

REPORT OF THE INDEPENDENT MONITOR
FOR THE
LOS ANGELES POLICE DEPARTMENT



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

REPORT FOR THE QUARTER ENDING
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Issued November 15, 2006

EXECUTIVE SUMMARY

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 original term of the Consent Decree expired on June 15, 2006. On May 15, 2006, Judge Gary Allen Feess ordered that the Consent Decree be extended for an additional three years, commencing on July 1, 2006.

This, the Monitor's twenty-first report, covers the results of the Monitor's compliance assessments conducted during the quarter ending September 30, 2006 and is the first report issued under the extension period. During the extension period, the Monitor is concentrating its monitoring efforts by actively monitoring those paragraphs of the Decree with which the City has failed to achieve substantial compliance. Based upon this approach, the Monitor examined 39 paragraphs or subparagraphs of the Consent Decree during the current quarter. Of these, the City and the LAPD successfully complied with 29, failed to achieve compliance with 6, and, for reasons stated in the body of this report, the Monitor withheld a determination of compliance with 4 paragraphs or subparagraphs.¹

The Monitor assessed the Department's compliance with several Consent Decree requirements related to Categorical Use of Force (CUOF) incidents and investigations, again finding the Department in compliance with several of the specific investigative requirements that apply to all CUOF incidents, as well as the requirement to consider an officer's work history when reviewing and/or making recommendations regarding non-disciplinary action as a result of a CUOF. However, the Monitor found the Department in non-compliance with the requirements that managers analyze the circumstances surrounding the presence or absence of a supervisor at a CUOF incident and that managers consider an officer's work history when reviewing and/or making recommendations regarding disciplinary action as a result of a CUOF.

The Department continues to perform admirably in relation to complaints received, as the Monitor found the Department in compliance with most Decree requirements reviewed this quarter regarding complaint intake, investigation and adjudication.

The Department was in compliance with most requirements assessed during this quarter in connection with the gang units, but failed to comply with requirements relative to the selection process for gang unit personnel. The Department was also found in non-compliance with requirements relative to the procedures for the handling of Confidential Informants.

¹ The Monitor also conducted a limited review of the LAPD's *Non-Categorical Use of Force Audi*, but did not assess compliance with the Consent Decree paragraphs related to that audit. As described in the Current Assessment of Compliance for subparagraphs 128(3), 129ii, 131a, 131c-3 and 131e, below, the Department is in substantial compliance with Consent Decree requirements relative to NCUOF incidents and investigations.

Both internal and external oversight continue to be strengths of the Department. The four audits conducted by the LAPD's Audit Division and assessed during the current quarter were found to be compliant. In addition, the Monitor assessed three reviews of audits conducted by the Office of the Inspector General, concluding that all three were quality reviews. Finally, the Monitor concluded that the Police Commission was compliant with Consent Decree requirements relative to its reviews of LAPD audits.

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I. 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. The original term of the Consent Decree expired on June 15, 2006. On May 15, 2006, Judge Gary Allen Feess ordered that the Consent Decree be extended for an additional three years, commencing on July 1, 2006.

This, the Monitor's twenty-first report, covers the results of the Monitor's compliance assessments conducted during the quarter ending September 30, 2006. As described in our Report for the Quarter Ending June 30, 2006, during the extension period, the Monitor is concentrating its monitoring efforts by actively monitoring those paragraphs of the Decree with which the City has failed to achieve substantial compliance. This is not to say that the City can ignore any of the provisions of the Decree. If there is any indication of backslide in any paragraph not being actively monitored, the Monitor will notify the parties and determine whether renewed active monitoring of such paragraph is appropriate. As such, the City continues to be bound not only to reforming those areas in which reform has not yet been completed, but also to maintaining those reforms that have been successfully implemented.

As a tool to assist the reader of this report, the Monitor has attached as Appendix A a "Report Card" that summarizes the overall grade of compliance with each paragraph or subparagraph of the Consent Decree for the last five quarters, beginning with the quarter ending September 30, 2005.² 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.

² 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.

II. FOCUS ISSUES

A. FIRST REPORT IN EXTENSION PERIOD

As noted in last quarter's report, the Los Angeles Police Department is a different agency than that which was found when the Independent Monitoring team arrived in June of 2001 to begin its assignment. Great strides have been made in instituting the reforms that were mandated by the Decree and in strengthening the Office of the Inspector General (OIG), the Police Commission and the Audit Division (AD), the institutions that will be charged with oversight once the Monitorship is completed. Notwithstanding this substantial progress, because there remained many mandated reforms for which substantial compliance had not been achieved, the Consent Decree was extended by Judge Gary Allen Feess through June of 2009. This quarterly report is the first report within the extension period.

During the extension period the Monitor's focus will be multi-fold. First, we will make certain that the reforms that have been successfully implemented are not backsliding. Second, we will determine whether the City has reached compliance with those reforms mandated by the Consent Decree with which the City has previously failed to substantially comply. Third, we will do all we can to make certain that the OIG, Police Commission and AD continue to be strengthened. Lastly, we will take a broader, macro-level view of the Department and its activities in order to determine whether the reforms outlined in the Consent Decree, including the prophylactics of the early warning system, have achieved their purpose of reducing abuses of force, incidents of biased policing, and incidents of other complainable conduct, and when such incidents do occur, as they inevitably will, whether they are dealt with appropriately by the Department.

III. PERFORMANCE OF THE LAPD'S POLICE DEPARTMENT

A. MANAGEMENT AND SUPERVISORY MEASURES TO PROMOTE CIVIL RIGHTS INTEGRITY – TEAMS II [COMPUTER INFORMATION SYSTEM]

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

The scope of the TEAMS II project has presented numerous challenges to the City. The City's struggle to meet these challenges has been a significant factor leading to the extension of the Consent Decree. However, the City has made strides in both Deployment Period System (DPS)⁵ and the UOFS. The Monitor continues to await roll-out of the CMS and full roll-out of the RMIS, and is hopeful that Department-wide implementation of all systems will be achieved early in 2007.

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

- As described in our Report for the Quarter Ending June 30, 2006, DPS has been rolled-out Department-wide and all Areas have been utilizing this system for over a year now.
- As described in our Report for the Quarter Ending June 30, 2006, the City has completely rolled-out the UOFS Department-wide and is now working on making improvements to the system regarding performance and usability.
- As described in our Report for the Quarter Ending June 30, 2006, RMIS has made the TEAMS Individual Report available Department-wide and the Department has given instructions to officers for reviewing their own individual TEAMS reports for accuracy. The City has turned off the TEAMS 1.5 system, so now all items go directly into the TEAMS II

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

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

⁵ The 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.

system. RMIS training has been completed Department-wide and the City is now providing the command staff with a presentation to refresh their training prior to action items being activated. All RMIS action items are now scheduled to be activated by early 2007, which will mean that full RMIS will be completed Department-wide at that time.

- As described in our Report for the Quarter Ending June 30, 2006, the City identified some corrections and enhancements to the reports and data conversion that had to be made before CMS Phase 1 could be rolled out. The City has rescheduled the roll-out of Phase 1 for the end of November 2006. CMS Phase 1 is sufficient to satisfy RMIS data requirements. The City is planning to stop entering complaint data into the Professional Standards Bureau's (PSB) complaint databases in November 2006 in order to begin the data conversion into CMS. The Department hopes to roll out the full CMS in the First Quarter of 2007.

The Department has not yet achieved substantial compliance with the majority of Consent Decree requirements related to TEAMS II (paragraphs 39-44, 46-49, 50d and e, 51b-d, 52-54). As a result, the Monitor will be assessing the Department's compliance with these paragraphs during the extension period.

During the current quarter, the Monitor assessed the Department's compliance with subparagraph 51c. The results of our current assessment follow.

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

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

Subparagraph 51d requires that when an officer is selected to the Force Investigation Division (FID),⁶ a gang unit, or assigned as a PSB⁷ investigator or FTO, supervisors and managers shall document their consideration of any sustained administrative investigation, adverse judicial finding, discipline for excessive force, false arrest or charge, improper search or seizure, sexual harassment, discrimination, or dishonesty.

Background

The Monitor last assessed the LAPD's compliance with subparagraphs 51b and d during the quarter ending September 30, 2005, at which time the Monitor found the LAPD in functional compliance with these subparagraphs.

⁶ FID is the successor to the Operations Headquarters Bureau (OHB) Unit.

⁷ PSB is the successor to the Internal Affairs Group (IAG).

Current Assessment of Compliance

In order to assess the LAPD's compliance with subparagraphs 51b and d, as they pertain to gang officers, during the current quarter, the Monitor reviewed and subsequently placed reliance on AD's *GED Selection Criteria Audit*, dated June 30, 2006, and related working papers. In this audit, AD identified a total population of 331 Gang Enforcement Detail (GED) officers assigned between February 5, 2006 and March 4, 2006. From this audit population, AD selected a sample of 74 officers (58 non-supervisory and 16 supervisory) who were selected to GED units between April 3, 2005 and March 4, 2006 to assess compliance with the requirements of subparagraphs 51b and d and 107a and b.

Regarding subparagraphs 51b and 107a,⁸ AD reviewed the TEAMS I records and performance evaluations for the 74 non-supervisory and supervisory officers selected for review and determined that all 74 officers had a positive evaluation of their TEAMS record prior to being selected into the respective unit. The Monitor randomly selected a sample of 18 non-supervisory officers and 5 supervisory officers from AD's samples, and reviewed their TEAMS I records and performance evaluations. The Monitor concurred with AD's assessments for the officers reviewed.⁹

Regarding subparagraph 51d, AD found that none of the officers selected for review had sustained complaints or adverse judicial findings with elements specified in subparagraph 51d of the Consent Decree during their assignment in the gang unit. The Monitor did identify and report to the Department its concern regarding the appropriate classification of complaints. The Department has changed its policy to now require review of all sustained complaints for elements related to subparagraph 51d. The Monitor commends the Department for taking this step; however, the Monitor still identified complaints with elements related to subparagraph 51d for which the consideration of the nature of the complaints and the reasons for their conclusions could have been better documented.¹⁰

Based on the foregoing, the Monitor finds the LAPD in compliance with subparagraphs 51b and d.

⁸ As noted in the Report for the Quarter Ending September 30, 2005, in connection with subparagraph 131b, and occurring again in this year's audit, AD did not report on the LAPD's compliance with subparagraphs 51b and d, even though it had done the fieldwork; the Monitor once again recommends that these assessments be included in future GED Selection Criteria audits.

