

REPORT OF
THE INDEPENDENT MONITOR
FOR THE
DETROIT POLICE DEPARTMENT



REPORT FOR THE QUARTER ENDING
NOVEMBER 30, 2008
ISSUED FEBRUARY 2, 2009

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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 twenty-first quarterly report of the Independent Monitor.⁴

The two Consent Judgments contain a total of 203 substantive paragraphs and subparagraphs with which the City and the DPD must substantially comply, 129 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 (subparagraphs U88c and f and paragraphs U89, U90, 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 203. 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.

substantial compliance for two consecutive review periods with 35 paragraphs or subparagraphs of the Consent Judgments.⁸

Each quarter, the Monitor examines a certain number of substantive paragraphs and subparagraphs. During the twenty-first quarter, which ended on November 30, 2008, the Monitor examined a total of 90 paragraphs or subparagraphs (61 paragraphs or subparagraphs of the UOF CJ and 29 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD are in compliance with 18, in partial compliance with two, and not yet in compliance with 30;⁹ the Monitor did not complete its evaluation¹⁰ of 30 paragraphs or subparagraphs.¹¹

As described above, overall, the Monitor is assessing the City and DPD's compliance with 203 paragraphs and subparagraphs, 129 from the UOF CJ and 74 from the COC CJ. The City and the DPD are currently in compliance with 66 of these paragraphs and subparagraphs (41 from the UOF CJ and 25 from the COC CJ)¹² and in partial compliance with four (three from the UOF CJ and one from the COC CJ).

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 35 paragraphs and subparagraphs, the Monitor found two in substantial compliance for two consecutive review quarters for the first time during the current review period (paragraph C58 and subparagraph C65b). Also included are four paragraphs that were previously in compliance for two consecutive quarters but for which a compliance determination was not yet completed during the current quarter (U61, U65, U67b, and U110).

⁹ The Monitor continues to utilize the terms "notable progress" and "significant progress" for paragraphs that are not yet in compliance or partial compliance. There were no non-compliant paragraphs that qualified for the notable progress or significant progress designations this quarter.

¹⁰ 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.

¹¹ 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.

¹² Included in these 66 paragraphs and subparagraphs are five paragraphs and subparagraphs that were in compliance prior to the current quarter but for which a compliance determination was not yet completed during the current quarter. All five of these are from the UOF CJ.

Use of Force Paragraphs

The Monitor assessed the Department's compliance with UOF CJ requirements regarding the implementation of its use of force policy and the conduct of general, use of force and PI investigations. In the assessment of the DPD's implementation of its use of force policy, the Monitor found that the types and levels of force used by the officers were consistent with the DPD's use of force continuum and officers gave verbal warnings when possible and de-escalated the level of force when appropriate. The only deficiency was that the DPD failed to document the use of appropriate precautionary measures that officers should take when possible to avoid the need to use force.

As has been consistently reported since the relevant paragraphs were first tested for implementation, the DPD has not yet achieved substantial compliance with the majority of the UOF CJ investigatory requirements. In fact, during this quarter the DPD's Audit Team (DPD AT) and the Monitor found that the DPD is no longer in compliance with two paragraphs in this area with which it had previously achieved compliance. Specifically, the DPD is no longer in compliance with requirements related to the Garrity protocol and requirements prohibiting leading questions and the use of interviews via written questions when contrary to appropriate law enforcement techniques. Also, although the investigations are adequately evaluating uses of force, the investigators are not evaluating the officers' tactics surrounding the uses of force. Nevertheless, the Monitor continued to find that investigations conducted by Force Investigation are of high quality. Also, the DPD continues to achieve compliance with the requirements to ensure that it accepts and processes all external complaints regarding incidents occurring in holding cells consistent with the DPD's external complaint policies

Once again, the Monitor's assessments of compliance with the requirements regarding critical firearm discharges and in-custody deaths have not changed significantly from previous quarters. The Department continues to struggle with carrying out the timing requirements in the critical firearm discharge investigative protocol, and has continued to fail to implement the Command Level Force Review Team (CLFRT or Board of Review) requirements. The Monitor found that the Department did not convene a CLFRT (Board of Review), as required by the UOF CJ, for any of the 11 critical firearm discharges selected for review; the DPD AT had similar findings. In a positive development, the DPD AT found that for the two critical firearm discharge investigations that were reviewed, the investigators conducted and preserved in the investigative files all appropriate ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests; however, neither investigation was completed within 30 days as required.

This quarter, in keeping with the Court's order, the DPD submitted its paragraph U41 annual report on critical firearm discharges and in-custody deaths for 2007. The Court granted the City's motion requesting that the DPD be relieved of its obligation to draft a report for 2005. As a result, the Monitor found the DPD in compliance with paragraph U41. The DPD's 2008 report will be due no later than May 31, 2009.

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 conveyances; arrest and detention documentation and Commanding Officer reviews. The Monitor again found that sufficient probable cause existed for all DPD arrests; however, for requirements related to reviews of arrests for probable cause, the DPD is no longer in compliance after achieving compliance for the first time during the last period that this topic was under review. This is primarily due to untimely or undocumented supervisory reviews.

The DPD also has not yet effectively implemented the documentation and review requirements related to stops and frisks. And, documentation of all interviews, interrogations and conveyances occurred in some instances; however, overwhelmingly, the required supervisory reviews were not occurring at all.

The Monitor continues to find that the DPD is not yet capturing all information required in connection with custodial detentions, including identifiers such as social security numbers and age, as well as aliases and physical characteristics. With regard to Commanding Officer reviews, auditable forms were not generated and therefore such reviews did not occur for stops and/or frisks or for interviews, interrogations and conveyances. Commanding Officer reviews of arrests occurred about half of the time for arrests for which an arrest warrant was not sought.

General Policies Paragraphs

The Monitor found the DPD in compliance with UOF CJ and COC CJ requirements to ensure all terms contained within the Consent Judgments are clearly defined in Departmental policies and to make available to the community proposed policy revisions.

Risk Management Paragraphs

According to the DPD, the Management Awareness System (MAS) was rolled out and implemented department-wide between July 24 and August 11, 2008. The DPD is commended for this significant accomplishment. The Monitor, the DOJ and the DOJ's expert intend to assess the MAS in January 2009.¹³

Audit Paragraphs

During the current quarter, the Monitor completed its review of the *Use of Force Investigations Audit* and the *Stops and Frisks Audit* that were submitted by the DPD on August 31, 2008. The Monitor identified several qualitative deficiencies in the *Use of Force Investigations Audit*, the most significant being that the audit failed to identify that investigators had not evaluated

¹³ After the end of the quarter, on January 12-13, 2009, the Monitor, the DOJ and the DOJ's expert spent two days evaluating the MAS, and DOJ's expert provided on-site feedback to the City and the DPD. The results of the assessment will be included in the Monitor's Report for the Quarter Ending February 28, 2009.

officers' tactics along with the force used in the use of force investigations, and that the audit time period selected for this audit was insufficient for evaluating the DPD's uses of force. As a result, the Monitor found the DPD in non-compliance with UOF CJ requirements regarding audits of use of force investigations. The Monitor found the *Stops and Frisks Audit* in partial compliance with pertinent UOF CJ requirements. Although the audit was well-organized and well-presented, it contained a number of qualitative deficiencies that had a direct impact on the accuracy of the AT's findings.

