paragraph 69 also requires the LAPD to complete NCUOF investigations within 14 days of occurrence. This particular provision of paragraph 69 was not evaluated during the current quarter. The Monitor is scheduled to assess the LAPD's compliance with this requirement during the quarter ending September 30, 2005.

⁵⁸ The Methodologies require that this paragraph be evaluated only for functional compliance. Primary and secondary compliance are not applicable.

⁵⁹ An OIS investigation is reviewed for three categories: 1) Tactics, 2) Drawing of the weapon, and 3) the Use of Force. A LERII investigation typically is reviewed for 1) Tactics and 2) Use of Force. However, on occasion, the officer may have drawn a weapon, in which case this is evaluated as well.

The Monitor last assessed the LAPD's compliance with subparagraph 69a during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in continued functional compliance.

Current Assessment of Compliance

In its *Categorical Use of Force Systems Audit*,⁶⁰ AD identified and reviewed all 14 CUOF incidents that were presented to the UOFRB during the period October 1 to November 30, 2004.⁶¹ For all 14 CUOF incidents, AD reviewed documents contained in each incident file maintained by the UOFRS, noting evidence of each incident's review by all members of the UOFRB.⁶² The Monitor reviewed AD's working papers and related documentation for all 14 incidents and concurred with AD's findings.

In its review of the AD's audit, the OIG noted that it would have preferred that the AD reviewed all CUOF incidents that were known to have occurred during the selected time-frame, rather than only those that were presented during that time-frame, in order to determine whether they all CUOF incidents were eventually presented to the UOFRB. The OIG also noted that other Departmental controls exist to ensure that all CUOF incidents are presented to the UOFRB. The Monitor concurs with this evaluation and agrees that the risk that an incident will not be presented is extremely low.

Based on the foregoing, the Monitor finds the LAPD in continued functional compliance with subparagraph a of paragraph 69.

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.

⁶⁰ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD's compliance with a number of paragraphs, including paragraph 69, the Monitor conducted a meta-audit of AD's *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers. After conducting the meta-audit, the Monitor elected to place reliance on the audit's analysis and findings regarding the LAPD's compliance with paragraph 69.

⁶¹ This population was separate from the primary population tested in the audit (all CUOF incidents that occurred during the same period), and was selected specifically to test compliance with paragraph 69 and one of the requirements of paragraph 64.

⁶² With the exception of canine bite incidents requiring hospitalization, all incidents are heard by a panel of five individuals. This panel is comprised of the CO of the Chief of Support Services, a representative from the Chief of Operations, the Bureau CO from the Division in which the incident occurred of the involved employee, a CP from the Training Division, a CO from Personnel and a peer officer of equal rank.

During the quarter ending March 31, 2004, the Monitor assessed the LAPD's compliance with Consent Decree requirements relative to supervisory review of warrants and supervisory review of warrant logs. During the quarter ending December 31, 2004, the Monitor assessed LAPD compliance with requirements regarding supervisory review of booking recommendations and watch commander inspections of all detainees and arrestees.

During the current quarter, the Monitor again assessed the LAPD's compliance with requirements regarding supervisory review of warrants and warrant logs. The results of our current assessments follow.

Paragraph 71 – Supervisory Review of Warrants

Paragraph 71 requires supervisory review of all search warrants and probable cause arrest warrants ("Ramey" warrants). The review must include the following:

- a. A review for completeness of the information contained therein and an authenticity review to include an examination for "canned" language, inconsistent information, and lack of articulation of the legal basis for the warrant.
- b. A review of the information on the application and affidavit, where applicable, to determine whether the warrant is appropriate, legal and in conformance with LAPD procedure.
- c. A review of the plan for executing the warrant and a review of the execution of the warrant after it occurs (after-action review). In addition, a supervisor must be present for the execution of the warrant.

Background

The Monitor last assessed the LAPD's compliance with paragraph 71 during the quarter ending March 31, 2004, at which time the Monitor found the LAPD in functional compliance with subparagraph 71b and in functional non-compliance with subparagraphs 71a and c.

Current Assessment of Compliance

In order to assess the LAPD's functional compliance with paragraph 71 during the current quarter, the Monitor reviewed AD's *Warrant Applications and Supporting Affidavits Audit, Second Quarter-Fiscal Year 2004/2005*, dated February 10, 2005. The Monitor conducted a meta-audit of AD's audit and findings, noting that AD included sealed search warrants in this, its third Search Warrant Audit.

During its audit, AD selected a sample of 98 warrant packages from a total population of 169 warrants that were prepared and/or served Department-wide during Deployment Period No. 7, from June 27, 2004 to July 24, 2004. AD reviewed each of the 98 warrant packages for compliance with subparagraphs 71a, b and c and found the LAPD in non-compliance with each.

In assessing compliance with subparagraph 71a, regarding completeness of the information and an authenticity review for warrants reviewed, AD determined that ten packages were non-compliant with the requirement for completeness of information,⁶³ resulting in a compliance rate of 90% (88 of 98); AD also concluded that all 98 warrants reviewed met the authenticity requirement of subparagraph 71a.

In assessing compliance with subparagraph 71b, regarding underlying actions for warrants reviewed, AD determined that two packages were non-compliant with the requirements regarding appropriateness and legality, resulting in a compliance rate of 98% (92 of 94);⁶⁴ AD also concluded that 2 packages were non-compliant with the requirement regarding conformance with LAPD procedures, resulting in a compliance rate of 82% (9 of 11).⁶⁵

In assessing compliance with subparagraph 71c, regarding supervisory oversight for warrants reviewed, AD determined that five packages were non-compliant with the requirements regarding supervisory oversight of applicable incidents,⁶⁶ resulting in a compliance rate of 92% (54 of 59);⁶⁷ AD also concluded that that eight packages – the five packages that were also non-compliant with the requirements regarding supervisory oversight and three additional packages -- were non-compliant with the post-incident review requirement,⁶⁸ resulting in a compliance rate of 86% (51 of 59).

As described in further detail under the Current Assessment of Compliance for paragraphs 128(1) & 131c-1, below, during its meta-audit, the Monitor evaluated AD's findings for a sample of 39 warrants reviewed by AD.⁶⁹ Based on its meta-audit, the Monitor concurs with AD's findings and conclusions.

⁶³ One warrant from an outside agency did not include supporting documentation; one warrant did not include a Receipt for Property; three warrants did not include a Return to Search Warrant; and five warrants did not include a Warrant Service/Tactical Plan Report as required.

⁶⁴ Four of the 98 warrants were not evaluated since they were not served. Of the resulting 94 warrants reviewed, two did not include a Return to Search Warrant and were not returned within the required ten days of issuance.

⁶⁵ In evaluating compliance with this requirement, AD reviewed only those warrants where Confidential Informants were used. There were 11 such warrants; of these, the warrant service was not documented in the appropriate CI package in 2 instances. The Monitor notes that the requirement to document service in CI packages is not a specific Consent Decree requirement; however, it is an internal LAPD requirement, and subparagraph 70b requires conformance with LAPD procedure.

⁶⁶ The five warrants did not contain a Warrant Service/Tactical Plan Report.

⁶⁷ Of the 94 warrants reviewed, 35 involved third party records, such as telephone records, and were therefore not reviewed for compliance with the supervisory review requirements.

⁶⁸ The three additional warrants did not properly document the debriefing by the day following the warrant service.

⁶⁹ The Monitor reviewed random samples of 23 Departmental warrants, 11 gang-related warrants, and an additional 5 Hobbs warrants.

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with subparagraphs 71a, b and c.

Paragraph 72 – Supervisory Review of Warrant Log

Paragraph 72 requires each Area and specialized Division of the LAPD to maintain a log listing:

- each search warrant;
- the case file where a copy of the warrant is maintained;
- the name of the officer who applied for the warrant; and,
- the name of each supervisor who reviewed the application for the warrant.

Background

The Monitor last assessed the LAPD's compliance with paragraph 72 during the quarter ending March 31, 2004, at which time the LAPD was found in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's functional compliance with paragraph 72 during the current quarter, the Monitor reviewed AD's *Warrant Applications and Supporting Affidavits Audit, Second Quarter-Fiscal Year 2004/2005*, dated February 10, 2005. As discussed above relative to paragraph 71, the Monitor conducted a meta-audit of AD's audit and findings, noting that AD included sealed search warrants.

AD selected and reviewed a sample of 98 warrant packages from a total population of 169 warrants that were prepared and/or served Department-wide during Deployment Period No. 7,⁷⁰ finding the Department in compliance with paragraph 72. AD concluded that four packages were non-compliant with the requirements regarding completeness and accuracy of the Warrant Tracking Log, resulting in a compliance rate of 96% (94 of 98).

As described in detail under the Current Assessment of Compliance for paragraphs 128(1) & 131c-1, below, during its meta-audit, the Monitor evaluated AD's findings for a sample of 39 warrants reviewed by AD. The Monitor concurred with AD's findings and conclusions.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 72.

⁷⁰ DP7 covered the period June 27 to July 24, 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.

During the quarter ending March 31, 2005, the Monitor assessed the LAPD's compliance with Consent Decree requirements regarding the receipt and maintenance of complaints and the reporting of officer misconduct.

During the current quarter, the Monitor assessed the LAPD's compliance with the Consent Decree requirement that a complaint investigation be initiated against any officer who allegedly fails to inform any civilian who indicates a desire to file a complaint of the means by which a complaint may be filed; attempts to dissuade a civilian from filing a complaint; or refuses to accept a complaint. The results of our current assessment follow.

Paragraph 75 – Initiation of Complaint Form 1.28 Investigations

Paragraph 75 requires that a complaint investigation be initiated against any officer who allegedly:

- Fails to inform any civilian who indicates a desire to file a complaint of the means by which a complaint may be filed;
- Attempts to dissuade a civilian from filing a complaint; or
- Refuses to accept a complaint.

Background

The Monitor last assessed the LAPD's compliance with paragraph 75 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 75 during the current quarter, the Monitor reviewed the OIG's Review of the Ethics Enforcement Section's (EES) Quarterly Reports for the Third and Fourth Quarters of 2004. During the quarters ending September 30, 2004 and December 31, 2004, the EES finalized reports on 39 random or targeted audits assessing the compliance of LAPD officers with the requirements of paragraph 75. Of the 39 completed audits, the EES concluded that in two instances officers either failed to take a complaint or attempted to dissuade the undercover officer from filing a complaint. For both instances, the EES appropriately initiated a complaint investigation against the involved officers.

The OIG reviewed the 39 completed audits, concurring with the EES' findings. As described in the Current Assessment of Compliance for paragraph 135b, below, the Monitor assessed the OIG's review of the EES audits and reports and determined that reliance could be placed on the conclusions reached by the OIG regarding whether LAPD officers complied with paragraph 75 requirements. With one exception, the Monitor concurred with the EES and OIG's conclusions.⁷¹

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 75.

D. CONDUCT OF INVESTIGATIONS

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

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

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

Paragraph 80ii – Complaint Investigations

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 subparagraphs requiring conformance as follows:

⁷¹ In placing reliance on the OIG's conclusions, the Monitor reviewed 25 of the 39 audits in their entirety, 22 of which were randomly selected during the Monitor's meta-audit of the OIG's reviews of the EES's Sting Audit Reports (see paragraph 135b, below); the Monitor elected to review an additional 3 audits. 13 of the 25 audits reviewed by the Monitor were complaint intake audits. For one complaint intake audit, the EES and the OIG concluded compliance based on the fact that the Sergeant eventually took the complaint, but identified that further training was required. The Monitor disagreed with the conclusion reached, as it appears that the Sergeant may have been attempting to dissuade the reporting of a complaint.

- 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 administrative complaint investigations.

Background

The Monitor last assessed the LAPD's compliance with paragraph 80ii during the quarter ending June 30, 2004, at which time the Monitor found the LAPD in overall primary compliance with subparagraph 80ii and in functional compliance with subsections b through e and g of the subparagraph, but in functional non-compliance with subsections a and f of the subparagraph.⁷²

Current Assessment of Compliance

In order to assess compliance with subparagraph 80ii during the current quarter, the Monitor reviewed AD's *Complaint Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.⁷³ In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations that were completed during the month of August 2004.⁷⁴

⁷² The Monitor last assessed the LAPD's compliance with subparagraph 80i (regarding CUOF investigations) during the quarter ending December 31, 2004, finding the LAPD in compliance with subsections b and e and in non-compliance with subsections a, c, f and g. The Monitor is scheduled to again assess the LAPD's compliance with subparagraph 80i during the quarter ending September 30, 2005.