⁹ Refer to paragraph 131b for further comments in regards to the GED selection process and its direct relation to the *GED Selection Criteria Audit*.

¹⁰ Refer to the Current Assessment of Compliance for subparagraph 107a for additional information regarding this issue.

Subparagraph 51c – Transferred Officers

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

Background

The Monitor last assessed compliance with subparagraph 51c during the quarter ending December 31, 2005, at which time the Monitor found the LAPD in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with subparagraph 51c during the current quarter, the Monitor requested and reviewed a list of officers who were transferred to a new Division or Area during Deployment Periods 5-7, 2006.¹¹ The total population of officers transferred during this time period was 573. The Monitor then selected a stratified sample of 82 transferred officers from this list and requested and reviewed materials related to Special Order 23,¹² including TEAMS I reports and TEAMS Evaluation Reports (TERs).¹³

The Monitor determined that TERs and TEAMS I Reports were included in 100% of the documentation for the transferred officers reviewed. However, the Monitor determined that the documentation, including TERs and TEAMS I Reports, for only 28 of the first 40¹⁴ (70%) officers reviewed was within ten working days of the transfer, as required by Special Order 23. Specifically:

- For 28 of 40 (70%) transferred officers reviewed, the TERs were timely approved by supervisors and Commanding Officers (COs), as evidenced by dates accompanying their signatures that indicated review of the TEAMS I reports.¹⁵
- For 36 of 40 (90%) transferred officers reviewed, the TEAMS Reports were dated within ten working days of the transfer.¹⁶

¹¹ Deployment Periods 5-7, 2006 covered the period April 30 – July 22, 2006.

¹² Special Order 23, "Criteria for Transfers/Loans of Sworn Personnel – Established," published July 10, 2003.

¹³ TERs are forms that supervisors and Commanding Officers sign and date to document that they have reviewed proper and timely TEAMS reports of officers under consideration for transfer. These forms are also utilized in connection with the selection of officers for assignment to FID, PSB or a gang unit, or as an FTO.

¹⁴ Given that the documentation for 12 of the first 40 officers was non-compliant, the Monitor did not continue reviewing the documentation for the remaining 42 officers in the sample.

¹⁵ Of the 12 TERs that were not approved on a timely basis, two were four months late, with one of those having the supervisors' name printed rather than signed for approval; one was three months late and had no CO signature; one was two months late; and the remaining eight did not have signatures of the supervisor and/or CO for approval.

The Monitor also queried the Use of Force Review Division (UOFRD) and found that the transferred officers reviewed were involved in additional uses of force (UOF) that were not included on the officers' TEAMS I reports. The Monitor again recommends that supervisors query the UOFRD for additional UOF that may not be listed on the transferred officers' TEAMS I reports.¹⁷

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

B. 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 CUOF¹⁸ is defined by paragraph 13 of the Consent Decree. Any UOF that falls under this definition is subject to certain paragraphs of the Consent Decree.¹⁹ Administrative investigations of these incidents are the responsibility of the FID. 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 Uses of Force (NCUOF). These are also subject to certain paragraphs.²⁰ 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.

The Department has achieved substantial compliance with all Consent Decree provisions relating to uses force except those requiring managers to analyze the circumstances surrounding the presence or absence of a supervisor at a CUOF incident (subparagraph 62a); the referral of all officers involved in a CUOF resulting in death or the substantial possibility of death to the LAPD's Behavioral Science Services for a psychological evaluation (paragraph 63); and managers to consider the officer's work history, including information contained in the TEAMS II system and that officer's CUOF history when reviewing and making recommendations regarding discipline or non-disciplinary action as a result of a CUOF (paragraph 64). In addition, the Department has not yet achieved substantial compliance with several Consent Decree provisions regarding use of force investigations (subparagraph 80i) and access to

¹⁶ The four late reports were one month, two months, three months and four months late, respectively.

¹⁷ The Monitor has discussed this issue and provided this recommendation in previous reports.

¹⁸ CUOF include an Officer-Involved Shooting (OIS) with or without a hit, ICD, Law Enforcement Activity Related Death (LEARD), LERI requiring hospitalization, Neck Restraint, Head Strike with an Impact Weapon and a Canine Bite requiring hospitalization.

¹⁹ 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.

²⁰ Specifically, paragraphs 13, 38, 65, 66, 68, 69, 81 and 82, as well as certain audit-related paragraphs.

information contained in TEAMS II for those units conducting CUOF investigations (paragraph 83). As a result, the Monitor will be assessing the Department's compliance with these paragraphs during the extension to the Consent Decree.

The Monitor assessed compliance with paragraphs 62 and 64 and subparagraph 80i during the current quarter. The results of our current assessments follow.

Paragraph 62 – Analyses of CUOF and Search Warrants

Paragraph 62 requires that managers shall 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. Paragraph 62 also requires (c) the consideration of the analysis in each supervisor's annual personnel performance evaluation.

Background

The Monitor last assessed the LAPD's compliance with paragraph 62 as it pertains to CUOF (subparagraph 62a) during the quarter ending June 30, 2006, at which time the Monitor found the LAPD in non-compliance.²¹ For a majority of the 21 CUOF incidents reviewed, the Monitor noted that the evaluations either were insufficient or were not timely completed and submitted.

Current Assessment of Compliance

In order to assess the LAPD's compliance with subparagraph 62a during the current quarter, the Monitor requested a listing of all completed CUOF incident investigations that were solely investigated by the LAPD's FID. In total, 13 such incidents were identified.²² For five incidents, although analyses were completed, they were deemed insufficient, as they did not

²¹ The Monitor last assessed the LAPD's compliance with paragraph 62 as it pertains to search warrants (subparagraph 62b) during the quarter ending December 31, 2005, at which time the Monitor found the LAPD in functional non-compliance. The Monitor was also scheduled to assess compliance with the requirement that any analyses be considered during the respective supervisor's performance evaluation (subparagraph 62c, as it pertains to the service of search warrants). However, the Monitor elected to defer evaluation of the LAPD's compliance with this requirement until the LAPD has met the seven-day reporting and qualitative content requirements of this subparagraph. The assessment of subparagraph 62 will be reported in section III.C., Search and Arrest Procedures, in future quarterly reports.

²² The 13 incidents occurred during the period March 2005 through October 2005 with the majority having occurred during August 2005. All 13 incident investigations were completed by the FID during the Spring of 2006 and subsequently forwarded to the Police Commission for review.

address material facts that would have been known at or right after the incident. Lastly, for two additional incidents the analyses were not completed within the mandated seven-day period.²³

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

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

Paragraph 64 requires a manager²⁴ to consider an officer’s work history, including information contained in the TEAMS II system,²⁵ the officer’s CUOF history and prior tactics, when reviewing and/or making recommendations regarding (a) discipline or (b) non-disciplinary action as a result of a CUOF.

Background

As described in previous quarterly reports issued by the Monitor, both AD and the Monitor have identified that TEAMS reports do not accurately reflect officers’ UOF work histories 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 UOFRD 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 as it pertains to disciplinary action (subparagraph 64a) during the quarter ending March 31, 2006, at which time the Monitor found the LAPD in compliance. The Monitor last assessed the LAPD’s compliance with paragraph 64 as it pertains to non-disciplinary action (subparagraph 64b) during the quarter ending June 30, 2006, at which time the Monitor found the LAPD in compliance.

Current Assessment of Compliance

Subparagraph 64a Officer History Considered For Disciplinary Actions

During the current quarter, at the Monitor’s request, the LAPD’s Civil Rights Division (CRD) identified six CUOF incidents involving 12 officers in which the officers’ tactics or uses of force were adjudicated out of policy by the UOFRB, the Chief of Police and/or the Police

²³ Although the analysis of one of these incidents was not completed within the required seven days, the Monitor concluded that the overall analysis was excellent and thorough.

²⁴ 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.

²⁵ Until the TEAMS II system is developed, the Monitor will base compliance on the LAPD’s use of its current TEAMS system.

Commission. For all 12 officers, the Monitor compared information concerning their complaint history and use of force history to CO analysis and noted the following:

- Complaint histories were appropriately considered for eight of the 12 officers.
- Use of force histories were appropriately considered for nine of the 12 officers.
- There was no documentation of a review of tactics prior to the use of force requiring analysis for three officers.²⁶
- For all 12 officers, the complaint initiated as a result of their respective out of policy finding had yet to be entered on each officer's TEAMS report.

Subparagraph 64b Officer History Considered For Non-Disciplinary Actions

As described in the Current Assessment of Compliance for paragraph 62, above, during the current quarter, the Monitor reviewed 13 CUOF incident investigations that were investigated solely by the FID. For all 13 CUOF incidents, the Monitor reviewed relevant documentation, including TEAMS reports, and determined that the UOFRB received accurate information.

Based on the foregoing, the Monitor finds the LAPD in non-compliance with subparagraph 64a and in compliance with subparagraph 64b.

Subparagraph 80i – Categorical Use of Force 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 subsections requiring conformance as follows:

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

²⁶ For the remaining nine officers, a review of UOF history indicated that this consideration was not applicable.

- 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. The Monitor's assessment of subparagraph 80i, related to CUOF investigations, follows; the Monitor's assessment of subparagraph 80ii, related to administrative complaint investigations, is included under section D. Complaints, below.

Background

The Monitor last assessed compliance with paragraph 80 as it pertains to CUOF incidents (subparagraph 80i) during the quarter ending June 30, 2006, at which time the Monitor found the LAPD in compliance with subsections a, b, c and e and in non-compliance with subsections f and g.²⁷

The parties have agreed that the Monitor's review of CUOF incident investigations should commence at the point in time a substantially completed investigation is forwarded to the Use of UOFRD and the OIG for review and presentation for adjudication to the UOFRB, the Chief of Police and the Police Commission.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph 62, above, during the current quarter, the Monitor reviewed 13 CUOF incident investigations that were investigated solely by the FID. The 13 incidents reviewed comprised:

- Eight OIS incidents, of which the suspect(s) sustained a hit in six incidents.
- One ICD incident for which the cause of death was not attributed to officer actions.²⁸
- Two head-strike with an impact weapon incidents. In one incident the officer utilized his baton. In the other incident, the officer utilized his Astro radio.
- Two incidents involving injuries requiring the hospitalization of the suspect.

