

REPORT OF
THE INDEPENDENT MONITOR
FOR THE
DETROIT POLICE DEPARTMENT



REPORT FOR THE QUARTER ENDING
MAY 31, 2008
ISSUED JULY 15, 2008

Sheryl Robinson Wood
Independent Monitor of the
Detroit Police Department

Assisted by: **KROLL**

EXECUTIVE SUMMARY

On June 12, 2003, the United States Department of Justice (DOJ) and the City of Detroit (City) (collectively, the parties) filed two Consent Judgments with the United States District Court for the Eastern District of Michigan (Court).¹ The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's [Detroit Police Department's] implementation"² of the Consent Judgments. On July 18, 2003,³ the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson Wood as the Independent Monitor in this matter, with the assistance of Kroll, Inc. This is the nineteenth quarterly report of the Independent Monitor.⁴

The two Consent Judgments contain a total of 205 substantive paragraphs and subparagraphs with which the City and the DPD must substantially comply, 131 from the UOF CJ and 74 from the COC CJ.⁵ The City and the DPD have achieved compliance with the policy components of the applicable paragraphs in both Consent Judgments, a significant accomplishment.⁶ There are a number of paragraphs that are "policy only" paragraphs with which the City and the DPD will remain in compliance unless a revision is made that does not meet the terms of the Consent Judgments.⁷ These 15 compliant "policy only" paragraphs are: U14-17, U19, U20, U42, U44, U46-47, U52, U54, U56, C28, and C29. There are also several paragraphs that require the City and the DPD to take a specific action and, once compliant, these paragraphs will generally remain in compliance; the DPD has complied with 11 such paragraphs or subparagraphs: U82-85; U88a, b, d, and e; C22; C44; and C46. Significantly, the DPD is currently in overall

¹ The two judgments are the Use of Force and Arrest and Witness Detention Consent Judgment (UOF CJ) and the Conditions of Confinement Consent Judgment (COC CJ).

² UOF CJ at paragraph U124 (hereinafter UOF CJ paragraphs will be referenced by "U"). COC CJ at paragraph C79 (hereinafter COC CJ paragraphs will be referenced by "C").

³ The "effective date" of the Consent Judgments.

⁴ The Monitor's quarterly reports may be found on the Internet at www.kroll.com/detroit.

⁵ There were originally 177 numbered paragraphs from the UOF CJ and COC CJ that were considered to be subject to monitoring. After adjusting for those paragraphs that are no longer being monitored on a regularly scheduled basis (for example, the monitoring of paragraphs U139 and C94) and paragraphs that the Monitor has separated out into subparagraphs for ease of analysis and/or reporting (paragraphs U62 and U67, for example), the total number of paragraphs and subparagraphs being monitored currently stands at 205. These paragraphs and subparagraphs are identified in the Report Card attached as Appendix B to this report.

⁶ These paragraphs are identified in the comments column of the attached Report Card. Pursuant to paragraphs U133 and C88 and various other paragraphs, these paragraphs also require implementation, which must also be accomplished for the DPD to achieve overall substantial compliance.

⁷ For these "policy only" paragraphs, implementation is separately evaluated under another substantive paragraph.

compliance for two consecutive quarters with 34 paragraphs or subparagraphs of the Consent Judgments.⁸

Each quarter, the Monitor examines a certain number of substantive paragraphs and subparagraphs. During the nineteenth quarter, which ended on May 31, 2008, the Monitor examined a total of 89 paragraphs or subparagraphs (64 paragraphs or subparagraphs of the UOF CJ and 25 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD are in compliance with 28, in partial compliance with two, and not yet in compliance with 48; the Monitor did not complete its evaluation⁹ of eight paragraphs or subparagraphs, and has withheld a determination of compliance with three paragraphs or subparagraphs.¹⁰

As described above, overall, the Monitor is assessing the City and DPD's compliance with 205 paragraphs and subparagraphs, 131 from the UOF CJ and 74 from the COC CJ. The City and the DPD are currently in compliance with 73 of these paragraphs and subparagraphs (44 from the UOF CJ and 29 from the COC CJ) and in partial compliance with two (both from the UOF CJ).

Use of Force Paragraphs

The Monitor assessed the Department's compliance with UOF CJ requirements regarding the conduct of general, use of force and prisoner injury investigations. The DPD's Audit Team and the Monitor agreed that the Department has continued to be in compliance with requirements related to the Garrity protocol. The DPD has also achieved compliance with the paragraph prohibiting leading questions and the use of interviews via written questions when contrary to appropriate law enforcement techniques. As reported during the last quarter in which these

⁸ These are substantive paragraphs and subparagraphs that are on a regular and periodic review schedule; this list does not include "policy only" paragraphs and other paragraphs and subparagraphs with which the DPD will generally remain in compliance once compliance is achieved. Of these 34 paragraphs and subparagraphs, the Monitor found four in compliance for two consecutive review quarters for the first time during the current review period (U61, U70, C60 and C71). Also included are three paragraphs that were previously in compliance for two consecutive quarters but for which a compliance determination was withheld or not yet completed during the current quarter (U37, U64, U96).

⁹ The paragraphs for which the Monitor has not yet completed its evaluation are generally "implementation" paragraphs, for which the DPD has now complied with the related policy requirements. In these instances, the Monitor's testing of implementation is currently taking place and has not yet been completed. There are varying reasons why the assessments have not yet been completed, including the dates documents were requested and/or submitted and the availability of information relevant to making the assessment. In addition, the Monitor generally times its reviews of certain topics to coincide with its review of DPD audits that cover those topics; the Monitor will generally defer its assessment of compliance if its review of the related audit has not been completed.

¹⁰ For each of these paragraphs, the Monitor's review and findings as of the end of the quarter are included in this report. The Monitor is mindful that this report is issued some 45 days after the end of the quarter. Therefore, for paragraphs assessed during the current quarter, the Monitor will make every effort to mention significant developments that occurred after the end of the quarter in footnotes throughout the report. For those paragraphs that were not assessed during the current quarter, developments that occurred during the current quarter or after the quarter's end will generally be fully reported on in the next quarter in which the applicable paragraph is under review.

paragraphs were under review, the DPD has not yet achieved substantial compliance with the majority of the paragraphs that include investigatory requirements. However, the Monitor continued to find that investigations conducted by one of the investigative entities, Force Investigation, are of high quality. The DPD AT found that investigations conducted by Internal Affairs were also high in quality.

The Monitor's assessments of compliance with the requirements regarding critical firearm discharges and in-custody deaths have not changed from previous quarters. The Department continues to struggle with carrying out the timing requirements in the critical firearm discharge investigative protocol, with the Command Level Force Review Team (CLFRT or Board of Review) requirements and with the submission of the annual reports on critical firearm discharges. The Monitor found that the Department did not convene a CLFRT (Board of Review), as required by the UOF CJ, for any of the 10 critical firearm discharges selected for review; the DPD's Audit Team had similar findings.¹¹ The DPD did submit its annual report reviewing critical firearm discharges and in-custody deaths for the year 2006. The Court has recently set a schedule for the DPD to submit its reports for 2005 and 2007 to the Monitor.

Arrest and Detention Paragraphs

The Monitor assessed the Department's compliance with UOF CJ requirements regarding review of arrests; documentation of stops and frisks, interviews and interrogations, and arrests; and prompt judicial review. Although the Monitor has found that sufficient probable cause existed for all DPD arrests, the Department is in compliance for the first time with requirements related to the review of arrests for probable cause due to the fact that supervisory reviews have taken place in a timely and complete manner. Furthermore, the DPD has achieved partial compliance for documenting failures to comply with the prompt judicial review requirements related to arraignments. The Monitor commends the DPD for these achievements.

However, the DPD has not yet effectively implemented the documentation and review requirements related to stops and frisks. The DPD also has not consistently presented detainees for arraignment within 48 hours or submitted warrant requests to the prosecutor's office within 24 hours of the arrest.

With regard to the documentation and review of all interviews, interrogations and conveyances, the DPD has indicated that the Homicide Unit is the only entity within the DPD utilizing the applicable conveyance form and that documentation to be utilized to capture information in connection with interviews and interrogations is under revision by the Department.

The Monitor found that the DPD is not yet capturing all information required in connection with custodial detentions arrests, including identifiers such as social security numbers and age, as well as aliases and physical characteristics, and supervisors who are responsible for completing

¹¹ The City has requested that the DOJ agree to request that the Court remove the requirement for a CLFRT, as currently defined, from the Consent Judgment

auditable forms for stops and/or frisks and providing them to Commanding Officers for review are not doing so.

Risk Management Paragraphs

The DOJ and the Monitor participated in a demonstration of the current version of the Management Awareness System (MAS) in May 2008. The DOJ has review and approval over the DPD's development of MAS. DOJ's expert gave verbal feedback to the City and the DPD after the demonstration and written comments are being prepared. According to the DPD, they are on schedule to meet the Court-ordered deadline for completion and implementation of the MAS, which is July 24, 2008.

Audit Paragraphs

During the current quarter, the Monitor completed its review of six COC CJ audits that were submitted on January 31, 2008: the *Prisoner Injury in Holding Cells Audit*, the *Allegations of Misconduct in Holding Cells Audit*, the *Fire Safety Practices and Policies Audit*, the *Emergency Preparedness Program Audit*, the *Environmental Health and Safety Audit*, and the *Detainee Food Services Programs and Personal Hygiene Practices Audit* finding all six of these audits in compliance. The audits were considered to be thorough and reliable, and valuable tools to assist the DPD in developing strategies to further its compliance with the COC CJ in the respective areas.

While the Monitor commends the DPD's Audit Team and the Holding Cell Compliance Committee for this significant achievement, it is important to note that the DPD's Audit Team had difficulty identifying the population for Command investigations due to the DPD's lack of record-keeping in the *Allegations of Misconduct in Holding Cells Audit* and the *Prisoner Injury in Holding Cells Audit*; accordingly, the Audit Team's findings relating to these audits may not be truly representative of the DPD's compliance with the paragraphs tested. In addition, in each of these six audits the Monitor identified a number of errors in the audit report and/or the audit's supporting documentation and there are other areas where there is further room for improvement. Although these errors did not significantly affect the overall quality of each audit, the Audit Team should strengthen its audit fieldwork and quality control processes in order to reduce the likelihood that future audits will be considered non-compliant. Although the DPD has made substantial progress in addressing the "challenges hampering the effectiveness of the DPD's Audit Team" as discussed in a focus issue within the Monitor's Report for the Quarter Ending September 30, 2006, primarily through the hiring and training of suitably-experienced audit/supervisory personnel; the DPD should revisit the suitability of its audit resources now and on a periodic basis hereinafter in order to maintain such progress.

The Monitor is continuing its review of the *Prisoner Injury Non-Holding Cells Investigations Audit* required by subparagraph U94b, which was submitted on February 29, 2008. The Monitor expects to complete its review and report its findings in the quarter ending August 31, 2008.

On the last day of the current quarter, the DPD submitted the *Arrest Practices Audit* required by subparagraph U95a, and the *Custodial Detention Practice Audit* required by paragraph U96. The Monitor has begun the process of reviewing these two audits and expects to report its findings in the quarter ending August 31, 2008.

Training Paragraphs

The Monitor approved the DPD's *Firearms Tactical Training and Qualification Lesson Plan* during the current quarter. The Monitor will assess the DPD's deliver of this training before or during the next quarter in which the applicable paragraphs are under review. The DPD has not yet begun to deliver training using the approved *Law of Arrest Search and Seizure* or *Use of Force Lesson Plans*. The *Detention Officer Training* and *U67f Lesson Plans* are being revised by the DPD and/or reviewed by the Monitor. At the end of this quarter, the DPD had not yet submitted a report of its semi-annual review of all Use of Force and Arrest and Detention training, trained a sufficient number of trainers, or developed adequate training records.

COC CJ Holding Cell Paragraphs

During the current quarter, the Monitor assessed the DPD's compliance with COC CJ requirements to implement policies, programs and protocols designed to address the following areas: environmental health and safety, food service and personal hygiene.

In assessing compliance with requirements related to the department's environmental health and safety policies, the Monitor reviewed the DPD's *Environmental Health and Safety (EH&S) Audit* submitted on January 31, 2008, and conducted supplemental onsite inspections of all DPD buildings containing holding cells and the Detroit Receiving Hospital. The Monitor and the Audit Team concluded that the DPD has met the policy components of the relevant paragraphs and is in compliance with the paragraphs requiring cleanliness of cells, adequate heating and ventilation, cell block repairs and access to toilets and potable water. Requirements that are not yet being effectively implemented include the implementation of cleaning and maintenance policies, since some of the required documentation (cleaning and maintenance logs) was either missing or contained incomplete entries.

In assessing compliance with requirements regarding food service and personal hygiene, the Monitor reviewed the DPD's *Detainee Food Services Programs and Personal Hygiene Practices Audit* which was submitted on January 31, 2008. The Monitor also conducted supplemental onsite inspections. The audit found that the DPD was not in compliance with the implementation of the food service policy, with the food service and storage requirements, and with the availability of personal hygiene items requirement. Although the Monitor found that the DPD had made some improvements by the time of the Monitor's inspections, which occurred after the audits had been conducted, the DPD continued to have some compliance issues. These issues generally relate to documentation and adequate service of food.

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APPENDICES:

- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor
- B. “Report Card” Summarizing the Monitor’s Evaluation of Compliance with the Consent Judgments as of the Quarter Ending May 31, 2008

SECTION ONE: INTRODUCTION

I. BACKGROUND

On June 12, 2003, the United States Department of Justice (DOJ) and the City of Detroit (City) (collectively, the parties) filed two Consent Judgments with the United States District Court for the Eastern District of Michigan (Court). The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's implementation" of the Consent Judgments. On July 18, 2003, the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson Wood as the Independent Monitor in this matter, with the assistance of Kroll, Inc.¹² This is the nineteenth report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor¹³ outlined the history of the DOJ investigation, the Technical Assistance (TA) letters and the DPD's reform efforts. The Monitor also summarized the complaint filed against the City and the DPD and the overall content of the Consent Judgments.¹⁴ The Monitor's duties and reporting requirements were also described.

As the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,¹⁵ the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments. The paragraphs that were scheduled for review during the nineteenth quarter, which ended on May 31, 2008, are assessed in this report.¹⁶

¹² The primary members of the Monitoring Team are Joseph Buczek, Jerry Clayton, Penny Cookson, Charles Curlett, Hazel de Burgh, Ronald Filak, Thomas Frazier, Marshall Johnson, Denise Lewis, Jane McFarlane, Terry Penney, and Sherry Woods.

¹³ The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

¹⁴ Complaint, Case no. 03-72258. The complaint, Consent Judgments and TA letters are publicly available at http://www.usdoj.gov/crt/split/documents/dpd/detroit_cover_2.html.

¹⁵ Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. Paragraphs U149 and C106.

¹⁶ For the paragraphs under review for this quarter, the Monitor makes every effort to report on significant matters that have taken place after the end of the quarter, although this is not possible in every instance. These occurrences appear in footnotes throughout the report.

II. MONITOR'S ROLE

The Monitor's role is to conduct compliance assessments,¹⁷ make recommendations, provide TA and report on the DPD's progress toward substantial compliance with the Consent Judgments on a quarterly basis. The Monitor carries out this role with a healthy respect for the critical role the Department plays in enforcing the law and the significant risks taken by DPD officers each day. The Consent Judgments, which are orders of the Court, are meant to improve the overall policing in the City of Detroit by taking measures to prevent the unconstitutional conduct alleged by the DOJ in its complaint filed against the City and the DPD. The Consent Judgments can only be modified by court order.

III. FINDINGS FROM COMPLIANCE ASSESSMENTS

During the nineteenth quarter, the Monitor continued to test the DPD's implementation of the policies, to review training lesson plans and to review audits conducted by the DPD's Audit Team (AT). The Monitor commends the DPD's AT and HCCC for achieving compliance with all six of the COC CJ audits that were submitted on January 31, 2008 and assessed in this report. The DPD also received approval of its *Firearms Tactical Training and Qualification Lesson Plan* and began using it to train officers during this quarter. The DPD also achieved compliance with a several paragraphs for the first time and, as described below, is in compliance with 34 paragraphs for two or more consecutive quarters during which the paragraph was under review.

Of the 89 paragraphs or subparagraphs that the Monitor assessed during the current quarter, the Monitor found that the DPD achieved compliance with 28 paragraphs and subparagraphs and partial compliance with two paragraphs or subparagraphs. Overall, the DPD is currently in compliance with 73 of the 205 paragraphs and subparagraphs that are assessed in the combined Consent Judgments (44 of 131 paragraphs and subparagraphs from the UOF CJ and 29 of 74 paragraphs and subparagraphs from the COC CJ).

Lastly, the DPD has been in overall compliance for two or more quarters with 34 paragraphs or subparagraphs of both Consent Judgments.¹⁸ Of these 31 paragraphs and subparagraphs, the

¹⁷ Paragraphs U138 and C93 require that the Monitor regularly conduct compliance reviews to ensure that the City and the DPD implement and continue to implement all measures required by the Consent Judgments. The Monitor shall, where appropriate, employ sampling techniques to measure compliance.

¹⁸ These are substantive paragraphs and subparagraphs that are on a regular and periodic review schedule; these do not include "policy only" paragraphs and other paragraphs and subparagraphs with which the DPD will generally remain in compliance once compliance is achieved. Also included are three paragraphs that were previously in compliance for two consecutive quarters but for which a compliance determination was withheld or not yet completed during the current quarter (U37, U64, U96).

Monitor found four in compliance for two consecutive review quarters for the first time during the current review period.¹⁹

The Monitor continued to implement the new finding of “partial compliance” and new terms of “notable progress” and “significant progress” for quantitative paragraphs²⁰ in the Report for the Quarter Ending May 31, 2008.²¹

IV. METHODOLOGIES

The *Methodologies to Aid in Determination of Compliance with the Consent Judgments* (the *Methodologies*) generally outline the methods that will be employed by the Monitor to determine compliance by the City and the DPD with each substantive provision of the Consent Judgments. The Monitor has submitted final copies of the *Methodologies* for both Consent Judgments to the parties. Any future modifications to the *Methodologies* will generally be made on a paragraph-by-paragraph basis.

Under the *Methodologies*, the DPD will generally be assessed as compliant when either a reliable audit has been submitted that concludes compliance or greater than 94% compliance is achieved for a statistically valid random sample²² of incidents from as recent a period as is practicable. As mentioned above, the Monitor will generally find the DPD partially compliant when the overall compliance rate of the implementation component of a paragraph is between 80% to 94%.

In the course of conducting compliance assessments, among various other activities, the Monitor conducts interviews of various City and DPD personnel and other individuals. It is the Monitor’s general practice, unless otherwise noted, to use matrices to ensure that the same general questions and subject matter are covered in interviews and document reviews.

In the course of evaluating the DPD’s audits, the Monitor reviews the audit report, work plan, matrices, and supporting documentation. The Monitor will then generally perform detailed fieldwork as part of its review, but may abridge its assessment of the detailed fieldwork and

¹⁹ Paragraphs U61, U70, C60 and C71.

²⁰ For qualitative paragraphs, after the end of the quarter, the Monitor and the DPD agreed on a methodology for applying this finding and terms commencing during the quarter ending August 31, 2008.

²¹ For quantitative paragraphs, the Monitor will generally find that the DPD has achieved partial compliance where the overall compliance rate is greater than 80% to less than or equal to 94%. For quantitative paragraphs that are not yet in compliance, the Monitor now reports when the DPD has made significant progress by achieving an overall compliance rate greater than 66% to 80% for the implementation component of a paragraph or notable progress by achieving an overall compliance rate greater than 50% to 66% for the implementation component of a paragraph.

²² If the total population of incidents is so small that the process of selecting a statistically valid random sample would take longer to perform than to evaluate 100% of the incidents in the population, 100% testing will be performed.

adopt the audit's findings as reliable if all of the following conditions are present: at a minimum, two consecutive audits of the same subject areas were found to be in compliance with applicable Consent Judgment requirements; the methodology for the audit under review has not been significantly altered from the prior audits that were found to be compliant; and, the audit's findings regarding the DPD's compliance with the underlying substantive Consent Judgment provisions have not changed from the prior audit. If all of these conditions are present, the Monitor will also confirm the audit's conclusions through non-audit sources of information, such as the Monitor's independent assessments of the underlying paragraphs and the City's Status Report. If the Monitor has specific concerns regarding any particular audit conclusions, the Monitor will conduct its usual detailed review of the audit fieldwork in that particular area.

Under certain circumstances, the Monitor may elect to rely on audits submitted by the DPD in assessing compliance with substantive paragraphs of the Consent Judgments. In doing so, the Monitor evaluates each audit to determine if it is compliant with the applicable audit paragraph requirements of the Consent Judgments. Even if the Monitor determines that an audit is not compliant with the applicable audit paragraph requirements of the Consent Judgments, the Monitor may still rely on some or all of the audit's findings if it is determined that the specific findings are reliable.²³ In addition, the Monitor reserves the right to adopt certain audit findings of non-compliance even in instances in which the Monitor has not determined whether the audit's findings are reliable, as long as the audit's assessment has been supplemented with additional testing by the Monitor.

Lastly, the organization of the UOF CJ and COC CJ paragraphs vary in that some paragraphs have separate but related "training" paragraphs within the Consent Judgments,²⁴ while others do not.²⁵ These varying formats impact the way in which the Monitor assesses compliance with each paragraph. Specifically, the Monitor's compliance assessments of paragraphs that do not have a separate training-related paragraph include reviews for annual and/or regular and periodic training and/or instruction to ensure appropriate DPD members have not only received the necessary policies, but have adequate information and direction to carry out the requirements of the Consent Judgments.²⁶

²³ As an example, if the audit report and fieldwork were considered reliable related to the substantive paragraphs under review but the audit was considered non-compliant because it failed to address a specific issue unrelated to the substantive paragraph or was submitted late, the Monitor may use all of the audit's findings regarding the substantive provisions of the paragraph(s) even though the audit was considered non-compliant.

²⁴ See, for example, paragraph U43 – Arrest Policies and paragraph U45 – Stop and Frisk Policies and related training paragraph, paragraph U114.

²⁵ See, for example, paragraphs U73 -- Supervisory Deployment and paragraph U77 -- Foot Pursuit Policies.

²⁶ As described in the Introduction to the Methodologies, this is the Training Component of compliance.

V. REPORT CARD

As a tool to assist the reader of this report, the Monitor is attaching as Appendix B a “Report Card,” which provides a “snapshot” of the DPD’s compliance with each of the substantive provisions of the Consent Judgments. It also serves as a tool to summarize the DPD’s progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph²⁷ of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.²⁸ The quarter in which the most recent evaluation was made is also indicated, as is the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. The next evaluation is estimated based on available information at the date of issuance of this Quarterly Report and accompanying Report Card. These estimated dates are subject to change as information develops and circumstances change.

The findings on the report card are: compliant, partial compliance, not yet evaluated, determination withheld or non-compliant. Also in the comments section of the report card, the Monitor will add a notation for each paragraph where the DPD has made notable or significant progress under the circumstances described above.

VI. MONITOR’S PLEDGE

The Monitor continues to be dedicated to making this process a transparent one, and continues to share the interest of all parties in having the City and DPD achieve substantial compliance with the Consent Judgments in a timely manner.

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending May 31, 2008. A draft copy of this report was made available to the parties at least ten days prior to final publication in order to provide the parties with an opportunity to identify any factual errors,²⁹ and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

²⁷ Although subparagraphs are often specifically identified in the Consent Judgments, the Monitor has split certain paragraphs that include more than one topic. The purpose of this is to facilitate the future evaluation of and reporting on each sub-topic.