The Monitor also completed its review of five audits required by the COC CJ, which were submitted by the DPD on July 31, 2008: the *Use of Force in Holding Cells Investigations Audit*, the *Prisoner Injury in Holding Cells Investigations Audit*, the *Allegations of Misconduct in Holding Cells Investigations Audit*, the *Detainee Safety Programs Audit*, and the *Food Service Programs Audit*.

The Monitor determined that the *Use of Force in Holding Cells Investigations Audit* was partially compliant. While the audit was, for the most part, a quality audit, the Monitor identified deficiencies similar to those identified in the *Use of Force Investigations Audit* related to the requirement for investigators to evaluate officers' tactics along with the force used. The Monitor found the *Prisoner Injury in Holding Cells Investigations Audit* and the *Allegations of Misconduct in Holding Cells Investigations Audit* in compliance, as they were well-performed, contained valuable recommendations to correct systemic problems and operational deficiencies identified during the audits, and, overall, were quality audits. The Monitor identified numerous qualitative and quantitative deficiencies in the *Detainee Safety Programs Audit*, including faulty sampling, incorrect testing of a number of items, and the failure to identify a number of critical issues related to cell checks and the communication of security screening information between holding cell staff. The Monitor identified substantial deficiencies in the *Food Service Programs Audit*, specifically flaws in its mathematical calculations of compliance and scope problems related to the exclusion of certain testing criteria in the calculations of compliance. As a result, the Monitor determined that the DPD is no longer in compliance with the pertinent COC CJ requirements regarding audits of Detainee Safety and the Food Service Programs.

During the current quarter, the Monitor also completed its review of the 2008/2009 Audit Protocol submitted by the DPD on August 31, 2008 pursuant to paragraph U92. The Monitor determined that the content and dissemination of the Audit Protocol, as well as training processes related to it, were adequate and sufficiently addressed Consent Judgment requirements and government auditing standards. The Monitor also completed its assessment of compliance with the Holding Cell Compliance Committee requirement of paragraph C66. The Monitor found that the committee meetings were attended by appropriate HCCC members and addressed issues in areas pertinent to achieving compliance with various COC CJ provisions. The Monitor also assessed the DPD's compliance with the reporting and follow-up requirements as described in paragraph C72 in connection with the COC CJ audits submitted by the DPD on July 31, 2008. The Monitor found that although the DPD is taking steps to ensure suitable corrective or disciplinary action is being taken, several significant officer-specific audit findings were not addressed.

The Monitor is continuing its review of the *Allegations of Misconduct Investigations* and the *Witness Identification and Questioning Audits* that were also submitted on August 31, 2008. The Monitor expects to complete its review and report its findings in its Report for the Quarter Ending February 28, 2009.

Training Paragraphs

Significantly, the DPD began its in-service training program on August 4, 2008. The Monitor is in the process of evaluating the training and provided the DPD with initial feedback at the end of this quarter. The DPD has not yet effectively implemented its semi-annual review of all Use of Force and Arrest and Detention training, nor has it developed an adequate evaluation system or needs assessment tool, 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: medical and mental health, prisoner safety, and persons with disabilities. The DPD continues to be in compliance with requirements related to suicide clothing and the removal of suicide hazards. The Monitor has elected to defer evaluation of the medical and mental health policies and persons with disabilities paragraphs until the DPD submits its next audit of Medical and Mental Health Programs and Policies, which is due on January 31, 2009.¹⁴ With regard to the detainee safety paragraphs, the DPD is no longer in compliance with requirements regarding the implementation of its observation cell policies, and has not yet achieved compliance with the other requirements related to security screening and cell check policies.

¹⁴ The DPD skipped the submission of the *Medical and Mental Health Programs and Policies Audit* that was due on July 31, 2008.

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APPENDICES:

- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor for the Detroit Police Department
- B. “Report Card” Summarizing the Monitor’s Evaluation of Compliance with the Consent Judgments as of the Quarter Ending November 30, 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.¹⁵ This is the twenty-first report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor¹⁶ 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.¹⁷ 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,¹⁸ 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 twenty-first quarter, which ended on November 30, 2008, are assessed in this report.¹⁹

¹⁵ The primary members of the Monitoring Team are Joseph Buczek, Jerry Clayton, Penny Cookson, Hazel de Burgh, Thomas DeGonia, Ronald Filak, Thomas Frazier, Marshall Johnson, Denise Lewis, Jane McFarlane, Terry Penney, and Sherry Woods.

¹⁶ The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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,²⁰ 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 twenty-first quarter, the City and the DPD worked towards retrofitting the holding cells to meet the requirements of the Fire Safety Code before the court-ordered deadline of December 31, 2008. Significantly, the City and DPD achieved this accomplishment for the five districts that contain holding cells that are in use by the DPD. Aside from this achievement, the DPD continued to face challenges with compliance, mostly due to the lack of automated systems and resulting failure to provide adequate and complete documentation of the implementation of Consent Judgment requirements.

In the quarter immediately preceding this one, the Monitor reported that the DPD achieved compliance or partial compliance for the first time in several areas and there were several areas where compliance had previously been achieved but was not reached during that quarter. During this quarter, which assessed different paragraphs than the previous one, the DPD fell out of compliance with several paragraphs, including the implementation of the Garrity protocol, the requirements prohibiting leading or written questions, review of arrests, and audit of Detainee Safety and Food Service Programs.

Of the 90 paragraphs or subparagraphs that the Monitor assessed during the current quarter, the Monitor found that the DPD achieved compliance with 18 paragraphs and subparagraphs and partial compliance with two paragraphs or subparagraphs.²¹ Overall, the DPD is currently in compliance with 66 of the 203 paragraphs and subparagraphs that are assessed in the combined

²⁰ 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.

²¹ The Monitor continues to utilize the terms "notable progress" and "significant progress" for paragraphs that are not yet in compliance or partial compliance. There were no non-compliant paragraphs that qualified for the notable progress or significant progress designations this quarter.

Consent Judgments (41 of 129 paragraphs and subparagraphs from the UOF CJ and 25 of 74 paragraphs and subparagraphs from the COC CJ).²²

The DPD has been in overall substantial compliance for two or more quarters with 35 paragraphs or subparagraphs of both Consent Judgments.²³ Of these 35 paragraphs and subparagraphs, the Monitor found two in substantial compliance for two consecutive review quarters for the first time during the current review period.²⁴

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 with a Consent Judgment requirement when either a reliable audit has been submitted that concludes compliance or greater than 94% compliance is achieved for a statistically valid random sample²⁵ of incidents from as recent a period as is practicable. 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 Included in these 66 paragraphs and subparagraphs are five paragraphs and subparagraphs that were in compliance prior to the current quarter but for which a compliance determination was not yet completed during the current quarter. All five of these are from the UOF CJ.

²³ 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 four paragraphs that were previously in compliance for two consecutive quarters but for which a compliance determination was not yet completed during the current quarter (U61, U65, U67b, and U110).

²⁴ Paragraph C58 and subparagraph C65b.

²⁵ 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.

For paragraphs that have a qualitative aspect and cannot be assessed by using quantitative measures alone, in addition to assessing any quantitative items described above, the Monitor will also assess “performance-related qualitative criteria” that can affect the compliance assessment for the paragraph. The Monitor will report whether any such deficiencies had “substantial” or “some” affect on the quality of the item being assessed. When possible, the Monitor will also report whether or not significant or notable progress was made as compared to the prior assessment of these types of paragraphs.

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 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.²⁶ 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.

²⁶ 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.

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,²⁷ while others do not.²⁸ 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.²⁹

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 subparagraph³⁰ of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.³¹ 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.