The Monitor noted the following:

²⁷ Subsection d of paragraph 80 is not applicable to CUOF investigations.

²⁸ Special Order No. 34, dated October 12, 2005, *In-Custody Deaths Terminology – Revised*, amended Sections 2/101, 2/140.02, 4/409.2, 3/794.1 and 4/238.55 of the Department Manual. It deactivated the categorization formerly referred to as LEARD. All incidents involving a person who dies have since been and will be categorized as ICD. This Special Order revised policy to conform with California/Federal DOJ and other statewide municipal agencies.

- For all 13 investigations reviewed, all interviews were tape recorded (subsection a).
- Interviews were conducted at times and locations convenient to the witness in 12 of the 13 investigations reviewed (subsection b). In one investigation, multiple individuals were detained and transported to a Division to ascertain their involvement in the events leading up to the UOF and their witnessing of the UOF. The Monitor could not determine whether the times and locations were convenient for all individuals transported.
- Group interviews did not occur in any of the 13 investigations (subsection c).
- Supervisors responding to the scene were interviewed regarding their conduct in all 13 investigations (subsection e).
- All appropriate evidence was collected in eight of the 13 investigations (subsection f). The Monitor noted that potential witnesses were not interviewed in one investigation; line(s) of questioning did not delve into the officers' actions / inaction in two investigations; medical records were referenced but not included in one investigation; and relevant evidence was not identified and preserved by a Sergeant in one investigation.
- Inconsistent statements were identified and addressed during the course of nine of the 13 investigation (subsection g). The Monitor noted that for three investigations, suspect statement discrepancies were not contained or addressed in the report, and for one investigation discrepancies in the number of rounds fired were not identified and reported.

In addition the Monitor noted that in five investigations, FID investigators utilized leading questions during interviews, which, as the Monitor has previously reported, detract from the overall quality of the investigation. The use of leading questions was most often prevalent during interviews of officers. The OIG has also identified the repeated use of leading questions and reported such to the LAPD.

The Monitor noted that in five of the 13 CUOF incidents, allegations of misconduct occurred either at the scene of the UOF or during witness interviews shortly thereafter. However, the LAPD did not immediately initiate a complaint investigation in connection with these complaints. Rather, several months passed, and only during the subsequent review of transcribed statements were the allegations formulated and memorialized on complaint initiation forms. This depleted the time available to the LAPD to complete the complaint investigations. Also, for one incident, through its review of the complaint forms and completed complaint investigations, the Monitor determined that not all of the allegations identified during the course of the UOF investigation were included in the related complaint investigations. For another incident, the complaint investigation had yet to appear on the officer's TEAMS report.

Finally, the Monitor also considered the merits of each CUOF incident investigation as a whole, and whether or not items of non-compliance impacted the investigation's overall quality and the

ability of a reviewer to properly adjudicate officer actions.²⁹ Although certain investigations were notably superiorly conducted and reported, all 13 provided adequate information to ultimately render a decision.³⁰ The Monitor agreed with the adjudication for all 13 investigations with regard to the officers' uses of force. The Monitor agreed with all 10 applicable adjudications with regard to the officers' decisions to draw their weapons.³¹ For 11 of the 13 investigations, the Monitor agreed that the officers' tactical decisions were appropriately adjudicated. For two incidents, the Monitor disagreed, concluding that the officers' tactical decisions and actions should have been adjudicated as administrative disapproval versus formal training.

Notwithstanding the aberrations identified above, the Monitor finds the LAPD in compliance with all subsections of subparagraph 80i. The Monitor urges the Department to ensure that the appropriate complaint processes are initiated whenever raised during an investigation.

C. SEARCH AND ARREST PROCEDURES

The Consent Decree requires the LAPD to establish and/or continue to implement policies and procedures regarding searches and arrests. Although the Department has achieved substantial compliance with many of the Consent Decree's requirements related to search and arrest procedures, it has not achieved substantial compliance with the requirement related to supervisory presence at and review of the service of search warrants (subparagraphs 62b, 70b, 70c and paragraph 71) and the search warrant log (paragraph 72). As a result, the Monitor will be assessing the Department's compliance with these paragraphs and subparagraphs during the extension to the Consent Decree.

D. COMPLAINTS

The Consent Decree directs the LAPD to ensure the public unfettered ability to lodge complaints against police officers, and provides specific requirements relative to the intake of complaints, including the continuation of a 24-hour toll-free complaint hotline. The Decree also provides a series of specific instructions relating to the conduct of complaint investigations and requires that misconduct complaints be adjudicated in a fair, timely and consistent fashion; provides specific requirements relative to the adjudication process, including standards for credibility determination and categories for final adjudication; and provides specific requirements regarding

²⁹ Each CUOF incident is reviewed and opined upon by the UOFRB, the Chief of Police and the Board of Commissioners, respectively.

³⁰ For one incident, the UOFRB requested a supplemental investigation in order to satisfy certain questions raised during their review. The FID conducted a timely supplemental investigation that was presented to the UOFRB, at which time the UOFRB rendered its adjudication.

³¹ For the remaining three incidents the officers did not draw their weapons therefore an adjudication was not applicable.

the imposition and reporting of disciplinary and non-disciplinary action. In addition, the Chief of Police must report to the Police Commission on his imposition of discipline during each calendar quarter. The OIG 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.

The Department has achieved substantial compliance with many of the Consent Decree's requirements relative to complaints intake, investigation, adjudication and reporting. However, the Department has not yet achieved substantial compliance with Decree requirements relative to the receipt and maintenance of complaints (paragraph 74); the investigation of complaints (certain subsections of subparagraph 80ii and paragraph 81³²); access to information contained in TEAMS II for those units conducting specified complaint investigations (paragraph 83); standards for credibility determinations (paragraph 84); adjudication of complaint investigations (paragraph 85); and manager review of complaint investigations (paragraph 90). As a result, the Monitor will be assessing the Department's compliance with this paragraph during the extension to the Consent Decree.

During the current quarter, the Monitor assessed the LAPD's compliance with paragraph 74, pertinent provisions of paragraphs 80 and 81, and paragraphs 84, 85 and 90. The results of our current assessments follow.

Paragraph 74 – Complaint Intake

Paragraph 74 outlines the methods by which the LAPD must receive complaints, maintain required complaint materials and continue the operation of a 24-hour toll free telephone complaint hotline. Specifically, the Department must continue to provide for the receipt of complaints as follows:

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

³² The parties agreed that during the extension the Monitor will assess subparagraph 80ii, subsections a and f, and paragraph 81 as it relates to subparagraph 80ii, subsection f.

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

Background

During the quarter ending March 31, 2005, the Monitor elected to separately report on the LAPD's compliance with the various subparagraphs of paragraph 74. The Monitor reported on compliance with subparagraphs 74d, f and g during that quarter, finding the LAPD in compliance with subparagraphs d and f and in non-compliance with subparagraph g. During the quarter ending September 30, 2005, the Monitor reported on compliance with subparagraph 74h, finding the LAPD in compliance.

Current Assessment of Compliance

In order to assess compliance with subparagraphs 74 a, b, f and h during the current quarter, the Monitor requested and received a listing of all complaint investigations completed during the period May 1, 2006 through June 30, 2006. From this listing the Monitor randomly selected 85 investigations for review.³³ The Monitor noted the following:

- For all 85 investigations, the complaints were received either in writing, verbally, in person, by telephone, by mail or by email. Although none of the complaints selected were received via facsimile, the LAPD is capable of receipt via facsimile (subparagraph a).
- Five of the 85 complaint investigations selected were received by the Department anonymously. The Monitor noted no instances of anonymous complaints not accepted (subparagraph b).
- For all 85 investigations, the complaints were assigned unique complaint file numbers (subsection f).³⁴

³³ As required, a random, statistical sample of 85 investigations was selected out of a population of 772 complaint investigations completed during the period May 1, 2006 through June 30, 2006 utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

³⁴ For duplicate complaints, a unique complaint file number is assigned, however once determined to be duplicate the most recent complaint file is combined with the first complaint file and investigated as one complaint.

- For all 85 investigations, the Monitor noted no instances in which the LAPD required the complainants to sign a form or waiver that in any way limited their ability to submit a complaint or file a lawsuit (subsection h).

In order to assess compliance with subparagraphs 74d and g, the Monitor reviewed and subsequently relied on AD's *Complaint, Form 1.28 Investigations Audit*, dated December 27, 2005, and related working papers. The Monitor noted the following:

- AD conducted unannounced visits to 19 geographical areas, one traffic division, one substation and the Police Administration Building in an effort to verify the availability of complaint material in all mandated languages³⁵ and the availability of pre-addressed, postage paid envelopes. The identified population of complaint material totaled 286 of which the LAPD AD verified the existence of 270 or 94.4%.³⁶
- AD determined that "the Department continues to be unable to automatically tape-record all incoming calls to the hotline" at the Department Command Post (DCP). AD also identified reliability issues with the equipment used and determined that 70% of the personnel assigned to man the hotline at the DCP lack expertise in handling complaints.

Based on the foregoing, the Monitor finds the LAPD in compliance with subparagraphs 74a, b, d, f and h, and in non-compliance with subparagraph 74g.

Subparagraph 80ii –Administrative 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, which allocate responsibility for complaint investigations. Paragraph 80 contains seven subsections requiring conformance as follows:

- a. Tape record or videotape interviews of complainants, involved officers, and witnesses;
- b. Canvass a scene, interview complainants and witnesses at sites and times convenient for them;
- c. Prohibit group interviews;
- d. Notify involved officers and the supervisors of involved officers, except when the LAPD deems the complaint to be confidential under the law;
- e. Interview all supervisors with respect to their conduct at the scene during the incident;

³⁵ The seven mandated languages are English, Spanish, Korean, Cantonese, Japanese, Vietnamese and Tagalog.

³⁶ AD also included the "Community and Commendation Poster" as an item of compliance; the Monitor does not consider this to be a requirement of subparagraph 74d.

- f. Collect and preserve all appropriate evidence, including canvassing the scene to locate witnesses; and
- 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. The Monitor's assessment of subparagraph 80i, related to CUOF investigations, is reported under section B. Use of Force, above; the Monitor's assessment of subparagraph 80ii, related to administrative complaint investigations, follows.