²⁸ 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 DPD’s compliance with the provisions of the Consent Judgments.

²⁹ As required by paragraphs U142 and C97.

SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND ARREST AND WITNESS DETENTION CONSENT JUDGMENT

This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending May 31, 2008.

I. USE OF FORCE POLICY

A. GENERAL USE OF FORCE POLICIES

This section comprises paragraphs U14-19. The Monitor has found the DPD in compliance with paragraphs U14-17 and U19, which are "policy only" paragraphs. The DPD will remain in compliance with these paragraphs until such time as the policies directly responsive to the paragraphs are revised.³⁰ The Monitor last assessed the DPD's compliance with paragraph U18 during the quarter ending May 31, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U18 – Revision / Implementation of UOF Policy

Paragraph U18 requires the DPD to develop a revised UOF policy within three months of the effective date of the UOF CJ. The policy must be submitted for review and approval of the DOJ. The DPD must implement the revised UOF policy within three months of the review and approval of the DOJ.

Background

The Monitor last assessed the DPD's compliance with paragraph U18 during the quarter ending May 31, 2007. During that quarter, the Monitor evaluated the *Use of Force in Holding Cells (UOFHC) Audit*, submitted by the DPD on January 31, 2007, which found that the DPD was not adequately implementing the policy promulgated in response to the requirements of paragraphs U14-17 and U19.

³⁰ As with all "policy-only" paragraphs with which the DPD has achieved compliance, any revisions to the policy will trigger an additional assessment by the Monitor. Implementation of the policy is tested under paragraph U18.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U18, the Monitor requested that all investigations of force conducted by the DPD (for both Command and Force Investigation (FI)) that were closed during the period March 1-31, 2008 be made available for the Monitor's inspection. When the Monitor arranged to review files at the DPD's Office of Civil Rights (OCR), four investigations conducted by FI and two Command Investigations were provided to the Monitor.

Overall, the Monitor's findings were positive. The force used was generally consistent with the definition of force in the UOF CJ; the force options chosen by the officers were appropriate; responses on the use of force continuum were employed; and, individuals were provided an opportunity to submit to arrest prior to the use of force where practicable. However, the Monitor identified two instances in which inappropriate force techniques were employed, a carotid hold and a head strike.

When the Monitor requested access to all UOF investigative files that were conducted by FI or Command and that were closed between March 1 and March 31, 2008, the Monitor was only provided with access to the six investigations described above. Due to the low number of files provided, the Monitor submitted a follow-up document request asking for a list of all investigations of force conducted by FI or Command that were closed during the period March 1-31, 2008 to verify that there were only six responsive investigations.³¹

Based on the foregoing, the Monitor is withholding its determination of compliance with paragraph U18.³²

B. USE OF FIREARMS POLICY

This section comprises paragraphs U20-23. The Monitor found the DPD in compliance with paragraph U20, which is a "policy-only" paragraph, during the quarter ending August 31, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.³³ The Monitor last assessed the DPD's compliance with

³¹ The Monitor requested a list of all such investigations on June 4, 2008. On June 27, 2008, the DPD provided a list of 28 FI and Command investigations that were closed during the relevant time period. Since the Monitor was not provided with timely access to these investigations, we will not complete our review of the additional files. We will assess this paragraph during the next quarter in which it is scheduled for review.

³² The Monitor is withholding its compliance determination based on the DPD's failure to provide the Monitor with all 28 investigations closed between March 1-31, 2008. The Monitor will review a more recent population of investigations in order to assess the DPD's compliance with paragraph U18 during the next regularly scheduled review of this paragraph.

³³ Revisions to policy will trigger an additional assessment by the Monitor. The implementation and training requirements associated with the paragraph will be assessed separately under paragraphs U111 and U113.

paragraphs U21-23 during the quarter ending February 29, 2008. The Monitor is scheduled to next assess the DPD's compliance with paragraph U21-22 during the quarter ending August 31, 2008. The Monitor again assessed compliance with paragraph U23 during the current quarter. The results of our current assessment follow.

Paragraph U23 – Firearms and Ammunition

Paragraph U23 requires the DPD to identify a limited selection of authorized ammunition and prohibit officers from possessing or using unauthorized firearms or ammunition. The DPD must specify the number of rounds DPD officers shall carry. Along with Directives 304.1, *Firearms*, and 304.2, *Use of Force*, that define the policies and procedures relative to the requirements of paragraph U23, the DPD has implemented the *Monthly Equipment Inspection Report* (DPD 709), which, according to DPD Teletype #06-00343 of January 26, 2006, is to be completed by all commands on a monthly basis.

Background

The Monitor last assessed the DPD's compliance with paragraph U23 during the quarter ending February 29, 2008. The Monitor was unable, however, to complete its assessment for two reasons. First, the Monitor did not have current information related to the total number of DPD commands as of the date the DPD 709s were submitted. The Monitor would only have been able to substantiate its findings by comparing the DPD 709 reports it received to a current list of commands. Second, the DPD 709 reports for 484 of the 1,418 officers, which were submitted electronically, were cut off and the violation section could not be reviewed by the Monitor when printed. The Monitor noted that it would request this information during the quarter ending May 31, 2008.

Current Assessment of Compliance

To complete its evaluation of paragraph U23, on April 24, 2008, the Monitor requested, and subsequently received, a current list of all DPD commands and specialized units, including all commands and specialized units required to complete DPD 709s on a monthly basis. The Monitor also requested legible copies of all completed monthly DPD 709 reports for the months of January, February and March 2008. The DPD noted in its *19th Quarter Status Report* that it is in the process of obtaining the reports from each of the commands to provide for the Monitor's review; however, the Monitor had not received the report at the time of the writing of this report. Without the DPD 709 reports to review and compare to the current list of commands, the Monitor was, again, not able to complete its review of U23. The Monitor will request a list of commands and completed DPD 709 forms when U23 is next up for review.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U23.

C. INTERMEDIATE FORCE DEVICE POLICY

This section comprises paragraph U24. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2008.

D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of uses of force (UOF), prisoner injury, critical firearms discharges (CFDs) and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for compelled statements and develop an auditable form³⁴ to document any prisoner injury, UOF, allegation of UOF, and instance where an officer draws a firearm and acquires a target.

The DPD Shooting Team must respond to and investigate all CFDs and in-custody deaths, and the DPD must develop a protocol for conducting investigations of CFDs. The DPD's Internal Controls Division (ICD) must investigate a variety of incidents, pursuant to the requirements of the UOF CJ, including all serious UOF (which includes all CFDs), UOF that cause serious bodily injury, and all in-custody deaths. Finally, the UOF CJ requires the DPD to create a command level force review team that is charged with critically evaluating and reporting on CFDs and in-custody deaths.

A. GENERAL INVESTIGATIONS OF POLICE ACTION

This section comprises paragraphs U27-33. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U27-33 – Revision of General Investigation Policies; Investigation Procedures; Investigatory Interview Procedures; Prohibitions of Investigatory Interviews; Protocol for Garrity Statements; Investigatory Reports and Evaluations; Review of Investigations

Paragraph U27 requires the DPD and the City to revise their policies regarding the conduct of all investigations to ensure full, thorough and complete investigations. All investigations must, to the extent reasonably possible, determine whether the officer's conduct was justified, and the DPD and the City must prohibit the closing of an investigation being conducted by the DPD and/or the City simply because a subject or complainant is unavailable, unwilling or unable to cooperate, including a refusal to provide medical records or proof of injury.

³⁴ The UOF CJ defines an auditable form as a discrete record of the relevant information maintained separate and independent of blotters or other forms maintained by the DPD.

Paragraph U28 requires the DPD and the City to ensure that investigations are conducted by a supervisor who did not authorize, witness or participate in the incident and that all investigations contain the criteria listed in this paragraph.

Paragraph U29 requires the DPD and the City to revise their procedures for all investigatory interviews to require the criteria listed in this paragraph.

Paragraph U30 requires the DPD and the City to prohibit the use of leading questions that improperly suggest legal justifications for an officer's actions when such questions are contrary to appropriate law enforcement techniques; and to prohibit the use of interviews via written questions when it is contrary to appropriate law enforcement techniques.

Paragraph U31 requires the DPD and the City to develop a protocol for when statements should (and should not) be compelled pursuant to *Garrity v. New Jersey*, 385 U.S. 493 (1967).

Paragraph U32 requires the DPD to revise its policies regarding all investigatory reports and evaluations to require the criteria listed in this paragraph.

Paragraph U33 requires the DPD to revise its policies regarding the review of all investigations to require those criteria listed in this paragraph.

Background

The Monitor last assessed the DPD's compliance with paragraphs U27-33 during the quarter ending November 30, 2007. The Monitor found that the DPD remained in compliance with paragraph U31, and in compliance with the policy requirements of paragraphs U27-30 and U32-33; however, the Monitor found that the DPD was not yet in compliance with the implementation requirements of paragraphs U27-30 and U32-33. The Monitor based its findings on its review of the following audits submitted by the DPD: the *Combined Allegations of Misconduct (AOM) Audit Report*, the *UOFHC Investigations Audit Report*, the *UOF Investigations Audit Report* and the *External Complaints and Complaint Investigations (EC&CI) Audit Report*

Current Assessment of Compliance

In order to assess the DPD's compliance with the General Investigation requirements contained in paragraphs U27-33 during the current quarter, the Monitor reviewed the following audits submitted by the DPD: the *Allegations of Misconduct in Holding Cells (AOMHC) Audit Report*,³⁵ the *Prisoner Injury in Holding Cells (PIHC) Audit Report*,³⁶ and the *Prisoner Injury*

³⁵ The *AOMHC Audit*, which was submitted on January 31, 2008, is separately evaluated under subparagraphs C65c of this report.

³⁶ The *PIHC Audit*, which was submitted on January 31, 2008, is separately evaluated under subparagraph C65b of this report.

Not in Holding Cells (PINHC) Audit Report,³⁷ all of which evaluated the DPD's compliance with paragraphs U27-33, among others.

A total of 19 investigations were reviewed in these three audits; of these, 11 were conducted at the Command level, three were conducted by Internal Affairs (IA), three were conducted by FI, and two were conducted by the Joint Incident Shooting Team (JIST).³⁸

Overall, the audits provided mixed reviews:

- The *PINHC Audit* found that the DPD was not yet in compliance with paragraphs U27-29 and U31-33 and in compliance with paragraph U30.
- The *PIHC Audit* found that the DPD was not yet in compliance with paragraphs U27-33.
- The *AOMHC Audit* found that the DPD was in compliance with paragraphs U27 and U30 but not yet in compliance with paragraphs U28, U29 and U31-33.

There are numerous requirements contained in general investigation paragraphs U27-33 and their corresponding subparagraphs. The findings are summarized below:³⁹

- In evaluating compliance with the requirements of paragraph U27, the *PINHC Audit* found that the Command, FI, and JIST investigations were not thorough and complete, and were otherwise not in compliance with the General Investigative requirements. The *PIHC Audit* evaluated three Command investigations and found them to be in non-compliance. The *AOMHC Audit*, on the other hand, evaluated IA investigations and found them in compliance with paragraph U27.
- All three audits concluded that the DPD was not yet in overall compliance with the requirements of paragraph U28 based on compliance problems identified in connection with specific subparagraphs. Examples of problems identified include interviews of witnesses that were either absent or not complete; investigations that did not include photographs of injuries or alleged injuries; failure to document canvassing of the scene for witnesses; and, failure to include names and badge numbers of all officers on the scene. Unlike previous audit

³⁷ The *PINHC Audit*, which was submitted on February 29, 2008, is separately evaluated under subparagraph U94b. Although the Monitor has not yet finalized its review of the audit, the Monitor has completed its review of the investigations within the audit, and validated the audit's findings. The Monitor will report its complete findings in connection with this audit in the Monitor's Report for the Quarter Ending August 31, 2008.

³⁸ Three investigations were reviewed in the *AOMHC Audit*, three investigations were reviewed in the *PIHC Audit*, and thirteen investigations were reviewed in the *PINHC Audit*.

³⁹ As the DPD moves closer to compliance with these requirements, the AT and the Monitor will provide more detail on the specific level of compliance achieved for each primary paragraph and its subparagraphs. However, due to the continued lack of consistency in the implementation of these requirements, the current findings are summarized.

findings, these most recent audits found that most of the investigative files did not include the appropriate medical documentation, when required.

- Although the *PINHC Audit* found that the DPD met the paragraph U29 requirement to prohibit group interviews, all audits found that the DPD was not yet in overall compliance with paragraph U29. This finding was based on the lack of interview statements from involved officers within the Command investigations, and most applicable investigations failed to video-tape or audio-tape interviews when required. In addition, the *PINHC Audit* reported that investigations did not include a signed refusal from the complainant when an interview was not video- or audio-taped.
- The *PINHC* and *AOMHC Audits* found that the IA, FI and JIST interviews were appropriate and conducted in accordance with paragraph U30. The audits found that all investigations generally included written questions and most avoided written questions in interviews. As a result, the audits found the DPD in compliance with paragraph U30.
- The *PINHC* and *AOMHC Audits* also found that applicable investigations complied with the Garrity Protocol as required by paragraph U31.

The findings from the audits and the Monitor's review of FI investigations specific to each subparagraph of paragraph U32 follow:⁴⁰

- Subparagraph U32a: The *PIHC* and the *PINHC Audits* both concluded that the investigations did not contain a precise account of the facts and circumstances of the incident; however, as with previous assessments, the *AOMHC Audit*, reviewing three IA investigations, found otherwise.
- Subparagraph U32b: With the exception of IA, many of the investigations did not consider all evidence because of missing witness interviews.
- Subparagraph U32c: The investigations were not discontinued nor was the guilt of the subject considered when determining if misconduct by the involved officer(s) had occurred.
- Subparagraph U32d: The investigators made reasonable credibility determinations regarding witness and officer statements.
- Subparagraph U32e: Most investigations did not include an evaluation of whether or not the officer(s) complied with DPD policy.
- Subparagraph U32f: Most of the investigations did not evaluate each instance of the officer's force, tactics, and/or misconduct uncovered during the investigation.

⁴⁰ Because paragraph U32 includes a large number of subparagraphs and components of investigative requirements, the Monitor has summarized the findings specific to each subparagraph.

- Subparagraph U32g: With the exception of the *PINHC Audit*, which did not consider these criteria due to an oversight during the audit, most of the investigations did evaluate the incident based on the preponderance of evidence standard only.
- Subparagraph U32h: None of the audits found compliance with any of the components of this subparagraph, mainly due to the lack of documentation evidencing that extensions were requested and/or granted for permissible reasons.
- Subparagraph U32i: When included in the investigations, recommendations of disciplinary or non-disciplinary corrective action were documented in writing.

Paragraph U33 mainly describes requirements related to the review process of the investigations. Three of the 19 investigations were not reviewed by the chain of command above the investigator. The reviewing supervisors are not identifying many of the qualitative errors in the investigations. When corrections are identified and returned to the investigator, documentation is often not available to demonstrate that those deficiencies were corrected within seven days, as required by subparagraph U33b. Additionally, the documentation does not demonstrate that any corrective action (non-disciplinary and/or disciplinary) was taken when an investigator failed to conduct or reviewing supervisor failed to evaluate an investigation appropriately, as required by subparagraph U33d.

In summary, based on the results of the three audits submitted by the DPD and reviewed by the Monitor, the Monitor finds that the DPD has not yet implemented the general investigation requirements of the UOF CJ.

Based on the foregoing, the Monitor finds that the DPD is in compliance with paragraphs U30 and U31, and in compliance with the policy requirements of paragraphs U27-29 and U32-33. However, the Monitor finds that the DPD is not yet in compliance with the implementation requirements of paragraphs U27-29 and U32-33.

B. UOF AND PRISONER INJURY INVESTIGATIONS

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U34-36 – Documentation of UOF and Prisoner Injury; UOF and Prisoner Injury Notification Requirements; Command Investigation Time Limits

Paragraph U34 requires the DPD to revise its reporting policies to require officers to document on a single auditable form any prisoner injury, UOF, allegation of UOF, and instance in which an officer draws a firearm and acquires a target.

Paragraph U35 requires the DPD to revise its policies regarding UOF and prisoner injury notifications to require:

- a. officers to notify their supervisors following any UOF or prisoner injury;
- b. that upon such notice, a supervisor must respond to the scene of all UOF that involve a firearm discharge, a visible injury or a complaint of injury. A supervisor must respond to all other UOF on a priority basis. Upon arrival at the scene, the supervisor must interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive needed medical attention;
- c. the supervisor responding to the scene to notify IA⁴¹ of all serious UOF, UOF that result in visible injury, UOF that a reasonable officer should have known were likely to result in injury, UOF where there is evidence of possible criminal misconduct by an officer or prisoner injury; and
- d. IA to respond to the scene of, and investigate, all incidents where there is evidence of possible criminal misconduct by an officer, a prisoner dies, suffers serious bodily injury or requires hospital admission, or involves a serious UOF, and to permit IA to delegate all other UOF or prisoner injury investigations to the supervisor for a Command investigation.

Paragraph U36 requires the DPD to revise its UOF and prisoner injury investigation policies to require:

- a. Command UOF preliminary and final investigations to be completed within 10 and 30 days of the incident, respectively; such investigations must include a synopsis of the incident, photographs of any injuries, witness statements, a canvas of the area, a profile of the officer's prior UOF and allegations of misconduct (AOM), and a first-line supervisory evaluation;
- b. IA investigations to be completed within 60 days of the incident; and
- c. copies of all reports and Command investigations to be sent to IA within 7 days of completion of the investigation.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs U34-36 during the current quarter, the Monitor reviewed the audits of prisoner injury investigations, which are described in the *Current Assessment of Compliance* for paragraphs U27-33 above.⁴² The audits included an evaluation of 11 Command and five FI (which included two JIST) investigations. Of these 16 investigations, ten included a use of force by DPD officers. Based on the low number of FI investigations

⁴¹ The DPD formerly referred to this entity as the Internal Affairs Section.

⁴² The DPD did not submit the audit of Use of Force in Holding Cells which was required to be submitted by January 31, 2008.

included in the audits, the Monitor conducted supplemental testing by selecting and reviewing four additional FI investigations and two Command investigations.⁴³

Similar to previous audits conducted by the DPD's AT, both of these audits correctly found that the DPD is not yet compliant with paragraphs U34-36. Following is a summary of the audit findings in connection with these paragraphs:

- Both audits concluded that the DPD is not complying with the requirements of paragraph U34 to document PI or UOF incidents on an auditable form.⁴⁴ In the case of the investigations conducted by FI (including JIST) although 3 of the 5 included an auditable form, 2 of these 3 were not completed properly (the checkbox indicating a force had occurred was not marked). In regards to the Command investigations, although 6 of 8 forms were present, similarly the checkbox indicating the type of incident (prisoner injury and/or use of force) were not properly completed.
- Regarding subparagraph U35a, the audits found that officers are consistently notifying a supervisor following the incident as required.
- Similar to previous audit findings, the audits again concluded that the requirements of subparagraph U35b are being met, with the exception of the requirement for supervisors interviewing subjects upon arrival at a scene.
- The DPD is generally meeting the requirements of subparagraph U35c, which requires the supervisor responding to the scene to notify Internal Affairs (IA); however, in two incidents in which the prisoner was injured and/or was admitted to the hospital, the DPD did not comply with these requirements, as neither IA nor FI was notified.
- Similar to the above finding, when FI was notified they appropriately respond to the scene to investigate incidents where there is evidence of possible criminal misconduct by an officer, a prisoner dies or suffers serious bodily injury, or a serious UOF has occurred, as required by subparagraph U35d. However if not notified, clearly FI cannot respond as required.
- Subparagraph U36a describes requirements related to the content, timing and review process of command use of force⁴⁵ preliminary investigations. Although the three Command investigations included a synopsis of the incident, all witnesses statements, documentation demonstrating that a canvass of the scene occurred, and a first-line supervisory evaluation; one investigation did not include photographs of the detainees' injury, and none of the investigations contained a profile of the officer's UOF and disciplinary history. Additionally,

⁴³ Refer to the *Current Assessment of Compliance* for subparagraph C65b for additional information regarding issues that arose regarding the identification of the appropriate population.

⁴⁴ The UF-002.

⁴⁵ The DPD has recently advised that Prisoner Injury investigations are not required to comply with subparagraph U36a (and U35b).

none of the Command preliminary investigations were completed within 10 days as required, but all were completed within 30 days. Also, only one of the three Command reports was forwarded to FI within seven days of completion.

Based on its testing of the audits, the Monitor concurs with the audits' overall determination of non-compliance. The Monitor notes that, aside from the 60-day completion requirement of subparagraph U36b and the lack of completion of the UOF auditable forms required by paragraph U34, the seven FI investigations reviewed by the Monitor met the requirements of paragraphs U27-36, whereas the Command investigations tested during the audit did not meet most of the requirements of paragraphs U34-36.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraphs U34-36.

C. REVIEW OF CRITICAL FIREARMS DISCHARGES AND IN-CUSTODY DEATHS

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U37-41 – Creation of Shooting Team; Protocol for Investigations of Critical Firearms Discharges; Command Level Force Review Team; Time Limits for Command Level Force Review Team; Aggregate Review

Paragraph U37 requires the DPD's Shooting Team, which is composed of officers from the Homicide Section and IA, to respond to the scene and investigate all CFDs and in-custody deaths.

Paragraph U38 requires the DPD to develop a protocol for conducting investigations of CFDs that, in addition to the requirements of paragraphs U27-36, requires:

- a. the investigation to account for all shots fired, all shell casings, and the locations of all officers at the time the officer discharged the firearm;
- b. the investigator to conduct and preserve in the investigative file all appropriate ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests; and
- c. the investigation to be completed within 30 days of the incident. If a Garrity statement is necessary, then that portion of the investigation may be deferred until 30 days from the declination or conclusion of the criminal prosecution.

Paragraph U39 mandates that the DPD require a Command Level Force Review Team (CLFRT) to evaluate all CFDs and in-custody deaths. The team must be chaired by the Deputy Chief who

directly supervises IA. The DPD must establish criteria for selecting the other members of the team.

Paragraph U40 mandates that the DPD policy that defines the CLFRT's role must require the team to:

- a. complete its review of CFDs that result in injury and in-custody deaths within 90 days of the resolution of any criminal review and/or proceedings and all other CFDs within 60 days and require the Chief of Police to complete his or her review of the team's report within 14 days;
- b. comply with the revised review of investigations policies and procedures;
- c. interview the principal investigators; and
- d. prepare a report to the Chief of Police in compliance with the revised investigatory report and evaluation protocol.

Paragraph U41 requires the Chair of the CLFRT to annually review CFDs and in-custody deaths in aggregate to detect patterns and/or problems and report his or her findings and recommendations, including additional investigative protocols and standards for all CFD and in-custody death investigations, to the Chief of Police.

Background

The Monitor last assessed the DPD's compliance with paragraphs U37-41 during the quarter ending November 30, 2007, finding the DPD in compliance with paragraph U37 and in compliance with the policy requirements of paragraphs U38-41. However, the Monitor found that the DPD was not yet in compliance with the implementation requirements of paragraphs U38-41. The Monitor requested and reviewed 15 CFD incidents occurring between March 1, 2007 and May 31, 2007. Although JIST responded to each of the incidents as required by paragraph U37, none of the investigations were completed in a timely manner as required by paragraph U38. Also, the DPD did not convene a Board of Review (BOR)⁴⁶ for any of the 15 CFDs identified during the time period reviewed. The Monitor noted, however, that the parties were involved in ongoing discussions concerning the correct interpretation of the requirements of paragraphs U39 and 40. The Monitor has participated in one of the parties' discussions. The parties were next scheduled to discuss this issue in January 2008.