⁷³ The Monitor conducted a meta-audit of the *Complaint Form 1.28 Investigations Audit*, ultimately concluding that the audit was non-compliant. However, the Monitor elected to rely on many of the conclusions reached by AD. Refer to the Current Assessment of Compliance for paragraph 129iii, below.

⁷⁴ AD selected the 53 complaint investigations, out of a total of 113, in order to test compliance with paragraphs 80ii, 81, 82, 84, 85, 86, 90 and 91, among others.

Of the 53 complaint investigations selected for review, 33 were investigated by the Internal Affairs Group (IAG) and subject to the requirements of subparagraph 80ii. AD reviewed all 33 completed investigations to determine whether the LAPD met some or all of the requirements of subparagraph 80ii. During its meta-audit, the Monitor randomly selected 16 of the 33 completed investigations for review.

AD concluded that the LAPD was in compliance with the subsections a through f. During its meta-audit, the Monitor concurred with AD's conclusions that the LAPD was in functional compliance with subsections a through e; however, the Monitor did not concur with AD's conclusion regarding subsection f. In its meta-audit the Monitor identified five complaint investigations that failed to meet one or more of the requirements of subsection f.⁷⁵ These five instances of non-compliance out of 33 investigations completed by IAG translates into a compliance rate of 84.8%. As a result, the Monitor concluded that the LAPD was in non-compliance with subsection f.

Regarding subsection g, AD determined that 15 of 16 complaint investigations complied with the subsection; based on the resulting 94% compliance rate, Audit Division concluded that the LAPD was in non-compliance with the subsection. Given the 94% compliance rate, and the fact that the inconsistency identified in the one non-compliant investigation did not involve a significant issue that had an impact on the investigation, the Monitor disagrees with AD's conclusion and finds the LAPD in compliance with subsection g.

In sum, the Monitor finds the Department in compliance with subsections a-e and g, and in non-compliance with subsection f of subparagraph 80ii.

Paragraph 81 – 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.

Background

The Monitor last assessed the LAPD's compliance with paragraph 81 as it relates to COC complaint investigations during the quarter ending June 30, 2004, at which time the Monitor found the LAPD in functional non-compliance. The Monitor last assessed the LAPD's compliance with paragraph 81 as it relates to NCUOF investigations during the quarter ending December 31, 2003, at which time the Monitor found the LAPD in functional compliance.⁷⁶

⁷⁵ These requirements were: a. canvassing; b. interviewed identified witnesses; c. collect and preserve evidence; and d. burden of evidence collection.

⁷⁶ The Monitor did not assess compliance regarding NCUOF administrative investigations this quarter. This assessment is scheduled for the quarter ending September 30, 2005.

Current Assessment of Compliance

In order to assess compliance with paragraph 81 as it relates to COC administrative complaint investigations during the current quarter, the Monitor reviewed AD's *Complaint Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.⁷⁷ In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations out of a total of 113 that were completed during the month of August 2004.

Of the 53 complaint investigations selected for review, 20 were investigated by COC and subject to the requirements of paragraph 81. AD reviewed all 20 completed investigations to determine whether the LAPD met some or all of the requirements of paragraph 81. During its meta-audit, the Monitor randomly selected 10 of the 20 completed investigations for review.

AD calculated a 100% compliance rate with the requirements regarding the prohibition of group interviews and interviewing all supervisors with respect to their conduct at the scene during the incident. Based upon its meta-audit, the Monitor concurred with these conclusions.

However, in reviewing AD's audit, the Monitor determined that for 4 investigations conducted by COC, the LAPD did not collect and preserve all appropriate evidence, namely the interviewing of witnesses identified during the course of the investigation. These 4 non-compliant instances out of the 20 investigations reviewed by AD⁷⁸ results in a compliance rate of 80%.⁷⁹

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with paragraph 81.

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.

⁷⁷ Refer to the Current Assessments of Compliance for paragraph 80ii, above, and paragraph 129iii, below, for additional information regarding the Monitor's review of this audit.

⁷⁸ For one of the four complaints the Monitor noted that the LAPD appropriately adjudicated the investigation as "sustained;" however, the accused officer was listed as "unknown." Both the Monitor and AD, upon reviewing the underlying material, concurred that the complainant provided sufficient information to identify the accused officer. AD referred this issue to the PSB during April 2005. The Monitor's has determined that it has yet to be addressed as of the date of this report.

⁷⁹ As described in the Current Assessment of Compliance for subparagraph 129iii, below, in its audit, AD did not separate its findings for paragraphs 80 and 81 -- it included the results for the three paragraph 81 requirements in its paragraph 80 findings.

Background

The Monitor last assessed the LAPD's compliance with paragraph 82 during the quarter ending December 31, 2004, at which time the LAPD was found in primary and functional compliance. The Monitor's evaluation of compliance was based on its meta-audit of the LAPD's CUOF Audit.

Current Assessment of Compliance

In order to assess compliance with paragraph 82 during the current quarter, the Monitor reviewed AD's *Complaint Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.⁸⁰ In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations out of 113 that were completed during the month of August 2004. AD reviewed all 53 completed investigations to determine whether there were any indications of misconduct in the initiation of the complaint investigations. During its meta-audit, the Monitor randomly selected 26 of the 53 completed investigations for review.⁸¹

AD noted that for one of the three investigations containing evidence of additional misconduct, the additional misconduct was not identified and not reported, representing a 67% compliance rate. The Monitor concurred with AD regarding the non-compliant investigation; however, the Monitor identified one additional complaint investigation for which a separate complaint investigation should have been initiated based on management's failure to properly review the complaint investigation. This matter was discussed with AD management, who concurred with the Monitor's rationale and advised that AD had already informed the IAG of a number of concerns with this investigation.

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with paragraph 82.

E. ADJUDICATING INVESTIGATIONS

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

⁸⁰ Refer to the Current Assessments of Compliance for paragraph 80ii, above, and paragraph 129iii, below, for additional information regarding the Monitor's review of this audit.

⁸¹ The basis for this sample selection is described in the Current Assessment of Compliance for paragraph 129iii, below

The Monitor assessed the LAPD's compliance with all requirements of this section of the Consent Decree during the quarter ending June 30, 2004. During the current quarter, the Monitor again assessed the LAPD's compliance with all requirements of this section, except for requirements regarding the timeliness of complaint investigations, which were last assessed during the quarter ending March 31, 2005. The results of our current assessments 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; no automatic rendering of a witness statement as biased or untruthful given a familial or social relationship.

Background

The Monitor last assessed the LAPD's compliance with paragraph 84 during the quarter ending June 30, 2004, at which time the LAPD was found in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 84 during the current quarter, the Monitor reviewed AD's *Complaint Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.⁸² In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations out of 113 that were completed during the month of August 2004.⁸³ During its meta-audit, the Monitor randomly selected for review 26 of the 53 completed investigations.

During its audit, AD identified four instances of non-compliance with one or more of the requirements of paragraph 84. The Monitor concurred with these findings, but also identified two additional complaint investigations that the Monitor concluded did not meet the minimum

⁸² Refer to the Current Assessments of Compliance for paragraph 80ii, above, and paragraph 129iii, below, for additional information regarding the Monitor's review of this audit.

⁸³ For evaluation purposes, AD separated paragraph 84 into four subsections: credibility determination, automatic preference of officer statements, automatic determination of credibility and dismissal of statement based upon familial / social relationships.

requirements of paragraph 84.⁸⁴ The six instances of non-compliance with one or more of the requirements of paragraph 84, out of the 53 investigations reviewed by AD, translates into a compliance rate of 88.7%.

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

Paragraph 85 – Preponderance of the Evidence

Paragraph 85 requires that all complaints be adjudicated using a preponderance of the evidence standard⁸⁵ and, wherever supported by evidence, collected complaints shall be adjudicated as follows.⁸⁶

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

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

⁸⁴ During one investigation, preference was given to the officer's statements in an incident where the complainant stated he was stopped and cited for not wearing his seatbelt. The second incident involved preference to the statements made by the officer in connection with a domestic incident involving a mother and her daughter.

⁸⁵ 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."

⁸⁶ 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.

Background

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

The Monitor last assessed the LAPD's compliance with paragraph 85 during the quarter ending June 30, 2004, at which time the LAPD was found in functional compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 85 during the current quarter, the Monitor reviewed AD's *Complaint Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.⁸⁷ In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations out of 113 that were completed during the month of August 2004. The Monitor conducted a meta-audit of AD's audit, randomly selecting for review 26 of the 53 completed investigations.

In evaluating compliance, AD divided this paragraph into two subsections, adjudication based on a preponderance of the evidence and adjudication of all allegations prior to complaint closure. For the requirement that all allegations be adjudicated prior to complaint closure, AD concluded that all investigations reviewed were properly approved prior to closure of the investigations. Based on its meta-audit, the Monitor agrees with AD findings.

For the requirement that adjudications be based on a preponderance of the evidence, AD concluded that 51 of the 53 complaint investigations reviewed either contained documented or inferred indications that the allegations were adjudicated using a preponderance of the evidence, resulting in a 96% compliance rate. During its meta audit, the Monitor identified 2 additional complaints⁸⁸ for which the LAPD did not adjudicate the complaint investigation using the preponderance of evidence standard. The four non-compliant investigations out of the 53 reviewed by AD results in a compliance rate of 92.5%.

Based on the foregoing, the Monitor finds the LAPD in non-compliance with paragraph 85.

⁸⁷ Refer to the Current Assessments of Compliance for paragraph 80ii, above, and paragraph 129iii, below, for additional information regarding the Monitor's review of this audit.

⁸⁸ One complaint indicated the complainant withdrew a consensual search of her residence and was adjudicated as "exonerated." The other complaint investigation indicated the complainant and a witness stated the complainant was wearing his seatbelt during a traffic stop and the officer stated he was not. The complaint investigation was adjudicated as "unfounded." The Monitor ascertained that the adjudication should have been "not resolved."

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.

Background

The Monitor last assessed the LAPD’s compliance with paragraph 86 during the quarter ending June 30, 2004, at which time the LAPD was found in functional compliance.

Current Assessment of Compliance

In order to assess the LAPD’s compliance with paragraph 86 during the current quarter, the Monitor reviewed AD’s *Complaint Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.⁸⁹ In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations out of 113 that were completed during the month of August 2004. The Monitor conducted a meta-audit of AD’s audit, randomly selecting for review 26 of the 53 completed investigations.

AD identified 15 complaints that were either withdrawn, filed anonymously or by third parties, or the complainant was not available for an interview. AD concluded that in all instances, the Department made reasonable efforts to investigate the complaints. Based on its meta-audit, the Monitor concurs with AD’s findings.⁹⁰

Based on the foregoing, the Monitor finds the LAPD in primary⁹¹ and functional compliance with paragraph 86.

⁸⁹ Refer to the Current Assessments of Compliance for paragraph 80ii, above, and paragraph 129iii, below, for additional information regarding the Monitor’s review of this audit.

⁹⁰ The Monitor also reviewed one investigation outside the scope of AD’s audit, for which the Monitor concluded that an anonymous email was not fully and completely investigated. In this particular investigation, it also appears that the involved officer was the recipient of favoritism; it is the Monitor’s opinion that complaint investigations should have been initiated against the accused officer’s supervisor and the misconduct investigator.

⁹¹ 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.

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 September 30, 2004, the Monitor assessed the Department's compliance with requirements relative to the Chief of Police's discipline report and the IG's and Commission's reviews of said report. During the quarter ending March 31, 2005, the Monitor assessed the Department's compliance with Consent Decree requirements relative to its anti-retaliation policy, as well as those relative to the discipline reports.

During the current quarter, the Monitor assessed the Department's compliance with requirements relative to managers' evaluation of complaint investigations and notification to complainants regarding complaint dispositions, as well as the requirement that the Police Commission's assessment of the appropriateness of discipline imposed by the Chief of Police be considered as part of the Chief's annual evaluation. The results of our current assessments follow.