Background

The Monitor last assessed compliance with paragraph 80 as it pertains to administrative complaint investigations (subparagraph 80ii) during the quarter ending March 31, 2006, at which time the Monitor found the LAPD in compliance with subsection a and in non-compliance with subsection f.³⁷

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph 74 above, during the current quarter, the Monitor reviewed 85 completed complaint investigations, of which 32 were completed by the IAG and 53 were completed by the LAPD's chain of command (COC). In assessing compliance with subsections a and f of subparagraph 80ii the Monitor considered only the 32 investigations completed by the IAG.³⁸

- Of the 32 IAG investigations reviewed, a total of seven interviews were not tape recorded, involving six investigations. Five interviews were of witnesses to the UOF; one interview was of a witness not at the scene but referenced in the FID report; and one interview was of a Detention Officer.³⁹
- The Monitor noted evidence was not collected in four of the 32 IAG investigations reviewed. In two investigations, there was no canvass of Department employees for witnesses; in one

³⁷ The parties have agreed that the Department has achieved substantial compliance with subsections b, c, d, e and g of subparagraph 80ii applicable to administrative complaint investigations.

³⁸ The remaining 53 completed complaint investigations were used in assessing the LAPD's compliance with paragraph 81.

³⁹ Two of the five witness interviews were for a complainant and witness wherein the accused officers utilized force against the complainant who subsequently alleged excessive force. The NCUOF investigation was incorporated into the complaint investigation and included the complainant and witness statements that were not taped. The LAPD is not required to tape record interviews for NCUOF investigations.

investigation, witness officers were not interviewed; and in one investigation, two third-party witnesses were not interviewed.

The Monitor considered the merits of each complaint investigation as a whole, and whether or not items of non-compliance impacted the investigations' overall quality and the ability of a reviewer to properly adjudicate officer actions. Although certain investigations were notably superiorly conducted and reported, 30 provided adequate information to ultimately render a decision. However, for two investigations the Monitor believes that the absence of witness statements and the absence of a taped statement may have influenced the LAPD's adjudication.⁴⁰

Also, although not within the purview of subparagraph 80ii, the Monitor noted six investigations in which the allegations were mischaracterized at either the onset or completion of the investigation. One investigation failed to address allegations of a false statement. Although another investigation addressed retaliation, the initial and final classifications did not reference retaliation. Finally, although an investigation addressed discrimination, the final classification did not include discrimination.

Notwithstanding the aberrations identified above, the Monitor finds the LAPD in compliance with subsections a and 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 March 31, 2006, at which time the Monitor found the LAPD in compliance with the requirements of the paragraph.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for subparagraph 80ii, above, during the current quarter, the Monitor reviewed 85 completed complaint investigations, of which 32 were completed by the IAG and 53 investigations were completed by COC.

The Monitor considered the merits of each complaint investigation as a whole, and whether or not items of non-compliance impacted the investigations' overall quality and the ability of a reviewer to properly adjudicate officer actions. For five of the 53 investigations completed, the

⁴⁰ Please refer to the Monitor's evaluation of paragraphs 84 and 85 dealing with officer preference and adjudications.

Monitor noted that either witnesses were not interviewed or there was no indication a canvass for interviews or evidence was completed. For one of these investigations, the Monitor believes that the additional evidence, had it been obtained, might have influenced the LAPD's adjudication. However, although certain investigations were notably superiorly conducted and reported, 48 provided adequate information to ultimately render a decision.

Notwithstanding the aberrations identified above, the Monitor finds the LAPD in compliance with paragraph 81.

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 March 31, 2006, at which time the Monitor found the LAPD in compliance.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for subparagraph 80ii, above, during the current quarter, the Monitor reviewed 85 completed complaint investigations, of which 32 were completed by the IAG and 53 were completed by COC

The Monitor concluded that the rationale used to evaluate the credibility of complainant, officer and witness statements was sufficient and unbiased in 81, or 95.3%, of the 85 investigations selected for review. For the remaining four investigations, the Monitor concluded that sufficient information existed in the investigation file for a reasonable individual to conclude that an automatic judgment in favor of the accused officer took place.

Based on the foregoing, the Monitor finds the LAPD in compliance with paragraph 84.

Paragraph 85 – Preponderance of the Evidence

Paragraph 85 requires that all complaints be adjudicated using a preponderance of the evidence standard⁴¹ and, wherever supported by evidence, collected complaints shall be adjudicated as follows:⁴²

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

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

Background

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

The Monitor assessed the LAPD's compliance with paragraph 85 during the quarter ending March 31, 2006, at which time the Monitor found the LAPD in non-compliance.

⁴¹ 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."

⁴² 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.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for subparagraph 80ii above, during the current quarter, the Monitor reviewed 85 completed complaint investigations, of which 32 were completed by the IAG and 53 were completed by COC.

The Monitor concluded that the LAPD applied a preponderance of the evidence standard in 79, or 92.9%, of the 85 investigations reviewed. The Monitor noted the following regarding the nine investigations in which the Monitor determined that the LAPD failed to apply the preponderance of the evidence standard:⁴³

- For an investigation of alleged unauthorized force, the Monitor believes that the finding of Insufficient Evidence to Adjudicate was a result of a poorly organized and documented investigation in which multiple identified witnesses were not interviewed without explanation.
- For one investigation, the initial allegations clearly include discrimination based on race and sexual orientation; however the final allegations and adjudication failed to address these allegations.
- For an investigation of an allegation that an officer lost property, the Monitor believes that under a preponderance of the evidence standard, the adjudication should have been Sustained, rather than No Misconduct - Actions Could Have Been Different. The investigation clearly proved that the officer exercised poor judgment.
- For an investigation alleging neglect of duty, the Monitor believes that under a preponderance of the evidence standard, the adjudication should have been Not Resolved versus Unfounded, given conflicting witness statements.
- For an investigation alleging excessive force, the Monitor believes that the Board of Rights (BOR) should have adjudicated the officer's actions as Guilty versus Not Guilty. The statements of multiple supervisors, coupled with witness statements and a clear and articulate rationale by the Bureau CO supported a guilty finding under a preponderance of the evidence standard.⁴⁴

⁴³ The Monitor notes that the quality of an investigation and the adjudication reached are separate and distinct processes. For example, an adjudication can be found inadequate because the Monitor determined that the appropriate adjudication standard was not applied, even if a sound underlying investigation (on which the adjudication was based) is conducted.

⁴⁴ For this particular investigation, the Monitor noted that the investigation, although thorough, did not formulate allegations of insubordination. The Monitor also noted that the Division Commander's rationale clearly favored the accused, with disregard to the findings of the investigation and failed to identify insubordination and a pattern among certain officers' statements, thereby adjudicating the allegations as Unfounded. Although the Bureau CO properly provided a military endorsement changing the adjudication to sustained, the accused officer elected to present this matter before a BOR, which ultimately overrode the Bureau Commander's sustained adjudication in

For an investigation of an allegation of neglect of duty, the Monitor believes that under a preponderance of the evidence standard, the adjudication should have been Sustained, rather than No Misconduct – Actions could Have Been Different.

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

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' compliance with paragraph 90 during the quarter ending March 31, 2006, at which time the Monitor found the LAPD in compliance.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for subparagraph 80ii, above, during the current quarter, the Monitor reviewed 85 completed complaint investigations, of which 32 were completed by the IAG and 53 were completed by COC. The Monitor determined that four of the 85 completed investigations reviewed lacked sufficient management review that otherwise should have identified underlying inconsistencies, the need for additional investigation and/or training needs.⁴⁵ This translates into a compliance rate of 95.3%.

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

E. 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 on race, color, ethnicity or national origin. Race, color, ethnicity or national origin can only be utilized as part of a basis for police

deference to clear evidence of excessive force. Furthermore, the BOR civilian representative expressed a minority opinion agreeing with the rationale and adjudication of the Bureau CO.

⁴⁵ Those investigations indicating underlying inconsistencies, the need for additional investigation and/or training needs included an allegation of a lost firearm; a sustained complaint against unknown officers, although at least one officer was known; discourtesy wherein officer interviews were directed yet not included; failure to take a complaint; false arrest; and incomplete search incident to arrest.

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 assessed the Department's compliance with paragraphs 102 and 103 during the current quarter. The results of our current assessment follow.

Paragraphs 102 and 103 – Non-Discrimination Policy

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

Background

The Monitor last assessed the Department's compliance with paragraphs 102 and 103 during the quarter ending March 31, 2006, at which time the Monitor withheld a determination of functional compliance with the provisions of the paragraphs pending further analysis of field data collected. In previous reports, the Monitor noted that until the propriety of the stops being made by LAPD is adequately determined, it remains difficult for the Monitor to fully assess compliance with these paragraphs.

Current Assessment of Compliance

As reported in the Monitor's previous quarterly reports, data collected in the field and posted on the LAPD website for the periods January 1, 2005 through June 30, 2005, July 1, 2005 through December 31, 2005 and January 1, 2006 through June 30, 2006 indicate that African Americans and Hispanics are more likely than Caucasians to be patted down and subjected to a search after being stopped. The Monitor continues to acknowledge that the disparate treatment reflected in the statistics is not necessarily indicative of biased policing and additional analysis is required.

The City, with assistance from the Analysis Group, Inc.⁴⁶ prepared and released the "Pedestrian and Motor Vehicle Post-Stop Data Analysis Report," which was received by the Monitor on July 7, 2006. The report was completed after a process of methodology development that consisted of a proposed methodology report, public comment on that report, and responses to the public

⁴⁶ As described in prior Monitor reports, the Analysis Group, Inc. is the vendor selected by the Department to develop a methodology to analyze the field data in order to determine if the disparity can be explained and, if so, what those explanations are.

comments on that report, which culminated in the “Final Pedestrian and Motor Vehicle Stop Data Analyses Methodology Report,” dated December 8, 2005. The City also posted the Report on its website.⁴⁷

As described in the Focus Issue entitled *Analysis of Field Data* in the Monitor’s Report for the Quarter Ending June 30, 2006, the analysis performed indicates that while controlling for characteristics of the stop generally reduces the racial disparity in post-stop outcomes, significant disparities remain. Specifically, unexplained racial differences occur most frequently for non-gang officer requests to exit the vehicle, pat-downs/frisks, and higher discretion searches. While suggesting that variables not considered by the study could possibly account for such differences, the report ultimately could not fully explain the disparity of the raw numbers or determine to what extent, if any, LAPD police officers were engaging in racial profiling.