Current Assessment of Compliance

In order to assess compliance with the implementation requirements of paragraphs U37-40, the Monitor reviewed a listing of CFD incidents provided by the DPD and, as described in the

⁴⁶ According to the DPD's Directive 305.4, *Board of Review*, the BOR is the CLFRT called for under paragraph U38.

Current Assessments of Compliance for paragraphs U27-33 and U34-36, above, the Monitor reviewed various DPD audits in connection with its assessment of investigations. These audits included two death investigations, one that occurred while the subject was in-custody and one that occurred as a result of a vehicle pursuit.

Monitor's Evaluation of CFD Incidents

On April 24, 2008, the Monitor requested a listing of all CFD incidents occurring from October 1, 2007 through December 31, 2007, to include, *at minimum*, the date of incident, name of district where incident occurred, location of occurrence, victim's name (if applicable), names of officer(s) involved, investigation number, date investigation opened, name of entity that conducted the investigation, and current status of the investigation - including whether there was or is a criminal review and the outcome of that review. The DPD identified ten CFDs that occurred between the dates of October 6, 2007 and December 31, 2008, as follows:

| Type of Incident | Date of Case | Date Case Closed | Case Disposition | Prosecutor's Disposition | BOR |
|--------------------------------|---------------------|-------------------------|-------------------------------|----------------------------------------------------------------------------------------------|------------|
| Intentional – No effect | 10/6/2007 | 11/5/2007 | Closed – Sustained Misconduct | N/A | None |
| Intentional – No effect | 10/23/2007 | 11/6/2007 | Closed – Exonerated | N/A | None |
| Non-Fatal | 10/28/2007 | 3/6/2008 | Closed – Not Sustained | Justified 12/5/2008 | None |
| Unintentional- No effect | 12/6/2007 | 1/8/2008 | Closed – Sustained Misconduct | N/A | None |
| Non-Fatal | 12/2/2007 | 3/6/2008 | Closed – Exonerated | Justified 1/8/2008 | None |
| Non-Fatal | 12/11/2007 | N/A | Open | Justified 1/22/2008 | None |
| Intentional No effect | 12/14/2007 | N/A | Open | N/A | None |
| Intentional/Off Duty No effect | 12/24/2007 | N/A | Open | Warrant Approved. Charged with MDP over 200.00 and Reckless Discharge of a Firearm 2/11/2008 | None |
| Non-Fatal | 12/31/2007 | N/A | Open | Justified 2/12/2008 | None |

With regard to paragraph U37, the information provided by the DPD indicates that there are currently 11 officers assigned to FI and eight officers assigned to Homicide who are currently members of the JIST. The information provided by DPD did not state whether JIST responded to any CFD. Accordingly, the Monitor's determination of compliance is withheld.

Only two of nine investigations were completed within 30 days of the incident or, where applicable, within 30 days of the criminal declination or prosecution, as required by subparagraph U38c, BOR policy and the JIST protocol.

Paragraph U39 and U40 require that the CLFRT (DPD's BOR) evaluate all CFDs, and sets forth the requirements for the BOR. Contrary to that requirement, DPD failed to convene a BOR for any of the 10 CFDs identified during the time period reviewed.⁴⁷

The City reported in its *19th Quarter Status Report* that the policy requirement of paragraph U41 is incorporated in Directive 304.5, *Board of Review*. As noted above, paragraph U41 requires the DPD to annually review all CFDs and in-custody deaths in aggregate to detect patterns and/or problems and report his or her findings and recommendations, including additional investigative protocols and standards for all CFD and in-custody death investigations, to the Chief of Police; the annual report must be completed and submitted to the Chief of Police no later than 30 days after the end of the calendar year.⁴⁸ During this quarter, the DPD provided the Monitor with the annual report required by paragraph U41 for the year 2006. Neither the annual report for 2005 nor 2007 have been provided at this time. Overall, the report indicates that FI is in fact identifying patterns in CFDs in terms of number, frequency, geographic location, and demographic indicators including racial and gender analysis. The report notes that FI investigators attend regular and routine training on investigative protocols and techniques.

The 2006 report is well-written and presents the information in a comprehensible manner. The Monitor understands that this is the first paragraph U41 report issued by the Department since 2004, and notes that a great deal of effort went into the preparation of this report. The following comments and recommendations are made for the Department's consideration when preparing future reports.

- The Monitor notes that the report does not offer any recommendations to the Chief of Police based upon the review of CFDs and in-custody deaths in aggregate. This is true despite the fact that the total number of CFDs increased by 35% from the previous year.
- The report does not analyze some issues that could indicate a need for additional training or instruction. For example, all seven of the reported unintentional firearms discharges that occurred in 2006 happened while the officer was on duty. This might not indicate a problem, since officers handle their weapon most often when on duty. However, since the only reported incidents happened on-duty, it may indicate the need to include a reminder in roll-call training that officers are required to report any off duty incidents, as well.

⁴⁷ The City has requested that the DOJ agree to request that the Court remove the requirement for a CLFRT, as currently defined, from the Consent Judgment

⁴⁸ The Monitor notes that the CO of FI is currently responsible for submitting this report (not the Chair of the CLFRT). This does not affect compliance for purposes of paragraph U41.

- The report's discussion of prisoner suicide attempts offered an opportunity to discuss compliance with the COC CJ requirement regarding cell checks that is directly related to this issue (paragraph C37). The report notes the implementation of a time date stamp by the DPD "as a tool to accurately determine if a member has fulfilled his/her responsibility to check the prisoners in a timely manner." Although the report accounts for the increase in sustained misconduct in this area due to the failure to adhere to this requirement (time date stamp), it did not discuss or appear to consider related findings from the Monitor's reports and the DPD's AT. The Monitor has noted that the time date stamp is not sufficient to document the relevant information required by the cell check policies paragraph. The time date stamp does not allow for the inclusion of information about the officer's observations and presently the officers only note minimal and general information about the condition of the detainees.⁴⁹ These findings offer an opportunity to make an appropriate recommendation to the Chief regarding cell checks which have some correlation to the prevention of attempted suicides and in-custody deaths. This is just one example of how the statistical information in the report could be used to detect potential problems and make recommendations to fix them.

Based on the foregoing, the Monitor withholds a determination of compliance with paragraph U37 and finds the DPD in compliance with the policy requirements of paragraphs U38-41. However, the Monitor finds that the DPD is not yet in compliance with the implementation requirements of paragraphs U38-41.

⁴⁹ This has been reported, at minimum, in the Monitor's Reports for the Quarters Ending February 28, 2006; November 30, 2007; and August 31, 2007.

III. ARREST AND DETENTION POLICIES AND PRACTICES

This section of the UOF CJ (paragraphs U42-60) requires the DPD to make significant changes to its policies, practices and procedures related to arrests, investigatory stops and frisks, witness identification and questioning, the detention of material witnesses, arrestee restrictions, custodial detention, prompt judicial review, holds and Command notification regarding arrests and witness detention issues. For many of these areas, the DPD must develop auditable forms to document officer violations of the UOF CJ requirements or to capture certain events.

This section also requires DPD supervisors to conduct reviews of all reported violations and take corrective or non-disciplinary action. Precinct commanders and, if applicable, specialized unit commanders, are required to review within seven days all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought, and to review on a daily basis all reported violations of DPD prompt judicial review, holds, restrictions and material witness policies. The Commanders' reviews must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

A. ARREST POLICIES

This section comprises paragraphs U42-43. The Monitor has found the DPD in compliance with paragraph U42, which is a "policy only" paragraph. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.⁵⁰ The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U43 – Review of Arrests

Paragraph U43 requires the DPD to review the merits of each arrest and opine as to whether or not adequate probable cause existed to support the arrest. The supervisory review must be made at the time an arrestee is presented at the precinct or specialized unit and memorialized within 12 hours of the arrest. For those arrests in which adequate probable cause does not exist, or for which the DPD does not request a warrant, the DPD is required to generate an auditable form memorializing such circumstances within 12 hours of the event.

⁵⁰ As with all "policy-only" paragraphs with which the DPD has achieved compliance, any revisions to the policy will trigger an additional assessment by the Monitor. Implementation of the policy is tested under paragraph U43.

Background

The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending November 30, 2007, at which time the Monitor found that the DPD was not yet in compliance. The Monitor determined that probable cause was present for 89 of 89 randomly selected arrests reviewed. However, supervisory review, once it occurred, was adequately documented within 12 hours of arrests for 69 of the 89 arrests. For the nine arrests requiring the generation of an auditable form, the DPD generated eight forms within the mandated 12-hour period and one form subsequent to the mandated 12-hour period.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U43 during the current quarter, the Monitor selected a sample⁵¹ of 87 arrests and requested that the DPD provide the Monitor with access to the arrest documentation, including Case Reports and related auditable forms. The Monitor reviewed documentation for all 87 arrests and noted the following:

- Sufficient probable cause existed to effect each of the 87 arrests reviewed.
- For five of the 87 arrests reviewed, an arrest warrant was not sought, triggering the requirement for an auditable form to be generated within 12 hours of the event. For all five of these arrests, an auditable form documenting the circumstances was generated within the mandated 12-hour period.
- For three arrests, the required documentation needed in order to make a determination of whether an arrest warrant was sought was not provided.
- For 85 of the 87 arrests reviewed, supervisory review occurred and was documented as having occurred within the mandated 12-hour period. For two arrests, although supervisory review occurred, it was documented in excess of 12 hours from the documented arrest time.⁵²

Based on the foregoing, the Monitor finds that the DPD is in compliance with paragraph U43.

B. INVESTIGATORY STOP POLICIES

This section comprises paragraphs U44-45. The Monitor has found the DPD in compliance with paragraph U44, which is a "policy only" paragraph. The DPD will remain in compliance with

⁵¹ As required, a random, statistical sample of 87 arrests was selected out of a population of approximately 914 arrests that occurred during the period March 1, 2008 through March 8, 2008, utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

⁵² Supervisory review occurred approximately four days, 19 hours subsequent to one arrest and approximately 48 hours subsequent to a second arrest.

the paragraph until such time as the policy directly responsive to the paragraph is revised.⁵³ The Monitor last assessed the DPD's compliance with paragraph U45 during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U45 – Stop and Frisk Documentation Requirements

Paragraph U45 mandates written documentation of all investigatory stops and frisks by the end of the shift in which the police action occurred. The DPD must review all investigatory stops and frisks and document on an auditable form those unsupported by reasonable suspicion within 24 hours of receiving the officer's report.

Background

The Monitor last assessed the DPD's compliance with paragraphs U45 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The Monitor reviewed and placed reliance on the AT's *Investigatory Stop and Frisk Practices Audit*, dated August 31, 2007. The AT reviewed a total of 1,882 daily activity logs for March 15, 2007; April 7, 2007; and April 9, 2007. The AT noted timely reporting for seven of 16 stops and for three of 14 frisks reviewed. The AT also noted timely supervisory review for articulation of reasonable suspicion for ten of 16 stops and for five of 14 frisks reviewed.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U45 during the current quarter, the Monitor requested and received officer daily activity logs for March 8, 2008. The Monitor selected and reviewed 20 logged police activities responsive to paragraph U45, noting the following:

- For ten of the 20 stops and/or frisks, the officers did not articulate reasonable suspicion leading up to the stop and/or frisk. There were no auditable forms prepared for the ten items identified.
- For four of the 20 stops and/or frisks, the Monitor was unable to determine whether the mandated supervisory review occurred within 24 hours of receipt of the officer's report.
- For six of the 20 stops and/or frisks, although supervisory review occurred, it either occurred or was documented as occurring in excess of 24 hours of receipt of the officer's report.

The Monitor noted that for four of the 20 stops and/or frisks, although the stop/frisk check box was marked on the log, the police action was an arrest clearly permitting a search incident to

⁵³ Implementation of the policy is tested under paragraph U45.

arrest. This, coupled with the items of non-compliance noted above, suggest that DPD officers would benefit from training on stops and frisks to include articulation of reasonable suspicion.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U45.

C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor has found the DPD in compliance with paragraphs U46 and U47, which are “policy-only” paragraphs. The DPD will remain in compliance with paragraphs U46 and U47 until such time as the policy directly responsive to these paragraphs is revised. The Monitor last assessed the DPD’s compliance with paragraph U48 during the quarter ending November 30, 2007. The Monitor again assessed the DPD’s compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U48 – Documentation of Interviews and Interrogations

Paragraph U48 requires the DPD to memorialize the content and circumstances of all interviews, interrogations and conveyances during the shift in which the police action occurred. The DPD is also required to review all interviews, interrogations and conveyances and document, on a separate auditable form, any interrogation, interview or conveyance in violation of DPD policy within 12 hours of the event.

Background

The Monitor last assessed the DPD’s compliance with paragraph U48 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The Monitor reviewed and placed reliance on the AT’s *Witness Identification and Questioning Audit*, dated August 31, 2007.⁵⁴ The AT reviewed, among other documentation, a sample of crime reports for the period March 1, 2007 through March 8, 2007, interview documentation and Administrative Investigations.⁵⁵ Among other things the AT noted the DPD appropriately memorialized 69 of 83 criminal investigation interviews and 13 of 23 interrogations reviewed. Also, there was no documentation of 15 non-arrest conveyances. Finally, the DPD did not document on an

⁵⁴ As explained in the Monitor’s Report for the Quarter Ending November 30, 2007, although the Monitor identified qualitative deficiencies within the AT’s audit, the Monitor was able to rely on its substantive findings.

⁵⁵ The AT requested homicide interview documentation, which is required to assess compliance with this paragraph; however, that documentation was not provided to the AT.

auditable form all violations of DPD policy within the mandated 12-hour period for any of the 30 conveyances reviewed.⁵⁶

Current Assessment of Compliance

During the current quarter, the Monitor met with and provided TA to DPD AT staff members in their preparation to complete the *Witness Identification and Questioning Audit* due August 31, 2008. The Monitor's audit team also reviewed the initial audit approach and matrices. During the course of review and discussion, the DPD disclosed that, as of the end of this quarter, the Homicide Unit is the only entity within the DPD utilizing the DPD's *Witness Conveyance Consent Form*.

Also, according to the DPD's 19th *Quarter Status Report*, the DPD is in the process of "revising the required supporting documentation (interrogation sheet, interview sheet, etc.) that captures interviews and interrogations. These revisions will include a segment for a supervisory review that will document the name, date and time of review in order to gain compliance with the 12 hour mandate of this paragraph."

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U48.

D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2008 and withheld a determination of compliance. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U49 – Revision of Policies and Requirements of Arraignment within 48 Hours

Paragraph U49 requires the DPD to revise its policies to require prompt judicial review, as defined in the UOF CJ, for every person arrested by the DPD. The DPD must develop a timely and systematic process for all arrestees to be presented for prompt judicial review or to be released.

⁵⁶ The violations that were identified by the audit related to the failure to record the end time for the conducted interview, interrogation, or conveyance and/or no written record of the interview conducted.

Background

The Monitor last assessed the DPD's compliance with paragraph U49 during the quarter ending February 29, 2008, at which time the Monitor withheld a determination of compliance. The UOF CJ definition of prompt judicial review suggests that paragraph U49 is applicable solely to warrantless arrests. However, a literal interpretation of the language of paragraph U49 suggests that all arrests require prompt judicial review. The Monitor sought guidance from the applicable DOJ Technical Assistance Letter noting that it did not clear up this issue.⁵⁷ However, the Technical Assistance Letter also referenced arrests in relation to the assignment of investigators, further suggesting that paragraph U49 is applicable solely to felony arrests and excludes misdemeanor arrests. The Monitor, DOJ and DPD initiated discussions on paragraph U49 that were not concluded as of the last reporting period.

Current Assessment of Compliance

During the current quarter, the parties and the Monitor reached a consensus that paragraph U49 was intended to apply to warrantless arrests. In order to assess the DPD's compliance with paragraph U49, among others, the Monitor selected a sample⁵⁸ of 89 arrests and requested and received from the DPD access to the applicable warrant requests and arraignments, including Case Reports and related auditable forms.

The Monitor reviewed documentation for all 89 arrests selected for review. Of the 89 arrests, 45 detainees were released prior to arraignment, released to another law enforcement agency, or arrested pursuant to an existing felony arrest warrant. The remaining 44 detainees were presented for arraignment. For one arrest in which the detainee was released, the Monitor could not ascertain whether the detainee was released within 48 hours of arrest. For one arrest, after repeated requests on behalf of the Monitor by the DPD's OCR for the production of additional information, the information needed to assess compliance was not provided by the end of the quarter.⁵⁹ For 13 arrests, the detainees were presented for arraignment after 48 hours had elapsed with no exigent circumstances.⁶⁰ This translates into a compliance rate of 65.9% (29 of 44).

⁵⁷ The DOJ wrote three technical assistance letters to the City and the DPD during their investigation (prior to the filing of the consent judgments). The letters were meant to provide guidance to the Department in a number of areas.

⁵⁸ As required, a random, statistical sample of 89 arrests was selected out of a population of approximately 817 arrests that occurred during the period October 9, 2007 through October 18, 2007, utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

⁵⁹ This information was requested of Narcotics.

⁶⁰ For the seven detainees, the amount of time that elapsed before arraignment ranged from approximately 50 hours to just over 84 hours.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements and is not yet in compliance with the implementation requirements of paragraph U49.

Paragraph U50 – Requirement of Warrant Request

For each arrestee, paragraph U50 requires the DPD to submit to the prosecutor's office, within 24 hours of the arrest, a warrant request for arraignment on the charges underlying the arrest.

Background

The Monitor last assessed the DPD's compliance with paragraph U50 during the quarter ending February 29, 2008, at which time the Monitor withheld a determination of compliance for the reasons described in the Background section of paragraph U49.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U50 during the current quarter, the Monitor reviewed the sample of 89 arrests selected to assess compliance with paragraph U49, among others. The Monitor determined that the 24-hour rule was not applicable to 37 of the 89 arrests selected for review. The DPD effected these arrests pursuant to an existing warrant or released the detainees without seeking a warrant request.⁶¹ For the remaining 52 arrests, the Monitor noted the following:

- For 32 arrests, the warrant requests were documented as submitted within 24 hours of arrest.
- For the remaining 20 arrests, the Monitor determined that warrant requests were not submitted within 24 hours for 19 arrests, and the Monitor was unable to make a determination whether the warrant request was submitted within 24 hours for one arrest.

This translates into a compliance rate of 61.5% (32 of 52).

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U50.

Paragraph U51 – Documentation of Late Request for Arraignment Warrants and Late Arraignments

Paragraph U51 requires the DPD to document on an auditable form all instances in which an arraignment warrant is submitted more than 24 hours after the arrest, all instances in which it is

⁶¹ In some instances, the underlying charges were minor, not requiring the warrant request.

not in compliance with the prompt judicial review policy, and all instances in which extraordinary circumstances delayed the arraignment. The documentation must occur by the end of the shift in which there was:

- A failure to request an arraignment warrant within 24 hours;
- A failure to comply with the prompt judicial review policy; or
- An arraignment delayed because of extraordinary circumstances.

Background

The Monitor last assessed the DPD's compliance with paragraph U51 during the quarter ending February 29, 2008 at which time the Monitor withheld a determination of compliance for the reasons described in the Background section of paragraph U49.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U51 during the current quarter, the Monitor reviewed the sample of 89 arrests selected to assess compliance with paragraphs U49 and U50, among others. Of the 89 arrests selected for review, 25 arrests required an auditable form for either not submitting a warrant request within 24 hours or not presenting the detainee for arraignment within 48 hours, or both. The Monitor noted the following regarding these 25 arrests:

- The DPD completed the required auditable form within the required 24 hour period for 22 of the 25 arrests.
- A form was not generated for two arrests for which the DPD did not request a warrant within 24 hours and did not present the arrestee for arraignment within 48 hours.
- A form was not generated for one arrest for which the DPD did not request a warrant within 24 hours.

This translates into an overall compliance rate of 88% (22 of 25).

Based on the foregoing, the Monitor finds that the DPD is in partial compliance with paragraph U51.

E. HOLD POLICIES

This section comprises paragraphs U52-53. The Monitor found the DPD in compliance with paragraph U52, which is a "policy-only" paragraph, during the quarter ending February 28,

2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.⁶² The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending February 29, 2008. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2008.

F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. The Monitor found the DPD in compliance with paragraph U54, which is a "policy-only" paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.⁶³ The Monitor last assessed the DPD's compliance with paragraph U55 during the quarter ending February 29, 2008. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2008.

G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. The Monitor found the DPD in compliance with paragraph U56, which is a "policy-only" paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.⁶⁴ The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending February 29, 2008. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2008.

H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

⁶² Implementation of the policy is tested under paragraph U53.

⁶³ Implementation of the policy is tested under paragraph U55.

⁶⁴ Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

Paragraph U58 – Arrest and Detention Documentation

Paragraph U58 mandates the DPD to revise its arrest and detention (A&D) documentation to require, for all arrests, a record or file to contain accurate and auditable documentation of:

- The individual's personal information;
- Crime(s) charged;
- Date and time of arrest and release;
- Date and time the arraignment warrant was submitted;
- Name and badge number of the officer who submitted the arraignment warrant;
- Date and time of arraignment;
- Date and time each warrant was lodged and cleared, if applicable; and,
- Custodial status e.g. new arrest, material witness or extradition.

Background

The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2007, at which time the Monitor found that the DPD was not yet in compliance. The Monitor reviewed 23 arrests that occurred during October 2007 noting that sufficient personal information and detainee release information were not obtained in many instances and for all 23 arrests items d through h of paragraph U58 were not captured.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U58 during the current quarter, the Monitor again tested the data entered into the Live Scan system.⁶⁵ In order to accomplish this testing, the Monitor provided the DPD with a sample of 24 arrests that occurred on either March 1 or March 2, 2008. The DPD provided the Monitor with Live Scan documentation for all 24 arrests. The Monitor found the following during its testing:

- Personal information was entered into the Live Scan for all 24 arrests. However, the records reviewed by the Monitor made no note of nicknames, aliases or physical characteristics (such as scars or tattoos), and for other personal information, such as social security number, age

⁶⁵ In its 19th *Quarter Report* the City and DPD refer to several forms developed under this paragraph that are meant to ensure that accurate and auditable information is captured. The Monitor notes that the DPD has indicated that all of the relevant information under paragraph U58 will be captured in Live Scan. Therefore the Monitor has limited its testing for this paragraph to the Live Scan system.

and telephone number, little information was captured. For four arrests, the detainees' ages were recorded as zero; detainees' telephone numbers were recorded for two arrests and the detainee's social security number was recorded for one arrest.

- The detainees' crimes were captured for all 24 arrests.
- The dates and times of the detainees' arrests were captured for all 24 arrests; however, for 11 of the 24 arrests, the detainees' dates and times of release were not documented.
- The system failed to capture any of the remaining information required by subsections d through h of paragraph U58.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U58.

I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 29, 2008. The Monitor is scheduled to again assess the DPD's compliance with paragraph U60 during the quarter ending August 31, 2008. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U59 – Commanding Officer Review

Paragraph U59 requires all DPD Commanders of a precinct and, if applicable, of the specialized unit to review in writing all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought. The commander's review must be completed within seven days of receiving the document reporting the event, and must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

Background

The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The Monitor placed reliance on the AT's *Investigatory Stop and Frisk Practices Audit* and *Witness Identification and Questioning Audit*, both dated August 31, 2007. The audits noted the requisite auditable forms were not completed for any of the investigatory stops, stops with frisks, criminal investigation interviews, interrogations or conveyances sampled.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U59 during the current quarter, the Monitor reviewed the arrest documentation and related auditable forms utilized in connection with the testing of compliance with paragraphs U43 and U45. The Monitor noted the following:

- The Monitor identified ten stops and/or frisks that required the completion of an auditable form. For all ten, an auditable form was not generated therefore did not allow for the requisite Commanding Officer (CO) review.
- A CO evaluation was documented on an auditable form for seven of eight arrests for which an arrest warrant was not sought. For one arrest, although CO review occurred, it occurred nearly two months subsequent to the arrest.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U59.