Paragraph 89 – IG and Police Commission Review of QDR

Paragraph 89 requires the IG to review, analyze and report to the Police Commission on each QDR. The Police Commission shall review the QDR no later than 45 days after its receipt and assess the appropriateness of the Chief of Police's actions, specifically with respect to CUOF. Such assessment must be considered as part of the Chief's annual evaluation as provided in paragraph 144.

For ease of reporting, the Monitor has split its reporting on paragraph 89 into three components:⁹²

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

⁹² The Monitor has split its reporting since there are three distinct activities required under this paragraph and it is possible that the Department could be in compliance with one or two, but not all three.

Background

The Monitor last assessed the LAPD's compliance with subparagraphs 89a and b during the quarter ending March 31, 2005 at which time the LAPD was found in functional compliance with each.⁹³

The Monitor last assessed the LAPD's compliance with subparagraph 89c during the quarter ending December 31, 2003, at which time the LAPD was found in functional compliance. The Monitor revisited the LAPD's compliance with subparagraph 89c during the quarter ending September 30, 2004. During that quarter, the Police Commission informed the Monitor that the annual review of the Chief of Police had not yet been completed. As a result, the Monitor withheld a determination of compliance with subparagraph 89c pending the Police Commission's completion of the Chief's evaluation.

Current Assessment of Compliance

Subparagraph 89c, Commission's Assessment Considered Part of Chief's Annual Review

As described under the Current Assessment of Compliance for paragraph 144, below, during the current quarter, Monitor completed its review of the Police Commission's annual review of the Chief of Police for the period July 1, 2003 through June 30, 2004. Although the evaluation generally addressed the requirements of the Consent Decree as required by paragraph 144, there was no specific indication that the Police Commission had considered its assessment of the appropriateness of discipline imposed by the Chief in its evaluation. This deficiency was brought to the attention of the Executive Director of the Police Commission, who indicated that he believed that the Chief's evaluation included consideration of the Commission's assessment of the appropriateness of discipline imposed by the Chief, even if it was not specifically declared in its written evaluation. The Monitor was assured that the Commission would take all necessary steps to make certain that its written evaluation of the Chief for the July 1, 2004 through June 30, 2005 period specifically recited all areas that were considered by the Commission in rendering its evaluation.

Based on the foregoing, the Monitor withholds a determination of the Department's compliance with paragraph 89c pending review of the Police Commission's next evaluation of the Chief of Police.

⁹³ The Monitor is scheduled to again assess the Department's compliance with subparagraphs 89a and b during the quarter ending September 30, 2005.

Paragraph 90 – Manager Review of Complaint Form 1.28 Investigations

The LAPD is required to continue its practice of having managers 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 assessed the LAPD's compliance with paragraph 90 during the quarter ending June 30, 2004, at which time the Monitor found the LAPD in primary⁹⁴ and functional compliance.

Current Assessment of Compliance

In order to assess compliance with paragraph 90 during the current quarter, the Monitor reviewed AD's *Complaint Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.⁹⁵ In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations out of 113 that were completed during the month of August 2004. The Monitor conducted a meta-audit of AD's audit, randomly selecting for review 26 of the 53 completed investigations.

In its audit, AD determined that there were 22 complaint investigations subject to the provisions of paragraph 90. Of these, AD concluded that in all instances, the investigations contained adequate indications that the adjudicating officer assessed the complaint for possible underlying causes and/or training issues. Based on its meta-audit, the Monitor determined that there were 4 investigations that identified underlying problems and/or training issues.⁹⁶ The 4 non-compliant investigations out of the 22 that were subject to the provisions of paragraph 90 results in a compliance rate of 81.8%.

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

⁹⁴ 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.

⁹⁵ Refer to the Current Assessments of Compliance for paragraph 80ii, above, and paragraph 128iii, below, for additional information regarding the Monitor's review of this audit.

⁹⁶ Those investigations indicating underlying problems or training issues included the revocation of a consensual search; sustained complaint against an unknown officer when, in her interview, the complainant identified the officer; complainant received a citation for seatbelt violation and the officer self tape-recorded the incident which was not considered for the investigation; and a domestic incident involving a mother and her daughter.

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 assessed the LAPD's compliance with paragraph 91 during the quarter ending June 30, 2004, at which time the Monitor found the LAPD in non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 91 during the current quarter, the Monitor reviewed AD's *Complaint Form 1.28 Investigations Audit*, dated March 31, 2005, and related working papers.⁹⁷ In this audit, AD randomly selected for review a statistical sample of 53 complaint investigations out of 113 that were completed during the month of August 2004. The Monitor conducted a meta-audit of AD's audit, randomly selecting for review 26 of the 53 completed investigations.

AD determined that 45 investigations required notification letters to be mailed to the complainants.⁹⁸ AD determined that all 45 investigation files contained evidence that the complainants were sent a notification letter that indicated the adjudication and contained all required information. Based on its meta-audit, the Monitor concurs with AD's findings.

It should be noted that the Monitor has noticed a marked improvement in the accuracy and quality of the LAPD's communications with complainants, which is a direct result of a policy change implemented during the summer of 2003. For those complaints not completed within a five-month period, the LAPD now requires that a communication be forwarded to the complainant advising him or her that the complaint investigation remains ongoing.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 91.

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

⁹⁷ Refer to the Current Assessment of Compliance for paragraph 80ii, above, for additional information regarding the Monitor's review of this audit.

⁹⁸ Because the remaining eight investigations were Department-initiated, they did not require notification letters.

directly by the PSB. It also outlines certain best practices with respect to complaint procedures and provides for a transition period to accomplish the reassignment of personnel to the PSB. In addition, the Consent Decree provides specific requirements regarding integrity/sting audits and outlines various requirements regarding the staffing of the PSB, including the selection and evaluation of PSB officers.

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

During the current quarter, the Monitor again assessed the LAPD's compliance with the Consent Decree requirements relative to integrity/sting audits. The results of our current assessment follow.

Paragraph 97 – Scheduled Integrity/Sting Audits

Paragraph 97 requires the LAPD, via its EES, to develop and initiate a plan for organizing and executing regular, targeted, and random integrity audit checks, or “sting” operations, to identify and investigate officers engaging in at-risk behavior, including, but not limited to: unlawful stops, searches, seizures (including false arrests), uses of excessive force, or discouraging the filing of a complaint or failing to report misconduct or complaints. The LAPD was required to develop and initiate this plan before July 1, 2001.

Background

The LAPD established the EES to address the requirements of Paragraph 97. The EES falls under the management of the CO of the PSB. The purpose of the EES is to either identify, through research or referrals, officers who may exhibit tendencies of at-risk behavior. Once identified, the EES must make a determination as to whether or not the behavior constitutes a violation of Paragraph 97, and if it does, whether or not a staged scenario is necessary to confirm the officers' at-risk behavior.

The Monitor last assessed the LAPD's compliance with paragraph 97 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in primary, secondary and functional compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 97 during the current quarter, the Monitor reviewed the OIG's Review of EES' Quarterly Reports for the Third and Fourth Quarters of 2004. The OIG reviewed a total of 67 EES sting and observational audits. Of those, 15 targeted audits addressed the following:

- Criminal misconduct
- Unlawful search
- Unlawful seizure
- Complaint in-take

The remaining 52 audits were random and addressed the following:

- Complaint Intake
- Unlawful search
- Criminal misconduct

The OIG concluded that all sting operations adequately addressed the targeted behaviors and continued to find the Department's sting audits to be effective and well planned. The OIG concluded that the quality of sting audits was sufficient. In its Fourth Quarter Report, the OIG recommended that the EES develop a formal process for notifying an officer's COC for procedural failures outside the scope of the sting audit. The Monitor concurs with this recommendation.

As described in the Current Assessment of Compliance for paragraph 135b, below, the Monitor assessed the OIG's review of the EES audits and reports. As part of this assessment, the Monitor reviewed a total of 25 audits,⁹⁹ concurring with the conclusions reached by the OIG in most instances. However, for three audits, the Monitor disagreed with the analysis and conclusions reached by the EES.¹⁰⁰ The OIG also disagreed with EES' analysis and conclusions for one of these three audits; concurred with the EES' conclusions for another; and did not express the OIG's concerns in its report on one of the audits, as identified in the OIG's working papers.¹⁰¹ Due to the confidential nature of the EES's role, the specifics of the Monitor's evaluation have been communicated to the Department separately.

⁹⁹ The Monitor reviewed 25 audits in their entirety, 22 of which were randomly selected during the Monitor's meta-audit of the OIG's reviews of the EES's Sting Audit Reports (see paragraph 135b, below); the Monitor elected to review an additional 3 audits.

¹⁰⁰ Two of the three audits in question were random and one was targeted.

¹⁰¹ The EES has indicated that it will address the concerns raised via follow-up sting audits.

Based on its review, the Monitor has become concerned that EES resources, which are limited, are not necessarily being utilized to adequately address Consent Decree requirements. For example, in one instance, the EES dedicated significant resources to conducting a targeted sting on misconduct that could very easily have been identified and investigated by other specialized units within PSB that are capable of conducting such investigations. Similarly, in another audit, resources were dedicated to an anonymous complaint that the Monitor contends should have first been investigated by the IAG. EES resources would have been more effectively utilized in conducting additional audits on officers for whom initial audits were initiated based upon concrete analysis by other LAPD entities but whose initial audits were rated either as “pass” or “inconclusive.” The OIG, to its credit, also identified certain Divisions that were not subject to EES audits, specifically testing the complaint intake process and recommending that the EES address them in its 2005 scheduling. The Monitor concurs with this recommendation.

In light of these findings, the Monitor is also concerned that the current review and rating assessment process requires additional oversight.

Based on the foregoing, the Monitor finds the LAPD in functional non-compliance with paragraph 97.

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

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

The Monitor is scheduled to assess the Department’s compliance with its non-discrimination policy during the quarter ending September 30, 2005.

During the current quarter, the Monitor assessed the LAPD’s data collection processes and its compliance with Consent Decree requirements relative to the collection of field data. The results of our current assessments follow.

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 pedestrian stop.

Background

The Monitor last evaluated paragraphs 104 and 105 during the quarter ending June 30, 2004, at which time the Monitor found the Department in functional compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraphs 104 and 105 during the current quarter, the Monitor reviewed and subsequently relied on AD's *Motor Vehicle and Pedestrian Stop Data Collection Audit, Third Quarter, Fiscal Year 2004/2005*, dated March 25, 2005, and related working papers.¹⁰² In this audit, AD tested two different samples to measure compliance with paragraphs 128(4) & 131c-4: a sample of 101 discretionary stops that required completion of 129 Field Data Reports (FDRs), randomly selected based on Daily Field Activity Reports (DFAR)¹⁰³ and a stratified random sample of 100 of the 214 personnel complaints that were filed on or after February 2004 and closed in September 2004. During its meta-audit, the Monitor tested a random sample of 36 of the FDRs and 31 of the complaints reviewed by AD.

AD concluded that the LAPD was non-compliant with several requirements relative to the completion of FDRs,¹⁰⁴ including accuracy as it relates to paragraphs 104 and 105. In terms of compliance with paragraphs 104 and 105, the Monitor reviewed the samples for compliance with the requirements of completion of the entire form, accuracy of the information, and completion of an FDR when required, and concurred with AD's findings. The inconsistencies between the FDRs and other LAPD forms that were identified involved Reporting District, time of day, and reason for stop. The Monitor notes that accurate information on the FDRs, including Reporting District, time of day, and reason for stop, is critical to any data analysis that may be undertaken.

Based in the foregoing, the Monitor finds the Department in non-compliance with paragraphs 104 and 105.

¹⁰² Refer to the Current Assessment of Compliance for paragraphs 128(4) & 131c-4, below, for additional information regarding this audit and the Monitor's meta-audit of it.

¹⁰³ Certain specialized units, such as Metropolitan Division, must complete a log during the course of their watch but it is not called a DFAR.