In light of these findings, and a belief that it will not be possible for the parties to determine from the raw data the extent to which biased policing may be occurring, the Monitor and DOJ will continue to discuss both preventive and probative measures that could be adopted by the City to both deter and detect biased policing that may be occurring, and will continue to report on the progress of the City in complying with the mandates of these paragraphs.

As in previous quarters, the Monitor withholds a determination of compliance with paragraphs 102 and 103.

F. MANAGEMENT OF GANG UNITS

In the wake of the Rampart Scandal, the LAPD conducted an audit of its internal operations and in March 2000 reorganized the units that police gang-related crime into Special Enforcement Units (SEU). The SEUs, which were subsequently reorganized into GEDs,⁴⁸ report to the command staff in the stations where they are assigned, and receive support from Special Operations Support Division (SOSD), 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.

The Department has achieved substantial compliance with most Consent Decree requirements relative to the management of gang units; it has not achieved substantial compliance with the

⁴⁷ The Report can be viewed at www.lapdonline.org/consent_decree/content_basic_view/32822. The methodology reports can be viewed at www.lacity.org/lapdstops.

⁴⁸ GEDs are part of Gang Impact Teams, which also include Community Law Enforcement and Recovery (CLEAR) units.

requirements relative to tour of duty limitations for gang supervisors and officers (subparagraph 106d); detention, transportation, arrest, booking and charging of gang arrestees (subparagraph 106e(i)); the roles of gang unit supervisors, Gang Area Managers and Bureau Gang Coordinators (BGCs) (subparagraphs 106f, g and h); and eligibility criteria and the selection process for gang unit personnel (subparagraphs 107a and b). As a result, the Monitor will be assessing the Department's compliance with these subparagraphs during the extension to the Consent Decree.

During the current quarter, the Monitor assessed the LAPD's compliance with subparagraphs 106d, 107a and 107b. The results of our current assessments follow.

Subparagraph 106d- Gang Unit Tour of Duty Limitations

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

Background

The Monitor last assessed the LAPD's compliance with subparagraph 106d during the quarter ending September 30, 2005, at which time the Monitor found the LAPD in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with subparagraph 106d during the current quarter, the Monitor reviewed and subsequently placed reliance on AD's *GED Selection Criteria Audit*, dated June 30, 2006, and related working papers. In this audit, AD identified the total population of GED officers assigned during Deployment Period (DP) 2, February 5 to March 4, 2006 and determined that a total of 57 GED personnel were due for an extension between April 3, 2005 and March 4, 2006.. In assessing Department-wide compliance regarding tour limitations, for the 57 GED personnel identified, AD reviewed TERs, TEAMS I records and performance evaluations for proper documentation and approval in extending the GED tours of duty. AD found that the extension requirements for tour assignments were adequately addressed for 55, or 97%, of the 57 GED personnel reviewed.⁴⁹

The Monitor randomly selected a sample of 21 GED personnel from AD's sample of 57, and reviewed their TERs, TEAMS I records and performance evaluations. The Monitor identified one TEAMS I record in the sample that was dated ten months before the request for extension was approved and, as a result, should have been found in non-compliance. In addition, AD

⁴⁹ AD found that two of the extension requests contain neither the Bureau CO's nor the Chief of Police's approval signatures on the TER for their one-year extensions.

identified three extensions that went beyond 65 DPs. The Monitor does not believe that extensions beyond 65 days are permissible under the Consent Decree;⁵⁰ as a result, the Monitor found these three instances non-compliant.

Overall, with the four additional non-compliant instances identified, the Monitor computed a compliance rate of 89.5% (51 of 57).⁵¹ Notwithstanding these additional instances, the Monitor finds the LAPD in compliance with subparagraph 106d.

Subparagraph 107a – Gang Unit Eligibility Criteria

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

Background

The Monitor last assessed the LAPD’s compliance with subparagraph 107a during the quarter ending September 30, 2005, at which time the Monitor found the LAPD in functional compliance.

Current Assessment of Compliance

In order to assess the LAPD’s compliance with subparagraph 107a during the current quarter, the Monitor reviewed and subsequently placed reliance on AD’s *GED Selection Criteria Audit*, dated June 30, 2006, and related working papers. As described in the Current Assessment of Compliance for subparagraphs 51a and d, AD identified a total population of 331 GED officers assigned between February 5 to March 4, 2006, from which it selected a sample of 74 officers (58 non-supervisory and 16 supervisory) who were selected to the GED units between April 3,

⁵⁰ Paragraph 106d states that supervisors and non-supervisory officers in gang units shall have a limited tour for a period not to exceed 39 DPs. Any longer extension shall be permitted upon written approval of the Chief of Police. Due to the lack of specifics surrounding the extension time beyond 39 DPs, the Chief submitted a letter to the DOJ proposing that after a 39 DP tour of duty, successful incumbents would be reassigned to the GED after a reevaluation process took place for no longer than 26 DPs. The DOJ letter in response, dated February 11, 2003, stated that they had no objections to this plan. The Monitor recommends that the Department and DOJ revisit this issue to ensure that the parties are in agreement as to the maximum extension period and the process for granting extensions.

⁵¹ Refer to the Current Assessment of Compliance for Paragraph 128(5), 131c-5, and 131d, below, for additional information regarding the *GED Selection Criteria Audit* and the Monitor’s review of that audit.

2005 and March 4, 2006 to assess compliance with the requirements of subparagraphs 51b and d and 107a and b.

AD reviewed the TEAMS I records and performance evaluations for the 74 non-supervisory and supervisory officers selected for review and determined that all 74 officers had a positive evaluation of their TEAMS records and written consideration of sustained complaints related to those activities specified in subparagraphs 51d and 107a prior to being selected into the respective unit.

The Monitor randomly selected a sample of 18 non-supervisory officers and 5 supervisory officers from AD's samples, and reviewed their TEAMS I records and written consideration of sustained complaints related to those activities specified in paragraph 107a prior to being selected into the respective unit. For three packages that contained elements related to subparagraph 107a, although the reviewing supervisors included these complaints in their assessment of these officers, the Monitor felt that the documentation of their consideration for this complaints could have been more thorough and explanatory in terms of the nature of the complaints and the reasons for their conclusions.⁵²

The Monitor notes that Special Order No. 43, dated December 28, 2005, now requires supervisors to review all sustained complaints to ascertain if they contain elements related to subparagraph 107a and to document their consideration of each sustained complaint that qualifies under this criterion. The Monitor has previously recommended this step, and commends the Department for taking such measures in its new policy.

Based on the foregoing, the Monitor finds the LAPD in compliance with subparagraph 107a.

Recommendations

The Monitor recommends that when supervisors are assessing sustained complaints related to those activities specified in subparagraph 107a, their documentation include the nature of the complaint and the reasons for their conclusions, in order to provide a thorough and explanatory assessment of officers' consideration for the GED unit.

Subparagraph 107b – Selection Process for Gang Unit Personnel

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

⁵² Please refer to the Current Assessment of Compliance for subparagraph 131b for additional information regarding the classification of complaints in connection with *the GED Selection Criteria Audit*.

Background

The Monitor last assessed the LAPD's compliance with subparagraph 107b during the quarter ending September 30, 2005, at which time the Monitor found the LAPD in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with subparagraph 107b during the current quarter, the Monitor reviewed and subsequently placed reliance on AD's *GED Selection Criteria Audit* dated June 30, 2006, and related working papers. As described in the Current Assessment of Compliance for subparagraphs 51b and d, AD identified a total population of 331 GED officers assigned between February 5 to March 4, 2006, from which it selected a sample of 74 officers (58 non-supervisory and 12 supervisory) who were selected between April 3, 2005 and March 4, 2006 to assess compliance with the requirements of subparagraphs 51b and d and 107a and b.

In assessing Department-wide compliance regarding eligibility criteria for officers selected to a gang unit, AD reviewed the TEAMS I records, performance evaluations, written applications and evidence of an oral interview for the 74 non-supervisory and supervisory officers selected. AD determined that 33 of 74, or 45% of these officers had a formal, written application process, oral interview(s), and the use of TEAMS II and annual performance evaluations considered and documented in their selection packages as required by subparagraph 107b. Of the 41 in non-compliance, issues included TEAMS records dated after selection, lack of relevant performance evaluations, CO approval after selection, and selections approved prior to the oral interview taking place.

The Monitor randomly selected a sample of 18 non-supervisory officers and 5 supervisory officers from AD's samples, and reviewed the TERs, the TEAMS I records, performance evaluations, written applications and evidence of an oral interview. The Monitor identified one package in its sample for which the supervisor's approval was dated after the officer's selection to the GED unit; this package should also have been classified as non-compliant by AD, which would have resulted in a compliance rate of 43% (32 of 74) for sub paragraph 107b.⁵³

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

⁵³ Please refer to the Current Assessment of Compliance for subparagraph 131b for additional information regarding the GED selection process in connection with *the GED Selection Criteria Audit*.

G. 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 Confidential Informant (CI) information. The Department has not yet achieved substantial compliance with the Consent Decree's requirements relative to procedures for the handling of informants (paragraph 108). As a result, the Monitor will be assessing the Department's compliance with this paragraph during the extension to the Consent Decree, and has completed such an assessment during the current quarter. The results of our current assessment follow.

Paragraph 108 – Procedures for the Handling of Confidential Informants

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

Background

The Monitor last assessed the LAPD's compliance with paragraph 108 during the quarter ending September 30, 2005, at which time the Monitor found the LAPD in functional non-compliance.

Current Assessment of Compliance

In order to assess the LAPD's compliance with paragraph 108 during the current quarter, the Monitor reviewed AD's *Confidential Informant Control Package Audit, Fourth Quarter-Fiscal Year 2005/2006*, and related working papers. The Monitor selected a random sample of 23 active informant packages that were reviewed by AD and reviewed them to determine whether they were compliant with the requirements of paragraph 108. The Monitor concurred with AD's assessments for each of the packages reviewed.⁵⁴

Overall, AD indicated that 45 active informant packages and 2 inactive packages were out of compliance. Of the 45 non-compliant active packages, AD reported that 12 had anomalies associated with paragraph 128, 10 had substantive errors associated with paragraph 108, and 23 had anomalies associated with both paragraphs 128 and 108.