IV. EXTERNAL COMPLAINTS

This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the Office of the Chief Investigator (OCI) and the DPD, including the development and implementation of an informational campaign and the review and evaluation of each allegation in an external complaint investigation.⁶⁶

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U61 – Revision of External Complaints Policy

Paragraph U61 requires the DPD and City to revise their external complaint policy to clearly delineate the roles and responsibilities of OCI and the DPD regarding the receipt, investigation and review of external complaints. At a minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints.

Background

The Monitor last assessed the DPD's compliance with paragraph U61 during the quarter ending November 30, 2007, finding the DPD in compliance with paragraph U61 as the requirements to receive, record, investigate and track complaints were effectively implemented by the DPD and OCI.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U61, the Monitor reviewed the *AOMHC Audit*, submitted by the DPD's AT on January 31, 2008. The audit, which evaluated the DPD's compliance with paragraph U61, among others, reviewed three external complaints, all of which

⁶⁶ The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

were appropriately investigated by IA due to the seriousness of the allegations.⁶⁷ The audit concluded that the DPD is in compliance with paragraph U61, as the complaints were received, recorded, investigated, and tracked as required. Based upon its review of the audit, the Monitor concurs with the AT's findings.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U61.

A. INTAKE AND TRACKING

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessment follow.

Paragraphs U64-66 – Policies Regarding Intake and Tracking; Factual Account by Intake Officer; Unique Identifier

Paragraph U64 requires the DPD and City to revise their policies regarding the intake and tracking of external complaints to define complaint and misconduct as those terms are defined in the UOF CJ and require all officers and OCI employees to accept and document all complaints filed in writing or verbally, in person or by mail, telephone (TDD), facsimile or electronic mail.

Paragraph U65 requires the DPD and the City to permit the intake officer or employee to include a factual account and/or description of a complainant's demeanor and physical condition but not an opinion regarding the complainant's mental competency or veracity.

Paragraph U66 requires the DPD and the City to assign all complaints a unique identifier, which shall be provided to the complainant, and a description of the basis for the complaint.

Background

The Monitor last assessed the DPD's compliance with paragraphs U64-66 during the quarter ending November 30, 2007, finding the DPD in compliance with each paragraph. The Monitor's assessment was based on a review of the *EC&CI Audit Report* submitted by DPD on August 31, 2007.

⁶⁷ Refer to the *Current Assessment of Compliance* for subparagraph C65b for details regarding this audit and the Monitor's assessment of it.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U65-66,⁶⁸ the Monitor reviewed the *AOMHC Audit*, submitted by the DPD on January 31, 2008. The audit assessed the DPD's compliance with paragraphs U65-66, among others, and reviewed three external complaints conducted by IA.⁶⁹ In regard to paragraph U65, the audit found that none of the investigations included subjective opinions of the complainant's mental competency or veracity. In regard to paragraph U66, although the audit found that all three complaints were assigned a unique identifier and included a description of the complaint, the complainant was not provided with this information in one of the three investigations as required.

During the current quarter, the Monitor conducted supplemental testing of complaints by selecting and reviewing a random sample of 15 investigations that were completed by OCI investigators during the month of January 2008.⁷⁰ Of the 15 investigations reviewed by the Monitor, two included appropriate descriptions of the complainants' demeanor and physical condition and none included the officer's subjective opinion of the complainant's mental competency or veracity; this was consistent with the audit's findings. In addition, all 15 complaints were assigned a unique identifier and included a description of the basis of the complaint.⁷¹

Based on the foregoing, the Monitor finds that the DPD is in compliance with paragraph U65 but not yet in compliance with paragraph U66.

B. EXTERNAL COMPLAINT INVESTIGATIONS

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

⁶⁸ The Monitor did not assess the DPD's compliance with paragraph U64 during this reporting period. The next assessment is scheduled for the quarter ending November 30, 2008.

⁶⁹ Refer to the *Current Assessment of Compliance* for subparagraph C65b for details regarding this audit and the Monitor's assessment of it.

⁷⁰ The Monitor's initial sample used a confidence interval of 95%, an error interval of +/-4%, and an expected proportion of success rate of 94%. Due to the number of errors identified in the first 15 investigations reviewed (to +/-10%), the Monitor concluded that the DPD was non-compliant and ceased further testing.

⁷¹ The Monitor did not test to determine whether this information was provided to the complainant at the outset of the investigation.

Paragraphs U67-69 – Revision of External Complaint Investigations Policy; External Complaint Review Process Time Limits; External Complaint Dispositions

Paragraph U67 requires the DPD and the City to revise its policies regarding external complaint investigations to:

- a. provide that all complaints be referred for investigation and resolution by OCI or, if the complaint alleges potentially criminal conduct by an officer, by IA;
- b. permit informal resolution of complaints alleging only inadequate service or the complainant's innocence of a charge and require the investigation and resolution of all other complaints;
- c. refer all complaints to appropriate agency within five business days;
- d. require complainant be periodically kept informed of complaint status;
- e. develop written criteria for IA and OCI investigator applicants;
- f. implement mandatory pre-service and in-service training for all IA and OCI investigators;
- g. require IA and OCI to complete all investigations within 60 days of receiving the complaint; and
- h. upon completion of investigation, the complainant shall be notified of its outcome.

Paragraph U68 requires the DPD and the City to review and evaluate the external complaint process to require:

- a. the Chief Investigator (CI) to complete review of OCI investigations within seven days of supervisor's review;
- b. the Board of Police Commissioners to complete review of OCI investigations within forty-five days of Chief Investigator's review; and
- c. the Chief of Police to complete review of external complaints within seven days of Board of Police Commissioner's review.

Paragraph U69 requires that each allegation in an administrative external complaint investigation be resolved by making one of the following dispositions:

- a. "unfounded," where the investigation revealed no facts to support that the incident complained of actually occurred;
- b. "sustained," where a preponderance of the evidence shows that the alleged conduct did occur and the actions of the officer violated DPD policies, procedures or training;
- c. "not sustained," where there are insufficient facts to decide whether the alleged misconduct occurred; and

- d. “exonerated,” where a preponderance of the evidence shows that the alleged conduct did occur but did not violate DPD policies, procedures or training.

Background

The Monitor last assessed the DPD’s compliance with paragraphs U67-69 during the quarter ending November 30, 2007. The Monitor relied upon the *EC&CI Audit Report* submitted by the DPD’s AT on August 31, 2007. The Monitor found that the DPD was in compliance with the policy requirements of paragraphs U67-69. The Monitor further found that the DPD was in compliance with the implementation requirements of subparagraph U67b but not yet in compliance with the implementation requirements of subparagraphs U67c-d, U67f-h, and paragraph U68. The Monitor withheld a determination of the DPD’s compliance with subparagraph U67a and had not yet evaluated the DPD’s compliance with the implementation requirements of subparagraph U67e and paragraph U69.

Current Assessment of Compliance

In order to assess the DPD’s compliance with paragraphs U67 and U69, the Monitor reviewed the *AOMHC Audit*, submitted by the DPD on January 31, 2008. The audit assessed the DPD’s compliance with paragraphs U67 and U69, among others, and reviewed three external complaint investigations conducted by IA. The audit found that the DPD is not yet in compliance with paragraph U67, primarily because complainants were not periodically kept informed of the status of the complaint (U67d); the investigations were not completed within 60 days of receipt of the complaint (U67g); and complainants were not notified of the outcome of the investigation as required (U67h).⁷² The audit correctly found the DPD in compliance with paragraph U69, as all three investigations were resolved with a finding of either “unfounded,” “sustained,” “not sustained,” or “exonerated.” Based upon its review of the audit, the Monitor concurs with the AT’s findings.

During the current quarter, the Monitor conducted supplemental testing of complaints by selecting and reviewing a statistically valid random sample of 15 investigations that were completed by OCI investigators during the month of January 2008.⁷³ The Monitor’s findings relative to paragraphs U67-69 are as follows:

⁷² Specifically, the audit found that the DPD was in compliance with subparagraphs U67b and c, and not yet in compliance with subparagraphs U67d, g and h. The audit did not assess the DPD’s compliance with subparagraphs U67 a, e and f.

⁷³ The Monitor’s initial sample used a confidence interval of 95%, an error interval of +/-4%, and an expected proportion of success rate of 94%. Due to the number of errors identified in the first 15 investigations reviewed (to +/-10%), the Monitor concluded that the DPD was non-compliant and ceased further testing.

Subparagraph U67a Referral of Complaints for Investigation

The Monitor did not independently review this subparagraph this quarter. The Monitor will assess this paragraph following the next corresponding audit by DPD, which is due on August 31, 2008.

Subparagraph U67b Complaints Permitted to be Resolved Informally

None of the 15 complaint investigations reviewed by the Monitor were resolved informally. The audit also found that none of the three complaints reviewed by the AT were resolved informally. Therefore, the DPD did not incorrectly permit the informal resolution of any complaints.

Subparagraph U67c Complaints Referred within 5 Days of Receipt

The audit found that all three of the complaints reviewed by the AT were properly referred to IA within five days of receipt. However, ten of the 15 complaints reviewed by the Monitor were referred to the appropriate agency within five days of receipt. Given that the Monitor tested a more recent sample of investigations than was tested in the audit, the Monitor finds that the DPD is not yet complying with this requirement.⁷⁴

Subparagraph U67d Periodic Notification of the Status of the Investigation

The complainant was periodically informed of the status of the investigation in only two of the 15 complaints reviewed by the Monitor. In the audit, the AT found that the complainant was periodically informed of the status of the investigation in one of the three complaints reviewed.

Subparagraph U67e Written Criteria for IA and OCI Investigator Applicants

The DPD and OCI have developed written criteria for investigator applicants and are in compliance with the policy component of this subparagraph. The Monitor has not yet been able to determine whether the criteria have been implemented in the consideration of applicants. The Monitor submitted a document request to make this determination regarding recent applicants, but was informed that there were no applicants considered during the relevant time period.

⁷⁴ As described in the *Current Assessment of Compliance* for subparagraph C65c, the AT selected a six-month audit time period from March 1, 2007 through August 31, 2007 and identified a total of three IA investigations and no Command investigations. The Monitor reviewed investigations that were completed by OCI investigators during the month of January 2008.

Subparagraph U67f Mandatory Pre-Service and In-Service Training

The DPD and OCI have not yet implemented mandatory pre-service and in-service training for IA and OCI investigators. The applicable lesson plan has been submitted to the Monitor and is currently under review.

Subparagraph U67g Investigations Completed within 60-Days of Receipt

The OCI did not complete the complaint investigations within 60 days in 11 of the 15 investigations reviewed by the Monitor. Similarly, in the audit, the AT found that none of the three complaint investigations reviewed were completed within 60 days.

Subparagraph U67h Notification of Outcome of Investigation

Although the OCI sent a letter that includes the outcome to the complainant at the close the investigation, in all of the 15 investigations reviewed by the Monitor (and all three reviewed by the AT), subparagraph U67h also requires that if the outcome was sustained, the notification must include an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken. The OCI indicates that it is unable to meet this requirement, as the action taken is not known at the time the investigation is closed.⁷⁵

Paragraph U68 - External Complaint Review Process

- The Chief Investigator of OCI, or his designee, did not complete reviews of OCI investigations within seven days of completion of the supervisors' reviews in any of the 15 investigations reviewed by the Monitor, as required by subparagraph U68a.
- The BOPC completed its review of OCI investigations with 45 days in nine of the 15 investigations reviewed by the Monitor, as required by subparagraph U68b.
- The Monitor was unable to determine whether the Office of the Chief of Police completed its review of external complaints within seven days of BOPC review, as required by subparagraph U68c. However, the Chief's review is not taking place within 7 days of the BOPC's review.⁷⁶ Documentation in the case files reviewed did not reference the Chief's review. The log that OCI uses to track timelines included only the date on which the closed investigations were sent to the Chief; there was nothing further to indicate when they were received or reviewed.

⁷⁵ This issue was identified 18 months after the Consent Judgments were entered. Recently, the City submitted a proposed amendment to paragraph U67h in attempt to address this issue.

⁷⁶ The Monitor has been told that the Chief of Police does not receive a copy of the investigation within seven days of the BOPC's review; however, without a tracking mechanism, the Monitor is unable to assess the actual length of time that the Chief's review is taking. The Monitor has raised this issue in previous reports and recommended that the DPD and OCI address this issue.

Paragraph U69 - Disposition of External Complaint Investigations

All 15 of the investigations reviewed by the Monitor resulted in a finding of “unfounded,” “sustained,” “not sustained,” or “exonerated.”

Based on the foregoing, the Monitor finds that the DPD continues to be in compliance with the policy requirements of paragraphs U67-69. Regarding the implementation requirements of paragraph U67, the Monitor find the DPD in compliance with subparagraph U67b, but not yet in compliance with subparagraphs U67c, d and g. The Monitor has not yet or was unable to assess compliance with the implementation requirements of subparagraphs a, e and f, and is withholding a determination of the DPD’s compliance with subparagraph U67h. The Monitor further finds that the DPD is not yet in compliance with the implementation requirements of paragraph U68. Finally, the Monitor finds the DPD in compliance with paragraph U69.

V. GENERAL POLICIES

This section of the UOF CJ (paragraphs U70-77) requires the DPD to develop, revise, and/or enforce a variety of general policies. The DPD is required to ensure that all terms are clearly defined in policies that it develops, revises, and augments, and to make proposed policy revisions available to the community. This section also requires the DPD to advise its personnel that taking police action in violation of DPD policy will subject them to discipline, possible criminal prosecution, and/or civil liability. In addition, the DPD must enforce its policies requiring all DPD officers to report misconduct committed by another DPD officer. The DPD must also revise its policies regarding off-duty officers taking police action, revise its policies regarding prisoners and develop a foot pursuit policy. Finally, the DPD and the City are required to develop a plan for adequate deployment of supervisors in the field.

The Monitor last assessed the DPD’s compliance with paragraphs U72-77 during the quarter ending February 29, 2008, and is scheduled to again assess the DPD’s compliance with paragraphs U72-74 and U76-77 during the quarter ending August 31, 2008. The Monitor assessed compliance with paragraph U75 during the current quarter.

The Monitor last assessed the DPD’s compliance with paragraphs U70 and U71 during the quarter ending November 30, 2007. The Monitor again assessed the DPD’s compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U70 – General Policies

Paragraph U70 requires the DPD, in developing, revising and augmenting policies, to ensure all terms contained within the UOF CJ are clearly defined.

Background

The Monitor last assessed the DPD's compliance with paragraph U70 during the quarter ending November 30, 2007, at which time the Monitor found the DPD in compliance with all of the requirements of the paragraph. The DPD finalized a document defining the Policy Focus Committee whose purpose is "to provide oversight of the established policy and procedure for management of the Detroit Police Department's written directive system..."

Current Assessment of Compliance

During the current quarter, the DPD produced a Special Order, *Policy Focus Committee*, establishing the Policy Focus committee and defining its membership through December 2008. The DPD also produced minutes from the first Policy Focus Committee meeting held April 7, 2008. The Monitor reviewed the meeting minutes and noted that the Committee's discussion centered on policy issues.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph U70.

Paragraph U71 – Proposed Policy for Community Review and Comment

Paragraph U71 requires that the DPD continue to make available proposed policy revisions to the community for review, comment and education. The DPD must also publish proposed policy on its website to allow for comment directly to the DPD.

Background

The Monitor last assessed the DPD's compliance with paragraph U71 during the quarter ending November 30, 2007, finding the DPD in compliance. The Monitor requested, received and reviewed the DPD's *Protocol for Proposed Policy Revisions*, noting that it addressed the requirements of paragraph U71.

Current Assessment of Compliance

During the current quarter, the Monitor periodically accessed the DPD's website, noting in each instance that no new additional policy was posted for review and comment.⁷⁷ Additionally, there were no revisions to the DPD's *Protocol for Proposed Policy Revisions*.

⁷⁷ After the end of the quarter, on June 30, 2008, the Monitor accessed the DPD's website noting it was re-designed. Although the Monitor could access Consent Judgment definitions, the Monitor's quarterly reports and the citizen complaint link, the Monitor noted that the re-designed website did not include a link to the OCR web page. Previously, public comment via the web was permitted via an OCR link. The Monitor discussed this issue with the DPD on the same date, and will continue its periodic review of the DPD website regarding this issue.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph U71.

Paragraph U75 – Off-Duty Police Action

Paragraph U75 requires the DPD to revise existing policy regarding off-duty officer police actions. Specifically, off-duty officers are:

- a. required to notify on-duty DPD or local law enforcement officers before taking police action, absent exigent circumstances, so that they may respond with appropriate personnel and resources to handle the problem;
- b. prohibited from carrying or using firearms or taking police action in situations where the officer's performance may be impaired or the officer's ability to take objective action may be compromised; and
- c. required to submit to field sobriety, breathalyser, and/or blood tests if it appears that the officer has consumed alcohol or is otherwise impaired.

Background

The Monitor last assessed the DPD's compliance with paragraph U75 during the quarter ending February 29, 2008, finding that the DPD was in compliance with the policy requirements of the paragraph. The Monitor also initiated a discussion with the parties seeking clarification regarding how implementation of the requirements can be assessed. As of the end of that quarter, although discussion commenced, a final resolution was not reached.⁷⁸ As a result, the Monitor elected to withhold an overall determination of compliance with paragraph U75 pending final resolution.

Current Assessment of Compliance

The parties continued discussing the intent of paragraph U75 during the current quarter and issued a joint communication, dated April 24, 2008, indicating that the Monitor is to continue considering policy, training and implementation when assessing compliance with this paragraph. However, the City and the DPD maintained that they have complied with the requirements of the paragraph simply by revising their policy, and although they intend to train and implement it, they are not required to do so. Nevertheless, the communication listed the actions that have been taken by the DPD to implement this paragraph and directed the Monitor to continue assessing compliance based upon those actions.

⁷⁸ The DOJ provided the City with a draft proposal on March 13, 2008.

During the prior quarter, the Monitor requested documentation in connection with the DPD's training on the requirements of paragraph U75 and the implementation of relevant policy. In response, the DPD provided an Administrative Message dated November 16, 2007 entitled *Roll Call Training: [07-08] – Off Duty Police Action* to be read at all roll calls for the period November 17, 2007 through November 23, 2007. The Administrative Message addressed the following:

- Law Enforcement Authority
- Off Duty Police Action

The Administrative Message was clear and concise and sufficiently addressed the requirements of paragraph U75.⁷⁹

The DPD provided a training matrix identifying the training module responsive to the requirements of paragraph U75. According to the matrix, the DPD's *Use of Force Lesson Plan* includes training that addresses the requirements of the paragraph.⁸⁰ In its *19th Quarter Status Report*, the DPD indicated that this training would begin in 2008; the Monitor has not been informed that training has commenced.⁸¹

The DPD also conducted an inspection of compliance with the implementation requirements of paragraph U75. The inspection queried the COs of all districts as well as OCI and the Detroit Law Department for any off-duty incidents that occurred during the period September 1, 2007 through November 28, 2007. One incident was identified and the inspections appropriately addressed the officer's actions.

Finally, the Chief of Police annually communicates the requirements of paragraph U75 to the Michigan Association of Chiefs of Police, requesting member agencies to report any off-duty police action by DPD officers to the DPD's internal affairs department.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy and implementation requirements of paragraph U75 but not yet in compliance with the training requirements of the paragraph. As a result, the DPD is in not yet in overall compliance with the requirements of paragraph U75.

⁷⁹ In response to an inquiry from the Monitor, the DPD confirmed that although roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements, it serves as a "supplement to training and reinforces the DPD's policies and procedures to its members for the purpose of ensuring compliance with the Consent Judgment requirements, as well as any other training, legal or other high risk issues that exist."

⁸⁰ The Monitor approved a revised *Use of Force Lesson Plan* on November 9, 2007.

⁸¹ After the end of the quarter, the Monitor was informed that training is currently scheduled to commence in August 2008.

VI. MANAGEMENT AND SUPERVISION

This section of the UOF CJ (paragraphs U78-105) requires the DPD to devise a comprehensive risk management plan that will consist of a Risk Management Database, a performance evaluation system and an auditing protocol. The plan must also provide a mechanism for the regular and periodic review of all DPD policies, and for the regular occurrence of meetings of DPD management to share information and evaluate patterns of conduct that could potentially increase the DPD's liability. This section of the UOF CJ also includes requirements in connection with the DPD's use of video cameras, as well as the DPD's policy and practices regarding discipline.

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI, during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2008.

A. RISK MANAGEMENT DATABASE

This section comprises paragraphs U79-U90. It provides specific requirements relative to the Risk Management Database, including the development and implementation of a new computerized relational database for maintaining, integrating and retrieving data necessary for the supervision and management of the DPD. While the Risk Management Database is being developed, paragraph U89 requires an interim system to be developed and implemented.

The Monitor has previously concluded that the DPD is in compliance with paragraphs U82-85 and subparagraphs U88a, b d, and e, as the DOJ provided the DPD with verbal conditional approval of the Data Input Plan and approved the Review Protocol and the Report Protocol. The DPD will remain in compliance with these provisions unless these documents are revised. In addition, the Monitor has discontinued monitoring compliance with subparagraph U88c, which requires the issuance of a Request for Proposal (RFP), as a result of the DOJ's agreement to allow the DPD to convert the Interim Management Awareness System (IMAS) into the Management Awareness System (MAS) without the use of an outside vendor, thereby obviating the need for a RFP.

The Monitor last assessed the DPD's compliance with paragraph subparagraphs U88f and g and paragraph U89 during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

The Monitor last assessed the DPD's compliance with paragraphs U79-81 and U86-87 during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U79-81, U86-87 – Expansion of Risk Management Database; Risk Management Database Information Requirements; Identifying Information for Officers and Civilians; Data Input Plan; Common Control Number; Information Maintained in Database

Paragraph U79 requires the DPD to enhance and expand its risk management system to include a new computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of the DPD. The DPD must ensure that the Risk Management Database it designs or acquires is adequate to evaluate the performance of DPD officers across all ranks, units and shifts; to manage risk and liability; and to promote civil rights and best police practices. The DPD must regularly use this data for such review and monitoring.

Paragraph U80 requires the new Risk Management Database to collect and record the following information:

- a. all UOF reports and UOF investigations;
- b. all canine deployments;
- c. all canine apprehensions;
- d. all canine bites;
- e. all canisters of chemical spray issued to officers;
- f. all injured prisoner reports and injured prisoner investigations;
- g. all instances in which force is used and a subject is charged with “resisting arrest,” “assault on a police officer,” “disorderly conduct” or interfering with a city employee;”
- h. all firearms discharge reports and firearms discharge investigations;
- i. all incidents in which an officer draws a firearm and acquires a target;
- j. all complaints and complaint investigations, entered at the time the complaint is filed and updated to record the finding;
- k. all preliminary investigations and investigations of alleged criminal conduct;
- l. all criminal proceedings initiated as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers or agents, resulting from DPD operations or the actions of DPD personnel, entered at the time proceedings are initiated and updated to record disposition;
- m. all vehicle and foot pursuits and traffic collisions;
- n. all reports regarding arrests without probable cause or where the individual was discharged from custody without formal charges being sought;
- o. all reports regarding investigatory stops and/or frisks unsupported by reasonable suspicion;

- p. all reports regarding interviews, interrogations or conveyances in violation of DPD policy;
- q. the time between arrest and arraignment for all arrests;
- r. all reports regarding a violation of DPD prompt judicial review policy;
- s. all reports regarding a violation of DPD hold policy;
- t. all restrictions on phone calls or visitors imposed by officers;
- u. all instances in which the DPD is informed by a prosecuting authority that a declination to prosecute any crime was based, in whole or in part, upon concerns about the credibility of a DPD officer or that a motion to suppress evidence was granted on the grounds of a constitutional violation by a DPD officer;
- v. all disciplinary action taken against officers;
- w. all non-disciplinary corrective action required of officers, excluding administrative counseling records;
- x. all awards and commendations received by officers;
- y. the assignment, rank, and training history of officers; and
- z. firearms qualification information of officers.