²⁷ See, for example, paragraph U43 – Arrest Policies and paragraph U45 – Stop and Frisk Policies and related training paragraph U114.

²⁸ See, for example, paragraphs U73 -- Supervisory Deployment and paragraph U77 -- Foot Pursuit Policies.

²⁹ As described in the Introduction to the Methodologies, this is the Training Component of compliance.

³⁰ 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.

³¹ 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.

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 November 30, 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,³² and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

³² 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 November 30, 2008.

I. USE OF FORCE POLICY

This section of the UOF CJ (paragraphs U14-26) requires the DPD to make revisions to its Use of Force (UOF) policies. Specifically, the DPD must revise its general UOF policy, use of firearms policy and chemical spray policy. The DPD must choose an intermediate force device, develop policy for the device, incorporate the device into the UOF continuum, and provide annual training on the use of the device.

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 unless the policies directly responsive to the paragraphs are revised.³³

The Monitor last assessed the DPD's compliance with paragraph U18 during the quarter ending August 31, 2008. 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. Paragraph U18 includes the implementation of paragraphs U14-17 and U19.

³³ 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.

Background

During the quarter ending August 31, 2008, the Monitor conducted an independent review of 15 UOF investigations reviewed in two audits submitted by the DPD, which included both command level and Force Investigation (FI) investigations.³⁴ All 15 incidents involved relatively low levels of force, and the types of force used by the officers were in compliance with the DPD's force continuum. However, the Monitor identified several areas of concern with regard to officers' tactical procedures surrounding the force incidents, including the officers' and investigators' reports failure to address the precautionary measures described in subparagraph U15c.³⁵ Since the Monitor's prior evaluation (during the quarter ending May 31, 2008) identified that officers had used inappropriate force techniques related to more serious uses of force, the Monitor indicated that it had not completed its determination of compliance and it would review additional uses of force before concluding on paragraph U18.

Current Assessment of Compliance

During the current quarter, the Monitor completed its assessment of the DPD's implementation of its UOF policies and its compliance with paragraph U18 by reviewing additional force incidents contained in the *Use of Force Investigations Audit (UOF Audit)*³⁶ submitted by the DPD on August 31, 2008.³⁷ The *UOF Audit* included a total of 18 incidents, 16 of which involved an actual use of force.³⁸ Of the 16 force incident investigations, ten were conducted at the command level, three were conducted by the Office of the Chief Investigator (OCI), one was conducted by FI, and two were conducted by the Joint Incident Shooting Team (JIST). The types of force used by officers in 13 of the 16 incidents were generally compliance and control holds, one of which included the use of chemical spray. The remaining three incidents included one FI investigation that involved a serious use of force (strike to the head) and the two JIST incidents that involved Critical Firearm Discharges (CFDs).

³⁴ Seven force incidents were reviewed in the *Prisoner Injuries (PI) Audit* submitted on May 31, 2008 and eight force incidents were reviewed in the *Use of Force in Holding Cells (UOFHC) Audit* submitted on July 31, 2008.

³⁵ As described in greater detail in the *Current Assessment of Compliance*, below, subparagraph U15c requires that the DPD's force policies describe appropriate precautionary measures that officers should take when possible to avoid the need to use force. Subparagraphs U76b and C53b also contain requirements similar to those in subparagraph U15c. The training requirements are included in subparagraph U112f.

³⁶ The *UOF Audit*, which was submitted by the DPD on August 31, 2008, is separately evaluated under subparagraph U94a. Refer to the *Current Assessment of Compliance* for subparagraph U94a, below.

³⁷ The DPD AT is not required to audit the force incident, only the "investigation" of the force. As such, the Monitor conducted an independent assessment of the force using the incidents included in this audit.

³⁸ Two of the 18 incidents were Allegations of Force (AOF) in which the investigations determined that no force had occurred.

Similar to the Monitor's findings from its review of the first 15 incidents, based on the information reported in the officers' reports and supervisory investigations, the Monitor found that for all 16 incidents, the types and levels of force used by the officers were consistent with the DPD's use of force continuum. The reports also indicate that officers gave verbal warnings when possible and de-escalated the level of force when appropriate. These findings demonstrate that the DPD is effectively implementing all of the requirements described in paragraphs U14-17 and U19, with one exception: as described immediately below, the DPD is not yet implementing the precautionary measures required by subparagraph U15c and contained in the DPD's Use of Force policy, Directive 304.2, *Use of Force*.

Subparagraph U15c requires that the DPD's force policies state that "de-escalation, disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units are often the appropriate response to a situation." The aforementioned actions are considered appropriate precautionary measures that officers should take when possible to avoid the need to use force, and are also described in subparagraphs U76b and C53b. The Monitor notes that the training specifications in subparagraph U112f also include these precautionary measures and specifically state that these techniques are intended to allow officers to effect arrests without using force even when the use of force would be legally justified.

In its review of the additional 16 force incidents, the Monitor again found that neither the officers' reports nor the investigative documentation completely or adequately addressed the officers' tactical procedures or decision-making with regard to the required precautionary measures. In regards to the officers' reports, for the most part, the reports did not include sufficient details concerning any decisions that were made on the part of the officers in an effort to avoid the need for the UOF.³⁹ In regards to investigators' reports, although some of the reports included detail that allowed for a review of some of the officers' tactical procedures, the reports were incomplete in the area of evaluating any precautionary measures taken.⁴⁰

Even though the DPD investigators did not evaluate the officer's tactics surrounding the force incidents, the Monitor attempted to conduct an independent evaluation of the officers' tactics

³⁹ When reporting a UOF, officers should always include specific details regarding their tactics surrounding the UOF incident. The Monitor notes that officers are not expected to include a detailed description of *every* tactical procedure used, nor *every* decision they make surrounding the UOF incident. However, documentation of the use of verbal commands and the reasoning for decisions to summon, or not to summon, additional officers when dealing with a recalcitrant or resistant subject should be included. Furthermore, officers are not expected to account for *every* potential alternative situation; however, the initial decisions made and actions taken in an effort to avoid the need to use force, and the tactics used to minimize the amount of force needed, are critical components of the incident and necessary to facilitate the investigatory review of such tactics.

⁴⁰ The Monitor notes that the requirement for investigators to evaluate the officers' tactics surrounding the UOF incident, including any precautionary measures taken by officers, is contained in subparagraph U32f and the DPD's Training Directive 04-7, *Use of Force Reporting and Investigation*. Refer to the *Current Assessment of Compliance* for subparagraph U32f for details regarding the DPD's compliance with the applicable investigative requirements.

based on the written reports of the additional 16 incidents. While the Monitor again noted several potential issues with regard to the officer's tactical procedures that appear to be questionable, the Monitor recognizes that its evaluation is based on investigations that may be lacking sufficient detail regarding the incident (i.e. totality of the circumstances), which hinders the Monitor's ability to assess the officers' actions in connection with the requirements of subparagraph U15c. Consequently, in order for the Monitor to evaluate the subparagraph U15c requirements going forward, officers must include within their UOF reports detailed information regarding the tactical procedures and decisions leading up to, during, and after the use of force, and investigators must begin evaluating the officers' tactics, ensuring that sufficient information regarding the circumstances and decision-making leading up to and surrounding the force incident are included in the investigative reports.