In addition to AD's findings, the Monitor noted a significant delay, of up to 10 weeks, in the filing of CI Contact forms. Many of the forms that were available at the time of the Monitor's

⁵⁴ Refer to the Current Assessment of Compliance for subparagraphs 128(5), 131c-5, and 131d, below, for additional information regarding the *Confidential Informant Control Package Audit, Fourth Quarter-Fiscal Year 2005/2006* and the Monitor's review of that audit.

fieldwork did not appear to be in the file at the time of AD's fieldwork. The Monitor also identified one package that lacked proper documentation for two separate controlling officer changes.

Based on the foregoing, the Monitor finds the LAPD in non-compliance with paragraph 108. Despite the non-compliant instances identified by the LAPD and a few instances identified by the Monitor in which follow-up documentation for the investigation could have been improved to provide better information, the Monitor noted that overall the maintenance and documentation of the CI packages had significantly improved from the prior years' reviews.

Recommendations

In some CI Contact forms, when buys or other activities were planned but did not take place, it would have been helpful to indicate why these did not occur. The Monitor understands that Narcotics Division may decide to revise the CI Manual in the upcoming months for clarification and updating of certain policies and procedures. Narcotics Division may want to consider clarifying or adding a requirement to the CI Manual to indicate the reason(s) why.

The Monitor recommends that the Department make an effort to reduce the lag time in filing the CI Contact forms in so that supervisors and others auditing such packages have a more current understanding of what is taking place during an investigation.

H. TRAINING

The Consent Decree's training requirements center largely on FTOs, supervisory training, and training content, including periodic training on police integrity. The Department has achieved substantial compliance with all requirements relative to supervisory training and most requirements relative to training content. The Department has not achieved substantial compliance with Consent Decree requirement to train members of the public scheduled to serve on the BOR in police practices and procedures (paragraph 118), nor has the Department complied with training requirements relative to FTOs -- eligibility criteria for FTOs (paragraph 114), FTO de-selection (paragraph 115), and an FTO Training Plan (paragraph 116). As a result, the Monitor will be assessing the Department's compliance with these paragraphs during the extension to the Consent Decree.

The Monitor assessed the Department's compliance with paragraph 118 during the current quarter. The results of our current assessments follow.

Paragraph 118 – Public Members on Board of Rights

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

Background

The Monitor last assessed the Department's compliance with paragraph 118 during the quarter ending September 30, 2005. At that time, the Monitor found the Department in functional non-compliance. The training curriculum for the public members on the BOR had not been finalized as of the end of that quarter, and the civilian members were not trained.

Current Assessment of Compliance

The Police Commission approved the new Hearing Examiner Selection and Appointment Process on June 20, 2006. This included a request to the public to apply to become hearing officers for the BOR. The LAPD posted a news release on its website on July 28, 2006 that outlined the position's responsibilities, compensation, and application process. The public response to the posting exceeded expectations, which has caused the selection process to take longer than planned. Once the process has been completed (expected by year's end), the newly appointed members will take part in an all-day training session, which the Monitor will attend.

Based on the foregoing, the Monitor is withholding a determination of the LAPD's compliance with paragraph 118 pending completion of the hearing examiner selection process.

IV. INTERNAL & EXTERNAL OVERSIGHT/MONITORING

A. INTEGRITY AUDITS & INTERNAL AUDIT OVERSIGHT

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. In addition, the Consent Decree provides specific requirements for the City 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 (paragraph 97).

Since the inception of the Consent Decree, the Department has established a professional audit division made up of a combination of sworn and civilian professionals. The LAPD's AD has developed an audit charter,⁵⁵ an audit protocol,⁵⁶ and submitted an annual audit plan which outlines the audits to be completed in the coming year. Additionally AD has developed and run a Basic Law Enforcement Performance Auditing Course, which covers all aspects of police performance auditing.⁵⁷ This course, offered on a quarterly basis, has been offered 10 times and has been attended by police professionals from the US and Canada.

During the past five years under the Consent Decree, AD issued a total of 30 quality audits. In light of the quality audits produced by AD, during this time, the Monitor decided that, in those instances in which the scope of an AD audit directly addressed the requirements of a given Consent Decree paragraph, the Monitor could elect to perform a meta-audit of AD's audit work

⁵⁵ The Audit Charter outlines AD's role, the requirement for independence, the requirement to comply with Generally Accepted Government Auditing Standards, and AD's access authorization to records, and defines the audit scope. It was approved by the Police Commission in January 2006.

⁵⁶ The Audit Protocol sets the standards for LAPD's audits. It outlines the requirements for Audit Staffing, Audit Team Member responsibilities, and the Audit Process. It includes direction on how AD conducts audits and covers topics such as audit planning, population identification and sampling methods, data collection, and audit reporting.

⁵⁷ This course, which 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, covers auditing standards, audit work plans, interviews, audit fieldwork and analysis, report writing and the review process.

and findings and, if appropriate, rely on such findings in assessing compliance with that paragraph.⁵⁸ Instances of such reliance are clearly indicated in our reports.

Given these advancements, during the three year extension, the Monitor has revised its methodology for reviewing certain required audits. Under the revised methodology, for those areas/audits that have been in compliance for the past two years, the Monitor will generally review the quality of the audits in order to gain assurance that the underlying area being audited does not require active monitoring. The Monitor will continue its focused review of documents in those areas/audits where the Department has not achieved substantial compliance, such as complaints, CUOF and CIs.

During this quarter, the Monitor evaluated:

- AD's *Non-categorical Use of Force Reports Audit* (subparagraphs 128(3), 129ii, 131a, 131c-3 and 131e).
- AD's *Confidential Informant Control Packages Audit* (subparagraph 128(5), 131c-5 and 131d).
- AD's *Categorical Use Of Force Investigations Audit* (subparagraph 129i)
- AD's *Gang Enforcement Detail Selection Criteria Audit* (subparagraph 131b)

*Subparagraphs 128(3), 129ii, 131a, 131c-3 and 131e – Audit of Non-Categorical Use of Force Reports/Investigations*⁵⁹

Subparagraphs 128(3) and 129ii require the Department to complete a regular, periodic audit of stratified random samples of all NCUOF reports and investigations. Paragraph 128 requires that this audit assess such reports for completeness, authenticity, appropriateness of action taken, compliance with the law, conformity with Department procedures and an evaluation of supervisory oversight. Paragraph 129ii requires the audit to assess the timeliness, completeness, adequacy and appropriateness of the investigations. Subparagraph 131c-3 also requires the Department to conduct similar audits of a stratified random sample of all gang unit NCUOF reports. Subparagraph 131a requires the Department to conduct regular periodic audits of the work product of all gang units covered by paragraph 106 by auditing a random sample of the

⁵⁸ This is consistent with paragraph 162 of the Consent Decree, which states, "In performing its obligations as required by the Consent Decree, the Monitor shall, where appropriate, utilize audits conducted by the LAPD for this purpose."

⁵⁹ AD submitted this audit to meet the requirement of subparagraph 131a, among others. However, AD also issued its second GED work product assessment on September 30, 2006, which was prepared to meet the requirements of subparagraphs 131f and g and looks at the work product of the gang unit as a whole. The Monitor will assess the GED work product audit to determine if it meets the requirements of subparagraph 131a during the quarter ending December 2006 and will conclude on its assessment at that time.

work of the unit as a whole, as well as the work of individuals whose work product appears to contain indicia of untruthfulness, other forms of misconduct, or otherwise merits further review. Subparagraph 131e requires an audit of the roles and conduct of supervisors of GED units.

Background

The Monitor found the first two NCUOF audits submitted by the LAPD in non-compliance, but found the third audit, completed in December 2003, and a fifth audit, issued June 30, 2005, in compliance with subparagraphs 128(3), 129ii, 131c-3 and 131e.⁶⁰ The LAPD issued a fourth audit report in February 2005, which was an interim audit designed to assess compliance with Special Order No. 13;⁶¹ the Monitor withheld determination on this report as it only addressed whether or not the investigations met the requirements of Special Order No. 13 rather than all of subparagraph 128(3).

Results of Monitor's Limited Review

During the current quarter, the Monitor reviewed AD's *Non-Categorical Use of Force Audit*, dated June 30, 2005, and the related workplan. The Department is in substantial compliance with Consent Decree requirements relative to NCUOF incidents and investigations. As a result, the Monitor did not conduct a detailed review of this audit, and the Monitor did not assess whether this audit is in compliance with pertinent Consent Decree requirements. Rather, the purpose of the Monitor's review was to determine if AD had used the same methodology as it had in prior compliant NCUOF audits and if AD had arrived at similar conclusions in relation to the Department's compliance with the Consent Decree. The Monitor determined that AD had, in fact, used the same methodology for completing this audit as it used in prior compliant audits of NCUOF incidents.

In the *Non-Categorical Use of Force Audit*, AD concluded that the Department had similar compliance rates as it had in the prior year for all but three audit objectives, each of which changed from compliant in the prior year's audit to non-compliant with Department policy

⁶⁰ The Audit report issued December 2003 did not address the requirements of 131c-3, however, three supplemental reports, issued June 2004; August 2004; and November 2004, identified and reviewed the NCUOF incidents involving GED officers. The Monitor found these reports in compliance with subparagraph 131c-3 in its Report for the Quarter Ending December 31, 2004. Prior to December 2005, the Monitor assessed the Department compliance with subparagraph 131e as part of the Bureau Gang Coordinator audit, and found the Department non-compliant in December 2003.

⁶¹ Special Order No. 13, *Non-Categorical Use of Force Reporting – Revised*, approved by the Police Commission on June 8, 2004, includes significant changes to NCUOF reporting procedures whereby certain UOF were de-categorized and no longer required to be reported and additional investigative steps were required for certain types of UOF incidents.

during this audit.⁶² Additionally, AD continued to find the Department in non-compliance with the evaluation of inconsistent information, evaluation of on-scene supervision, and evaluation of investigator's representation of statements objectives. Each of the substantive paragraphs where AD found the Department out of compliance is still actively monitored.

Based on our limited review and the foregoing findings, the Monitor did not identify any issues that suggested that subparagraphs 128(3) or 131c-3 should be actively monitored or that the quality of this audit varied significantly from prior compliant audits of this topic. The Monitor will continue to review for subparagraph 131e in each of the appropriate paragraph 128 audits.