¹⁰⁴ As described in the Current Assessment of Compliance for 128(4) and 131c-4, AD concluded that the Department was non-compliant with the requirements of authenticity and supervisory oversight (post incident); and compliant with the requirements of completeness, underlying actions and supervisory oversight (on-scene supervision). AD concluded that the GED units were non-compliant with the requirements of completeness of information on each FDR, authenticity, and supervisory oversight (post incident).

IV. MANAGEMENT OF GANG UNITS

In the wake of the Rampart Scandal, the LAPD conducted an audit of its internal operations and in March 2000 reorganized the units that police gang-related crime into Special Enforcement Units (SEU). The SEUs, which were subsequently reorganized into Gang Enforcement Details (GED),¹⁰⁵ report to the command staff in the stations where they are assigned, and receive support from Special Operations Support Division (SOSD),¹⁰⁶ which has responsibility for monitoring gang units Department-wide.

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

During the quarter ending September 30, 2004, the Monitor assessed compliance with Consent Decree requirements regarding the eligibility criteria for and the selection process of GED officers, tour of duty limitations, and supervisory review of sustained complaint or adverse judicial findings during an officer's assignment tour in the GED. During the quarter ending December 31, 2004, the Monitor assessed the LAPD's compliance with all Consent Decree requirements regarding the management of gang units that were not assessed during the prior quarter, although the Monitor withheld its determination of compliance with requirements related to gang unit procedures.

During the quarter ending March 31, 2005, the Monitor followed up on its compliance assessment related to gang unit procedures and also assessed compliance with requirements related to the monitoring and assessment of gang units by Bureau Gang Coordinators. In addition, the Monitor attended a Gang Symposium given by SOSD, which covered different gang histories, surveillance, arrest report writing, search warrants, and gun laws. The Monitor found the information well-presented and quite useful for the gang officers.

The Monitor is scheduled to again assess the Consent Decree requirements relative to the management of gang units during the quarters ending September 30, 2005 and December 31, 2005.

¹⁰⁵ GEDs are part of Gang Impact Teams, which also include Community Law Enforcement and Recovery (CLEAR) units.

¹⁰⁶ 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.

V. CONFIDENTIAL INFORMANTS

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

The Monitor last assessed compliance with the Consent Decree's requirements regarding Confidential Informants (CIs) during the quarter ending September 30, 2004. The Monitor is scheduled to again assess compliance with these requirements during the quarter ending September 30, 2005.

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

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

During the quarter ending September 30, 2004, the Monitor evaluated the Department's progress with its Mental Illness Program, and evaluated the Department's *Audit of Police Contact with the Mentally Ill*. The Monitor again evaluated the progress of the Department's Mental Illness Program during the quarter ending March 31, 2005, and is scheduled to do so again during the quarter ending March 31, 2006.

VII. TRAINING

A. FIELD TRAINING OFFICERS PROGRAM

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

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

The Monitor is scheduled to again assess the LAPD's eligibility criteria for FTOs and its training of FTOs during the quarter ending September 30, 2005. The Monitor is scheduled to again assess the LAPD's compliance with the requirements relative to the FTO de-selection process during the quarter ending March 31, 2006.

B. TRAINING CONTENT

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

The Monitor last assessed the LAPD's compliance with requirements regarding the training curriculum for the public members of the Board of Rights during the quarter ending June 30, 2004. The Monitor is scheduled to again assess compliance with these requirements, as well as requirements related to the communication of training ideas, during the quarter ending September 30, 2005. The Monitor last assessed the LAPD's compliance with requirements regarding police integrity training for all LAPD personnel during the quarter ending March 31, 2005. The Monitor is scheduled to again assess the LAPD's compliance with these requirements during the quarter ending March 31, 2006.

C. SUPERVISORY TRAINING

The Consent Decree mandates that all officers promoted to supervisory positions receive training prior to the assumption of their new responsibilities.¹⁰⁷ Once promoted, supervisors should continue to receive regular training on key issues, including report review, incident control, ethical decision-making, UOF and complaint investigations. The Consent Decree also requires the Department to ensure that supervisors who conduct investigations receive relevant training.

The Monitor last assessed the LAPD's compliance with supervisory investigations training requirements during the quarter ending June 30, 2004. The Monitor last assessed the LAPD's compliance with the requirements for training newly promoted supervisors and for providing regular and periodic training to supervisors during the quarter ending September 30, 2004. The Monitor is scheduled to again assess the LAPD's compliance with all Consent Decree requirements regarding supervisory training during the quarter ending September 30, 2005.

¹⁰⁷ 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.

VIII. INTEGRITY AUDITS

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

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

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

The Success of LAPD's AD

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

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

Since then, the Department has made significant progress relative to both of these issues, including the development of a Basic Law Enforcement Performance Auditing Course covering all aspects of police performance auditing, including auditing standards, audit work plans, interviews, audit fieldwork and analysis, report writing and the review process.¹⁰⁸

These developments have resulted in the completion of a total of 24 quality audits, as set out in the table below. In light of the recognition granted to LAPD's Law Enforcement Performance Auditing Course, and the quality of the work performed by AD since 2004, in those instances in which the scope of an AD audit directly addresses the requirements of a given paragraph, the Monitor elected to perform meta-audits of AD's audit work and findings and, if appropriate, rely

¹⁰⁸ This course was certified by the California Commission on Peace Officer Standards & Training and by the Michigan Commission on Law Enforcement Standards in late 2004/early 2005.

on such findings in assessing compliance with that paragraph.¹⁰⁹ Instances of such reliance are articulated earlier in this report.

<i>Timing of Monitor's Eval'n</i>	<i>Quantity and Title(s) of "Quality" Audits Completed by the LAPD¹¹⁰</i>
Sept 30, 2002	1: <i>Warrant Applications & Affidavits Audit - CD128(1)</i>
Dec 31, 2002	1: <i>ABC Reports Audit - CD128(2)</i>
Sept 30, 2003	1: <i>CI Control Packages Audit - CD128(5)</i>
Dec 31, 2003	2: <i>MV&PS Audit - CD128(4); GED Work Product Audit - CD131a</i>
Mar 31, 2004	1: <i>GED Work Product Audit - CD131a</i>
Jun 30, 2004	5: <i>Warrant Applications & Affidavits Audit - CD128(1); ABC Reports Audit - CD128(2); NCUOF Reports/Investigations Audit - CD128(3) & CD129ii; Complaints Investigations Audit - CD129iii; GED Work Product Audit - CD131a</i>
Sept 30, 2004	2: <i>CI Control Packages Audit - CD128(5) & CD131d; CUOF Systems Audit - CD129i</i>
Dec 31, 2004	7: <i>ABC Reports Audit - CD128(2); MV&PS Audit - CD128(4); CUOF Investigations Audit - CD129i; GED Work Product Audit - CD131a; GED Selection Criteria Audit - CD131b; Supplemental GED Warrants Audit - CD131c-1; Supplemental GED NCUOF Reports Audit - CD131c-3</i>
Mar 31, 2005	1: <i>Complaint Systems Audit - CD129iii</i>
June 30, 2005	3: <i>Warrant Applications and Supporting Affidavits Audit - 128(3), 131c-1; Motor Vehicle and Pedestrian Stop Audit - 128(4), 131c-4; CUOF Systems Audit - 129i</i>

¹⁰⁹ This is consistent with paragraph 162 of the Consent Decree, "In performing its obligations as required by the Consent Decree, the Monitor shall, where appropriate, utilize audits conducted by the LAPD for this purpose."

¹¹⁰ Although the GED Audits listed in this table were quality audits, the Monitor concluded they were non-compliant during the quarters ending Dec 31, 2003 through June 30, 2004 because they were performed by AD rather than the SOSD. The Monitor noted that until the Consent Decree was amended to allow AD to conduct these audits, the Monitor would continue to find the Department in non-compliance for such audits. As noted in the Monitor's Report for the Quarter Ending Sept 30, 2004, the City and the DOJ agreed upon such a modification. As a result, beginning in that quarter, the Monitor disregarded the fact that AD conducted GED audits and ultimately concluded (during the quarter ending December 31, 2004) that the GED audits listed in this table for that quarter were compliant.

The OIG's Oversight of the LAPD

For more than two years,¹¹¹ the Monitor expressed concerns regarding the OIG's resource constraints, which were hampering its ability to effectively oversee the LAPD. During the quarter ending September 30, 2004, the Monitor highlighted its concerns in a focus issue which addressed the Monitor's concerns about the timeliness and quality of the OIG's reviews and audits. Since then, the OIG implemented a restructuring plan to address its resource challenges and is making progress in this area, most notably with the addition of an Assistant IG who is focusing on improving the quality and timeliness of the OIG's audits and audit reviews. In addition, the OIG is making a transition to personnel with the expertise needed to consistently perform quality and timely audits/reviews. This transition is not yet complete. Notwithstanding this, since May 2005, the OIG has submitted 5 meta-audits on a timely basis. The Monitor commends these efforts and will evaluate the quality of such meta-audits next quarter.

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

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

B. AUDITS BY THE LAPD

During this quarter, the Monitor evaluated:

- The LAPD's compliance with paragraph 127 requirements regarding the reporting of Sting Audits;
- AD's paragraph 128(1) and 131c-1 *Warrant Applications and Supporting Affidavits Audit*;

¹¹¹ Since the quarter ending March 31, 2003.

- AD's paragraph 128(3), 129ii and 131c-3 *Interim NCUOF Audit*;
- AD's paragraph 128(4) and 131c-4 *Motor Vehicle and Pedestrian Stop Audit*;
- AD's paragraph 129i *CUOF Systems Audit*; and
- AD's paragraph 129iii *Complaint Form Investigations Audit*.

Paragraph 127 – Sting Audit Reporting Protocol

Under paragraph 127, sting audits conducted by the EES shall not be reported in the Quarterly Audit Report. Rather, results of all sting audits shall be reported to the Police Commission and the IG by the Chief of Police within two weeks of the Chief's receipt of each sting audit report.

Background

The Monitor last assessed the LAPD' compliance with paragraph 127 during the quarter ending September 30, 2004, at which time the Monitor found the LAPD in functional compliance.¹¹²

Current Assessment of Compliance

During the current quarter, the LAPD issued two quarterly reports summarizing the results of sting integrity audits covering the quarters ending September 30, 2004 and December 31, 2004, respectively.

The Monitor confirmed that the written quarterly reports were provided to the OIG and the Police Commission within two weeks, defined as 14 calendar days, of the Chief of Police's receipt of such reports. As previously reported, the Chief of Police is verbally apprised of any audits that result in a failure, typically within 24 hours of such occurrence. Similar verbal notification to the OIG and the Police Commission also occurs.

Based on the foregoing, the Monitor finds the LAPD in functional compliance with paragraph 127.

Paragraphs 128(1) & 131c-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 documents for completeness, authenticity, appropriateness of action taken, compliance with the law, conformity with Department procedures and an evaluation of supervisory oversight.

¹¹² There are no primary and secondary compliance requirements for this paragraph.

Paragraph 131c requires the Department to conduct regular, periodic audits of a stratified random sample of all gang unit warrant applications and supporting affidavits. This paragraph requires an assessment of the same qualitative factors that are required in paragraph 128(1).

Background

On June 21, 2001, Criminal Intelligence Group completed a Department-wide audit of warrants and supporting affidavits, which the Monitor concluded was deficient and was therefore non-compliant with the requirements of paragraph 128(1) of the Consent Decree. AD completed another *Warrants and Supporting Affidavits Audit* in July 2002, which the Monitor concluded was a compliant audit. This was AD'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 until March 26, 2004. The Monitor later found this audit in compliance.

Current Assessment of Compliance

In order to assess the Department's compliance with paragraphs 128(1) & 131c-1 during the current quarter, the Monitor reviewed AD's *Warrants Applications and Supporting Affidavits Audit* submitted February 10, 2005 and an *Amendment* submitted May 25, 2005. The Monitor also reviewed selected AD working papers, including workplans, crib sheets, matrices and related documents.