Paragraph U81 requires the new Risk Management Database to include, for each incident, appropriate identifying information for each involved officer (including name, pension number, badge number, shift and supervisor) and civilian (including race, ethnicity or national origin, sex, and age).

Paragraph U86 mandates that where information about a single incident is entered into the Risk Management Database from more than one document, the Risk Management Database must use a common control number or other equally effective means to link the information from different sources so that the user can cross-reference the information and perform analyses.

Paragraph U87 requires the City to maintain all personally identifiable information about an officer included in the Risk Management Database during the officer's employment with the DPD and for at least five years after separation. Information necessary for aggregate statistical analysis must be maintained indefinitely in the Risk Management Database.

Background

The Monitor last assessed the DPD's compliance with paragraphs U79-82 and U86-87 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance with the paragraphs, as the MAS was not yet fully developed or operational. The Monitor summarized the requirements for the MAS in the report for the quarter ending November 30, 2007, pursuant to which the City is to have a beta version of the new Risk Management Database ready for

testing by January 28, 2008. The Risk Management Database must be operational and fully implemented by July 24, 2008. The parties and the Monitor are required to meet on a monthly basis to discuss what actions have been taken during the previous month toward development of the new Risk Management Database, and the City must present to the DOJ and the Monitor, on a monthly basis, evidence of satisfactory progress sufficient to justify a conclusion that completion of the new Risk Management Database by July 24, 2008 remains feasible.

Current Assessment of Compliance

During the current quarter, the Monitor attended monthly meetings with the parties and the DPD regarding the MAS. In addition, the DPD submitted documentation on the continuing progress made to date on the MAS Project Plan. The parties and the Monitor convened on May 29, 2008 at the DPD's Training Center for a demonstration and preliminary testing of the MAS system. The DPD is still striving to have the MAS ready by the July 24, 2008 deadline.⁸² The DPD expects to begin employing the MAS in the Central District by June 16, 2008, prior to its full implementation, Department-wide, in July.⁸³ The expert retained by DOJ gave verbal feedback to the City and the DPD following the demonstration and will provide his written comments and recommendations on the development of the MAS. The DOJ expert was complimentary of the system on the whole, but noted that several items need to be taken care of in order to meet the deadline. Specifically, two of the issues that the DOJ expert was concerned with were limitations regarding the MAS data entry forms and system security issues. The Monitor also notes that the DPD has made significant progress with the development of the MAS. The Monitor is concerned, however, that all of the historical data that is supposed to be available in the MAS did not appear to be readily accessible.

In the most recent Status Report on the DPD MAS Project Plan, through May 23, 2008, the DPD noted the following with respect to the MAS beta: The recent focus has been on continuing system testing. The SCAN team has been working through the Defect Log, and the electronic form capture framework and the Performance Indicator (PI) and Performance Evaluation and Enhancement Review Session (PEERS) generation processes are complete. Development of the

⁸² On June 30, 2008, the City Law Department sent an email to the Monitor and to DOJ indicating that on Friday, June 27, 2008, "a lightning strike in downtown Detroit resulted in a fire and the loss of electrical service in the Coleman A. Young Municipal Center (CAYMC)", which is the location of the City's principle IT servers. As a result, the City Law Department noted that "[i]t would be possible, but probably not prudent, to implement MAS department-wide on July 24, as currently scheduled." On July 11, 2008, the City Law Department sent a follow-up email requesting DOJ to stipulate to an extension of time to implement the MAS until August 11, 2008.

⁸³ The plan to deploy MAS in the Central District was rescheduled for July 2008; the DPD reports that the deployment, in fact, took place on July 8, 2008. The City reports that the "MAS has been in use in selected units since then. Members of the MAS team have been monitoring usage and providing round-the-clock technical support. Although there have been a few problems, the system overall appears to be working as expected and to be well accepted."

Electronic Desk Blotter application is nearing completion, and development of the Daily Detail Application is in progress.

The DPD describes the next steps as concluding the MAS system, conducting user testing, training the trainers, starting training of users, and large/small group rollout.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraphs U79-81 and U86-87.

B. PERFORMANCE EVALUATION SYSTEM

This section comprises one paragraph, paragraph U91, which requires the DPD to ensure that performance evaluations for all DPD employees occur at least annually and include consideration of civil rights integrity, adherence to federal constitutional amendments and civil rights statutes and for supervisors, the identification of at-risk behavior in subordinates.

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2008.

C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual audits of all Commands, including specialized units on eight areas of policing,⁸⁴ to perform periodic random reviews of scout car camera videotapes and video recording equipment, and to meet regularly with local prosecutors to identify any issues in officer, shift or unit performance. Each of these oversight provisions requires the DPD to examine a number of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

The Monitor last assessed the DPD's compliance with paragraphs U92, U93, U94 (subparagraphs a and c), U95 (subparagraph b), U97 and U99 during the quarter ending November 30, 2007. The Monitor last assessed the DPD's compliance with subparagraph U94b during the quarter ending May 31, 2007, and with subparagraph U95a and paragraphs U96 and U98 during the quarter ending August 31, 2007. The Monitor last assessed the DPD's compliance with subparagraph U95c during the quarter ending February 29, 2008.

The Monitor is scheduled to again assess compliance with paragraphs U92 and U97 and subparagraphs U94a, U94c, and U95b during the quarter ending August 31, 2008, and paragraph

⁸⁴ Including investigations into uses of force, prisoner injuries, and allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices; and complaint investigations.

U93 during the quarter ending February 28, 2009. The Monitor again assessed the DPD's compliance with subparagraphs U94b and U95a and paragraphs U96 and U99 during the current quarter. The results of our current assessments follow.

Paragraph U94 – Audits of UOF, Prisoner Injuries and Misconduct Investigations

Paragraph U94 requires the DPD to conduct regularly scheduled annual audits covering all DPD units and commands that investigate uses of force, prisoner injuries, and AOM. These audits were due by August 31, 2004, and annually thereafter.

In order to address the requirements of paragraph U94, the DPD's AT has historically conducted three separate audits of a) UOF investigations, b) prisoner injury investigations, and c) AOM investigations. The Monitor has similarly split its evaluation of this paragraph into three separate evaluations as subparagraphs U94a, U94b and U94c.

Background

The Monitor last assessed the DPD's compliance with subparagraphs U94a and U94c during the quarter ending November 30, 2007. The Monitor found that the DPD was not yet in compliance with subparagraph U94a as the DPD's AT failed to identify at least five force investigations that were critical to the review and did not test all of the areas required by the UOF CJ in its first *UOF Investigations Audit*, which was submitted on August 31, 2007. The Monitor found the DPD in compliance with subparagraph U94c, as the Monitor concluded that the *Combined UOF and COC AOM Audit* submitted by the DPD on July 31, 2007 was a thorough and quality audit.

The Monitor last assessed the DPD's compliance with subparagraph U94b during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance, as the AT incorrectly assessed the DPD's compliance with a number of UOF CJ requirements in the *Prisoner Injury (PI) Investigations Audit* submitted by the DPD's AT on January 31, 2007.

Current Assessment of Compliance

Subparagraph U94a – Use of Force Investigations Audit

The next audit of this topic is due to be submitted by August 31, 2008. Accordingly, the Monitor is scheduled to re-assess the DPD's compliance with subparagraph U94a during the quarter ending August 31, 2008.

Subparagraph U94b – Prisoner Injuries Investigations Audits

The DPD submitted its *PINHC Investigations Audit* in order to address the requirements of subparagraph U94b on the required due date of February 29, 2008. The audit found the DPD in compliance with paragraphs U30 and U37, but not yet in compliance with paragraphs U27-29, U31-36, and U39-41. Due to the number of audits submitted for review during this quarter and

the previous quarter, and several issues regarding the AT's organization of its investigative audits, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with this subparagraph. The Monitor expects to report its findings in its Report for the Quarter Ending August 31, 2008.

Subparagraph U94c – Allegations of Misconduct Investigations Audits

The next audit of this topic is due to be submitted by August 31, 2008. Accordingly, the Monitor is scheduled to re-assess the DPD's compliance with subparagraph U94c during the quarter ending August 31, 2008.

Paragraph U95 – Audits of Probable Cause, Stops and Frisks and Witness Identification and Questioning Documentation

Paragraph U95 requires the DPD to conduct regularly scheduled annual audits of a) arrest practices, b) stops and frisks, and c) witness identification and questioning documentation. Such audits must cover all precincts and specialized units and must include an evaluation of the scope, duration, content, and voluntariness, if appropriate, of the police interaction. The arrest practices audit must also include a comparison of the number of arrests to requests for warrants and number of arrests for which warrants were sought to judicial findings of probable cause. These audits were due by August 31, 2004, and annually thereafter.

Background

The Monitor last assessed the DPD's compliance with subparagraph U95a during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance mainly because the *Arrest Practices Audit* submitted on April 14, 2007 did not include testing of all of the UOF CJ requirements and incorrectly assessed certain arrests.

The Monitor last assessed the DPD's compliance with subparagraph U95b during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance because the *Stop and Frisk Audit* submitted on August 31, 2007 either did not identify or incorrectly identified a significant number of stops and frisks.

The Monitor last assessed the DPD's compliance with subparagraph U95c during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance primarily because the *Witness Identification and Questioning Audit* submitted on August 31, 2007 did not test certain Consent Judgment requirements and because there were inconsistencies between the audit's actual and reported findings.

Current Assessments of Compliance

Subparagraph U95a – Arrest Practices Audit

On May 31, 2008, the DPD submitted the *Arrest Practices Audit*, which is required by subparagraph U95a. The audit found that the DPD was not yet in compliance with all paragraphs tested - U43, U46, U48, U59 and U114. Due to the timing of submission, on the last day of the quarter, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with this subparagraph.

Subparagraph U95b – Investigatory Stop and Frisk Practices Audit

The next audit of this topic is due to be submitted by August 31, 2008. Accordingly, the Monitor is scheduled to re-assess the DPD's compliance with subparagraph U95b during the quarter ending August 31, 2008.

Subparagraph U95c – Witness Identification and Questioning Audit

The next audit of this topic is due to be submitted by August 31, 2008. Accordingly, the Monitor is scheduled to re-assess the DPD's compliance with subparagraph U95c during the quarter ending August 31, 2008.

Paragraph U96 – Audit of Custodial Detention Practices

Paragraph U96 requires the DPD to conduct regularly scheduled annual audits of the DPD's custodial detention practices, including evaluating the length of detention between the time of arrest and the time of arraignment and the time to adjudicate holds. Such audits must cover all precincts and specialized units.

Background

The Monitor last assessed the DPD's compliance with paragraph U96 during the quarter ending August 31, 2007, finding that the DPD was in compliance as the *Custodial Detention Practices Audit* submitted on April 14, 2007, as the audit was timely, appropriately assessed the DPD's compliance, and made insightful recommendations.

Current Assessment of Compliance

On May 31, 2008 the DPD submitted the *Custodial Detention Practices Audit*, which is required by paragraph U96. The audit found that the DPD was not yet in compliance with all paragraphs tested - U49-55, U58, U60, and U115-116. Due to the timing of submission, on the last day of the quarter, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with this paragraph.

Paragraph U99 – Regular Meetings with Prosecutors

Paragraph U99 requires the DPD to ensure regular meetings with local prosecutors to identify issues in officer, shift or unit performance.

Background

The Monitor last assessed the DPD's compliance with paragraph U99 during the quarter ending November 30, 2007, finding the DPD in compliance. The DPD and the Wayne County Prosecutor's Office (WCPO) continued to meet quarterly to identify and discuss issues relevant to the requirements of this paragraph.

Current Assessment of Compliance

The DPD and the WCPO continue to meet quarterly to identify issues in officer, shift or unit performance. During this quarter, the meeting was held on April 9, 2008. A member of the Monitor's team was in attendance. The meeting included, among other things, a review of police officers charged over the past year, officers' attendance requirements for court, issues related to scout car videos, and the MAS.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U99.

D. USE OF VIDEO CAMERAS

This section comprises paragraphs U100-102. It requires the DPD to develop a policy on the use of video cameras that provides a systematic approach for activation, recording, review and preservation of video cameras and tapes. Additionally, the DPD is required to repair and replace all non-functioning video equipment. Other paragraphs in the UOF CJ and COC CJ that require periodic random reviews of videotapes and periodic random surveys of recording equipment are U98 and C64, which are also discussed in this report.

Consistent procedures throughout the DPD in this area will facilitate the availability of information for investigative purposes and will assist in the identification of at-risk behavior and violations of police procedure. These policies will also serve to protect DPD officers by providing an accurate record of encounters with citizens.

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2008.

E. DISCIPLINE

This section comprises paragraphs U103-105. It requires the DPD to eliminate the current backlog of disciplinary cases and to establish guidelines and create a scheduling process that will prevent backlogs from developing in the future. In order to provide guidelines for uniformity in discipline, the DPD must create a matrix that establishes a presumptive range of discipline for each type of rule violation.

The Monitor last assessed the DPD's compliance with paragraphs U103-105 during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2008.

VII. TRAINING

This section of the UOF CJ (paragraphs U106-123) directs the DPD to coordinate and review all UOF and Arrest and Detention training to ensure quality, consistency, and compliance with applicable law and DPD policy. Significantly, the DPD must provide annual training for all DPD recruits, officers and supervisors in a number of areas including UOF, arrests and other police-citizen interactions and custodial detention. Furthermore, the DPD must develop a firearms protocol and provide supervisory, investigator and field training. The Department must also select and train trainers, evaluate all training, conduct needs assessments, and create and maintain individual training records for all officers. The UOF CJ provides specific requirements for review and reporting on these issues to the Monitor and the DOJ.

A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106 -111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U106 – Review of all UOF and Arrest and Detention Training

Paragraph U106 requires the DPD to coordinate and review all UOF and A&D training to ensure quality, consistency and compliance with applicable law and DPD policy. The DPD must conduct regular subsequent reviews, at least semi-annually, and produce a report of such reviews to the Monitor and the DOJ.

Background

The Monitor last assessed the DPD's compliance with paragraph U106 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The Monitor determined

that three lesson plans submitted by the DPD, the *Supervisory Leadership and Accountability Lesson Plan*, the *Use of Force Lesson Plan*, and the *Law of Arrest, Search and Seizure Lesson Plan* met the requirements of the underlying paragraphs. However, the DPD had not conducted the review of the training required by paragraph U106 and had not submitted the required report of the review to the Monitor and DOJ. In its Seventeenth Quarter Status Report, the DPD indicated that it would be more advantageous to begin a review process of the entire UOF and A&D training curriculum at the time all related lesson plans have been implemented.

Current Assessment of Compliance

The DPD has not submitted a semi-annual report of its review of all UOF and A&D training to the Monitor and DOJ pursuant to the requirements of this paragraph.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U106.

Paragraph U107 – Michigan Law Enforcement Officers Training Council Standards

Paragraph U107 requires the DPD, consistent with Michigan law and the Michigan Law Enforcement Officers Training Council standards, to:

- a. ensure the quality of all UOF and Arrest and Detention training;
- b. develop UOF and Arrest and Detention training curricula;
- c. select and train DPD officer trainers;
- d. develop, implement, approve and oversee all training and curricula;
- e. establish procedures for evaluating all training curricula and procedures; and
- f. conduct regular needs assessments to ensure that training governing UOF and Arrest and Detention are responsive to the knowledge, skills and abilities of the officers being trained.

Background

The Monitor last assessed the DPD's compliance with paragraph U107 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The DPD indicated that an organizational matrix previously recommended by the Monitor during TA was being utilized to track the development, review, and approval processes of all Consent Judgment-related lesson plans. The DPD also reported that it was in the process of developing the matrix in an attempt to meet a broad array of Consent Judgment training requirements.

For subparagraphs U107a and d, the DPD indicated that the 2008 training schedule was still being developed. In regards to subparagraphs U107 b and d, the DPD effectively developed

curricula for the *Supervisory Leadership and Accountability*, the *Use of Force*, and the *Law of Arrest, Search and Seizure Lesson Plans*. For subparagraph U107c, the DPD indicated that four UOF and three *Law of Arrest, Search and Seizure Lesson Plan* instructors had been selected and qualified. The Monitor requested the qualification packets for these individuals, but had not received them as of the end of that quarter. The DPD also indicated that three DPD members (who are different from the seven instructors just mentioned) completed the Michigan Department of State Police's (MSP) Instructor Development training program. In regards to subparagraphs U107e and f, the DPD indicated that pre- and post-tests are used to evaluate training and conduct needs assessments. The DPD confirmed that the roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements; however, "it is a supplement to training and reinforces the DPD's policies and procedures to its members for the purpose of ensuring compliance with the Consent Judgment requirements, as well as any other training, legal or other high risk issues that exist."

Current Assessment of Compliance

The DPD has not yet implemented the requirements of subparagraphs a-f of paragraph U107. The Monitor met with members of the DPD's Curriculum Design and Development Team (CDDT) on May 27, 2008 to discuss the requirements of paragraph U107 and indicated again that the DPD's response under paragraph U106 does not adequately demonstrates its compliance with the type of management approach that is required by paragraph U107.

As previously noted, the DPD has indicated that only three members of the DPD have completed the MSP Instructor Development training program. Completion of this program may be problematic, since programs are routinely cancelled due to low enrollment. To mitigate this problem, the Monitor has suggested other instructor development programs that the DPD may take advantage of, including those offered by private vendors. In addition, the Monitor informally offered TA to the DPD in the form of an Instructor Development Class for those identified as DPD trainers who would conduct a Train-the-Trainer program. The DPD has not yet responded to this offer.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U107.

Paragraph U108 – Individual Training Records

Paragraph U108 directs the DPD to maintain individual training records for all officers, documenting the date and topic of all pre-service and in-service training.

Background

The Monitor last assessed the DPD's compliance with paragraph U108 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The DPD indicated that it

was continuing to enter training records into the Michigan Commission on Law Enforcement Standards (MCOLES) Information Tracking Network (MITN) as an interim method for tracking DPD training records for sworn personnel. However, all of the training records required by this paragraph have not been entered into MITN. Furthermore, although the DPD plans to use its MAS in order to maintain training records, the DPD had not fully implemented the MAS as an operational component for tracking and documenting individual training records for all officers.

Current Assessment of Compliance

As reported in its 19th *Quarter Status Report*, the DPD still intends to fulfill the requirements of this paragraph by utilizing the MITN system to capture all training records for sworn members. According to the DPD, they have continued to enter training records into MITN to track DPD sworn personnel training. However, as with our previous assessments, the vast majority of the training records that meet the requirements of this paragraph have not been entered into MITN.

In its Status Report, the DPD also reports that it will be incorporating MAS as a datalink to the MITN system to integrate training records into the MAS, and is currently studying the feasibility of capturing training records for non-sworn members within MAS as well.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U108.

Paragraph U109 – Approved Lessons Plans/Scenario-Based Training

Paragraph U109 directs the DPD to ensure that approved lesson plans are taught by qualified instructors to provide training, while utilizing scenario-based examples, preferably based on DPD examples involving DPD officers.

Background

The Monitor last assessed the DPD's compliance with paragraph U109 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. Several lesson plans have been approved; however, the Monitor noted that until approved lesson plans are delivered by instructors who are selected pursuant to paragraph U107, and the scenario-based portions of the training are observed during classroom instruction, the Monitor will be unable to assess the requirements of this paragraph.

Current Assessment of Compliance

The Monitor is encouraged by the DPD's efforts to incorporate into its lesson plans recommendations that were previously provided, specifically with regard to inclusion of relevant scenario-based training. However, until approved lesson plans are delivered by instructors who

are selected pursuant to paragraph U107, the Monitor will be unable to assess the requirements of this paragraph.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U109.

Paragraph U110 – Civil Lawsuits

Paragraph U110 requires the DPD to meet with the City Law Department on a quarterly basis concerning the conclusion of civil lawsuits alleging officer misconduct. Information gleaned from this process must be distributed to DPD risk management and training staff.

Background

The Monitor last assessed the DPD's compliance with paragraph U110 during the quarter ending November 30, 2007, finding the DPD in compliance.

Current Assessment of Compliance

In response to a request from the Monitor, the DPD provided agendas for meetings of the DPD and the City Law Department that took place on January 9, 2008 and May 20, 2008. The January 9 meeting was attended by a member of the Monitor's team. A guest speaker spoke to the group on issues related to the use of deadly force. Although the May 20 meeting was not attended by a member of the Monitor's team,⁸⁵ the DPD provided the Monitor with minutes for that meeting. The minutes indicate that the Law Department and the DPD explored the relevance at trial of the number of shots fired in a police shooting. In addition, the Risk Management Bureau plans to review a Rand Corporation study commissioned by the NYPD concerning firearms training and the firearms discharge review process. Information from these meetings was distributed to risk management and incorporated into risk management newsletters.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U110.

⁸⁵ On March 4, 2008, the Corporation Counsel's office informed the Monitor that the City Law Department and the DPD will exclude any "third parties" from paragraph U110 meetings, including members of the Monitor's team, who would waive the attorney-client privilege applicable to communications between the City Law Department and the DPD. Based on this representation, the Monitor is no longer attending U110 meetings. As described above, the DPD did provide minutes of the May 20 meeting, which is sufficient for the Monitor's review of compliance with paragraph U110.

Paragraph U111 – Distribution and Explanation of the UOF CJ

Paragraph U111 requires the City and the DPD to distribute and explain the UOF CJ to all DPD and all relevant City employees. The City and the DPD must provide initial training on the UOF CJ to all City and DPD employees whose job responsibilities are affected by it within 120 days of each provision's implementation. Thereafter, the DPD must provide training on the policies contained in the UOF CJ during in-service training.

Background

The Monitor last assessed the DPD's compliance with paragraph U111 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The Monitor still had not been provided with documentation indicating that non-DPD City employees other than managers from Neighborhood City Halls have received copies and an explanation of the UOF CJ.⁸⁶ The rosters or other information submitted must identify which City agency the employee is from.

Current Assessment of Compliance

During the current quarter, the Monitor requested information regarding any initial training provided to all City and DPD employees whose job responsibilities are affected by the UOF CJ after/during the implementation of each provision, including the applicable paragraph numbers that the training covered and the dates and subject matter of the training. In response, the DPD provided sign in sheets relating to three days of training for the "Consent Decree," but included none of the specific information requested. The paragraph also requires that initial training be conducted within 120 days of the implementation of each provision and, thereafter, in-service training be given on the policies contained in the UOF CJ. Although numerous policies have been in effect in excess of 120 days, the DPD has not yet implemented these requirements for the vast majority of the policies.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U111.

B. USE OF FORCE TRAINING

This section comprises paragraph U112 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

⁸⁶ As reported in the Quarters Ending November 30, 2005, May 31, 2006, November 30, 2006, May 31, 2007, and November 30, 2007.