The Monitor, the DPD (including the Office of Civil Rights (OCR), and the DPD's Audit Team (DPD AT or AT)), and the DOJ have had ongoing discussions regarding this issue. The DPD has since agreed to ensure that investigators begin evaluating the officers' tactics surrounding force incidents, and has agreed to train its members, including the audit team, in this area.⁴¹

Based on the foregoing, the Monitor finds that the DPD continues to be in compliance with the policy requirements of paragraph U18; however, the Monitor finds that the DPD is not yet in compliance with all of the implementation requirements of paragraph U18 (which includes the implementation of the underlying paragraphs U14-17 and U19), specifically those contained in subparagraph U15c.

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 unless the policy directly responsive to the paragraph is revised. The Monitor last assessed the DPD's compliance with paragraphs U21-23 during the quarter ending August 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending February 28, 2009.

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 August 31, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending February 28, 2009.

⁴¹ After the end of the current quarter, on January 23, 2009, the DPD issued a teletype to its members in an effort towards compliance in this area. The Monitor will provide the DPD with feedback on the teletype and any other efforts to instruct its members during the quarter ending February 28, 2009.

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 August 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending February 28, 2009.

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 UOF, prisoner injuries (PI), 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 form⁴² to document any PI, 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 uses of force (which includes all CFDs), uses of force 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 May 31, 2008. 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.

⁴² 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:

- a. a precise description of the facts and circumstances of the incident, including a detailed account of the subject's / complainant's and officer's actions and an evaluation of the initial stop or seizure;
- b. a review of all relevant evidence, including circumstantial, direct and physical evidence;
- c. that the fact that a subject or complainant pled guilty or was found guilty of an offense shall not be considered as evidence of whether a DPD officer engaged in misconduct, nor shall it justify discontinuing the investigation;
- d. reasonable credibility determinations, with no automatic preference given to an officer's statement over a non-officer's statement or discounting of a witness' statement merely because the witness has some connection to the subject or complainant;
- e. an evaluation of whether an officer complied with DPD policy;
- f. an evaluation of all UOF, including the officer's tactics, and any allegations or evidence of misconduct uncovered during the course of the investigation;
- g. all administrative investigations to be evaluated based on a preponderance of the evidence standard;
- h. written documentation of the basis for extending the deadline of a report and evaluation and provide that the circumstances justifying an extension do not include an investigator's vacation or furlough and that problems with investigator vacations or workload should result in the matter being reassigned; and,
- i. any recommended non-disciplinary corrective action or disciplinary action be documented in writing.

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 May 31, 2008. The Monitor found the DPD in compliance with paragraph U30 and in continued compliance with paragraph U31; the Monitor also found the DPD in compliance with the policy requirements of paragraphs U27-30 and U32-33 but not yet in compliance with the implementation requirements of these paragraphs. The Monitor based its findings on its review of the following audits submitted by the DPD: the *Allegations of Misconduct in Holding Cells (AOMHC) Audit Report*, the *Prisoner Injury in Holding Cells (PIHC) Audit Report*, and the *Prisoner Injury Not in Holding Cells (PINHC) Audit Report*, all of which evaluated the DPD's compliance with paragraphs U27-33, among others.

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 *PIHC Audit*,⁴³ the *Allegations of Misconduct (AOM) Audit*,⁴⁴ and the *UOF Audit*.⁴⁵ In these audits, a total of 52 investigations were reviewed, of which 12 were conducted at the command level, three were conducted by the OCI, 32 were conducted by Internal Affairs (IA), three were conducted by FI, and two were conducted by JIST.⁴⁶

Overall, the reviews provided consistent findings, with few variances:

- The *PIHC Audit* found that the DPD was in compliance with paragraph U30 but not yet in compliance with paragraphs U27-29 and U32-33. Paragraph U31 was not assessed, as there were no applicable investigations.

⁴³ The *PIHC Audit*, which was submitted on July 31, 2008, is separately evaluated under subparagraph C65c of this report.

⁴⁴ The *AOM Audit*, which was submitted on August 31, 2008, is separately evaluated under subparagraph U94c. Although the Monitor has not yet finalized its review of the audit, the Monitor has completed its review of the investigations within the audit. The Monitor will report its complete findings in connection with this audit in the Monitor's Report for the Quarter Ending February 28, 2009.

⁴⁵ The *UOF Audit*, which was submitted on August 31, 2008, is separately evaluated under subparagraph C65a of this report.

⁴⁶ On a per audit basis, the investigations break down as follows: two investigations were reviewed in the *PIHC Audit*, 32 investigations were reviewed in the *AOM Audit*, and 18 investigations were reviewed in the *UOF Audit*.

- The *AOM Audit* found that the DPD was in compliance with paragraphs U27 and U30 but not yet in compliance with paragraphs U28-29 and U31-33.
- The *UOF Audit* found that the DPD was not yet in compliance with paragraphs U27-33.

There are numerous requirements contained in general investigation paragraphs U27-33 and their corresponding subparagraphs. The findings are summarized below:⁴⁷

- In evaluating compliance with the requirements of paragraph U27, the above audits consistently found that command investigations were not thorough and complete, and were otherwise not in compliance with the general investigative requirements. In contrast, the *AOM Audit*, which included only IA investigations, found the DPD in compliance with paragraph U27. Likewise, in the *UOF Audit*, the three FI investigations reviewed were found to be complete and thorough and also in compliance paragraph U27.
- All three audits concluded that the DPD was not yet in compliance with the requirements of paragraph U28 based on issues identified in connection with specific subparagraphs. Generally, the investigations had deficiencies related to witness interviews, including a failure to address material inconsistencies between witness statements; the lack of photographs of injuries and/or alleged injuries; and, the failure to document canvassing of the scene for witnesses. Most of the investigations reviewed included appropriate medical documentation, when required, and the names and badge numbers of all officers on the scene.
- Similar to previous audit findings, all three audits found that the DPD was not yet in compliance with paragraph U29. Generally the audits found that involved officers did not provide timely statements or investigative files lacked documentation indicating that officers' statements were timely. The *PIHC Audit* also found that the two PI investigations reviewed did not videotape or audiotape interviews when required, and did not include a signed refusal from the complainant when an interview was not video- or audiotaped.
- The *UOF Audit* and the *AOM Audit* found that for the most part the IA, FI and JIST interviews were conducted in accordance with paragraph U30. The *UOF Audit* and the *PIHC Audit*, however, could not determine whether leading questions were used as part of the interviews, as the majority of the command investigations did not include written questions and did not video- or audiotape the interviews.⁴⁸ As a result, these audits found the

⁴⁷ As the DPD moves closer to compliance with a particular requirement, 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 non-compliant assessments of the implementation of the majority of these requirements, the current findings are summarized.

⁴⁸ Although paragraph U30 does not require investigations to include interview question documentation (written questions, videotape or audiotape), the DPD must document its interview questions in order to demonstrate that investigators are not using leading questions during interviews.

DPD in non-compliance with the subparagraph U30a requirements and, consequently, in overall non-compliance with paragraph U30. Based on the documentation deficiencies in thirteen of the 52 (72%) investigations included in these audits,⁴⁹ the DPD is no longer in compliance with paragraph U30.

- Regarding paragraph U31, the *PIHC Audit* had no applicable investigations and therefore did not assess compliance with that paragraph. In the *AOM Audit*, two of the first twelve IA investigations reviewed were non-compliant because the Garrity Notices were not signed or dated. As a result, the AT appropriately ceased its testing due to the non-compliant finding. In the *UOF Audit*, in the one investigation that was applicable to paragraph U31 requirements, no interviews of the involved officers were conducted; as a result, the AT could not determine if the officers had refused to provide a statement and/or should have been compelled under the Garrity Protocol. In summary, of the 13 investigations applicable to paragraph U31 in these audits, three were deficient, resulting in a 77% compliance rate. As a result, the DPD is no longer in compliance with paragraph U31.