AD selected a stratified random sample of 82 LAPD warrants from the 169 Departmental warrants issued in DP7 (June 27, 2004 to July 24, 2004). Included within the population were 16 gang-related warrants; AD sampled 100% of these warrants. Within these populations, 20 warrants were identified as Hobbs warrants, of which AD reviewed 18 (11 from the Departmental warrants, and 7 from the gang-related warrants).¹¹³ The Monitor obtained and reviewed a random sample of 23 of these Departmental warrants, a random sample of 11 gang-related warrants, and an additional 5 Hobbs warrants.¹¹⁴

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

¹¹³ Hobbs warrants include those warrants that are sealed pursuant to *People v. Hobbs (1994) 7 Cal.4th 948*, where the California Supreme Court held that all or part of the information in a search warrant provided by an informant (whose only relevance is supplying cause) may be sealed to protect the informant's identify.

¹¹⁴ The random samples of 23 and 11 were selected using a 95% confidence interval and an error rate of +/- 7%. Nine warrants were identified as Hobbs warrants within these random samples. Due to the extent of issues identified during the Monitor's review of the Hobbs warrants, the Monitor extended its testing to include another 5 Hobbs warrants, using a +/- 4% error rate.

- As with prior *Warrants* audits, AD continued to be unable to confirm the completeness of the warrant population due to the absence of an automated tracking system. The Monitor commends AD for the procedures taken in attempting to ensure the completeness of the population.¹¹⁵
- AD's amended report concluded that the Department and gang unit warrants were in overall non-compliance relative to each of the requirements of paragraph 62,¹¹⁶ the completeness of information requirements of paragraph 71a,¹¹⁷ the conformance with LAPD procedures requirements of paragraph 71b, and the supervisory oversight of the incident and post-incident review requirements of paragraph 71c,¹¹⁸ but were compliant with the remaining requirements of paragraphs 71a, 71b and 72.¹¹⁹ The Monitor concurs with these findings.
- AD also concluded that there were no risk management issues related to the Hobbs warrants reviewed during its audit. As described in the Focus Issues section of this report, the Monitor identified several areas of concern related to the Department's handling of such warrants, none of which were identified by AD. In summary, there were delays in the sealing of 2 warrants, there were 5 warrants identified as Hobbs warrants that were not Hobbs warrants,¹²⁰ there were inconsistencies in the type of information sealed within each warrant, and there was confusion about access to sealed warrants. While these issues do not directly involve Consent Decree requirements, and therefore do not impact compliance, the Monitor raises them because they represent a possible risk management concern. AD has taken appropriate corrective action to ensure these issues are addressed by the Department.
- The Monitor found the detailed findings within the audit report supported the overall findings; however the initial overall compliance rates included in the summary of findings were based on incorrect calculations. This was pointed out by the OIG and subsequently corrected in AD's *Amendment*.

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

¹¹⁵ These procedures included sending correspondence to all divisions to obtain the warrant tracking logs, and testing whether warrants identified in previous audits (e.g., the recent *ABC Reports Audit*) were captured in the warrant tracking logs. These procedures identified additional warrants for inclusion in the audit beyond those listed on the divisional warrant tracking logs.

¹¹⁶ The amended table in the report indicates that the manager analysis of gang unit warrants was compliant, but all other requirements of paragraph 62 were non-compliant.

¹¹⁷ The Departmental warrants were non-compliant, whereas the gang unit warrants were compliant.

¹¹⁸ The post incident reviews of the gang unit warrants were compliant, but all other supervisory oversight requirements were non-compliant.

¹¹⁹ Related to authenticity, appropriateness of the time of service, and accuracy of the warrant tracking log.

¹²⁰ 3 warrants in the general population and 2 warrants in the gang population.

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

Paragraphs 128(3) and 129ii require the Department to complete a regular, periodic audit of stratified random samples of all NCUOF reports/investigations. Paragraph 128 requires this audit to 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 also assess the timeliness, completeness, adequacy and appropriateness of the investigations.

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

Background

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

The Monitor found the Department in non-compliance with paragraphs 128(3) and 129ii for the three consecutive quarters from December 31, 2002 to June 30, 2003, because the Department did not complete another NCUOF audit on a regular, periodic basis after the initial audit referenced above.

The Monitor subsequently found the Department in compliance with paragraphs 128(3) and 129ii for the quarter ended December 31, 2004.

Current Assessment of Compliance

During the current quarter, the Department issued Special Order No.13, *Non-Categorical Use of Force Reporting Revised*, dated May 26, 2004, which made changes to NCUOF reporting procedures. An interim audit was completed on February 16, 2005 by AD that was not intended to meet the requirements of the Consent Decree. The purpose of the audit was to evaluate if NCUOF incidents were investigated according to the requirements of Special Order No.13. The Monitor reviewed this interim report in order to understand the status of the implementation of Special Order No.13.

AD selected a judgmental sample of 45 NCUOF investigations and one skeletal fracture from a population of 104 investigations conducted¹²¹ in DP6 and DP7, the first two periods after the publication of SO13.

¹²¹ Relating to UOF within the 18 geographic areas, Metropolitan, Jail and the Traffic Divisions.

The Monitor obtained and reviewed a random sample of 12 of the NCUOF reports in AD's sample.¹²² The Monitor's findings, which have been discussed with AD, are highlighted below:

- The Monitor did not identify any concerns within the UOF packages in the sample.
- The Monitor commends AD for the progress it has made in developing its matrices to include the cribsheet within the matrix, as well as having the matrices and AD responses available in electronic format.
- The Monitor had difficulty reconciling AD's compliance findings with the working papers provided, as the working papers did not adequately explain AD's reported rates.

On June 30, 2005, AD completed a *NCUOF Audit* to address the requirements of the Consent Decree. The Monitor is withholding a determination of the Department's compliance with paragraphs 128(3), 129ii and 131c-3 until it evaluates AD's June 30, 2005 *NCUOF Audit*.

Paragraphs 128(4) & 131c-4 Motor Vehicle & Pedestrian Stop Audit

Paragraph 128(4) requires the Department to complete a regular, periodic audit of stratified random samples of all motor vehicle and pedestrian stops (MV&PS). This audit requires, at a minimum, an assessment for completeness, authenticity, appropriateness of action taken, conformity with Department procedures, quality of supervisory oversight, and compliance with the requirements for documenting MV&PS as noted in paragraphs 104 and 105.

Paragraph 131 requires the Department to conduct similar audits of a stratified random sample of all gang unit MV&PS.

Background

For the quarters ending September 30, 2002 through June 30, 2003, the Monitor found the Department in non-compliance with paragraphs 128(4) and 131c-4 because the Department had not completed a regular, periodic MV&PS audit as required by these paragraphs. The first audit of this type was not completed until August 2003, because the data collection process was not considered to be reliable enough to warrant an audit. The Monitor reviewed the August 2003 audit, finding it in compliance with the requirements of paragraph 128(4), but in non-compliance with paragraph 131c-4 because the August 2003 audit did not address specific gang unit issues and there were no conclusions articulated relating to gang unit findings.

During the quarter ending December 31, 2004, the Monitor completed its review of AD's *MV&PS Data Collection Audit Report* dated June 30, 2004 and found the audit in compliance with paragraphs 128(4) and 131c-4.

¹²² This Monitor's sample size was selected using a 95% confidence interval and an error rate of 10%.

Current Assessment of Compliance

In order to assess the Department's compliance with paragraphs 128(4) & 131c-4 during the current quarter, the Monitor reviewed AD's *MV&PS Data Collection Audit* dated March 25, 2005, the related audit workplan and cribsheet, the Monitor's sample of completed audit matrices and supporting documents relating to the audit population and sample determination.

AD's sample comprised randomly selected DFARs and FDRs for patrol and gang units from the 18 areas as well as the four Traffic Divisions and Metropolitan Division for 3 dates in September and October 2004. Discretionary stops that required the completion of an FDR were identified on each unit's DFARs and one randomly selected stop was chosen from each DFAR, resulting in a sample of 101 discretionary stops that required completion of 129 FDRs. AD also reviewed a stratified random sample of 100 of the 214 personnel complaints that were filed on or after February 2004 and closed in September 2004 in order to determine whether FDRs were completed when required, and whether they were properly posted to the STOP database.

The Monitor tested a random sample of 36 of the FDRs and 31 of the complaints reviewed by AD.¹²³ The Monitor's findings, which have been discussed with AD, are highlighted below:

- AD appropriately concluded that the Department was non-compliant with the paragraph 128(4) requirements of authenticity and supervisory oversight (post incident); and compliant with the requirements of completeness, underlying actions and supervisory oversight (on-scene supervision). AD appropriately concluded that the GED units were non-compliant with the paragraph 128(4) requirements of completeness of information on each FDR, authenticity, and supervisory oversight (post incident).
- The Monitor identified minor discrepancies in the compliance statistics reported in tables included in AD's report. The discrepancies did not impact AD's overall compliance findings.
- The Monitor noted that AD assessed and reported compliance for the objectives of authenticity, underlying actions and supervisory oversight based on the specific attributes tested for each objective, rather than assessing compliance for each objective as a whole. Although this is inconsistent with the compliance assessments in AD's other audits, and results in higher overall compliance assessments, the Monitor concurs that AD's methodology is appropriate for these circumstances in that better information is reported regarding the specific problems identified on the FDRs and DFARs.

¹²³ The Monitor, after reviewing for appropriateness, used the OIG's sample, which was selected based on a 95% confidence interval and an error rate of +/-7% and included GED arrests. Of the 31 Complaints, 22 were from FDRs and 9 were excluded complaints.

- While reconciling the detailed working papers to AD's reported compliance rates, the Monitor noted that AD's compliance rate working papers were not well-organized; significant explanations from AD were required to complete this reconciliation.
- The Monitor did not identify any concerns with AD's fieldwork related to the patrol and gang stops, but identified one personnel complaint assessed by AD as out of compliance for completeness because AD concluded an FDR had not been completed when, in fact, it was completed.

Based on the foregoing, the Monitor finds the LAPD in compliance with paragraphs 128(4) and 131c-4.

Paragraph 129i – Categorical Use of Force Systems Audit

Paragraph 129i requires the Department to conduct regular, periodic audits of random samples of all CUOF investigations, and describes the qualitative factors that should be assessed in such audits, including the timeliness, completeness, adequacy and appropriateness of the investigations. Paragraph 129i also requires the Department to evaluate compliance with paragraphs 67, 69, 80, 82 and 83; in addition, AD's audit has considered paragraphs 55 to 59 and 61 to 65 relating to CUOF investigations. These further paragraphs are not specifically required to be included in paragraph 129i audits.

Background

The Monitor has provided assessments for five prior CUOF investigation audit reports prepared by AD for paragraph 129i. For the first report, the Monitor withheld its determination of compliance because the review covered only one investigation. The Monitor concluded that the next two reports were non-compliant because of audit timing, scope and quality of review issues.¹²⁴

For the quarters ended September 30, 2004 and December 31, 2004, the Monitor determined that AD's *CUOF Systems Audit Report* dated June 9, 2004 and *CUOF Investigations Audit Report* dated August 13, 2004 were compliant with paragraph 129i requirements.¹²⁵

¹²⁴ The Monitor's findings were reported in the Monitor's reports for the quarters ended June 30, 2002, June 30, 2003 and December 31, 2003.

¹²⁵ For fiscal year 2003/2004, AD bifurcated its review of CUOF investigations into interim and final audit reports. The CUOF interim systems audit report assessed the requirements of 13 paragraphs: 55, 56, 58, 59, 61 – 65, 67, 69, 83 and 147. Additionally, it assessed portions of paragraphs 128(3) and 129i(a) relating to completeness of information contained and timeliness of completing the investigation respectively. The CUOF final investigations audit report assessed the requirements of paragraphs 57, 80 and 82 and the remaining requirements of 128(3) and 129i.

Current Assessment of Compliance

For the 2004/2005 fiscal year, AD has again split its CUOF investigations review into two separate audit reports in order to address the requirements of paragraph 129i: an interim audit report covering those paragraphs that largely address specific process issues and a final audit report that will cover quality of investigation requirements.¹²⁶ For reporting purposes, the Monitor has similarly split its evaluation of paragraph 129i into two separate evaluations:¹²⁷

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

For the current quarter's evaluation of paragraph 129i, the Monitor reviewed AD's *CUOF Systems Audit Report* dated March 31, 2005, as well as its underlying CUOF audit working papers.