Paragraph U112 – Annual UOF Training

Paragraph U112 requires the DPD to provide all DPD recruits, officers, and supervisors with annual UOF training. Such training must include and address the following topics:

- a. the DPD's UOF continuum; proper UOF; decision making; and the DPD's UOF reporting requirements;
- b. the Fourth Amendment and other constitutional requirements, including recent legal developments;
- c. examples of scenarios faced by DPD officers and interactive exercises that illustrate proper UOF decision making, including the use of deadly force;
- d. the circumstances in which officers may draw, display, or point a firearm, emphasizing: officers should not draw their firearms unless they reasonably believe there is a threat of serious bodily harm to the officer or another person; the danger of engaging or pursuing a subject with a firearm drawn; and that officers are generally not justified in drawing their firearms when pursuing a subject suspected of committing only a misdemeanor;
- e. the proper use of all intermediate force weapons;
- f. threat assessment, alternative and de-escalation techniques that allow officers to effect arrests without using force and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units or even letting a subject temporarily evade arrest may be the appropriate response to a situation, even when the UOF would be legally justified;
- g. interacting with people with mental illnesses, including instruction by mental health practitioners and an emphasis on de-escalation strategies;
- h. factors to consider in initiating or continuing a pursuit;
- i. the proper duration of a burst of chemical spray, the distance from which it should be applied, and emphasize that officers must aim chemical spray only at the target's face and upper torso; and
- j. consideration of the safety of civilians in the vicinity before engaging in police action.

Background

The Monitor last assessed the DPD's compliance with paragraph U112 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. During that quarter, the Monitor approved the *Use of Force Lesson Plan* and commended the DPD for its excellent work in developing this complex document. The Monitor noted that the DPD's 2008 Training Schedule had not yet been received.

Current Assessment of Compliance

In its *19th Quarter Status Report*, the DPD indicated that it continues to train DPD members on the approved *Monadnock PR-24 Collapsible Baton Lesson Plan* and, to-date, approximately 1,000 DPD members have been trained. However, the DPD has not yet begun to deliver training using the approved *Use of Force Lesson Plan*. The DPD has indicated that it is devising a roll-out plan for the training. The Monitor has not received a schedule for delivery of this training course.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U112.

C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U113 – Firearms Training Protocol

Paragraph U113 requires the DPD to develop a protocol regarding firearms training that:

- a. ensures that all officers and supervisors complete the bi-annual firearms training and qualification;
- b. incorporates professional night training, stress training (i.e., training in using a firearm after undergoing physical exertion) and proper UOF decision making training in the bi-annual in-service training program, with the goal of adequately preparing officers for real life situations;
- c. ensures that firearms instructors critically observe students and provide corrective instruction regarding deficient firearms techniques and failure to utilize safe gun handling procedures at all times; and
- d. incorporates evaluation criteria to determine satisfactory completion of recruit and in-service firearms training, including: maintains finger off trigger unless justified and ready to fire; maintains proper hold of firearm and proper stance; and uses proper UOF decision making.

Background

The Monitor last assessed the DPD's compliance with paragraph U113 during the quarter ending November 30, 2007, finding the DPD not yet in compliance. The Monitor reviewed the *Firearms Tactical Training and Qualification Lesson Plan* submitted by the DPD and provided

feedback to the DPD via written memorandums that identified a number of deficiencies in the lesson plan.

Current Assessment of Compliance

The Monitor approved the DPD's *Firearms Tactical Training and Qualification Lesson Plan* during the current quarter. According to the DPD, the Firearms Training Unit immediately implemented this approved lesson plan into their current bi-annual in-service qualification period. The Monitor received the DPD's firearms training schedule on April 22, 2008. The Monitor has not yet completed its evaluation of the DPD's implementation of the firearms training protocol.

Based on the foregoing, the Monitor has not yet evaluated the implementation requirements of paragraph U113.

D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING

This section comprises paragraph U114 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U114 – Annual Arrest and Police-Citizen Interaction Training

Paragraph U114 requires the DPD to provide all DPD recruits, officers and supervisors with annual training on arrests and other police-citizen interactions. Such training must include and address the following topics:

- a. the DPD arrest, investigatory stop and frisk and witness identification and questioning policies;
- b. the Fourth Amendment and other constitutional requirements, including: advising officers that the "possibility" that an individual committed a crime does not rise to the level of probable cause; advising officers that the duration and scope of the police-citizen interaction determines whether an arrest occurred, not the officer's subjective, intent or belief that he or she effected an arrest; and advising officers that every detention is a seizure, every seizure requires reasonable suspicion or probable cause and there is no legally authorized seizure apart from a "Terry stop" and an arrest; and
- c. examples of scenarios faced by DPD officers and interactive exercises that illustrate proper police-community interactions, including scenarios which distinguish an investigatory stop from an arrest by the scope and duration of the police interaction; between probable cause, reasonable suspicion and mere speculation; and voluntary consent from mere acquiescence to police authority.

Background

The Monitor last assessed the DPD's compliance with paragraph U114 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. During that quarter, the DPD re-submitted *the Law of Arrest Search and Seizure Lesson Plan* and it was approved by the Monitor on November 9, 2007. However, the Monitor noted that the DPD's 2008 Training Schedule, which is to include the delivery of this lesson plan, had not yet been received.

Current Assessment of Compliance

The DPD has not yet begun to deliver training using the approved *Law of Arrest Search and Seizure Lesson Plan*. The DPD has indicated that it is devising a roll-out plan for the training. The Monitor has not received a schedule for delivery of this training course.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U114.

E. CUSTODIAL DETENTION TRAINING

This section comprises paragraphs U115-117. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2008.

VIII. MONITORING, REPORTING, AND IMPLEMENTATION

Paragraph U139 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. The paragraph requires that any directive to reopen an investigation by the Monitor be given within a reasonable period following the investigation's conclusion and be given prior to the time when the disposition is officially communicated to the subject officer. Although the Monitor has requested various investigative files for review, as the DPD pointed out in its Fifteenth Quarter Status Report, the files reviewed usually closed several months prior to the review. The Monitor did not take into account whether it was a reasonable period since closing and did not have knowledge as to whether the disposition had been communicated to the subject officer. The Monitor has not yet requested that a mechanism be developed for meeting the restrictions of this paragraph regarding when an investigation can be reopened. However, a mechanism for taking these matters into account must be developed before the requirements of this paragraph can be carried out properly.

As reported previously, the Monitor will no longer make a compliance finding with regard to this paragraph but, rather, will report instances in which the Monitor directs the DPD to reopen an investigation and the results thereafter. As also reported previously, the requirements of paragraph U139 will become more pertinent when the DPD begins to achieve compliance with the investigative requirements in the UOF CJ.

SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT

This section of the report contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending May 31, 2008.

I. FIRE SAFETY POLICIES

This section of the COC CJ comprises paragraphs C14-22. It requires the DPD to develop, implement, and provide training on specific fire safety policies and procedures and develop and implement a comprehensive fire safety program (FSP) in all DPD facilities that maintain holding cells.

The Monitor found the DPD in compliance with paragraph C22 during the quarter ending August 31, 2005, as the Monitor confirmed that all Kane Fiber Ceiling Tiles had been removed from DPD buildings containing holding cells.⁸⁷ The Monitor last assessed the DPD's compliance with paragraphs C14-21 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

II. EMERGENCY PREPAREDNESS POLICIES

This section of the COC CJ comprises paragraphs C23-25. It requires the DPD to develop and implement emergency preparedness plans for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure that each precinct and the entire Department have a clear understanding of what actions are required in the event of an emergency.

The Monitor last assessed the DPD's compliance with paragraphs C23-25 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

⁸⁷ The DPD will remain in compliance with paragraph C22 unless it begins using buildings that contain Kane Fiber Ceiling Tiles to detain prisoners.

III. MEDICAL AND MENTAL HEALTH CARE POLICIES

This section of the COC CJ comprises paragraphs C26-34. It requires the DPD to develop and implement a medical and mental health care program, which includes a series of policies, procedures and protocols. These policies and procedures must be designed and developed to ensure that the DPD is adequately identifying and responding to the medical and mental health care conditions and needs of its detainees. The policies and procedures must be approved by a qualified medical and mental health professional. The comprehensive medical and mental health screening program (CMMHSP) must include specific intake screening procedures and medical protocols and must be reviewed and approved by the DOJ prior to implementation.

The Monitor last assessed the DPD's compliance with paragraphs C26-34 during the quarter ending February 29, 2008. The Monitor found the DPD in compliance with paragraphs C28-29, which are "policy only" paragraphs. The DPD will remain in compliance with these paragraphs until such time as the policies directly responsive to the paragraphs are revised.⁸⁸ The Monitor is scheduled to again assess the DPD's compliance with paragraphs C26-27 and C30-34 during the quarter ending November 30, 2008.

IV. PRISONER SAFETY POLICIES

This section of the COC CJ comprises paragraphs C35-38. It requires the DPD to develop and implement prisoner safety policies for all facilities that maintain holding cells. Each precinct, and the entire Department, must have clear and concise policies, procedures and forms that will ensure the safety and well-being of prisoners.

The Monitor last assessed the DPD's compliance with paragraphs C35-38 during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2008.

⁸⁸ As with all "policy-only" paragraphs with which the DPD has achieved compliance, any revisions to the policy will trigger an additional assessment by the Monitor. Implementation of the policy is tested under paragraph U27.

V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

This section of the COC CJ (paragraphs C39-46) requires the DPD to develop and implement environmental health and safety policies for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure the cleanliness and maintenance of the cell-block areas to ensure the safety of DPD prisoners.

The Monitor has concluded that the DPD is in compliance with paragraphs C44 and C46, which respectively require the DPD to ensure that lighting in all cell block areas is sufficient to reach 20 foot-candles of illumination at desk level and in personal grooming areas and that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.⁸⁹

The Monitor last assessed the DPD's compliance with paragraphs C39-43 and C45 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs C39-43, C45 – Cleanliness of Cells; Development of Cleaning Policy; Maintenance Policy; Heating and Ventilation; Cell Block Repairs; Lighting; Access to Toilets and Potable Water

Paragraph C39 requires the DPD to ensure that all holding cells are cleaned immediately and, thereafter, are maintained in a clean and sanitary manner.

Paragraph C40 requires the DPD to design and implement a cleaning policy for all holding cells. This policy will require routine cleaning and supervisory inspection of the holding cells and nearby areas.

Paragraph C41 requires the DPD to design and implement a maintenance policy for all holding cells that requires timely performance of routine maintenance, as well as the documentation of all maintenance requests and responses in an auditable log.

Paragraph C42 requires the DPD to provide adequate heating and ventilation for all buildings containing holding cells.

Paragraph C43 requires the DPD to repair all broken or malfunctioning lighting, toilets, sinks and windows in holding cells and observation cells.

⁸⁹ The Monitor will not assess compliance with paragraph C44 again unless alterations are made to the lighting fixtures or other conditions arise that affect the sufficiency of the lighting in the cell block areas. The Monitor will not assess compliance with paragraph C46 again unless Hepa-Aire purifiers are re-installed in buildings containing holding cells.

Paragraph C45 requires the DPD to provide all prisoners with reasonable access to toilets and potable water 24 hours-a-day.

Background

The Monitor last assessed the DPD's compliance with paragraphs C39-43 and C45 during the quarter ending August 31, 2007, finding that the DPD was in compliance with paragraphs C39, C42-43 and C45, and in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraphs C40-41. The compliance assessments were based on random unannounced onsite inspections of DPD buildings containing holding cells conducted by the Monitor, as well as the findings contained in the *Environmental Health and Safety (EH&S) Audit* submitted by the DPD on July 31, 2007.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs C39-43 and C45, the Monitor reviewed the *EH&S Audit* submitted by the DPD on January 31, 2008, which was required by paragraph C70. The Monitor also conducted supplemental onsite inspections of all DPD buildings containing holding cells.⁹⁰

The *EH&S Audit* included compliance assessments of the requirements of paragraphs C39-43 and C45, among others, as well as an assessment of the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C70 and the Monitor was able to rely upon the audit's findings.⁹¹

The following reflects the Monitor's and the AT's findings:

Paragraph C39 – Cleanliness of Cells

The AT determined that the DPD was in compliance with the requirements of paragraph C39, as the holding cells were maintained in a clean and sanitary manner. Although the Monitor's findings from the supplemental onsite inspections generally support these audit findings, the Monitor did observe several instances of debris (condiment wrappers, juice containers) in several holding cells (Southwestern, Northeastern), and soiled sinks and toilets (Southwestern, Northeastern, Northwestern). Additionally, the Monitor conducted an onsite inspection the day after the power washing of the holding cells at the Southwestern District and observed that

⁹⁰ The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts, and the Detroit Receiving Hospital (DRH) on May 28, 29 and 30, 2008.

⁹¹ Refer to the *Current Assessment of Compliance* for paragraph C70 for information regarding the Monitor's assessment of the audit.

graffiti (condiment-Mustard) remained on the walls in several cells. It does not appear that the power washing can effectively sanitize the cells and remove the condiments once it hardens. As part of maintaining holding cell cleanliness, the holding cell staff should remove any freshly applied condiments or other substance from the walls immediately after it is identified.

Paragraph C40 – Development of Cleaning Policy

The AT determined that the DPD is not yet in compliance with the requirements of paragraph C40, as only 94% of the required cleaning logs were available for review⁹² and of the cleaning logs that were evaluated, all 15 were missing required information, including officer-related information and cleaning duties completed.

As part of the overall assessment of DPD compliance with this paragraph, the Monitor reviewed the DPD cleaning policy (Directive 305.4), reviewed the most recent entries in the cleaning log to determine if the cleaning schedule is being followed and documented, and visually inspected each holding cell and the surrounding areas for cleanliness. The Monitor observed a lack of documentation of the cleaning of various areas in the holding cells and food preparation areas in the Southwestern District. Additionally, in the Northeastern District, the Monitor noted a lack of holding cell staff entries documenting cleaning for several consecutive days, as well as a lack of supervisors' entries, both of which are required by the DPD cleaning policy.

Paragraph C41 – Maintenance Policy

The AT found that the DPD is not yet in compliance with paragraph C41, as 7% of the maintenance logs included in the selected time period were missing and the Officer-in-Charge (OIC) failed to accurately complete all 12 maintenance logs reviewed. As a result the DPD failed to meet the greater than 94% requirement for compliance.

The Monitor's findings from the supplemental onsite inspections support these audit findings. The Monitor observed that although the majority of the districts were complying with the DPD Directive 305.4 (sections 4.5 and 5.1) regarding inspecting the holding cells for equipment functionality, the Monitor observed that the DPD practices regarding documenting the maintenance staff response to maintenance requests are inconsistent, and two districts had several maintenance logs with missing entries.⁹³

⁹² Northeastern District had missing cleaning logs.

⁹³ The Northwestern and Northeastern Districts.

Paragraph C42 – Heating and Ventilation

The AT determined that the DPD is in compliance with the requirements of this paragraph. The AT found that 100% (111 of 111) of the holding cells inspected had temperatures within the required 66-80 degrees Fahrenheit range. The AT also identified that there were no reported changes or malfunctions in the DPD systems for all buildings containing holding cells since the time of the most recent inspection by the independent contractor, who determined that the system provides adequate ventilation.

During the supplemental on-site inspections, the Monitor determined that the holding cell areas of each district were within the acceptable temperature range of 66-80 degrees Fahrenheit.⁹⁴

Paragraph C43 – Cell Block Repairs

The AT determined that the DPD is in compliance with the requirements of paragraph C43, as 100% of all the light fixtures, light bulbs, sinks, toilets, and windows in the holding cells were operable or intact. The Monitor's findings from the supplemental onsite inspections support these audit findings. The Monitor determined that 100% of all light fixtures, sinks, toilets, and windows were either operable or intact.

Paragraph C44 – Lighting

The AT determined that the DPD is in compliance with the requirements of paragraph C44 based on onsite inspections that measured the lighting, using a LUX Meter, within varying areas within all of the individual cells and within the surrounding areas of all buildings containing holding cells. As described above, the Monitor has concluded that the DPD is in compliance with paragraph C44 and will not re-assess compliance with the paragraph unless alterations are made to the lighting fixtures or other conditions arise that affect the sufficiency of the lighting in the cell block areas.

⁹⁴ While conducting an on-site inspection of the Northeastern District, the Monitoring Team member noticed strong fumes in the district facility, including the holding cell area. The team member was informed that the fumes were the result of the substance being used to make repairs to the roof of the facility. The fumes were extremely strong, causing the Monitoring Team member eye irritation and a minor headache. Several detainees complained of headaches, eye irritation and one detainee stated that he had asthma and was having difficulty breathing. The Monitoring Team member notified DPD staff and they responded to the detainee and assessed his condition. Staff stated that the conditions had persisted for several days without any relief and they had worked and held detainees in these conditions. During the time of the Monitoring Team member's onsite inspection, detainees were being moved to other facilities, but a significant number remained in place and were still being held at the district when the inspection was complete and the Monitoring Team member left the district. During the inspection, the Monitoring Team member informed the District Compliance Officer of the issue and made himself available to the District OIC.

Paragraph C45 –Access to Toilets and Potable Water

The AT determined that the DPD was in compliance with the requirements of paragraph C45, as 100% (111 of 111) of the holding cells are equipped with operable self-contained toilets and sink units with drinking fountain spigots that provide detainees with access to potable water and a toilet 24 hours a day.

The Monitor's findings from the supplemental onsite inspections support the audit findings described above. The Monitor reviewed assignment logs and interviewed staff and verified that the DPD was continuing its practice of having at least one detention officer present at all times in the holding cell areas and that water is available to the prisoners either through sinks in the individual holding cells or by having cups and water available to the prisoners upon request.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraphs C39, C42 (both subparagraphs C42a and b), C43 and C45; the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs C40 and C41, but is not yet in compliance with implementation requirements of these paragraphs.

VI. POLICIES CONCERNING PERSONS WITH DISABILITIES

This section of the COC CJ (paragraphs C47-48) requires the DPD to develop and implement appropriate policies concerning persons with disabilities for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure the detainees with disabilities are provided with appropriate facilities and care.

The Monitor last assessed the DPD's compliance with paragraphs C47-48 during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2008.

VII. FOOD SERVICE POLICIES

This section of the COC CJ comprises paragraphs C49-50. It requires the DPD to develop and implement a comprehensive new food service policy with the assistance and approval of a qualified dietician and sanitarian. The new program must ensure that food is prepared and served in a sanitary manner, and that prisoners are fed on a regular basis. In addition, the program must ensure that all prisoners are provided with an alternative meal if they are unable to eat the standard meal for religious or dietary reasons.

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs C49-50 – Food Storage and Service, Development and Implementation of Food Service Policies

Paragraph C49 requires the DPD to ensure that food is stored and served in a sanitary manner and in compliance with state and local health codes. The DPD's efforts to ensure that food is stored and served in a sanitary manner are also dependent on its implementation of the comprehensive food service policy required by paragraph C50.

Paragraph C50 requires the DPD to develop and implement a comprehensive food service policy, which must be reviewed and approved, in writing, by a qualified sanitarian. Under this policy, the meal plan must be initially reviewed and approved, in writing, by a qualified dietician. It must also be reviewed and approved, in writing, by a qualified dietician at least once a year, and prior to implementing any revisions to the program. In addition, all food must be stored and handled in a sanitary manner, all prisoners must be provided with an alternative meal selection and food must be provided to all detainees who are held over six hours.

Background

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending August 31, 2007, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraphs. The Monitor conducted onsite inspections of holding cells and reviewed the *Food Service Audit* submitted by the DPD on July 31, 2007. The Monitor found that the holding cell staff was not adhering to the specified feeding schedule and documentation requirements of the paragraphs.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs C49-50, the Monitor reviewed the *Food Service Audit* submitted by the DPD on January 31, 2008, which was required by subparagraph C71. The Monitor also conducted supplemental onsite inspections of all DPD buildings containing holding cells.⁹⁵

The *Food Service Audit* included compliance assessments of the requirements of paragraphs C49-50 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C71 and that the Monitor was able to rely upon its findings.⁹⁶

⁹⁵ The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts, and the DRH on May 28, 29 and 30, 2008.

⁹⁶ Refer to the *Current Assessment of Compliance* for paragraph C71 for information regarding the Monitor's assessment of the audit.

The following reflects the Monitor's and AT's findings:

Paragraph C49 - Food Storage and Service

The AT determined that the DPD is not yet in compliance with the requirements of paragraph C49, based on the following findings:

- The AT found that in eight of 14 inspections, the refrigerators in DPD holding cells were free of soil, dust, food residue and debris, which failed to meet the greater than 94% requirement for compliance.⁹⁷
- The AT found that in 13 of 14 inspections (93%) the DPD ensured that food containers were cleaned and maintained properly, falling just short of the greater than 94% rate required for compliance.
- During the inspections the AT identified that there were no expiration dates on the stored juice containers designated to be served to detainees. During subsequent discussions, in December 2007 the DPD HCCC was assured by the food vendor that all forthcoming juice containers and the invoice accompanying each shipment will have an expiration stamp.
- The AT found that the DPD routinely records the temperature of the holding cell refrigerators, as well as the cleaning and sanitation (on at least a weekly basis); however, the compliance rate did not exceed the 94% compliance rate as required.⁹⁸
- The AT determined that holding cell staff did not meet the required greater than 94% requirement for ensuring that the distribution of food is handled in a sanitary manner, according to DPD directives.⁹⁹

The Monitor's findings from the supplemental onsite inspections generally support the audit findings described above; however, the Monitor identified several changes/improvements in operations and conditions subsequent to the audit fieldwork conducted by the AT. Specific findings included:

⁹⁷ For compliance rate calculations in connection with paragraph C49, the Monitor recalculated the AT's findings using 14 inspections as the denominator instead of 15 as stated in the *Food Service Audit Report*. Refer to the *Current Assessment of Compliance* for paragraph C71 for specific details.

⁹⁸ The *Food Services Audit* revealed that the DPD complied with the requirement to record the temperature of the refrigerator each shift on a daily basis at a rate of 93% (1,291 of 1,380) and with the requirement to record the weekly cleaning and sanitation of the refrigerator at a rate of 90% (54 of 60).

⁹⁹ The Monitor's recalculation of the AT findings, using 14 inspections as the denominator, as described above, indicated that DPD staff complied with the requirement to offer each detainee an antiseptic towelettes prior to serving them food at a rate of 71% (10 of 14).

- The Monitor generally observed sanitary conditions in the food storage and serving areas, although the Monitor did observe a collection of boxes, papers and other items in the food storage areas at two districts¹⁰⁰ that could eventually contribute to unsanitary conditions.¹⁰¹
- Upon review of the Holding Cell Cleaning Log, the Monitor observed that cleaning logs in two districts were missing entries documenting that the food service areas had been cleaned and disinfected.¹⁰²
- The Monitor observed that the juice containers at each district were stamped with an expiration date. All of the meals and juice inspected at each district were within the stamped expiration dates on the package or carton.
- The temperatures of refrigerators at each district were maintained below the maximum allowable temperature of 41 degrees Fahrenheit.
- The Monitor observed that holding cell supervisors were not documenting their review and approval of the Cleaning and Inspection of Detention Refrigerator Logs.¹⁰³

Paragraph C50 - Development and Implementation of Food Service Policies

The AT determined that the DPD is not yet in compliance with the requirements of paragraph C50 based on the following findings:

- The DPD is not ensuring that all detainees who are held in DPD custody over six hours are provided regular, adequate and timely meals throughout their detainment. Sixteen of 88 randomly selected detainees could not be located on the Daily Detainee Meal and Hygiene Items Log (DDMHIL.)
- The DPD is not ensuring that detainees arrested between the hours of 10:00 p.m. and 12:00 a.m. are provided meals shortly after intake. The AT could not verify that any of the sampled detainees received meals in accordance with this requirement.
- The DPD is not ensuring that all detainees that are conveyed to and returned from a hospital facility were provided with a meal upon their return. The AT confirmed that 33% of the sampled detainees received food service during their stay at the hospital facility or upon their return to a DPD district.