The findings from the audits and the Monitor's independent review of FI investigations specific to each subparagraph of paragraph U32 follow:⁵⁰

- Subparagraph U32a: According to the audits, all of the investigations contained a precise account of the facts and circumstances of the incident and evaluated any stops or seizures. While the investigations did not specifically state that the stops or seizures were justified, all of the investigations appropriately included a description of the legal basis for the stops or seizures when applicable. Since the legal justification for stops and seizures are specified in DPD policy, as well as Michigan State and Federal law, the inclusion of the legal basis for the officers' activities in this area is considered an implied evaluation of these activities.
- Subparagraph U32b: Similar to previous audit findings, 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 included an evaluation of whether or not the officers complied with DPD policy with regard to any sustained allegations and/or the use of force policies as they related to the specific force evaluated. However, the Monitor noted

⁴⁹ The *AOM Audit* reviewed 32 applicable investigations and found one in non-compliance, the *UOF Audit* reviewed 18 investigations and found ten in non-compliance and the *PIHC Audit* reviewed two investigations and found them both non-compliant.

⁵⁰ Because paragraph U32 includes a large number of subparagraphs and components of investigative requirements, the Monitor has summarized the findings specific to each subparagraph.

several investigations (one PI, three OCI and one command) that had not evaluated all of the officers' uses of force. In these five cases, the investigators also failed to evaluate the officers' compliance with the applicable force policies.

- Subparagraph U32f: Several of the investigations did not evaluate each instance of the officers' force, and none of those investigations completely or adequately evaluated the fundamental tactics used by officers surrounding the UOF incidents.⁵¹ Since most tactical procedures and decisions surrounding UOF incidents are not specified within DPD policy or within the State and Federal law, the investigators must include a specific evaluation of the officers' tactics, rather than simply restating the circumstances as reported by the officers.⁵²

The Monitor noted that in the two JIST CFD incidents, even though the investigators had not evaluated all of the fundamental tactics, based on the details provided in the reports and given the totality of the circumstances, the officers' tactical procedures surrounding the UOF incidents did not appear to be inappropriate, nor did they appear to violate the DPD's UOF policies or use of force continuum. Nevertheless, even absent the tactics evaluation, in both of these incidents the JIST investigator properly recommended that the officers receive additional firearms and/or tactical training, as the officers' force techniques in the specific area related to CFD could have been improved.

Several investigations included additional misconduct that was uncovered during the investigation but was not evaluated by the investigators. The Monitor noted that the misconduct was generally related to violations of DPD policy, such as an involved officer's failure to report a use of force.

- Subparagraph U32g: With the exception of one PI investigation in the *PIHC Audit* in which the investigator failed to include an overall summary, evaluation or conclusion, all of the investigations evaluated the incidents based on the preponderance of evidence standard.

⁵¹ For example, in an incident involving a domestic dispute, the responding officers received information from the victim regarding the suspect's violent behavior. Subsequently, one officer attempted to handcuff the suspect while the other officer was writing in his notebook. The suspect resisted and began choking the officer, and the officer had to punch the suspect in the face in order to escape the suspect's chokehold. The officer and the suspect then struggled before the suspect was eventually subdued and taken into custody. The officer who had to use force should have communicated with his partner before attempting to handcuff the suspect, thereby ensuring that his partner was available to assist if necessary. Additionally, the documentation does not indicate that the second officer assisted in any manner, and in fact the second officer's statement indicates that he "observed" the above facts and did not use force. The officer's tactics were not – but should have been -- evaluated by the investigator. Both officers should have received training in tactical communication and teamwork.

⁵² When evaluating the officers' tactics, the investigators must ensure that the officers' reports include sufficient information and an accurate account of the tactics surrounding the incidents, including the decisions made and actions taken before the force occurred. As with other areas of the investigation, in evaluating the officers' tactics, investigators can rely on their individual training and experience; their observations; the content of the tactical training officers have received; specific, directed questions during the interviews of officers, witnesses, and the subject; and a review of the evidence to corroborate the facts presented during the investigation.

- Subparagraph U32h: Similar to previous audit findings, none of the audits found the DPD in compliance with 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: Recommendations of disciplinary or non-disciplinary corrective action made by the investigators were documented in writing.

Paragraph U33 mainly describes requirements related to the review process of the investigations. While all the investigations were reviewed by the chain of command above the investigator, similar to previous audit findings, the reviewing supervisors are not identifying many of the errors in the investigations, such as those described in the preceding paragraphs. When corrections are identified and returned to the investigators, the documentation rarely demonstrates that corrections were made 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 a reviewing supervisor failed to evaluate an investigation appropriately, as required by subparagraph U33d.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy requirements of paragraphs U27-33. However, the DPD is no longer in compliance with the implementation requirements of paragraphs U30-31 and 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 May 31, 2008. 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 PI, 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 PI notifications to require:

- a. officers to notify their supervisors following any UOF or PI;
- 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 IA⁵³ 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 PI; 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 PI investigations to the supervisor for a command investigation.

Paragraph U36 requires the DPD to revise its UOF and PI 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.

Background

The Monitor last assessed the DPD's compliance with paragraphs U34-36 during the quarter ending May 31, 2008. The Monitor found 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 based its findings on its review of the DPD's audits of PI investigations, which included a total of 13 investigations of force incidents (11 command and five FI, which included two JIST) and an independent review of four additional FI investigations and two additional command investigations. Similar to previous audits conducted by the DPD's AT, the audits found that the DPD was not yet compliant with paragraphs U34-36. The Monitor concurred with these findings. The Monitor's additional review of force investigations substantiated the audit findings that officers were not properly documenting PIs or UOF, and officers were not notifying a supervisor following such incidents. None of the investigations contained profiles of the officers' UOF and disciplinary histories. While some of the requirements of these paragraphs were met, FI and IA were not consistently notified of serious incidents in order to respond when required, and none of the command preliminary investigations were completed within ten days as required.

⁵³ The DPD formerly referred to this entity as the Internal Affairs Section.

Current Assessment of Compliance

In order to assess the DPD's compliance with the requirements contained in paragraphs U34-36 during the current quarter, the Monitor reviewed the *PIHC Audit* and the *UOF Audit* submitted by the DPD on July 31 and August 31, 2008, respectively.⁵⁴ A total of 20 UOF and AOF investigations were reviewed in these two audits, of which 12 were conducted at the command level, three were conducted by OCI, three were conducted by FI, and two were conducted by the JIST.⁵⁵

Similar to previous audits conducted by the DPD 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:

- Twelve of the 20 investigations evaluated in both audits did not include an auditable form⁵⁶ as required by paragraph U34. Additionally, eight of the force investigations evaluated had no Force Control Number (FCN) from communications as required by the DPD's Training Directive 04-7, *Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating* (TD 04-7), which describes the DPD's current process for tracking force investigations.
- During its identification of investigations in the *UOF Audit*, the AT found that in seven of eight AOF investigations conducted by the OCI⁵⁷ that revealed that officers had used force, the UOF was not reported by the involved officers as required by subparagraph U35a and by TD 04-7.
- During its identification of investigations in the *PIHC Audit*, the AT identified three PI incidents that should have been investigated as required by subparagraphs U35b-U35d, but were not.
- The *UOF Audit* concluded that the requirements of subparagraph U35b are not being met. Specifically, the investigative documentation did not demonstrate that supervisors interviewed and examined the subjects at scene nor did the documentation provide detail that the subjects were provided medical attention when necessary.
- When DPD supervisors respond to the scene of a serious UOF, the supervisors notified FI as required by subparagraph U35c; however, FI was not notified as required in one of the two

⁵⁴ The *PIHC Audit* is separately evaluated under subparagraph C65c and the *UOF Audit* is separately evaluated under subparagraph C65a of this report.