AD's primary population comprised all 23 CUOF incidents that occurred during the period October 1 to November 30, 2004.¹²⁸ For additional audit objectives, AD selected three other audit populations of CUOF incidents to make more-timely assessments.¹²⁹ As the audit populations were small, AD did not sample. Based on this review, AD found the Department to be at least 95% compliant with the requirements of 10 of the 13 paragraphs reviewed; AD found the Department in non-compliance with the requirements of the following 3 paragraphs, as the 95% standard was not met:

Paragraph 56b	DCP notifications for 2 of 23 (91.3% compliance) incidents did not meet timely protocols
Paragraph 64	Evidence of consideration of officer's work history was not documented for 1 of 7 (85.7% compliance) incidents resulting in disciplinary action
Paragraph 67	Submission of completed investigation or status report was not submitted to PC within 60 days of statute for 13 of 31 (58.1% compliance) incidents

¹²⁶ AD has delayed the commencement of the final CUOF investigation audit report pending the completion of a suitable population of CUOF investigations initiated and completed by FID.

¹²⁷ In the attached Report Card (Appendix B), the historical assessments for CD129i have been applied to both evaluations of the CD129i audits.

¹²⁸ AD appropriately deselected 4 CUOF investigations involving animal shootings or accidental discharges. A further incident was appropriately deselected as it was subsequently classified as non-categorical. Completed CUOF investigations are those reviewed and approved by the Chief of Police.

¹²⁹ To assess one of the requirements of paragraph 64, AD selected all out-of-policy CUOF incidents that were initiated and closed in 2004. For another requirement of paragraphs 64, and for paragraph 69, AD included all CUOF incident investigations presented to the UOFRB October 1 to November 30, 2004. For paragraph 67, the audit population comprised all CUOF incidents occurring January 1 to March 31, 2004.

The Monitor randomly selected for review samples of CUOF investigations from each of the four audit populations.¹³⁰ The Monitor's primary sample was 14 CUOF investigations. The Monitor's findings are highlighted below:

Strengths:

- This audit report generally presented its audit findings in a clear manner and working papers contained evidence of appropriate planning and conduct of the audit processes and adequate documentary support of audit findings.
- Although not a requirement of paragraph 129i, AD expanded the scope of its audit to assess the requirements of paragraphs 55 to 59 and 61 to 65 as they relate to CUOF investigations.
- AD conducted suitable follow-up procedures in several instances including a determination of the causes of paragraph 67 non-compliance. Recommendations made by AD were appropriate.

Weaknesses:

- For paragraph 69,¹³¹ AD's approach tested that CUOF investigations scheduled for presentation to the UOFRB were, in fact, presented. The Monitor and the OIG felt a better approach would assess whether *all* CUOF incidents were presented to the UOFRB. The Monitor determined from AD working papers that all completed CUOF investigations were presented to the UOFRB.

For four paragraphs assessed by AD but not required in paragraph 129i audits, the Monitor identified the following issues:

- AD reported that the Department was in compliance with paragraph 55c, which requires that FID investigators be trained in conducting administrative investigations as specified in paragraph 80, despite identifying that 8 of 37 (21.6%) FID investigators had received only informal training. The Methodologies for assessing compliance with paragraph 55c require that such training be documented.¹³²
- AD's reporting for paragraph 56 regarding notifications of CUOF incidents to the Chief of Police, FID, Police Commission and IG lacked clarity.¹³³ The report noted "Only unjustified

¹³⁰ The Monitor's sample was selected using a +/-7% error rate.

¹³¹ Paragraph 69 requires the Department to continue to have the UOFRB review all CUOF incidents.

¹³² In order to achieve secondary compliance with paragraph 55, the Methodologies require training curricula, examination and testing processes and other related training documentation.

¹³³ The Department uses the DCP to provide this notification. The Consent Decree provides no definition of the standard for "immediate" notification. In this absence, AD's prior audit established an "ideal" protocol for compliance for "immediate" notification to the DCP as 20 minutes after the time of the incident unless there is documented justification for further delay

delays in notification to the DCP beyond one hour were considered non-compliant.” Discussions with AD, and the Monitor’s review of AD’s actual findings revealed that AD actually applied a 20-minute notification protocol when evaluating compliance with paragraph 56, with which the Monitor agrees.

- The Monitor noted 6 instances not identified by AD in which the CO’s paragraph 62 assessment of the supervisor’s actions at the CUOF scene did not include adequate specificity to support the evaluation. As a result, the Monitor disagreed with AD’s determination that the Department was compliant with paragraph 62 requirements. Additionally, AD’s review did not assess whether the supervisor’s conduct was considered in each supervisor’s annual personnel performance evaluation.¹³⁴ The Monitor withheld determination, in conflict with AD’s finding of compliance.
- AD found the LAPD in compliance with paragraph 63,¹³⁵ with a 97.3% rate. The Monitor identified several additional instances of non-compliance in connection with the requirements tested by AD. For one referral, the Chief of Police’s clearance for the officer’s return to active duty preceded the medical clearance; for another referral, 3 Daily Worksheets were found to be edited versions for which the original certification signatures were unchanged; and for several referrals, the particulars of referred officers’ appointments for BSS medical evaluation were not documented. Based on these additional non-compliant instances, the AD should have found the LAPD in non-compliance with the requirements tested.

Although the Monitor had different findings for certain paragraphs that were outside the scope of a paragraph 129i audit, based on the foregoing, the Monitor finds the Department in compliance with paragraph 129i.

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,¹³⁶ the completeness of the investigation file, the accuracy of the

¹³⁴ AD assessed the completion and quality of Employee Comment Sheets prepared by the CO for each in-charge supervisor’s conduct at the CUOF scene. Department policy requires these Employee Comment Sheets to be included in the supervisor’s Divisional personnel package and available for consideration by the CO preparing the annual performance evaluation.

¹³⁵ Paragraph 63 requires the Department to refer all officers involved in a CUOF resulting in death or substantial possibility of death to a BSS evaluation.

¹³⁶ As required by paragraph 87 (most complaint investigations to be completed in five months).

investigator's statement summaries, the adequacy¹³⁷ of the investigation, and the appropriateness of PSB's determinations relative to who shall conduct the investigation.¹³⁸

Background

For the quarter ending June 30, 2004, the Monitor determined that LAPD's *Complaint Form 1.28 Investigation Audit* dated March 30, 2004 and subsequent clarification dated June 22, 2004 were compliant with paragraph 129iii.

In 2004, AD decided to split the requirements of paragraph 129iii into two audits: an interim audit that assessed systems-related issues and a final audit that assessed the quality of complaint investigations. The Monitor supports AD's bifurcation of this audit and determined that AD's systems-related *Interim Complaint Form 1.28 Investigations Audit* dated December 22, 2004 was compliant with paragraph 129iii.¹³⁹

Current Assessment of Compliance

In order to assess the Department's compliance with paragraph 129iii during the current quarter, the Monitor reviewed AD's *Final Complaint Form 1.28 Investigations Audit* submitted March 31, 2005¹⁴⁰ and supporting working papers, including its audit workplan, cribsheet and selected matrices, complaint investigation packages and taped interviews.

The audit population and samples used by AD and the Monitor were stratified as follows:

¹³⁷ As required by paragraphs 80-86.

¹³⁸ As required by paragraphs 79 (PSB to receive Complaint Form 1.28 face sheets and classify as to investigating entity within 10 days) and 93-95.

¹³⁹ This audit assessed the following provisions: 74d,f,g, 76, 79/129iii(e), 83, 87/129iii(a), 93, 94, 95 and 152 relating to investigative resources, public accessibility and administrative processes for the complaint review process.

¹⁴⁰ This audit primarily addressed the following 14 provisions: 74h, 75, 77, 78, 80a-g/81, 82, 84-86, 90, 91, 101, 102 and 129b-d, all of which relate to the quality of the complaint investigations.

<i>Audit Population</i>	<i>Audit Objective(s)</i>	<i>Population Size</i>	<i>AD's Sample Size¹⁴¹</i>	<i>Monitor's Sample Size¹⁴²</i>
All Complaint Form 1.28 investigations (excluding FTA/FTQ/PTCs ¹⁴³) closed August 2004	Completeness, accuracy and adequacy of the investigation, appropriate adjudication and follow-up	IAG: 71 COC: <u>42</u> Total: <u>113</u>	IAG: 33 COC: <u>20</u> Total: <u>53</u>	IAG: 16 COC: <u>10</u> Total: <u>26</u>

Although AD's sample was stratified by investigating entity, namely the IAG and COC, its findings were not reported on the stratified samples, as required by the *Methodologies*, but were instead reported in overall terms.¹⁴⁴

AD concluded that the Department was compliant with 22 provisions of the Consent Decree, and non-compliant with 5; compliance determinations were withheld for 2 paragraphs.¹⁴⁵ The following table identifies AD's 5 non-compliant findings:

¹⁴¹ AD's sample was randomly selected based on a one-tail test, a 95% confidence interval, a 94% success rate factor and +/-4% error rate.

¹⁴² The Monitor utilized the sample selected by the OIG for its paragraph 135b review of AD's *Complaint Form 1.28 Investigations Audit* report. The OIG determined a statistically-based sample size, then randomly picked the complaint investigations to be reviewed on an interval basis. The Monitor considers this approach acceptable, but notes the resulting sample size of 26 exceeded the required sample size of 20 arising with a +/-7% error rate.

¹⁴³ Department-generated complaints arising from non-compliance with administrative policy were appropriately deselected: FTA: Failure to Appear; FTQ: Failure to Qualify; PTC: Preventable Traffic Collisions.

¹⁴⁴ For example, in its planning, AD addressed paragraphs 80 (PSB investigations of complaints) and 81 (COC investigation of complaints) in its sample selection; however, it included the results for the three paragraph 81 requirements in its evaluation of and reporting on paragraph 80.

¹⁴⁵ Compliance determinations were withheld for paragraphs 77 and 78 as no officers were arrested and no gross misconduct was evident in relation to the sample of complaint investigations reviewed.

<i>Paragraph Ref.</i>	<i>Paragraph Description</i>	<i>Instances Where Department Non-Compliance Exceeded 5%</i>
80f(b)	Interview all witnesses	12%: 6 of 49 investigations where witnesses were interviewed did not document that all witnesses were interviewed
80g	Witness statement inconsistency	6%: 1 of 16 investigations noting witness statement inconsistencies did not have documented resolution
84d	Dismissal of witness statement for familial/social relations	7%: 1 of 14 investigations had the witness statement dismissed solely for a familial/social relationship
82	Initiate complaint for additional misconduct	33%: unable to confirm whether 1 of 3 investigations with additional misconduct was reported
129c	General consistency of paraphrased statements	9%: 4 of 46 investigations had significant inconsistencies

AD concluded that the 5 findings of non-compliance “appeared to be isolated and... many of the anomalies were caused by two particularly problematic investigations, or they were benign and correctable with enhanced documentation of investigative efforts and findings.” Although AD appropriately referred the “two particularly problematic investigations” to PSB for further consideration, the Monitor is concerned that AD’s overall conclusion appears to rationalize its findings of non-compliance related to the other investigations that were included in AD’s non-compliance findings.

Although the Monitor agreed with the majority of AD’s specific findings, the Monitor identified concerns with the quality of or the adjudication determination for 3 other investigations that were not identified by AD, and identified further concerns with the 2 “problematic investigations” already referred to PSB for further review. As a result, AD’s compliance conclusions were overstated for 6 provisions of the Consent Decree, namely paragraphs 80f(c), 84, 85, 90 and 129d:

- AD identified 2 investigations where the tapes of officers’ statements were missing, but inappropriately excluded these findings from its assessment of paragraph 80f(c) which requires the collection and preservation of all appropriate evidence.¹⁴⁶
- In two instances not identified by AD, the Monitor determined the complaint adjudications preferred the officer’s statement over the complainant’s when either (i) no further evidence was available to assess the conflicting statements, or (ii) the Monitor felt further available evidence supported the complainant’s statements – paragraph 84b. The Monitor believes such complaints should have been adjudicated as “Not Resolved” rather than “Unfounded”. These findings also impact paragraph 84a relative to witness credibility assessments.