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

Subparagraph 128(5) requires AD to complete a regular periodic audit of stratified random samples of CI control packages to assess the completeness, authenticity, appropriateness of action taken, conformity with Department procedures and quality of supervisory oversight of the CI control packages and compliance with the requirements for handling CIs as noted in paragraphs 108 and 109. Subparagraph 131c-5 extends these audit requirements to CIs utilized by gang units. Subparagraph 131d requires the Department to audit the use of CIs by gang units to assess compliance with paragraph 108. Subparagraph 131e requires the Department to audit the roles and conduct of supervisors in the GED unit.

Background

The Monitor determined that AD's first audit of CI Control packages, submitted in July 2003, was in compliance with paragraph 128(5), but was non-compliant with subparagraphs 131c-5 and 131d, as it did not address their requirements. The Monitor found AD's second audit of CI Control Packages, submitted June 2004, in compliance with subparagraphs 128(5), 131c-5 and 131d. In the Monitor's Report for Quarter Ending September 30, 2005, the Monitor found AD's third audit of CI Control packages, submitted on June 29, 2005, in compliance with subparagraph 131d but in non-compliance with subparagraphs 128(5) and 131c-5.⁶³

⁶² For the evaluation of post-incident review objective, AD determined that the Department's compliance rate decreased from 100% compliance to 82% for both the general population and the GED population; for the interviewing all on-scene supervisors objective, AD determined that the Department's compliance rate decreased from 97% to 86% for the general population, resulting in an overall compliance rate of 91% when combined with the GED population that AD identified as having 100% compliance; for the tape-recording of all Level I interviews objective, AD determined that the compliance rate for the general population decreased from 100% to 92%.

⁶³ The Monitor also found this report in compliance with subparagraph 131e in its Report for the Quarter Ending December 31, 2005.

Current Assessment of Compliance

In order to assess the Department's compliance with subparagraphs 128(5), 131c-5, 131d, and 131e during the current quarter, the Monitor reviewed AD's *CI Control Packages Audit Report* dated June 30, 2006, the Monitor's sample of completed audit matrices for active CI packages, and other audit working papers, including documents relating to audit population and sample determination.

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

- The audit addressed the requirements, but did not specifically report on, subparagraph 131d.
- The Monitor commends AD for identifying that four of the packages they reviewed were not segregated by Narcotics Division as shared informants even though they met the definition of shared informant in the Informant Manual.⁶⁴
- The Monitor identified one package in which a standard statement regarding informing the controlling officer prior to contact appears to have been written in the same ink, by the same officer on numerous contact forms over several months. It appears this comment was added to the all the contact forms at the same time. The Monitor is concerned that it is unknown whether or not the controlling officer was actually contacted. While AD identified this issue in their work papers, it did not report this finding or include it in its evaluation.⁶⁵
- In one package, the Monitor identified one contact sheet that was not signed by either officer who contacted the informant; it was signed by a third officer.

Notwithstanding the few discrepancies identified above, the Monitor finds the LAPD in compliance with subparagraphs 128(5), 131c-5, 131d and 131e.

Proposed Recommendation

As with the prior audit, the Monitor identified a number of packages in which there were delays in filing the informant contact forms in the packages.⁶⁶ As we stated in our Report for the Quarter Ending September 30, 2005, some delay is reasonable; however, several packages had delays of greater than 6 weeks before the informant contact forms were filed. As suggested in paragraph 108, the Monitor recommends the Department make an effort to reduce the lag time in

⁶⁴ Narcotics Division subsequently identified one additional package reviewed by AD that should also have been classified as a shared informant.

⁶⁵ AD concurred that this should have been reported.

⁶⁶ AD could not have identified the delays, as the contact forms were added to the files subsequent to AD's fieldwork. While this issue does not impact the Monitor's assessment of AD's audit, it is a Departmental issue that hinders AD's ability to assess CI packages by preventing AD from having full access to documentation that should be contained within the CI package.

order to ensure that when supervisors and others, such as AD, review the packages, they have information that is current and complete.

The Monitor understood that AD discussed its findings with Narcotics Division and believed that Narcotics Division concurred with its findings. However, during the Monitor's review of the audit, Narcotics Division indicated that it did not agree with all of AD's findings. In regards to this difference of opinion, the Monitor was unable determine whether or not AD missed identifying information contained in the files or if the packages were updated subsequent to the audit. We recommend a process be put in place to ensure that the findings are understood and accepted by both parties prior to issuing the final audit report.

Subparagraph 129i – Categorical Use of Force Investigations Audit

Subparagraph 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. Subparagraph 129i also requires the Department to evaluate compliance with paragraphs 67, 69, 80, and 82 to 83; in addition, paragraphs 55 to 59 and 61 to 65 are related to this audit.

Background

AD has split the CUOF Investigations Audit into a CUOF Interim Systems Audit⁶⁷ and CUOF Investigations Audit⁶⁸ during the fiscal year 2003/04. The Monitor has similarly split its evaluation of subparagraph 129i into two separate evaluations.

The Monitor found the AD's *CUOF Systems Audits* dated August 1 2004, June 9, 2005 and March 23, 2006 in compliance with subparagraph 129i requirements. The Monitor found the *CUOF Investigations Audit* dated August 13, 2004 in compliance with subparagraph 129i and withheld a determination of compliance regarding AD's *CUOF Investigations Audit* dated September 29, 2005 due to its limited audit population and sample size (only 3 investigations).

Current Assessment of Compliance

In order to assess the Department's compliance with subparagraphs 129i , the Monitor reviewed AD's *CUOF Investigations Audit Report* dated June 26, 2006, the related workplan, cribsheet and the Monitor's sample of completed matrices, supporting documents and electronic databases

⁶⁷ This audit primarily addresses the following 13 Consent Decree paragraphs: 55, 56, 58, 59, 61 to 65, 67, 69, 83 and 147.

⁶⁸ This audit primarily addresses the following 5 Consent Decree paragraphs: 57, 80, 82, 128 and 129.

related to the audit population and sample selected. In addition, under its revised methodologies, the Monitor reviewed the OIG's reports for the same incidents.

AD's population comprised all 24 CUOF incidents completed by FID that occurred during the period November 3, 2005 through February 7, 2006. The Monitor reviewed a random sample of 13 CUOF investigations. Our findings, which have been discussed with AD, are highlighted below:

- The audit report 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.
- The Monitor noted several instances in which drawings and/or diagrams referenced during interviews were not included in the FID file. AD did not identify this as a concern when evaluating the completeness of these investigations under paragraphs 129 or 80f (collect and preserve evidence).
- In one investigation, the Monitor noted concerns involving leading questions in the interviews of several officers who were involved or were witnesses to the CUOF. AD did not identify this as a concern when evaluating the adequacy of this investigation under paragraph 129

Based on the foregoing, the Monitor finds the Department in compliance with subparagraph 129i.

Subparagraph 131b – GED Selection Criteria Compliance Audit

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

Background

Prior to the quarter ending December 31, 2004 the Monitor found the LAPD in noncompliance with subparagraph 131b. In its Reports for the Quarter Ending December 31, 2004 and September 30, 2005, the Monitor reported that AD's *Gang Selection Criteria Audits* dated June 25, 2004 and June 22, 2005, respectively, were quality audits that were compliant with the requirements of subparagraph 131b.

Current Assessment of Compliance

In order to assess compliance with paragraph 131b during the current quarter, the Monitor reviewed AD's *GED Selection Criteria Audit* dated June 30, 2006, the related audit workplan and matrix questionnaires, a sample of completed audit matrices for the GED selection packages,⁶⁹ and audit working papers relating to the audit population and sample determination.

AD identified a total audit population of 331 GED officers for DP2.⁷⁰ From this population, AD selected 3 sample groups, each covering both non-supervisory and supervisory personnel, to assess the 3 audit objectives identified in AD's workplan.⁷¹ The Monitor used the same sample selected by the OIG during its review of this audit, which consisted of 23 officers for objective 1 (new officer selections), 21 officers for objective 2 (GED tour extensions), and 12 officers, all of whom were identified as having sustained complaints, for objective 3 (current suitability).

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

- The Monitor identified one package in which the date the oral interview took place, as identified on the GED checklist and the TEAMS report, was after the date of approval by the supervisor completing the review.
- The Monitor identified one package in which the TEAMS report was dated ten months prior to when the extension request was approved by the CO. AD indicated that they did not look at the timeliness of the TEAMS reports in relation to this objective.⁷² The Monitor believes AD should have considered timeliness of the TEAMS report in addition to whether or not it is the promotional paygrade report when assessing if the appropriate TEAMS report was used.
- AD identified in its work papers three officers who worked beyond the extension period of 26 DPs.⁷³ AD concluded these packages should not be included in its evaluation of objective

⁶⁹ The Monitor used the sample selected by the OIG which was chosen using a one tailed test with an error rate of +/- 7% and a 95% confidence interval. This resulted in a sample of 23 officers for objective 1 (new officer selections) and 21 officers for objective 2 (GED tour extensions). Additionally there were 12 officers identified as having sustained complaints and all of these were reviewed for objective 3 (current suitability).

⁷⁰ DP2 covered the period February 5 to March 4, 2006. The population contained 294 non-supervisory officers and 37 supervisory officers.

⁷¹ The first sample group comprised 58 officers and 16 supervisors to test for objective 1 (new officer selections). The second sample group comprised 57 personnel to test for objective 2 (GED tour extensions). The third sample group comprised 12 officers to test for objective 3 (current suitability).

⁷² AD reviewed timeliness in connection with objective 1 (new officer selections), and assessed whether TEAMS reports were dated 45 days before selection to the unit, however, AD did not review timeliness in connection with objective 2 (extensions).

⁷³ The Monitor identified that AD used 68 DPs as the allowable period an individual can be a member of the GED unit based on the calculation of 39 DPs, an extension of 3 DPs approved by the Bureau Commander as allowed by subparagraph 106d, plus the 26 DPs approved by the Chief of Police as allowed by Special Order No. 27. The

2 (Limited Tour Assignment), based on intradepartmental correspondence in which the Chief of Police approved these extensions beyond 5 years. AD concluded the Chief had the prerogative to allow exceptions to Special Order 27, which states that the Chief will consider extensions of up to 26 additional deployment periods. The Monitor is concerned that this approval circumvents the written policy, which was based on an agreement between the City and DOJ stating that the Chief could only extend a tour of duty up to 26 DPs.⁷⁴

- The Monitor commends AD for reviewing to ensure that supervisors had reviewed sustained complaints;⁷⁵ however, the Monitor identified three complaints classified as either Neglect of Duty or Conduct Unbecoming an Officer, one in each sample, for which the supervisors did not adequately document why the complaints did not impact the officers' selection to or continued service in a GED unit.