⁵⁵ Two investigations were reviewed in the *PIHC Audit* and 18 investigations were reviewed in the *UOF Audit*.

⁵⁶ The UF-002.

⁵⁷ The AOFs had been reported to the OCI and were documented on a Citizen Complaint Report (CCR). Only three of these eight CCRs were included in the audit's sample of investigations reviewed.

PI incidents reviewed. Since FI was not notified, it could not respond as required by subparagraph U35d. For those incidents in which FI was notified, it appropriately responded to the scene and investigated the incidents as required.

- Subparagraph U36a describes requirements related to the content, timing and review process of command UOF and PI preliminary investigations. Both audits found that the investigations included synopses of the incidents, and the *UOF Audit* found that the UOF investigations reviewed also included all witness statements and a first-line supervisory review. However, both audits found that the investigations did not document that a canvass of the scene had occurred, generally did not include photographs of the detainees' injuries, and did not contain profiles of the officers' UOF and disciplinary histories.

Additionally, although requirements regarding the content and timing of the Supervisor's Investigation Report (SIR) are contained in TD 04-7, the SIRs were not completed within 10 days, and only five of 12 applicable command investigations were completed within 30 days. The AT could not determine whether any of the command investigations were forwarded to FI within seven days of completion, as required, due to tracking problems.

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 May 31, 2008. 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 May 31, 2008, withholding a determination of compliance with paragraph U37 and finding the DPD in compliance with the policy requirements of paragraphs U38-41. However, the Monitor found the DPD not yet in compliance with the implementation requirements of paragraphs U38-41. The Monitor requested and reviewed 11 CFD incidents occurring between March 15, 2008 and May 31, 2008. Although JIST responded to each of the incidents as required by paragraph U37, only one of the investigations was completed in a timely manner as required by paragraph U38. Also, the DPD convened a single Board of Review (BOR)⁵⁸ out of 11 CFDs identified during the time period reviewed.

⁵⁸ According to the DPD's Directive 305.4, *Board of Review*, the BOR is the CLFRT called for under paragraph U38.

Current Assessment of Compliance

In order to assess compliance with the implementation requirements of paragraphs U37-40, the Monitor reviewed a listing provided by the DPD of CFD incidents that occurred during the three-month period from March 1, 2008 through May 31, 2008 and reviewed the DPD's *UOF Audit*,⁵⁹ which included assessments of two CFD incident investigations.

UOF Audit Evaluation of CFD Incidents

The *UOF Audit* found that in both CFD incidents reviewed, the JIST team responded as required, and appeared to account for all shots fired, shell casings, and the locations of officers at the time the officers discharged their firearms. The audit also found that the investigators conducted and preserved in the investigative files all appropriate ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests; however, neither investigation was completed within 30 days as required.

Monitor's Evaluation of CFD Incidents

The Monitor requested a listing of all CFD incidents that occurred during the three-month period from March 1, 2008 through May 31, 2008, to include, at minimum, the date of incident, name of the district where the 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 eleven CFDs that occurred between the dates of March 10, 2008 and May 28, 2008, as follows:

⁵⁹ The *UOF Audit*, which was submitted on August 31, 2008, is separately evaluated under subparagraph U94a of this report.

Type of Incident	Date of Case	Date Case Closed	Case Disposition⁶⁰	Prosecutor's Disposition	BOR
Non-Fatal	3/10/2008	N/A	Open	Warrant Denied	None
Fatal	3/11/2008	N/A	Open	Warrant Denied	Impaneled
Shots Fired	3/28/2008	10/16/08	Closed – Not Sustained/Sustained	—	None
Shots Fired	3/28/2008	6/23/2008	Closed – Not Sustained	—	None
Non-Fatal	4/7/2008	9/16/2008	Closed – Exonerated	Warrant Denied	None
Unintentional	5/13/2008	5/29/2008	Closed – Sustained	—	None
Shots Fired	5/23/2008	N/A	Open	—	None
Shots Fired	5/24/2008	10/28/08	Closed-Exonerated/Sustained	—	None
Non-Fatal	5/24/2008	N/A	Open	Warrant Denied	None
Shots Fired	5/25/2008	N/A	Open	—	None
Shots Fired	5/28/2008	10/14/2008	Closed – Exonerated	—	None

With regard to paragraph U37, the information provided by the DPD stated that the JIST responded to and investigated the above 11 CFDs.

Only one⁶¹ of eleven investigations was 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.

Paragraphs U39 and U40 require that the CLFRT (DPD's BOR) evaluate all CFDs, and sets forth the requirements for the BOR. The DPD impaneled a single BOR from the 11 CFDs identified during the time period reviewed.⁶² The Monitor notes the CFD incident occurred on March 11, 2008 and a BOR was not impaneled until November 7, 2008.⁶³

⁶⁰ When multiple allegations are investigated in connection with the same incident, there will be a disposition for each separate allegation.

⁶¹ Although identified as a CFD, this incident occurred at the range and was identified as an unintentional discharge. The incident may have been properly closed as a violation of policy. However, it may not have been properly identified as a CFD because discharges at the range are specifically excepted.

⁶² As previously reported by the Monitor, and as of December 16, 2008, the Parties were discussing the composition and function of the CLFRT. The Monitor has consistently taken the position that a BOR must be impaneled for every CFD as directed in paragraph U39.

⁶³ At the end of this quarter, the BOR has not returned a finding.

During this quarter, the DPD provided the Monitor with the annual report required by paragraph U41 for the year 2007. The annual report for 2005 was not submitted.⁶⁴

With regard to the 2007 report, overall, it 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 2007 report is well-written and presents the information in a comprehensible manner. The Monitor 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.

- In contrast to 2006, the Monitor notes the 2007 report offered two specific recommendations to the Chief of Police based upon the review of CFDs occurring outside of the City of Detroit. FI should track the status of these recommendations in its 2008 report. While there was an overall decrease in CFDs from 2006 to 2007, the number of CFDs outside of the city of Detroit increased.
- The report under-utilizes the collected data to analyze DPD's successes as well as areas for improvement. For example, the dramatic improvement in reducing prisoner suicide attempts or gestures is attributed to training and accountability. This success may provide an example of training opportunities or methodologies that might be employed successfully in other divisions. An appropriate recommendation may be to have detention supervisors who were successful in their training and accountability efforts share those best practices with other supervisors who may be less successful.
- In an effort to maximize the usefulness of the data provided in the report, the Monitor suggests the addition of a "Recommendations" section. This section would identify successful strategies, areas for improvement, or changes in policies or procedures. By separating these specific recommendations, the report would provide a clear and actionable course of change for the Department based on data and experience.

Based on the foregoing, the Monitor finds DPD in compliance with the policy and implementation requirements of paragraphs U37 and U41, and in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraphs U38-40.

⁶⁴ On September 24, 2008, the Court granted the City's motion to be relieved of the responsibility of filing a 2005 U41 report based upon the City's assertion that an effective method of gathering reliable information had not been developed during the time period that the report would capture. In a further development, the parties agreed and the Court approved a timeline for the submission of future U41 reports. Going forward, the DPD must provide its annual reports within five months after the end of the preceding calendar year.