¹⁴⁶ AD reported these findings in Other Related Matters, and did not include these findings in its assessment of compliance for paragraph 80f.

- For 2 adjudications, the Monitor determined that the preponderance of evidence standards of paragraph 85 were not met. For an allegation that a sergeant continued a residential search after consent had been withdrawn, the Department adjudicated the complaint as “Exonerated” due to officer safety. The Monitor disagreed with this determination in light of the availability of other tactics and the clear violation of Department policy at the supervisor level. For another complaint investigation, a “Sustained – Unknown Officer” adjudication did not appear to appropriately consider the complainant’s evidence that provided sufficient identification of the officer.
- Paragraph 80-86 issues identified by AD were excluded from AD’s further assessments of management oversight (paragraph 90) and adequacy of the investigation (paragraph 129d). Additionally, the Monitor identified 2 other investigations with paragraph 90 management oversight issues, and a further 4 investigations with paragraph 129d investigation adequacy issues.

AD concluded that the Department was in compliance with certain requirements of paragraphs 80f(c), 84, 85, 90 and 129d; based on the above, the Monitor concluded that the Department was non-compliant with each. Although the Monitor discussed these issues with AD at length, AD did not accept the Monitor’s findings. The Monitor notes that the OIG had similar difficulties in reaching agreement with AD regarding certain of its findings.

Based on the foregoing, in light of the impact of the Monitor’s findings on AD’s ultimate conclusions of compliance for this audit, the Monitor finds this audit non-compliant with the requirements of paragraph 129iii.

C. INSPECTOR GENERAL REVIEWS & AUDITS

During the current quarter, the Monitor assessed:

- the timeliness of transmittal of LAPD’s audits to the OIG (paragraph 135a);
- the timeliness and quality of the OIG’s audit review process in general, and the OIG’s February 28, 2005 and May 2, 2005 reviews of the *EES’s Sting Audit Reports* for the quarters ending September 30, 2004 and December 31, 2004, respectively;
- the timeliness of the OIG’s *NCUOF Audit* (paragraph 136i); and
- the OIG’s recording and investigation of retaliation complaints (paragraph 139).

Paragraph 135 – OIG Evaluation of LAPD Audits

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

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

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 their completion. Since then, the Monitor has continued to find the Department in non-compliance, with the exception of the quarter ending March 31, 2004, in which the Department was found in compliance.

Current Assessment of Compliance

In order to assess the Department’s 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, 2005, as listed in the table below, and communicated directly with the OIG to confirm the dates of receipt.

<i>CD ¶</i>	<i>Audit Description</i>	<i>Date of Approval of Audit Report by Chief of Police</i>	<i>Date Audit Report Received by OIG</i>	<i># Days to OIG Receipt</i>
CD127	<i>Ethics Enforcement Section 1st Quarterly Report 2005</i>	May 6, 2005	May 10, 2005	4 ✓
CD128(3), CD129ii	<i>Non-Categorical Use of Force Reports Audit</i>	Jun 30, 2005	Jul 1, 2005	1 ✓
CD128(5), CD131c-5	<i>Confidential Informant Control Packages Audit</i>	Jun 29, 2005	Jul 1, 2005	2 ✓
CD131b	<i>GED Selection Criteria Audit</i>	Jun 22, 2005	Jun 29, 2005	7 ✓

✓ = Compliant X = Non-Compliant

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

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

Background

Since the quarter ending March 31, 2002, when the OIG was first found to be non-compliant with the requirements of paragraph 135b, with few exceptions,¹⁴⁷ the Monitor has continued to find the OIG’s reviews to be non-compliant. The assessments of non-compliance resulted either from shortcomings in the quality of the OIG’s reviews or the failure of the OIG to present its reviews in a timely manner to the Police Commission.

Current Assessment of Compliance

During the current quarter, in light of the ongoing staffing reorganization and staffing shortages at the OIG and the limitations that this places on the OIG’s ability to conduct quality reviews on a timely basis, rather than performing a detailed evaluation of the quality of each of the OIG’s reviews submitted during the previous quarter,¹⁴⁸ the Monitor evaluated the timeliness of the OIG’s reviews that were outstanding at the end of the previous quarter, and performed the following steps to evaluate the quality of the reviews submitted to mid-May 2005:¹⁴⁹

- The Monitor reviewed the quality and timeliness of the OIG’s reviews dated February 28, 2005 and May 2, 2005 of the EES’s Q3 and Q4 Sting Audit Reports.
- The Monitor asked the OIG if there were any other reviews issued to mid-May 2005 that warranted evaluation by the Monitor, and was advised that there were none, as most were executive level reviews rather than meta-audits.

¹⁴⁷ The Monitor did not assess compliance during the quarter ending June 30, 2002, found the OIG in compliance during the quarter ending December 31, 2002, and withheld a determination of compliance during the quarter ending June 30, 2003.

¹⁴⁸ This is the process that the Monitor followed until September 2004 for previous evaluations of the OIG’s reviews.

¹⁴⁹ The middle of the current quarter has been established as a cutoff date for monitoring purposes.

<i>CD Paragraph(s)</i>	<i>Audit Name¹⁵⁰</i>	<i>Date Approved by COP</i>	<i>Date Audit Rec'd by OIG</i>	<i>Date of OIG Report</i>	<i># Months to Completion</i>
CD97, 127	<i>EES's Sting Audit Report</i>	Dec 8, 2004	Dec 15, 2004	Feb 28, 2005	< 3 ✓
CD97, 127	<i>EES's Sting Audit Report</i>	Feb 8, 2005	Feb 9, 2005	May 2, 2005	< 3 ✓
CD128(1), CD131c-1	<i>Warrant Applications & Supporting Affidavits Audit</i>	Feb 10, 2005	Mar 1, 2005 ¹⁵¹	May 27, 2005	< 3 ✓
CD128(3), CD129ii	<i>NCUOF Reports Interim Audit</i>	Mar 3, 2005	Mar 9, 2005	Apr 11, 2005 ¹⁵²	< 3 ✓
CD128(4), CD131c-4	<i>Motor Vehicle and Pedestrian Stop Data Collection Audit</i>	Mar 25, 2005	Mar 30, 2005	Jun 10, 2005	< 3 ✓
CD129i	<i>CUOF Systems Audit</i>	Mar 30, 2005	Mar 30, 2005	June 30, 2005	= 3 ✓
CD129iii	<i>Complaint Form 1.28 Investigations Audit</i>	Mar 31, 2005	Mar 31, 2005	May 2, 2005 ¹⁵³ & Jun 30, 2005	< 3 ✓

✓ = Submitted on a timely basis X = Not submitted on a timely basis

Based on information in the table above, discussions with representatives of the OIG and the Monitor's review of the OIG's reports:

- All of the OIG's reviews in the table above were issued to the Police Commission on a timely basis within 3 months of the date of issuance of the audit.¹⁵⁴
- Most of the OIG's reviews completed to mid-May 2005, which would ordinarily be evaluated during the current quarter, did not include meta-audits, and were instead 'executive

¹⁵⁰ In addition to the audits listed in this table, GED Command Accountability Performance Audits dated Mar 21, 2005 for the Wilshire and Newton Areas were issued that relate to the Consent Decree. These were not reviewed by the OIG because they were not formally submitted as Consent Decree audits, and because the Assistant Inspector General actively participated in these audits when she was employed by AD.

¹⁵¹ The OIG first received this report on Feb 23, 2005 without a signed cover page from the Chief of Police, and later received the signed cover page on Mar 1, 2005. No changes were made to the report between these dates.

¹⁵² AD's NCUOF Interim Audit was not submitted to comply with the requirements of the CD; accordingly, the OIG's review was limited to an executive level review.

¹⁵³ This review was conducted over 2 phases, comprising an executive level review in the first phase, followed by a meta-audit.

¹⁵⁴ The OIG acknowledges that reviews issued more than 3 months after the date of an audit will cause such findings to be stale.

level reviews' of the respective audit reports and planning documents; accordingly, such reviews did not adequately evaluate the quality, completeness and findings of such audits. This finding alone causes the OIG to be non-compliant with the requirements of paragraph 135b.

The OIG's Reviews of the EES's Sting Audit Reports (CD97 & CD127)

In order to provide feedback related to certain of the OIG's recent reviews, the Monitor reviewed the OIG's reports and related audit working papers for two EES Sting Audit Reports as follows:

- The OIG's report dated February 8, 2005 on its review of the EES Sting Audit Report dated December 8, 2004 for the 3rd quarter ending September 30, 2004;
- The OIG's report dated May 2, 2005 on its review of the EES Sting Audit Report dated February 8, 2005 for the 4th quarter ending December 31, 2004; and
- A random sample of 11 of the EES sting audit reports examined by the OIG (11 from each quarter); in addition, the Monitor elected to review an additional 3 EES sting audit reports, 1 of which was outside the scope of the OIG's review for the 3rd and 4th quarters.

The Monitor's findings are highlighted below:

- The OIG submitted each of these reviews on a timely basis.
- The OIG reviewed 100% of the sting audit packages related to these EES reports, and appropriately reviewed each sting package utilizing a matrix with appropriate questions designed to evaluate the completeness, quality and findings of each sting audit.
- The OIG concluded that the quality and findings of the 3rd quarter sting audits were sufficient, but that such audits were incomplete. The OIG found the 4th quarter sting audits to be complete and of good quality, and the reported findings accurate and adequately supported. The Monitor concurs with these findings, with 2 exceptions.¹⁵⁵
- The OIG appropriately noted administrative deficiencies related to the accuracy of certain information described in the 3rd quarter EES Audit Report, and the OIG's 4th quarter report noted that the EES did not have a formal process to notify an officer's COC regarding procedural errors outside the scope of a sting audit. The OIG offered several recommendations to address these issues and improve the overall sting audit process. The

¹⁵⁵ For one complaint intake audit, the EES and the OIG concluded compliance based on the fact that the Sergeant eventually took the complaint, but identified that further training was required. The Monitor disagreed with the conclusion reached, as it appears that the Sergeant may have been attempting to dissuade the reporting of a complaint. For an unlawful search audit, the OIG expressed concerns in its working papers and exit interview regarding the legality of the search and appropriateness of certain of the EES' techniques, but did not report such concerns in its final report.

Monitor commends the OIG for identifying such issues, and agrees with the OIG's recommendations.

- The Monitor notes that the OIG's 4th quarter review report was an improvement over its 3rd quarter report and reports previously submitted by the OIG. The 4th quarter report was better organized, more clearly reported the OIG's findings, provided additional information on related matters¹⁵⁶ and outlined a number of valid and insightful recommendations to assist in the identification and handling of procedural failures and to improve the overall quality of the sting audits conducted by the EES. The Monitor commends the OIG for its continued progress in this regard.

In summary, although the above two reviews were well done, as expressed in the preceding text, most of the OIG's other reviews completed to mid-May 2005 did not include a meta-audit and, therefore, did not adequately evaluate the quality, completeness and findings of such audits.¹⁵⁷ Accordingly, the Monitor finds the OIG in non-compliance with the requirements of paragraph 135b.

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

Paragraph 136i, as amended, requires the OIG to conduct a regular, periodic review¹⁵⁸ of a random sample of all NCUOF investigations, and issue its reports thereon to the Police Commission. Such reviews are required to assess any areas of concern identified by the OIG, and at least one of the following issues related to the quality and/or outcome of the investigations: the accuracy of the statement summaries/transcripts, the completeness of the evidence collected and analyzed, and whether the investigation was properly adjudicated.

Background

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

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

¹⁵⁶ For example, the status of open complaints investigations and the coverage, by Department, of EES audits undertaken.

¹⁵⁷ As discussed with the OIG's representatives, the Monitor expects to evaluate the quality of the reviews submitted since May 2005 in its Report for the Quarter Ending September 30, 2005. Although the OIG's reorganization is not yet complete, these reviews comprised a meta-audit.

¹⁵⁸ The OIG was previously required to submit an audit.

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

Current Assessment of Compliance

The Consent Decree requires the OIG to complete "regular, periodic" reviews of this topic. As a result, this review must be completed on at least an annual basis, by March 24, 2005. By June 30, 2005, this review remained incomplete. The Monitor understands that this review will be conducted by the OIG's Police Performance Auditors as soon as their positions are filled.¹⁵⁹

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

Paragraph 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 assessed the Department's compliance with paragraph 139 during the quarter ending June 30, 2004, at which time the Department was found in functional compliance.