¹⁰⁰ The Northeastern and Southwestern Districts.

¹⁰¹ Inside one of the holding cell refrigerators, the Monitor observed water leaking on top of and inside the container holding the detainee meals; this was reported to DPD staff.

¹⁰² Also the Northeastern and Southwestern Districts.

¹⁰³ There were multiple missing supervisor entries in the Southwestern District; a missing supervisor entry and a missing staff entry in the Western District; and multiple missing staff and supervisor entries in the Northeastern District.

- The AT could not verify that any of the sampled detainees conveyed to a hospital facility for treatment and provided prescription medication requiring food prior to taking the medication were actually provided meals in accordance with the requirement.
- As described in the assessment of paragraph U49, above, the AT determined that the DPD holding cell staff are not offering all detainees antiseptic towelettes to sanitize their hands prior to serving them food.

The Monitor's findings from the supplemental onsite inspections generally supported the audit findings described above:

- The Monitor's review of the Holding Cell Cleaning Log revealed that DPD staff failed to consistently document the cleaning of the food service prep areas.
- The Monitor observed that holding cell staff serving detainee meals sanitized their hands using a proper cleaner and wore approved gloves during the meal service.
- The holding cell staff did not clean the food cart prior to or after the serving of meals and did not consistently provide anti-septic towelettes to detainees prior to serving them food.
- The Monitor reviewed DDMHILs at each district and noted that the DPD failed to consistently and completely document the required information.¹⁰⁴

The Monitor notes that the DPD modified Directive 305.8, *Detainee Food Service and Hygiene Items*, effective February 2008, and received written approval from a qualified dietician in February 2008.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraphs C49-50.

VIII. PERSONAL HYGIENE POLICIES

This section of the COC CJ comprises paragraph C51 only. The Monitor last assessed the DPD's compliance with paragraph C51 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

¹⁰⁴ Distribution of towelettes (Eastern, Northeastern Districts), Staff serving meal (Eastern, Northwestern Districts).

Paragraph C51 – Availability of Personal Hygiene Items

Paragraph C51 requires the DPD to provide all prisoners with access to personal hygiene items such as soap, toothbrushes, toilet paper, comb, deodorant and feminine hygiene products. The DPD must implement this provision within one month of the effective date of the COC CJ.

Background

The Monitor last assessed the DPD's compliance with paragraph C51 during the quarter ending August 31, 2007, finding the DPD in compliance with the requirements of the paragraph, as 100% of the DPD district facilities with holding cells maintain an adequate supply of hygiene kits and individual personal hygiene items. Staff indicated that the items are made available to detainees upon request. In addition, the DPD's *Food Service Audit* submitted on July 31, 2007, which the Monitor found to be compliant, appropriately concluded that the DPD was in compliance with paragraph C51.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph C51, the Monitor reviewed the *Food Service Audit* submitted by the DPD on January 31, 2008, which was required by subparagraph C71. The Monitor also conducted onsite inspections of all DPD buildings containing holding cells.¹⁰⁵

The *Food Service Audit* included compliance assessments of the requirements of paragraph C51 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C71 and that the Monitor was able to rely upon its findings.¹⁰⁶

The following reflects the Monitor's and AT's findings:

The AT determined that the DPD is no longer in compliance with the requirements of paragraph C51, as an adequate supply of personal hygiene products (including feminine hygiene products) and toilet paper were not available at all of the DPD district facilities with holding cells. The audit also indicated that the appropriate signage informing detainees that personal hygiene products are available to them upon request was not posted in one of the five district facilities (Southwestern District).

¹⁰⁵ The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts, and the DRH on May 28, 29 and 30, 2008.

¹⁰⁶ Refer to the *Current Assessment of Compliance* for paragraph C71 for information regarding the Monitor's assessment of the audit.

In contrast, during the Monitor's on-site inspections, an adequate supply of hygiene kits and individual personal hygiene items were available at each of the five districts, and the holding cell staff were able to consistently articulate the DPD policy for distributing these items, stating that the items are made available upon request and towelettes are offered to each detainee during food service. The sign in the Southwestern District was still missing six months after the AT's inspections;¹⁰⁷ the Monitor conferred with the compliance officer at the district regarding reposting of the sign prior to making a final determination of compliance. The compliance officer informed the Monitor that the sign was removed during the remodeling and construction of the district facilities, and although steps have been taken to repost the sign, the materials used were not strong enough hold the sign permanently in place. As a result, the DPD has requested that Facilities Management re-bolt the sign to the wall.

Considering the difference between the Monitor's and the AT's findings regarding the available personal hygiene products, the Monitor is concerned about the DPD's process for maintaining an adequate inventory and supply of these products at all times. Additionally, the DPD's procedure to ensure that detainees are made aware that the products are "available" is through the posting of the signage. In order to comply with the requirements of paragraph C51, the products must be "available" through having sufficient supplies on hand and by proper notification to detainees that such products are available.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph C51.

IX. USE OF FORCE AND RESTRAINTS POLICIES

This section of the COC CJ (paragraphs C52-54) requires the DPD to revise its policies regarding prisoners and comply with the DPD's UOF policies and procedures for any UOF on prisoners in holding cells. In addition, the DPD must not handcuff prisoners to benches for longer periods of time than are necessary. The DPD is required to submit its revised UOF policies to the DOJ for review and obtain DOJ's approval.

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

This section of the COC CJ (paragraphs C55-57) requires the DPD to comply with its general incident investigation policies, UOF investigation policies and prisoner injury investigation

¹⁰⁷ The AT's inspections were conducted October 15, 2007 through November 30, 2007.

policies in connection with all UOF, injuries and in-custody deaths occurring to prisoners in holding cells. The DPD is required to provide its revised UOF policies to the DOJ for review and to obtain DOJ's approval.

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C55-57 – Prisoner Injury and Use of Force in Holding Cell Investigations

Paragraph C55 states that the DPD shall require that all uses of force, injuries to prisoners and in custody deaths occurring in the DPD holding cells are investigated in compliance with the DPD's general incident investigation policies.

Paragraph C56 states that the DPD shall require that all uses of force occurring in DPD holding cells are reported and investigated in compliance with the DPD's use of force investigation policies.

Paragraph C57 states that the DPD shall require that all injuries to prisoners occurring in DPD holding cells are reported and investigated in compliance with the DPD's prisoner injury investigation policies.

Background

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending August 31, 2007, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the implementation requirements of the paragraphs. The Monitor reviewed the *UOFHC Investigations Audit* submitted by the DPD on July 31, 2007 and the *PIHC* submitted by the DPD on January 31, 2007. The *UOFHC Audit* evaluated eight investigations of UOF incidents and the *PIHC Audit* identified five PIHC investigations of incidents, all of which occurred in holding cells. Both audits found that the DPD was not adequately implementing policies with regard to investigations of use of force and prisoner injuries that occur in a holding cell.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs C55-57, the Monitor reviewed the *PIHC Audit* submitted by the DPD on January 31, 2008, which was required by subparagraph C65b.¹⁰⁸ The audit identified three Command investigations of prisoner injury incidents that

¹⁰⁸ Refer to the Current Assessment of Compliance for subparagraph C65b for detail regarding the assessment of the audit.

occurred in holding cells. Two of the three incidents also involved a use of force; it was determined, however, that the use of force was not the cause of the prisoner's injury. In these three investigations, the AT evaluated whether the DPD is investigating prisoner injuries and uses of force that occur in holding cells in compliance with the DPD's general investigation policies, *Use of Force* investigation policies and *Prisoner Injury* investigation policies, as required by paragraphs C55-57.¹⁰⁹

Similar to previous PIHC audits conducted by the DPD's AT, the audit correctly found that the DPD is not yet compliant with paragraphs C55-57, as the policies governing investigations of uses of force and prisoner injuries that occurred in holding cells have not been adequately implemented. A summary of the audit findings in connection with the requirements for these investigations is described in the *Current Assessment of Compliance* for paragraphs U27-36, above. Of note, the audit found that in both prisoner injury investigations in which a use of force was evident, the investigators failed to evaluate or address the officers' use of force, including tactics within the investigation.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs C55-57, but is not yet in compliance with the implementation requirements of the paragraphs.

XI. EXTERNAL COMPLAINTS

This section of the COC CJ (paragraphs C58-59) requires the DPD to comply with its external complaint and investigation policies when responding to all external complaints and incidents occurring in holding cells.

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs C58-59 – Acceptance of External Complaints–Holding Cells; Investigation of External Complaints–Holding Cells

Paragraph C58 requires the DPD to ensure that it accepts and processes all external complaints regarding incidents occurring in holding cells consistent with the DPD's external complaint policies.

¹⁰⁹ The AT indicated that these paragraphs were tested as part of its assessment of the related UOF CJ paragraphs (paragraphs U27-36).

Paragraph C59 requires the DPD to ensure that all external complaints it receives regarding incidents occurring in holding cells are investigated and reviewed consistent with the DPD's policies concerning external complaints investigations and review.

Background

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance with either paragraph. The Monitor conducted an independent review of the two holding cell incidents included in the AT's *EC&CI Audit Report*, which was submitted on August 31, 2007. The Monitor found that one investigation that involved a possible force and was potentially criminal was inappropriately conducted by the OCI and the other incident also alleged force and was inappropriately conducted by the Command where the incident was alleged to have occurred. In addition, both investigations contained numerous deficiencies with regard to the conduct and review of external complaints required by DPD policies.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs C58-59, the Monitor reviewed the *AOMHC Audit*, submitted by the DPD on January 31, 2008. As described in the *Current Assessments of Compliance* for paragraphs U61 and U67, above, the audit included and reviewed three external complaints regarding incidents that occurred in a holding cell, all of which were appropriately investigated by IA due to the seriousness of the allegations.¹¹⁰

Paragraph C58 relates to the intake and processing requirements that are contained in paragraph U61; the DPD's AT correctly found the DPD in compliance with paragraph U61 and, therefore, in compliance with paragraph C58. Paragraph C59 relates to the investigative requirements that are contained in paragraph U67; the DPD's AT correctly found that the DPD was not yet in compliance with paragraph U67 and was, therefore, not yet in compliance with paragraph C59, due to several deficiencies in the conduct and review of the external complaint investigations as required by DPD policies. These deficiencies include the failure to interview all involved officers, a lack of documented supervisory review, and failure to timely complete the investigation.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs C58-59, in compliance with the implementation requirements of paragraph C58, and not yet in compliance with the implementation requirements of paragraph C59.

¹¹⁰ Refer to the *Current Assessment of Compliance* for subparagraph C65b for details regarding this audit and the Monitor's assessment of it.

XII. GENERAL POLICIES

This section of the COC CJ (paragraphs C60-61) requires the DPD to ensure that all terms are clearly defined in all policies that are developed, revised, and augmented, and to make proposed policy revisions available to the community.

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C60 – General Policies

Paragraph C60 requires the DPD, in developing, revising and augmenting policies, to ensure all terms contained within the UOF CJ are clearly defined.

Background

The Monitor last assessed the DPD's compliance with paragraph C70 during the quarter ending November 30, 2007, at which time the Monitor found the DPD in compliance with all of the requirements of the paragraph. The DPD finalized a document defining the Policy Focus Committee whose purpose is "to provide oversight of the established policy and procedure for management of the Detroit Police Department's written directive system..."

Current Assessment of Compliance

During the current quarter, the DPD produced a Special Order, *Policy Focus Committee*, establishing the Policy Focus committee and defining its membership through December 2008. The DPD also produced minutes from the first Policy Focus Committee meeting held April 7, 2008. The Monitor reviewed the meeting minutes and noted that the Committee's discussion centered on policy issues.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph C60.

Paragraph C61 – Proposed Policy for Community Review and Comment

Paragraph C61 requires that the DPD continue to make available proposed policy revisions to the community for review, comment and education. The DPD must also publish proposed policy on its website to allow for comment directly to the DPD.

Background

The Monitor last assessed the DPD's compliance with paragraph C61 during the quarter ending November 30, 2007, finding the DPD in compliance. The Monitor requested, received and reviewed the DPD's *Protocol for Proposed Policy Revisions*, noting that it addressed the requirements of paragraph C61.

Current Assessment of Compliance

During the current quarter, the Monitor periodically accessed the DPD's website, noting in each instance that no new additional policy was posted for review and comment. Additionally, there were no revisions to the DPD's *Protocol for Proposed Policy Revisions*.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph C61.

XIII. MANAGEMENT AND SUPERVISION

This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the holding cells to minimize the risks to its staff and prisoners. The DPD must evaluate such operations through the use of video cameras and via regularly scheduled semi-annual¹¹¹ audits that assess and report on issues affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells.¹¹²

The Monitor last assessed the DPD's compliance with paragraphs C62-64 during the quarter ending February 29, 2008, and

The Monitor last assessed the DPD's compliance with subparagraph C65c and paragraphs C66, C67 and C72 during the quarter ending November 30, 2007; paragraphs C62-64, C70-71 and subparagraphs C65a and C65b during the quarter ending August 31, 2007; and subparagraph C65a and paragraphs C66, and C68-69 during the quarter ending February 29, 2008. The Monitor is scheduled to again assess the DPD's compliance with most of the requirements of this section during the quarter ending August 31, 2008, and again assessed the DPD's compliance

¹¹¹ On October 4, 2004, at the request of the parties, the Court amended the audit schedule in the COC CJ by requiring the DPD's COC CJ audits to be completed semi-annually with the first and second audits due by January 31 and August 31, 2004, and subsequent audits due by January 31, 2005 and every six months thereafter.

¹¹² The topics covered by these audits include: UOF; injuries to prisoners and allegations of misconduct in holding cells; fire detection, suppression and evacuation; emergency preparedness; medical/mental health; detainee safety; environmental health and safety; and food service.

with paragraphs subparagraphs C65b and C65c, paragraphs C66 (FSP audit requirement), C67 and C70-72 during the current quarter. The results of our current assessments follow.

Paragraph C65 – Audits of UOF, Prisoner Injuries and Misconduct Investigations in Holding Cells

Paragraph C65 requires the DPD to conduct regularly scheduled semi-annual audits covering all DPD units and Commands (including a sample of Command, IAD and Homicide Section investigations) that investigate uses of force, prisoner injuries, and AOM in holding cells.

In order to address the requirements of paragraph C65, the DPD's AT has historically conducted three separate audits of a) investigations of UOF in holding cells, b) investigations of prisoner injuries in holding cells, and c) investigations of AOM in holding cells. The Monitor has similarly split its evaluation of this paragraph into three separate evaluations as subparagraphs C65a, C65b and C65c.

Background

The Monitor last assessed the DPD's compliance with subparagraph C65a during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance due to the lack of submission of the *UOFHC Audit*, which was required to be submitted by January 31, 2008. The Monitor last assessed the DPD's compliance with subparagraph C64b during the quarter ending August 31, 2007, finding the DPD was not yet in compliance due to the lack of submission of the *PIHC Audit*, which was required to be submitted by July 31, 2007. The Monitor last assessed the DPD's compliance with subparagraph C65c during the quarter ending November 30, 2007, finding the DPD in compliance, as the *AOMHC Audit* submitted on July 31, 2007 was in compliance with the requirements of the subparagraph.

Current Assessment of Compliance

Subparagraph C65a – Holding Cells Use of Force Investigations Audit

The next audit of this topic is due to be submitted by July 31, 2008. Accordingly, the Monitor is scheduled to re-assess the DPD's compliance with subparagraph C65a during the quarter ending August 31, 2008.

Subparagraph C65b – Prisoner Injuries in Holding Cells Audit

In order to assess the DPD's compliance with paragraph C65b, the Monitor reviewed the *PIHC Audit Report* submitted by the AT on January 31, 2008, and the related audit work plan. The Monitor also conducted an assessment of 100% of the audit population, the audit fieldwork and working papers related to this audit.

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

- The AT submitted the *PIHC Audit* in a timely manner on January 31, 2008. The AT selected a three-month time period from August 1 through October 31, 2007, for three populations of investigations: Command, FI and JIST. The total population identified and reviewed was three investigations conducted at the Command level, as no FI or JIST investigations were identified. The AT extended its time period for FI and JIST to November 30, 2007; however, no additional investigations were identified.
- The AT conducted suitable completeness tests and although no additional investigations were identified, the audit appropriately reported that the lack of a tracking system continues to be a problem. The AT further stated that the future implementation of the MAS should address these problems and will allow the AT to identify complete populations of Command investigations.¹¹³ In order to assess compliance with the Consent Judgment timing requirements for investigations, the AT also reviewed open investigations from April 1 through October 31, 2007 to determine if any of them should have been closed.
- As detailed below, the Monitor identified a number of areas where the AT should have better documented and reported its assessment of the paragraphs tested. Notwithstanding these issues, based on the Monitor's review of the AT's working papers and the underlying investigations, the Monitor concurs with the AT's conclusions that the DPD was not yet in compliance with paragraphs C53, C55-57, and U27-36.¹¹⁴
- Two of the three Prisoner Injury (PI) investigations described incidents that also involved a use of force by DPD officers (herein referred to as a "connected UOF"). Since PI investigations must comply with the requirements contained within paragraphs U27-36 where applicable, for these two PI investigations with a connected UOF, the AT must assess whether or not the investigators evaluated the force, including the tactics, as required by subparagraph U32f. Neither of the two investigators evaluated the force or the tactics in the pertinent investigations and the AT properly identified this deficiency. However, the AT's articulation and documentation of this review did not specifically refer to the force, and instead referred only to the review for tactics.¹¹⁵ Furthermore, the AT did not properly link the applicable use of force policies described in paragraphs U14-26, and C52 to the review of the force. The Monitor notes that this issue arose primarily because of AT's current method of separately auditing investigations based on the type of incident (i.e., PI, UOF,

¹¹³ It should be noted that this is limited by the fact that the MAS will not include historical data for investigations that are not currently tracked in a database. This includes Command investigations. Rather, for these types of investigations, only information entered into the MAS once it is operational going forward will be available.

¹¹⁴ It should be noted that although the DPD was not in compliance with these paragraphs overall, several subparagraphs were found to be in compliance. Refer to the *Current Assessment of Compliance* for paragraphs U27-36 for details regarding the DPD's compliance with certain subparagraphs.

¹¹⁵ The AT verbally stated that although they did not document it, they did, in fact, evaluate the force as part of their evaluation of the tactics. The AT agreed that future audits of PI investigations will more clearly articulate the audit's assessment of the investigators' evaluation of the force.

Misconduct). Since each investigation may contain multiple types of incidents, the AT should consider reorganizing their investigative audits to help ensure that the applicable (respective) standards are appropriately addressed for each investigation.

- In reporting that paragraphs U14-16 (force policies) were not yet in compliance, the AT stated that, “[T]he investigation included an evaluation of the force used....” However, these paragraphs have no such requirement for investigations; rather, they are the specific policies that officers are required to follow when using force.

Given this reporting problem, the Monitor reviewed the underlying incidents for compliance with the applicable force policy paragraphs. Based on the level of force articulated by the officer(s) who used force, the Monitor disagrees with the manner in which the AT reported its findings, that these incidents were not yet in compliance with the force policy paragraphs as required by specific policy paragraphs related to paragraphs U18 (including paragraphs U15-16) and C52.¹¹⁶ The AT acknowledged this reporting deficiency and stated that future audits will not include these paragraphs in the audit report; rather they will refer to these paragraphs within the review pursuant to subparagraph U32f (as described above) within the audit working papers.

- Regarding paragraphs C55-57, the audit report stated that the AT’s overall assessment was that the DPD did not meet the requirements of the paragraphs. However, neither the audit matrices nor the detailed findings in the audit report included testing or findings related to these paragraphs. During meetings, the AT stated that these paragraphs were tested as part of its assessment of the related UOF CJ paragraphs (paragraphs U27-36). While the Monitor agrees that these COC CJ and UOF CJ paragraphs are connected and should be tested simultaneously, the AT should have made this clear in the audit report and documented the inter-relationship in the audit working papers. The AT stated these adjustments will be made in future audits.
- The audit report made good use of tables, had few typographical, grammatical or spelling errors, and made appropriate recommendations where the DPD was not yet in compliance. The Monitor also found the working papers to be well-organized.
- The AT appropriately reported overall compliance by audit objective and included detailed tables for each objective that illustrated the DPD’s compliance with the paragraphs and subparagraphs. However, these detailed tables were organized by audit objective, rather than in sequential order of the paragraphs and subparagraphs. This made it difficult to decipher the overall compliance by paragraph. For example, paragraph U28 has multiple subparagraphs and components, all of which were reported in three different audit objectives. While this way of organizing the report is appropriate, the Monitor has advised the AT that it would be helpful for future audits to also include a reporting method to illustrate compliance

¹¹⁶ Paragraphs U17, U19, U31, and U37-41 were not tested due to the lack of applicable incidents.

by paragraph and subparagraph in order to provide DPD executive staff with an at-a-glance picture of CJ compliance.

Although, as described above, the audit contained several reporting and documentation deficiencies that should be addressed in the next PIHC audit, these deficiencies did not significantly affect the overall quality of the audit. As a result, the Monitor finds the DPD in compliance with paragraph C65b.

Subparagraph C65c –Allegations of Misconduct in Holding Cells Audit

In order to assess the DPD's compliance with subparagraph C65c, the Monitor reviewed the *AOMHC Audit* submitted by the AT on January 31, 2008 and the related audit work plan. The Monitor also conducted an assessment of 100% of the audit fieldwork and working papers related to this audit.

The Monitor's findings, which were discussed with the AT, are highlighted below:

- The AT submitted the AOMHC Audit in a timely manner on January 31, 2008 and appropriately selected a six-month audit time period from March 1, 2007 through August 31, 2007 to identify and review all closed investigations of AOMHC conducted by Internal Affairs (IA) and DPD Commands. The AT identified and reviewed a total of three IA investigations and no Command investigations.
- The AT properly included and applied all of the substantive paragraphs related to this topic.¹¹⁷ Although the audit did not include an assessment of the specific training requirements related to AOM investigations, it did include recommendations for the DPD to conduct training regarding the completion of AOM investigations.
- The AT conducted suitable completeness tests of both IA and Command investigations and evaluated the Command tracking processes. Although the completeness tests did not result in additional investigations being identified; similar to the prior three audits of this topic, the AT again reported that it was difficult to obtain a complete population of Command investigations due to the lack of a suitable and consistent tracking systems. The AT appropriately reported that due to the laborious process of hand searching blotter entries and hard-copy files at the Commands, they could not determine with certainty whether all AOM investigations by Commands were included for review. The Monitor concurs with these observations.

¹¹⁷ The three IA investigations were of external complaints in holding cells; these were conducted by IA due to potential criminal conduct. As a result, all of the UOF CJ standards (paragraphs U67-69) for investigations of external complaints were applicable.

- The AT appropriately conducted a separate review of open external compliant investigations conducted by IA for the period August 2006 through January 2008 to assess compliance with the timeliness requirements of subparagraph U67g.
- Based on its review of the AT's working papers and the underlying incidents, the Monitor concluded that the AT correctly applied all relevant standards and CJ paragraphs to the investigations reviewed, and correctly concluded that the DPD was in compliance with the requirements of paragraphs U27, U30, U61, U65, U69 but not yet in compliance with paragraphs U28, U29, U31-33, U66 and U67.
- The AT made appropriate recommendations in areas where the DPD was not yet in compliance. The audit report made good use of tables and had few grammatical, spelling and reporting errors. The AT reported overall compliance by objective and included each Consent Judgment paragraph and subparagraph tested. However, the Monitor has advised the AT that it would be useful for future audits to also include a reporting method organized by paragraph and subparagraph in sequential order.¹¹⁸

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph C65c.