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 unless the policy directly responsive to the paragraph is revised.⁶⁵ The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending May 31, 2008. 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.

⁶⁵ 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 May 31, 2008, at which time the Monitor found that the DPD was in compliance. The Monitor determined that probable cause was present for 87 of 87 randomly selected arrests reviewed. Supervisory review, once it occurred, was adequately documented within 12 hours of arrests for 85 of the 87 arrests. For the five arrests requiring the generation of an auditable form, the DPD generated all five forms 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.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U43 during the current quarter, the Monitor selected a sample⁶⁶ of 72 warrantless arrests and requested that the DPD provide the Monitor with access to the underlying documentation, including Case Reports, CRISNET reports and related auditable forms. The Monitor reviewed documentation for all 72 arrests and noted the following:

- Sufficient probable cause existed to effect each of the 72 arrests reviewed.
- For 12 of the 72 arrests reviewed, although the detainee was released, insufficient documentation prevented the Monitor from assessing compliance. The Monitor could not ascertain whether the detainee was released as a result of an arrest warrant not sought or an arrest warrant submitted and denied. For one arrest, an arrest warrant was not sought and the requisite auditable form was generated within the mandated 12-hour period.⁶⁷
- For 60 of the 72 arrests reviewed, supervisory review occurred and was documented as having occurred within the mandated 12-hour period. For 11 arrests, although supervisory review occurred, it was documented in excess of 12 hours from the documented arrest time.⁶⁸ For one arrest the time of supervisory review was not documented and therefore the Monitor could not assess compliance.

Through discussions with OCR personnel and review of internal DPD memoranda, the Monitor determined that arrests reviewed by Investigators on Duty and subsequently returned for correction are captured by CRISNET in "return status." When this occurs, any prior verification

⁶⁶ As required, the Monitor selected a random, statistical sample of 72 warrantless arrests out of a population of approximately 288 warrantless arrests that occurred during the period October 12, 2008 through October 18, 2008 utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

⁶⁷ For the remaining 59 arrests, the Monitor determined that either the arrest warrant was submitted or was not applicable as the detainee was permitted to post bond.

⁶⁸ Supervisory review times ranged from 12 hours and 13 minutes subsequent to arrest to 15 days.

information is erased. This may account for the DPD's marked decrease in compliance relative to supervisory review during the current assessment period versus the Monitor's prior assessment. Also of note is that the current auditable form used to capture information for warrants not sought does not prompt the user to document the timing of decisions not to seek warrants.

Based on the foregoing, the Monitor finds that the DPD is no longer 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 the paragraph unless the policy directly responsive to the paragraph is revised.⁶⁹ The Monitor last assessed the DPD's compliance with paragraph U45 during the quarter ending May 31, 2008. 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 May 31, 2008, finding that the DPD was not yet in compliance. The Monitor selected and reviewed 20 logged police activities noting that for ten stops and/or frisks, the involved officers did not articulate reasonable suspicion. Additionally, for four stops the Monitor was unable to determine whether the requisite supervisory review occurred within the mandated 24-hour period. And for six stops, although the review occurred, it was beyond the 24-hour period. Lastly, for all ten instances of non-compliance, the requisite auditable form was not prepared for review by the Commanding Officer (CO).

⁶⁹ Implementation of the policy is tested under paragraph U45.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U45 during the current quarter, the Monitor reviewed and placed reliance on the AT's *Investigatory Stop and Frisk Practices Audit*, dated August 31, 2008.⁷⁰ The Monitor's findings, based on its review of the audit results, follow:⁷¹

- The audit determined that officers had not articulated reasonable suspicion for four of the 15 investigatory stops reviewed. For three of these four, the log indicated that the involved officers had "talked to" (i.e. consensual contact) the individuals related to the police activity, and the "stop" checkboxes related to these three activities were not marked. Based on the fact that the individuals' names and addresses were included in all three of the descriptions on the respective log, the AT determined that these activities were, in fact, investigatory stops rather than consensual contacts and further concluded that the officers had not articulated reasonable suspicion for the related stops. The Monitor agrees that these three activities appear to be stops, and recommends that the DPD ensure that officers have a clear understanding of the definition of a stop versus a consensual contact, and direction on how they are to log each of these activities (i.e. stop versus "talked to") to ensure accuracy of the documentation and proper recordation of the activity.
- For nine of the 14 stops and frisks reviewed the audit determined that officers had not articulated reasonable suspicion for the frisk.
- For four of 15 stops reviewed, the audit was not able to determine whether the stop was recorded by the end of the shift in which the police action occurred.
- For three of 14 stops with frisks reviewed, the audit was not able to determine whether the stop and frisk was recorded by the end of the shift in which the police action occurred.
- For four of 15 stops reviewed, the audit was not able to determine whether supervisory review was performed within 24-hours of receipt of the officer's report.

⁷⁰ The AT reviewed a total of 2,280 Daily Activity Logs for 24 districts or Specialized Units for February 16, 2008; March 6, 2008; April 20, 2008, and May 22, 2008. Using a 94% probability, a 95% confidence interval and a four percent tolerable error rate, the AT selected statistical samples of 91 stops and 71 stops with frisks, respectively. Allowing for stratification for all commands, these samples were increased to 124 stops and 86 stops and frisks, respectively. The *Investigatory Stop and Frisk Practices Audit* is separately evaluated under subparagraph U95b. Refer to the *Current Assessment of Compliance* for subparagraph U95b for details.

⁷¹ Based on its review, the Monitor adjusted certain individual findings reported by the AT; these adjusted findings did not impact the AT's overall finding of non-compliance with the requirements of paragraph U45. These findings and related adjustments are described in the *Current Assessment of Compliance* for subparagraph U95b.

- For four of 14 stops with frisks reviewed, the audit was not able to determine whether supervisory review was performed within 24-hours of receipt of the officer's report.⁷²
- For all instances of non-compliance noted, there is no evidence that a supervisor prepared the requisite auditable form for CO review.⁷³

Significantly, the August 31, 2008 *Investigatory Stop and Frisk Practices Audit* is the fourth such audit completed by the AT, and the AT reported the following in each audit:

- Inadequate documentation to substantiate that all investigatory stops and frisks were documented by the end of the shift in which the police action occurred.
- Inadequate documentation to substantiate supervisors reviewed the stops and frisks within 24 hours of receipt.
- Failure to prepare the requisite investigatory stop and frisk auditable form.

Clearly, the AT has placed the DPD on notice of its continued non-compliance with paragraph U45. The time has come for the DPD, in particular its supervisors, to implement the required processes to ensure compliance going forward.

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 unless the policy directly responsive to these paragraphs is revised. The Monitor last assessed the DPD's compliance with paragraph U48 during the quarter ending May 31, 2008. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

⁷² Although the AT identified samples of 124 and 86, respectively, for stops and stops with frisks, the AT's review and assessment of the initial 16 and 15 items, respectively, was all that was necessary to reach a conclusion of non-compliance. Based on its review, the Monitor determined that only 15 stops and 14 stop and frisks were representative of investigatory stop and frisk activity and removed two items (one from each sample) from the AT's reported findings.

⁷³ The AT initially queried for any auditable forms prepared for the four dates selected for audit. The AT expanded its request to encompass the entire audit period of approximately six months. During this six-month period, the AT identified one auditable form that was completed for failing to comply with the requirements of paragraph U45.