Current Assessment of Compliance

In order to assess the Department's 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 between June of 2004 and March of 2005.

¹⁵⁹ The OIG is currently conducting interviews to fill such positions.

The OIG identified 9 retaliation complaints/contacts received during the period of June 2004 and March 2005, all of which were “employee initiated” versus “OIG-initiated.” The Monitor’s case review generally found that existing OIG protocols were being followed, and the investigative files reviewed appeared to be uniform and well-documented.

During the period of time reviewed, the OIG only forwarded its findings to the Police Commission on one occasion, and this was done through an oral briefing. The reason given for not referring other findings was that the other eight investigations are still pending with IAD, so it was not possible for the OIG to make a determination without all the facts.

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 June 30, 2004, the Monitor assessed the Police Commission's compliance with requirements relative to the reviewing of and reporting on CUOF. The Monitor is scheduled to again assess compliance with these requirements during the quarter ending September 30, 2005. During the quarter ending September 30, 2004, the Monitor assessed compliance with requirements relative to the Police Commission's review of audits and its investigation of misconduct complaints filed against the Chief. The Monitor is also scheduled to assess compliance with the audit review requirements during the quarter ending September 30, 2005, and assessed compliance with the requirements relative to misconduct complaints filed against the Chief during the current quarter. During the quarter ending December 31, 2004, the Monitor assessed compliance with the requirements regarding the Commission's review of the LAPD budget and its review and approval of LAPD policies and procedures. The Monitor is scheduled to again assess compliance with these requirements during the quarter ending December 31, 2005.

During the current quarter, in addition to assessing compliance with the requirements relative to misconduct complaints filed against the Chief Monitor, the Monitor assessed compliance with requirements relating to the Commission's annual review of the Chief of Police. The results of our current assessments follow.

Paragraph 143b – Police Commission Consideration of Audit Results in Evaluation of Chief of Police

Paragraph 143b states that the Police Commission shall consider the results of specified audit reports, the sting audit reports, and the audits required by paragraphs 111, 113, 125, 126, 133, and 134 in its annual evaluation of the Chief of Police

Background

The Monitor last assessed the Department's compliance with paragraph 143b during the quarter ending December 31, 2003, at which time the Department was found in functional compliance.

Current Assessment of Compliance

As described under the Current Assessment of Compliance for paragraph 144, below, during the current quarter, Monitor completed its review of the Police Commission's annual review of the Chief of Police for the period July 1, 2003 through June 30, 2004. Although the evaluation generally addressed the requirements of the Consent Decree as required by paragraph 144, there was no specific indication that the Police Commission had considered the results of the enumerated audits in its evaluation. This deficiency was brought to the attention of the Executive Director of the Police Commission, who indicated that he believed that the results of such audits were considered by the Commission in its evaluation, even if not specifically declared in its written evaluation. The Monitor was assured that the Commission would take all necessary steps to make certain that its written evaluation of the Chief for the July 1, 2004 through June 30, 2005 period specifically recited all areas that were considered by the Commission in rendering its evaluation.

Based on the foregoing, the Monitor withholds a determination of the Department's compliance with paragraph 143b pending review of the Police Commission's next evaluation of the Chief of Police.

Paragraph 144 – Police Commission Annual Review of Chief of Police

Paragraph 144 requires the Police Commission, while conducting its annual review of the Chief of Police, to consider the Chief's responses to UOF incidents and complaints of officer misconduct, assessment and imposition of discipline and those matters described in paragraphs 67, 88, 89, 106, 124, 127, and 143 of the Consent Decree.

Background

The Monitor last assessed the Department's compliance with paragraph 144 during the quarter ending December 31, 2003, at which time the Monitor found the Department in functional compliance with the paragraph.

Current Assessment of Compliance

In December 2004, the Police Commission completed its annual review of the Chief of Police, covering the period July 1 2003, through June 30, 2004. During the current quarter, the Monitor completed its assessment of the Police Commission's review.

The Monitor determined that the review encompassed six distinct areas of performance. Each area contained a definition of the Police Commission's expectations of the Chief and an evaluation of his performance. The review also considered the requirements of the Consent Decree in evaluating the Chief's performance.

Based on the foregoing, the Monitor finds the Department in functional compliance with paragraph 144.

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 OIG, or authorized contractors to conduct such investigations.

Background

The Monitor last assessed the Department's compliance with paragraph 145 during the quarter ending September 30, 2004, at which time the Department was found in functional non-compliance. This Monitor determined that the OIG had no written protocol for the investigation of, and reporting on, complaints against the Chief of Police. The OIG agreed to promulgate written protocols relative to this important function.

During the quarter ending March 31, 2005, the OIG identified eight open misconduct complaints filed against the current Chief of Police. The Monitor deferred its review of these complaints to the current quarter due to a pending change in the OIG's review protocol.

Current Assessment of Compliance

Due to the potentially sensitive nature of complaints filed against the Chief of Police, the City only provides documentation directly to the Chief Monitor or his Deputy. During the current quarter, the Deputy Monitor reviewed the status of OIG complaint investigations against the Chief of Police and determined that the OIG has put into place written protocols for the investigation of, and reporting on, complaints against the Chief. The Deputy Monitor also reviewed the pending complaints against the Chief of Police and found them to be compliant with those protocols and with appropriate standards of investigation.

Based on the foregoing, the Monitor finds the Department in functional compliance with paragraph 145.

B. OPERATIONS OF THE INSPECTOR GENERAL

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

During the quarter ending September 30, 2004, the Monitor assessed compliance with the Consent Decree requirements that the LAPD provide the IG with complaint intake information on a timely basis and that the IG review complaints for compliance with LAPD policies and procedures and the terms of the Consent Decree. The Monitor is scheduled to again assess compliance with these requirements during the quarter ending September 30, 2005.

During the current quarter, the Monitor assessed compliance with a number of requirements relative to the role of the IG, including the Department’s timely notification to the IG of all CUOF incidents, the IG’s attendance at CUOF roll outs, the IG’s attendance at UOFRB meetings; and the IG’s acceptance of complaints from LAPD officers. The results of our current assessments follow.

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 assessed the Department’s compliance with paragraph 147 during the quarter ending June 30, 2004, at which time the Monitor found the Department in functional compliance.

Current Assessment of Compliance

In its *Categorical Use of Force Systems Audit*,¹⁶⁰ AD identified and reviewed all 23 CUOF incidents that occurred during the period October 1 to November 30, 2004 in order to determine

¹⁶⁰ As indicated in the Current Assessment of Compliance for paragraph 55, in order to assess the LAPD’s compliance with a number of paragraphs, including paragraph 147, the Monitor conducted a meta-audit of AD’s *Categorical Use of Force Systems Audit Report*, dated March 31, 2005, and related working papers. After

whether the LAPD gave proper notification to the IG. The AD defined “timely” notification as notification by the DCP within 15 minutes or notification through other means within one hour of the incident.

AD compared the OIG’s notification logs to DCP’s notification logs and concluded that there was timely notification for 22 of the 23 incidents reviewed. During its meta-audit, the Monitor randomly selected and reviewed 14 incidents and their supporting documentation. The Monitor concurred with AD’s findings for all 14 incidents.

The Monitor also determined that observations concerning conformance, and incidents of nonconformance, with LAPD polices, 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.

Background

The Monitor last assessed the Department’s compliance with paragraph 148 during the quarter ending June 30, 2004, at which time the Department was found in functional compliance.

Current Assessment of Compliance

In order to assess the Department’s compliance with paragraph 148 during the current quarter, the Monitor met with OIG staff to determine the level of access the OIG has to the UOFRB meetings. The IG and his staff confirmed that they continue to have unfettered access to UOFRB meetings. A representative from the OIG attends every UOFRB meeting, and they are encouraged to participate in questioning.

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

conducting the meta-audit, the Monitor elected to place reliance on the audit’s analysis and findings regarding the LAPD’s compliance with paragraph 147.

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 assessed the Department’s compliance with paragraph 149 during the quarter ending June 30, 2004, at which time the Department was found in functional compliance.

Current Assessment of Compliance

In order to assess the Department’s 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 request 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.

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 assessed the Department’s compliance with paragraph 150 during the quarter ending June 30, 2004, at which time the Department was found in functional compliance.

Current Assessment of Compliance

In order to assess the Department’s 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 determined that the OIG continues to track complaints and maintain records of

the complaints brought to its attention by LAPD personnel. Complaints are forwarded to the PSB as required.

The Monitor also reviewed complaints received by the IG for the period June 1, 2004 through March 31, 2005. During this time period, a total of 11 complaints were filed by Department employees, of which 9 involved retaliation issues. The remaining two complaints filed by Department employees involved claims of discrimination and fraudulent preparation of reports.

As with the complaints of retaliation,¹⁶¹ the OIG does not conduct the actual investigations of complaints received from LAPD officers. The OIG's role is primarily one of monitoring the progress of the investigation, and reviewing the investigation for thoroughness. The OIG does not make initial recommendations regarding how issues/allegations should be addressed by the Department.

The OIG staff continues to properly advise 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 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 Monitor last assessed the Department's compliance with paragraph 153 during the quarter ending June 30, 2004, at which time the Department was found in functional compliance.

Current Assessment of Compliance

In order to assess the Department's compliance with paragraph 153 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.

¹⁶¹ Refer to the Current Assessment of Compliance for paragraph 139, above, for the Monitor's assessment of the Department's compliance with Consent Decree requirements regarding the recording and investigating of retaliation complaints.

The Monitor reviewed the IG's monthly activity reports for the period May 2004 through March 2005. 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.

The IG also continues to communicate with the Police Commission through the placement of special interest items on the Police Commission's meeting agenda when reviews are completed and reports are ready for submission.

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

C. GENERAL

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

In previous quarters, the Monitor assessed the Department's progress in tracking recommendations and their implementation, and whether appropriate, timely and reasonable steps have been undertaken to implement recommendations and remedy deficiencies emanating from LAPD and OIG audits. During the quarter ending September 30, 2004, the Monitor reviewed the LAPD's recent recommendation status report. During the quarter ending December 31, 2004, the Monitor reviewed the recent *Audit Recommendations Tracking Report, Third Quarter* and the process in place to track specified audit and non-audit recommendations. The Monitor is scheduled to next review the LAPD's compliance with the requirements of this section during the quarter ending December 31, 2005.

X. COMMUNITY OUTREACH AND PUBLIC INFORMATION

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

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

During the quarter ending December 31, 2004, the Monitor assessed the LAPD's compliance with the requirement to prepare and post certain semiannual reports on its website. The Monitor is scheduled to again assess compliance with this requirement during the quarter ending September 30, 2005.

During the quarter ending June 30, 2004, the Monitor assessed the LAPD'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 assessed the LAPD's compliance with paragraph 155 during the quarter ending June 30, 2004, at which time the Monitor found the LAPD in compliance.

Current Assessment of Compliance

During the current quarter, the Monitor determined that all 19 Areas held their community meetings during the period of July 1, 2004 through June 30, 2005. The meetings in each of the 19 Areas were publicized on the LAPD website.

The Department provided the Monitor with materials from all 19 Areas relating directly to their community meetings. The Areas also provided ancillary materials, including photocopies of newspaper advertisements and fliers posted in public places, which identified the meetings' dates, times and locations. The Monitor reviewed the material provided and determined that each Area addressed Consent Decree requirements.

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

XI. CONCLUSION

As we conclude our fourth year of the Monitorship, we continue to be generally pleased with the progress of the Department in achieving compliance in most areas. Yet, as detailed in this report, we did note slippage in a number of areas that were previously found to be in compliance. It may be that some of this slippage is due to a change in auditing timeframes brought about by our reliance on LAPD audits, which in some instances lag behind audits that we have historically conducted. While there is absolutely nothing to lead us to believe that Department or City officials are any less committed to the Consent Decree than in previous quarters, the slippage is both discouraging and worrisome. We will continue our monitoring with the hope that such slippage proves to be an aberration.