Paragraph C66 – Holding Cell Compliance Committee Responsibilities

Paragraph C66 requires the DPD to form a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. This paragraph also requires the HCCC to conduct regularly scheduled semi-annual audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed in the COC CJ.¹¹⁹

Background

The Monitor last assessed the DPD's compliance with the HCCC requirement of paragraph C66 during the quarter ending February 29, 2008, finding the DPD in compliance because the HCCC met at least once per month and the meetings were attended by members with appropriate expertise in the topic areas discussed. These topic areas were related to areas where the DPD was not yet in compliance and remedies were discussed to further the DPD towards implementation of the COC CJ required policies, programs and procedures.

The Monitor last assessed the DPD's compliance with the *Fire Safety Practices and Policies (FSPP) Audit* requirement of paragraph C66 during the quarter ending November 30, 2007,

¹¹⁸ Refer to the *Current Assessment of Compliance* for subparagraph C65b above.

¹¹⁹ The scope of such audits must include an evaluation of the smoke detectors and sprinklers, the back-up power systems, and the DPD's fire equipment.

finding the DPD in compliance. The Monitor again assessed the DPD's compliance with the paragraph C66 Fire Safety Program (FSP) requirement during the current quarter. The results of our current assessments follow.

Current Assessment of Compliance

HCCC Requirement of Paragraph C66

The Monitor is scheduled to re-assess the DPD's compliance with the HCCC requirement of paragraph C66 during the quarter ending August 31, 2008.

FSP Audit Requirement of Paragraph C66

During the current quarter, the Monitor completed its review of the *FSPP Audit Report*, submitted by the DPD's AT on January 31, 2008 and the associated audit work plan, working papers and fieldwork documents.¹²⁰

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

- The audit report was submitted on a timely basis by the required due date of January 31, 2008, and within six months of the fire safety procedures evaluated in the audit.
- The scope of the audit addressed all relevant sections of the COC CJ and appropriately included the involvement of an HCCC member as specifically required by paragraph C66. Overall, the AT correctly found that the DPD is in compliance with paragraphs C20-21 but is not yet in compliance with paragraphs C14-19 or the training requirements of paragraph C75.
- The AT's work consisted primarily of unannounced on-site inspections at each district during the months of November and December 2007. As in previous audits, these inspections provided a valuable and comprehensive assessment of fire safety equipment and procedures, and were appropriately conducted by members of the Detroit Fire Department (DFD), and two independent certified examiners who performed the required testing of fire equipment, along with the AT/HCCC members.
- As in previous audits, the AT did not inspect the holding cells at the DRH. Although the DRH conducts its own inspections, testing and maintenance procedures and the AT received a statement from the DRH facilities manager to evidence this; the letter did not indicate

¹²⁰ Being the sixth FSP audit, the AT's audit methodology and approach has now been well-researched and perfected, and was appropriately unchanged for this review period. Additionally, the Monitor's review of the prior two FSP audits, submitted in January and July 2007, were found to be in compliance, the methodologies were not significantly changed, and the overall audit conclusions regarding the DPD's compliance with the underlying COC CJ paragraphs have not changed. As a result, and as discussed in the *Methodologies Section* in the Introduction of this report, the Monitor performed its usual review of the report, work plan, matrices, and supporting documentation, but limited its detailed testing of the fieldwork data.

whether all the relevant fire equipment complied with the Life Safety Code (LSC) as required. As a result of the Monitor's and Fire Marshall's recommendation during meetings with the AT, during future audits, the AT/HCCC will obtain a letter from the State Fire Marshall's office to verify the DRH's compliance with the LSC.

- The audit report was well written, logical and informative, with sound recommendations. The Monitor did note, however, that the summary findings in the report erroneously indicated that the DPD was not yet in compliance with respect to the testing, inspection and maintenance of fire extinguishers; but the DPD was, in fact, in compliance.¹²¹
- One of the outcomes of the Monitor's review of the previous *FSPP Audit*, dated July 2007, was that the Monitor recommended and the AT agreed to include audit testing of certain critical operational aspects of the existing FSP in the next audit. However, due to ongoing revisions of the Emergency Response Plans (ERP) and the absence of fire safety training of the holding cell area staff, the AT opted not to include such testing in this audit. On April 8, 2008, after the time period of the audit, the DPD submitted a newly revised FSP. Since paragraph C66 specifically requires the audit to evaluate the FSP, the Monitor expects that the next FSPP audit, due by July 31, 2008, will include testing and an evaluation of the new FSP, including the operational aspects contained in its Appendix. The aforementioned is required to ensure that this audit remains in compliance.

Based on the above findings, the Monitor finds the DPD in compliance with the FSPP audit requirements of paragraph C66.

Paragraph C67- Audit of Emergency Preparedness Program

Paragraph C67 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD's Emergency Preparedness Program (EPP) for all DPD buildings that contain holding cells.

Background

The Monitor last assessed the DPD's compliance with paragraph C67 during the quarter ending November 30, 2007, finding the DPD in compliance. The Monitor determined that the *Emergency Preparedness Program (EPP) Audit* submitted by the DPD on July 31, 2007 was appropriately conducted by the HCCC and was a quality and thorough audit.

¹²¹ For the testing of fire extinguishers, the report summary table showed a compliance rate of 17% rather than the actual rate of 100%. The AT acknowledged this error; however, the error had no impact on the overall compliance of the related paragraph, C19, as fire extinguishers are only one component of the paragraph requirements.

Current Assessment of Compliance

During the current quarter, the Monitor completed its review of the *EPP Audit Report*, submitted by the DPD's AT on January 31, 2008 and the associated audit work plan, working papers and fieldwork documents. The Monitor's findings, which have been discussed with the AT, are as follows:

- The audit report was submitted on a timely basis by the required due date of January 31, 2008 and was appropriately conducted by the AT and members of the HCCC with expertise in emergency management.
- The scope of the audit addressed all relevant sections of the COC CJ as required by the audit paragraph C67. Overall, the AT correctly found that the DPD is not yet in compliance with the requirements of paragraphs C23-25 with the exception of subparagraphs C25a (emergency identification of keys by touch), and C24b (fire drill performance) which were found to be in compliance. The AT also correctly found the DPD was not yet compliant with the training requirements of paragraph C75.
- The AT conducted on-site interviews and "table-top" scenarios with DPD holding cell staff to assess their knowledge of responsibilities during various emergency situations. These onsite assessments were conducted from December 11, 2007 through January 17, 2008. The methodology for this testing has continued to improve with each new audit submitted; however, in order to further improve the AT's analysis of the DPD's compliance in connection with these scenarios, the AT should consider "weighting" the results based on the significance of the elements being tested rather than simply calculating compliance based strictly on the number of staff interviewed or the number of questions asked.
- As part of the on-site interviews, those DPD staff members with direct responsibility for the detainees were asked about their recent participation in fire drills. Of the 51 interviewees, six¹²² were not regular holding cell staff and had therefore not participated in a fire drill in the last year. The Monitor's subject matter expert and the DFD-designated HCCC member both recommended that temporary or replacement staff who are given responsibility for detainees should be provided with basic emergency safety training by the district OIC immediately prior to assuming their responsibilities. Furthermore, in future audits, all interview results for such individuals should be included in assessing compliance with this question.
- The AT reviewed fire drill documentation for the districts from January 1 through June 30, 2007, based on the DPD designated fire drill time-periods.¹²³ The DPD should consider adjusting their fire drill time periods within the districts so that the AT is able to review more

¹²² Five Prisoner Detention Officers (PDOs) and one Cell Block Supervisor (CBS).

¹²³ The DPD has designated January 1 to June 30 as Time Period 1, and July 1 to December 31 as Time Period 2.

recent information in the semi-annual audits, thereby providing a more current assessment of the DPD's compliance rate.

- As in previous audits, the AT attempted to evaluate key and lock testing, inventory and maintenance and fire equipment inventory, but was unable to do so as these records are still being developed and are not currently maintained.¹²⁴
- Although the Monitor found some minor errors in the testing as described above, the test results were accurately transferred from the audit working papers to the audit report. Furthermore, the report was well organized, logical and comprehensive, with valuable recommendations.
- The AT previously recognized that the existing ERPs for each district required significant revision and updated Plans are now in the final stages of review by the DFD. The AT members have continued to orchestrate the revision process and should be commended for their efforts. Going forward, the Monitor expects that the AT's methodology will be revised to address and test all aspects of the updated ERPs to ensure the next EPP audit remains in compliance.

Based on the above findings, the Monitor finds the DPD in compliance with paragraph C67.

Paragraph C70 – Audits of Environmental Health and Safety Program

Paragraph C70 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD's environmental health and safety program covering all DPD buildings that contain holding cells.

Background

The Monitor last assessed the DPD's compliance with paragraph C70 during the quarter ending August 31, 2007, finding the DPD in compliance. The Monitor determined that the *Environmental Health and Safety (EH&S) Audit* submitted by DPD on July 31, 2007 was appropriately conducted by the HCCC and was a quality and thorough audit.

Current Assessment of Compliance

During the current quarter, the Monitor completed its review of the *EH&S Audit* submitted by the DPD on January 31, 2008 and the related audit work plan. The Monitor also conducted an assessment of the audit fieldwork and working papers related to this audit.¹²⁵

¹²⁴ These records are required specifically by subparagraph C25b.

The Monitor's findings, which were discussed with the DPD's AT, are highlighted below:

- The audit was submitted by the DPD in a timely manner on January 31, 2008, and was conducted by members of the HCCC, as required by paragraph C70, along with members of the AT.
- The audit properly included all of the substantive paragraphs related to this topic including an assessment of the training on this topic.
- The audit methodology, including the time periods selected for review, the population determination, and the sampling techniques, sufficiently tested each of the objectives and relevant paragraphs. The AT also conducted additional testing of cleaning and maintenance logs in order to provide information and appropriate recommendations regarding corrective actions to remedy the areas that are not yet in compliance.
- The Monitor was able to reconcile the findings reported to the supporting work papers and reports and the conclusions reached for each objective. The Monitor concurred with all of the AT's reported conclusions, namely that the DPD is in compliance with paragraphs C39 and C42-45 and is not yet in compliance with paragraphs C40-41.
- During its review of the fieldwork documentation, the Monitor noted that in contrast to previous audit on this topic, the AT did not provide a detailed on-site inspection matrix. Instead, rough notes were made and the information was then copied and summarized to an electronic spreadsheet. Since the on-site inspections matrices are the only method of evidencing and validating the AT's findings in this area, the AT must again use and retain these matrices in future audits.
- The Monitor noted a few errors in the audit report; however, these errors did not significantly affect the quality of the audit.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C70.

Paragraph C71 – Audits of Food Service Program and Policies

Paragraph C71 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of the food service program.

¹²⁵ The audit did not include a review of the related documents due to the fact that many of the cleaning and maintenance logs were missing. Therefore, the Monitor's review did not include a review or sampling of documents but rather consisted of a review of all audit working papers and independent on-site inspections to verify the AT's conclusions.

Background

The Monitor last assessed the DPD's compliance with paragraph C71 during the quarter ending August 31, 2007, finding the DPD in compliance as the *Detainee Food Service Program (FSP) and Personal Hygiene Practices Audit* submitted on July 31, 2007 was appropriately conducted by the HCCC and was a quality and thorough audit.

Current Assessment of Compliance

During the current quarter, the Monitor completed its review of the *FSP Audit* submitted by the DPD on January 31, 2008. The Monitor reviewed the audit work plan, audit matrices, and supporting documentation.¹²⁶

The Monitor's findings, which were discussed with the DPD's AT, are highlighted below:

- The AT submitted this audit in a timely manner on January 31, 2008. The audit was conducted by members of the AT with the involvement of the HCCC as specifically required by paragraph C71.¹²⁷
- The audit tested all of the required substantive paragraphs and selected appropriate populations for each objective. Similar to previous audits of this topic, the AT included three on-site inspections per district.
- The reported findings were supported by well-organized working papers that reconciled to the underlying documentation (logs). The Monitor concurred with the AT's findings for each objective, namely that the DPD is not yet in compliance with paragraphs C49-51.
- The Monitor noted several errors in the reported findings compared to the audit working papers in the AT's assessment of cleaning documentation. These errors resulted from incorrect calculations of compliance, which was determined to be an oversight on the part of the auditor. Notwithstanding these errors, the AT correctly reported the DPD's compliance with the associated objectives and paragraphs.
- In one of its on-site inspections of the District's food service and sanitary conditions, the HCCC inspection team did not complete an assigned audit inspection because the service of food had already occurred at the district, and they could not observe the service of the food to

¹²⁶ Since the DPD stopped testing at +/-10%, the Monitor reviewed Daily Detainee Meal and Hygiene Logs for 100% of the sample of the detainees selected for review by AT. Additionally the Monitor reviewed all of the available matrices used in conducting on-site inspections and the Weekly Detainee Refrigerator Cleaning and Inspection Logs reviewed by AT.

¹²⁷ During this audit, two of every three inspections were conducted by the HCCC or the Detroit Department of Health and Wellness Promotion (DDHWP) Food Sanitation Section. The DDHWP reviews and approves the Detainee Feeding Policy; its members are also members of the HCCC.

detainees. The inspection team should have conducted the inspection for the remaining requirements, such as the cleanliness of the food service area and the availability of hand washing implements. In short, the entire inspection matrix of 47 questions was incorrectly marked as “unable to determine (UTD)” even though many of the requirements could have, and should have, been tested. The AT then inappropriately included these UTD findings and considered them a deficiency within the District and the DPD. Rather the AT should have recognized that the UTD was a flaw in the lack of inspection rather than the District’s performance; the AT should have excluded them from the calculations of compliance and conducted a replacement inspection.

- The AT reproduced almost the entire working papers within the audit report. This made the information cumbersome to read and difficult to comprehend. The AT should have summarized the data, which would have provided DPD executives with a less detailed, bigger picture view of the audit findings.

Although the Monitor identified several errors in the *FSP Audit*, as described above, these errors did not significantly affect the quality of the audit nor the AT’s conclusions of the DPD’s overall compliance. As a result, the Monitor finds the DPD in compliance with the requirements of paragraph C71.

Paragraph C72 – Audit Reporting Requirements

Paragraph C72 requires the results of each of the COC CJ audits to be submitted via a written report to the Chief of Police and all precinct and specialized unit commanders. Paragraph C72 also requires commanders to take disciplinary or non-disciplinary corrective action, when appropriate, regarding employees under their command.

Background

The Monitor last assessed the DPD’s compliance with paragraph C72 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The HCCC had submitted audits required by the COC CJ in July 2007 and the Monitor had requested the associated documentation in response to this paragraph. The DPD had submitted a document titled *Audit Follow-Up Protocol* for which the Monitor had provided feedback. However, as of the end of that quarter the Monitor had not received any documentation evidencing corrective action taken in connection with the audits submitted.

Current Assessment of Compliance

Since January 31, 2008, the DPD’s AT submitted a total of eight COC CJ required audits. The OCR distributes the audit reports electronically via the DPD’s email system to the Chief of Police and COs, which meets one of the requirements of this paragraph.

In response to the requirement for COs to take action in response to the audits, during the current quarter, the DPD submitted documentation evidencing that non-disciplinary corrective action for several DPD members was taken by the Southwestern District CO in response to one of the eight audits mentioned above. However, as of the end of the current quarter, no other documentation has been submitted evidencing similar action by the other COs in connection with findings in the eight COC CJ audits. The Monitor initiated discussions with the OCR staff to discuss the DPD's efforts towards compliance with this aspect of the paragraph. The results of those discussions are as follows:

- According to the OCR staff and the City's 19th *Quarter Status Report*, the DPD is continually taking steps to address negative audit findings that impact the DPD as a whole. Some of these steps include informal training at the district or unit level, the issuance of teletypes, and the revision of forms, procedures, and/or policies. However, the DPD has not yet implemented a system or process for ensuring that such steps are documented, tracked, and submitted to the Monitor for evaluation.¹²⁸
- The OCR staff indicated that in response to previous feedback provided by the Monitor, they are currently revising the *Audit Follow-Up Protocol* and the "Corrective Action Needed" (CAN) System, DPD Form 568, which will be used to document compliance with the requirements of C72.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C72.

XIV. TRAINING

This section of the COC CJ (paragraphs C73-78) requires the DPD to provide all detention officers with comprehensive training, maintain individual training records, provide training in key areas such as emergency response, intake and medical protocols, safety programs, maintenance protocols, and food preparation and delivery protocols.¹²⁹

¹²⁸ After the end of the quarter, on June 12, 2008, the Monitor provided to the OCR staff a tracking grid in the form of a spreadsheet, similar to the Monitor's tool used to track the audit findings and documentation submitted in response to the audit findings. The grid will assist the OCR staff with tracking actions already taken and it will also be a useful tool to ensure that COs are notified of each item requiring specific disciplinary or non-disciplinary corrective action. The grid will also provide a mechanism for follow-up on each item to ensure that action has occurred and will be a useful device to communicate such actions to the Monitor. The grid was well received by the OCR staff and should assist in their efforts to achieve compliance with this paragraph.

¹²⁹ Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

The Monitor last assessed the DPD's compliance with paragraphs C73, 75-78 during the quarter ending August 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph C74 - Individual Training Records

Paragraph C74 requires the DPD to create and maintain individual training records for all detention officers, documenting the date and topic of all pre-service and in-service training completed on or after the effective date of the COC CJ.

Background

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The DPD indicated that it was continuing to enter training records into MITN as an interim method for tracking DPD training records for sworn personnel. However, all of the training records required by this paragraph have not been entered into MITN. Furthermore, although the DPD plans to use its MAS in order to maintain training records, the DPD had not fully implemented the MAS as an operational component for tracking and documenting individual training records for all officers.

Current Assessment of Compliance

As reported in its 19th *Quarter Status Report*, the DPD still intends to fulfill the requirements of this paragraph by utilizing the MITN system to capture all training records for sworn members. According to the DPD, they have continued to enter training records into MITN to track DPD sworn personnel training. However, as with our previous assessments, the vast majority of the training records that meet the requirements of this paragraph have not been entered into MITN.

In its 19 *Quarter Status Report*, the DPD also reports that it will be incorporating MAS as a datalink to the MITN system to integrate training records into the MAS, and is currently studying the feasibility of capturing training records for non-sworn members within MAS as well.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C74.

XV. MONITORING AND REPORTING

Paragraph C94 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. See paragraph U139, which

is the corresponding paragraph in the UOF CJ, for information regarding the requirements of this paragraph.

CONCLUSION

The DPD continues to make progress toward achieving substantial compliance with all substantive paragraphs in both Consent Judgments. To that end, the DPD was found to be in compliance for two or more consecutive quarters during which a topic was under review for 34 paragraphs. The DPD also achieved compliance for the first time with the review of arrests requirements. These are significant achievements. Nevertheless, as we approach the five-year mark since the inception of the Consent Judgments, the DPD has not yet achieved compliance with the majority of the substantive paragraphs.

Sheryl Robinson Wood
Independent Monitor

July 15, 2008

Principal Contributors

Joseph Buczek
Jerry Clayton
Penny Cookson
Charles Curlett
Hazel de Burgh
Ronald Filak
Thomas Frazier
Marshall Johnson
Denise Lewis
Jane McFarlane
Terry Penney
Sherry Woods

APPENDIX A:

Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor for the DPD

Following is a listing of acronyms utilized in the Independent Monitor's Quarterly Reports.

| ACRONYM | DEFINITION |
|----------------|----------------------------------------------------------|
| A&D | Arrest and Detention |
| AT | Audit Team |
| BOPC | Board of Police Commissioners |
| BOR | Board of Review |
| BRT | Board Review Team |
| CALEA | Commission on Accreditation for Law Enforcement Agencies |
| CAN report | Corrective Action Needed report |
| CBS | Cell Block Supervisor |
| CCR | Citizen Complaint Report |
| CDDT | Curriculum Design and Development Team |
| CEPP | Comprehensive Emergency Preparedness Program |
| CFD | Critical Firearm Discharge |
| CI | Chief Investigator |
| City | City of Detroit |
| CLBR | Command Level Board of Review |
| CLFRT | Command Level Force Review Team |

| | |
|--------|-----------------------------------------------------------|
| CLO | Compliance Liaison Officer |
| CME | Confidential Medical Envelopes |
| CMMHSP | Comprehensive Medical and Mental Health Screening Program |
| CO | Commanding Officer |
| COC CJ | Conditions of Confinement Consent Judgment |
| CRD | Civil Rights Division |
| CRIB | Civil Rights Integrity Bureau |
| CSU | Communications Systems Unit |
| DA | Disciplinary Administration |
| DAS | Disciplinary Administration Section |
| DCCL | Detention Cell Check Log |
| DDHWP | Detroit Department of Health and Wellness Promotion |
| DDMHIL | Daily Detainee Meal and Hygiene Items Log |
| DDOH | Detroit Department of Health |
| DFD | Detroit Fire Department |
| DFF | Detainee File Folders |
| DFO | Detention Facility Officer |
| DHWP | Detroit Health and Wellness Promotion |
| DIF | Detainee Intake Form |
| DOJ | Department of Justice |
| DPD | Detroit Police Department |

| | |
|------|-----------------------------------------------|
| DPR | Daily Prisoner Report |
| DRH | Detroit Receiving Hospital |
| ECD | Emergency Communications Division |
| EPP | Emergency Preparedness Program |
| FI | Force Investigation |
| FIS | Force Investigation Section |
| FIU | Force Investigation Unit |
| FRT | Force Review Team |
| FSP | Fire Safety Program |
| FSPP | Fire Safety Practices and Policies [Audit] |
| GAS | Government Auditing Standards |
| HCCC | Holding Cell Compliance Committee |
| IACP | International Association of Chiefs of Police |
| IA | Internal Affairs |
| IAD | Internal Affairs Division |
| IAS | Internal Affairs Section |
| ICD | Internal Controls Division |
| IM | Independent Monitor |
| IMAS | Interim Management Awareness System |
| ITS | Information Technology Services |
| JIST | Joint Incident Shooting Team |

| | |
|--------|--------------------------------------------------------|
| LP | Lesson Plan |
| MAS | Management Awareness System |
| MCOLES | Michigan Commission on Law Enforcement Standards |
| MIF | Medical Intake Form |
| MIOSHA | Michigan Occupational Safety and Health Administration |
| MITN | MCOLES Information and Tracking System |
| MSP | Michigan State Police |
| OCI | Office of the Chief Investigator |
| OIC | Officer in Charge |
| OCR | Office of Civil Rights |
| PAB | Professional Accountability Bureau |
| PAIR | Police Action Incident Report |
| PCR | Preliminary Complaint Report |
| PDDS | Platoon Daily Detainee Summary |
| PDO | Police Detention Officer |
| PEERS | Performance Evaluation and Enhancement Review Session |
| PI | Performance Indicator |
| PSA | Public Service Announcement |
| RFP | Request for Proposals |
| RMB | Risk Management Bureau |
| RMG | Risk Management Group |

| | |
|--------|----------------------------------------------------------------|
| SCAN | Security Communications Alert Network, Inc. |
| SCBA | Self-Contained Breathing Apparatus |
| SIR | Supervisor's Investigation Report |
| SME | Subject Matter Expert |
| SMT | Senior Management Team |
| SOP | Standard Operating Procedure(s) |
| TA | Technical Assistance |
| USAO | United States Attorney's Office |
| UOF | Use(s) of Force |
| UOF CJ | Use of Force and Arrest and Witness Detention Consent Judgment |
| WCPO | Wayne County Prosecutor's Office |
| WCSD | Wayne County Sheriff's Office |
| WIQD | Witness Identification and Questioning Documentation |