Notwithstanding the few aberrations described above, the Monitor finds the Department in compliance with subparagraph 131b.

Proposed Recommendation

The Monitor identified several instances in which AD reached the appropriate conclusion in answering a matrix question, but it was unclear how AD reached its conclusion.⁷⁶ The Monitor recommends that in the future AD provide sufficient information to support its conclusions in the matrix responses.

AD did not consider all processes applicable to advanced paygrade positions, nor did it review to ensure that candidates who were not selected to the unit were appropriately considered. The review for advanced paygrade positions should include reviewing the 15.2 justifying the advanced paygrade selection, oral written interview worksheets for those interviewed, whether the position was advertised, and whether or not they had packages for those individuals not selected to the unit.

In connection with objective 2 (Limited Tour of Duty), although AD reviewed TERs to determine if the evaluating supervisor gave approval, it did not review to determine if the COs

Monitor believes that in future audits AD should use the maximum of 65 DPs unless otherwise agreed to by the DOJ. Refer to the Current Assessment of Compliance for subparagraph 106d for additional information.

⁷⁴ Refer to related recommendation included in footnote 50 in the Current Assessment of Compliance for subparagraph 106d.

⁷⁵ The Monitor has previously raised concerns regarding classification of complaints and notes the Department has changed its policy to require supervisors to review all sustained complaints in order to address any elements related to subparagraphs 51d, 107a and 107c in their review rather than just those complaints classified as excessive force, false arrest or charge, unreasonable search or seizure, sexual harassment, discrimination or dishonesty. The Monitor commends the Department for taking this step.

⁷⁶ In some instances it was not clear that AD had measured the question against all policies or if AD had seen the appropriate documentation.

approved the report. The Monitor did not identify any instances in which the CO did not sign the TER; however, the Monitor recommends that AD review for this approval in the future.

While the Monitor commends AD for reviewing the supervisors' assessments of sustained complaints, the Monitor found that in some instances the documentation summarizing this review was minimal, as it only referenced the complaint and the supervisors did not clearly state why they believed the sustained complaints did not impact the candidates' selection or continued participation in GED. The Monitor recommends that in future audits AD should ensure that supervisors have provided an explanation for why sustained complaints do not limit the officers' selection to or continued participation in GED.

B. INSPECTOR GENERAL REVIEWS & AUDITS

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

The OIG's overall goal is to step into the Monitor's role of providing civilian oversight for the Department. Over the past five years, the OIG has developed a professional audit team that includes police performance auditors and special investigators who have the expertise to ensure the OIG meets its mandate. In particular, the OIG made significant strides in 2005 and 2006 in successfully implementing its role, and completed 16 timely meta-audits that were quality reviews of the audits completed by AD and the Ethics Enforcement Section (EES). Additionally the OIG conducted its own audits of complaints, CUOF and NCUOF. Each of these reviews and audits provided insightful comments, conclusions and recommendation to the Police Commission.

During the current quarter, the Monitor assessed the timeliness and quality of the OIG's audit review process in general and of its reviews of several Department audits issued during June and July of 2006.

Subparagraph 135b – OIG Reviews of LAPD Audits

Paragraph 135b includes the requirement for the OIG to evaluate LAPD audits to assess their quality, completeness, and findings.

Background

Prior to the quarter ending September 30, 2005, with few exceptions,⁷⁷ the Monitor found the OIG's reviews to be non-compliant.⁷⁸ However, since the quarter ending September 30, 2005, the Monitor has found the OIG in compliance with the requirements of subparagraph 135b. To date, the OIG has completed a total of 18 quality reviews.

Current Assessment of Compliance

The Monitor reviewed the following three OIG reports and compared the OIG's findings to the Monitor's findings from its review of the same AD reports, AD audit work papers, and sampling documentation:

- OIG's June 27, 2006 review of AD's *Categorical Use of Force Systems Audit* (subparagraph 129i);
- OIG's June 30, 2006 review of AD's *Motor Vehicle and Pedestrian Stops Data Collection Audit* (subparagraphs 128(4), 131a, 131c-4 and 131e); and
- OIG's July 5, 2006 review of AD's *1.28 Investigations Phase II Audit* (subparagraph 129iii).

Additionally, the Monitor reviewed the OIG's follow-up memo dated June 29, 2006 summarizing each area's action's taken on concerns identified in the OIG's review of AD's *Warrant Applications and Supporting Affidavits Audit* issued April 10, 2006.

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

- For the quarter ending June 30, 2006, the OIG prepared timely reviews of the three AD audit reports that were forwarded to the OIG.⁷⁹ Additionally, the OIG provided a timely summary of the Department's feed back on the *Warrant Applications and Supporting Affidavits Audit*.
- The OIG's reports were well-organized and contained clearly reported findings and insightful comments.

⁷⁷ 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.

⁷⁸ Throughout this period, the OIG experienced staff reorganization and shortages that limited the OIG's ability to conduct quality reviews on a timely basis as required by subparagraph 135b.

⁷⁹ All OIG reviews were completed and submitted to the Police Commission within three months of the date of completion of the Department audit. The OIG acknowledges that reviews submitted more than three months after the audit completion date will generally be found to be stale.

- The OIG appropriately found that AD's populations for the *Categorical Use of Force Systems Audit*, *Complaint Form 1.28 Investigations Audit-Phase II* and *Motor Vehicle and Pedestrian Stops Data Collection Audit* were generally complete.⁸⁰
- The OIG appropriately identified that while AD's *Complaint Form 1.28 Investigations Audit-Phase II* separately assessed several paragraphs related to adequacy of the investigation, it did not provide an overall assessment of the adequacy of the investigation, as required by subparagraph 129d. The OIG also appropriately expressed concerns about the quality and findings of the audit, as it identified eight complaints for which AD did not identify all of the issues in relation to several objectives tested.
- The OIG appropriately found AD's *Categorical Use of Force Systems Audit* to be a quality audit that included well-supported findings.
- In assessing AD's findings, the OIG appropriately concluded that the *Motor Vehicle and Pedestrian Stops Data Collection Audit* was properly planned, performed and supervised, and that AD identified and reported on all relevant issues.⁸¹ The Monitor commends the OIG for also recommending that AD review the FDRs for consistency or completeness of incident numbers.

The Monitor concluded that the OIG's Reviews of AD's *Motor Vehicle and Pedestrian Stops Data Collection Audit*, AD's *CUOF Systems Audit*, and AD's *Complaint Form 1.28 Investigation Phase II Audit* were quality reviews that provided additional insights and ideas for the Department to consider. The OIG has now completed a total of 21 quality reviews of LAPD audits.

Based on the foregoing, the Monitor finds the Department in compliance with the provision of paragraph 135b that requires the OIG to evaluate the quality of Departmental audits.

Paragraph 140 – Police Commission Requested Audits

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

⁸⁰ The OIG identified that AD erroneously excluded one complaint from a population of 458 complaint investigations in AD's *Complaint Form 1.28, Investigations Audit-Phase II*. Additionally the OIG identified a few issues related to completeness of the population in AD's *Motor Vehicle and Pedestrian Stop Data Collection Audit* but concluded these did not notably impact the quality of the sampling process.

⁸¹ The OIG identified three additional discrepancies on two FDRs and one DFAR which would not impact the AD's overall assessment.

Background

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

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

Current Assessment of Compliance

The Monitor met with the Executive Director for the Police Commission, who informed the Monitor that there have been no requests made by the Police Commission to the LAPD or the OIG to complete any audits since the quarter ending December 31, 2004.

C. POLICE COMMISSION OVERSIGHT

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

The only provisions of this section of the Consent Decree with which the Department has not achieved substantial compliance are those requiring the Commission to annually issue a publicly available report detailing its findings regarding CUOF incidents (subparagraph 142b) and to review specific audits required under the Decree (subparagraph 143a). The Monitor will be assessing the Department's compliance with these requirements during the extension to the Consent Decree.

During the current quarter, the Monitor assessed compliance with requirements regarding the Commission's review of audits. The results of our current assessment follow.

Subparagraph 143a – Police Commission Review of Audits

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

Background

Prior to the quarter ending September 30, 2005, the Monitor found the Department in non-compliance with subparagraph 143a either because the Police Commission had not yet developed a process to track the LAPD's and OIG's audits or because the Commission's reviews or reports were incomplete.

During the quarter ending December 31, 2005 the Monitor found the Department in compliance with subparagraph 143a, as it determined that the Police Commission had developed a system that tracked the required audits that was generally complete and then used the information from this system to review, discuss and approve the AD's and OIG's audits and reports and their recommendations.

Current Assessment of Compliance

During the current quarter, the Monitor met with staff from the Police Commission to review the system and documentation used to track information in relation to specified and non-specified audits completed by the Department. The Monitor reviewed the Police Commission meeting transcripts and minutes, as well as correspondence and audit reports/reviews issued by AD, the OIG and other LAPD departments for a random sample⁸² of 15 reports to confirm that the information was accurate. The Monitor determined that the Department has continued to refine its system for tracking audits in order to ensure that they are submitted to the Police Commission on a timely basis and subsequently discussed and reviewed by the Police Commission for changes to policy and procedures.

Based on the foregoing, the Monitor finds the Department in compliance with subparagraph 143a.

⁸² The Monitor's sample size was selected using a 95% confidence interval and an error rate of +/- 7%.

XII. CONCLUSION

In this first report of the extension period, we have looked at a significant number of paragraphs with which the City had yet to achieve overall compliance during the initial five-year period of the Decree. We are pleased with the progress that has been made in those paragraphs, as well as the fact that no inactive paragraphs have fallen out of compliance. There do remain a number of paragraphs for which we have continued to withhold a determination of compliance or await implementation by the Department. Specifically, we await the full implementation of TEAMS II (paragraphs 40-52), appropriate financial disclosure (paragraph 132) and an overall plan to fully address the paragraphs prohibiting biased policing (paragraphs 102 and 103). Overall, the City has continued to move forward toward its goal of full substantial compliance with the Consent Decree.