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 May 31, 2008, finding that the DPD was not yet in compliance. Discussion with sworn personnel assigned to the OCR and the AT yielded that only the Homicide Specialized Unit utilized the DPD's *Witness Conveyance Consent Form*.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U48 during the current quarter, the Monitor reviewed and placed reliance on the AT's *Witness Identification and Questioning Audit*, dated August 31, 2008. The AT reported the following:

- For 14 of 20 interviews reviewed, the AT could ascertain that the interview was documented during the shift in which the interview occurred. For 19 of the 20 interviews, the AT concluded that the requisite supervisory review did not occur.
- For six of ten interrogations reviewed, the AT could ascertain that the interrogation was documented during the shift in which the interrogation occurred. For nine of the ten interrogations, the AT concluded that the requisite supervisory review did not occur. For an additional interrogation, although supervisory review occurred, it was documented in excess of the requisite 12-hour period.
- For 21 of 28 conveyances reviewed, the AT could ascertain that the conveyance was documented during the shift in which the conveyance occurred. For all 28 conveyances reviewed, the AT concluded that the requisite supervisory review did not occur.

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 August 31, 2008. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 28, 2009.

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 unless the policy directly responsive to the paragraph is revised.⁷⁴ The Monitor last assessed the DPD’s compliance with paragraph U53 during the quarter ending August 31, 2008. The Monitor is scheduled to again assess the DPD’s compliance with this paragraph during the quarter ending February 28, 2009.

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 unless the policy directly responsive to the paragraph is revised.⁷⁵ The Monitor last assessed the DPD’s compliance with paragraph U55 during the quarter ending August 31, 2008. The Monitor is scheduled to again assess the DPD’s compliance with this paragraph during the quarter ending February 28, 2009.

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 unless the policy directly responsive to the paragraph is revised.⁷⁶ The Monitor last assessed the DPD’s compliance with paragraph U57 during the quarter ending August 31, 2008. The Monitor is scheduled to again assess the DPD’s compliance with this paragraph during the quarter ending February 28, 2009.

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 May 31, 2008. The Monitor again assessed the DPD’s compliance with this paragraph during the current quarter. The results of our current assessment follow.

⁷⁴ Implementation of the policy is tested under paragraph U53.

⁷⁵ Implementation of the policy is tested under paragraph U55.

⁷⁶ Implementation of policy is tested under paragraph U57.

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 May 31, 2008, at which time the Monitor found that the DPD was not yet in compliance. The Monitor reviewed 24 arrests that occurred on either March 1 or March 2, 2008, 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. In order to accomplish this testing, the Monitor provided the DPD with a sample of 18 arrests that occurred during the period October 13 through October 18, 2008. The DPD provided the Monitor with Live Scan documentation for all 18 arrests. The Monitor found the following during its testing:

- For three arrests, no information was contained in Live Scan.
- Personal information was entered into the Live Scan for 15 of 18 arrests. Although the DPD represented that Livescan captures nicknames, aliases and/or physical characteristics, extracted information provided to the Monitor did not include this information. For other personal information, such as social security number, age and telephone number, scant information was captured.
- The detainees' crimes were captured for 15 of 18 arrests.

- The dates and times of the detainees' arrests were captured for 15 of 18 arrests; however, for nine of the 18 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 August 31, 2008. The Monitor is scheduled to again assess the DPD's compliance with paragraph U60 during the quarter ending February 28, 2009. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2008. 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 May 31, 2008, finding that the DPD was not yet in compliance. The Monitor reviewed arrest documentation and related auditable forms in connection with the testing of compliance with paragraphs U43 and U45. For all ten stops and/or frisks requiring an auditable form, the Monitor noted the form was not generated and therefore did not allow for the requisite CO review. For seven of eight arrests for which an arrest warrant was not sought, the requisite CO evaluation was documented on an auditable form.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U59 during the current quarter, the Monitor placed reliance on the AT's *Investigatory Stop and Frisk Practices Audit* and *Witness Identification and Questioning Audit*, both dated August 31, 2008. The referenced audits included the following findings:

- Auditable forms were not generated, and therefore the requisite CO review and comment did not occur, for all instances of non-compliance noted for stops and frisks.
- The requisite auditable form was not generated, and therefore the requisite CO review and comment did not occur, for all instances of non-compliance noted for memorializing and reviewing interviews, interrogations and conveyances.

The Monitor also reviewed the arrest documentation and related auditable forms utilized in connection with the testing of compliance with paragraph U43. The Monitor noted the CO evaluation was documented on an auditable form for six of eleven arrests for which an arrest warrant was not sought.

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.⁷⁷

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments 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 May 31, 2008, finding the DPD in compliance, as the requirements to receive, record, investigate and track complaints were effectively implemented by the DPD and OCI.

Current Assessment of Compliance

The Monitor's methodology for assessing the DPD's implementation of and compliance with paragraph U61 includes a review of the DPD's *External Complaints and Complaint Investigations (EC&CI) Audit Report* findings and a review of the underlying complaint investigations from the audit's population. Because the DPD did not submit the *EC&CI Audit* that was due on August 31, 2008, the Monitor elected to conduct an independent review of a

⁷⁷ The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

sample of complaint investigations that were completed during the month of September 2008. The Monitor was in the process of conducting this review as of the end of the current quarter.

As a result, the Monitor has not yet completed its evaluation of paragraph U61. The Monitor expects to complete this evaluation during the quarter ending February 28, 2009.

Paragraph U62 – Revision of External Complaints Policy

Paragraph U62 requires the DPD and the City to develop and implement an informational campaign regarding external complaints including:

- a. informing persons they may file complaints regarding the performance of any DPD employee;
- b. distributing complaint forms, fact sheets and informational posters at City Hall, OCI, all DPD precincts, libraries, on the internet and, upon request, to community groups and community centers;
- c. broadcasting public service announcements (PSAs) that describe the complaint process; and
- d. posting permanently a placard describing the complaint process, with relevant phone numbers, in the lobby of each DPD precinct.

Background

The Monitor last assessed the DPD's compliance with paragraph U62 during the quarter ending May 31, 2008, finding the DPD in compliance with subparagraphs U62b and c and in partial compliance with subparagraph U62d.

Current Assessment of Compliance

Subparagraph U62a Informing persons that they may file complaints

The methods by which the DPD will inform persons that they may file complaints regarding the performance of any DPD employee are included under subparagraphs U62b-d. The Monitor will not be conducting a separate assessment of compliance with this subparagraph.

Subparagraph U62b Distribution of complaint forms, fact sheets and informational posters

On November 17, 2008, the Monitor requested the DPD's most recent inspections in connection with paragraph U62. On December 11, 2008, the DPD submitted three reports of inspections conducted by the OCR and the OCI that evaluated the requirements of subparagraph U62b. OCR staff inspected eleven libraries and six district stations from November 24 to November 26, 2008, while OCI staff inspected twelve libraries and seven Neighborhood City Halls (NCH) from November 21 to November 25, 2008.

In total, all 23 libraries visited had the required materials, as well as posters and fact sheets posted on their walls. OCR and BOPC staff replenished the materials as needed and supplied other libraries with extra materials. Most of the seven NCH locations visited had all of the required materials, as well as posters and fact sheets posted on the walls. The only exception noted was one location that did not have CCRs available due to a recent relocation. BOPC staff promptly supplied this location and reinforced the importance of form availability. The other NCHs were supplied with extra materials per their request. Lastly, all but one of the six district visited had all of the required materials, posters and fact sheets posted on the walls, and CCRs and the Informational Brochures available at the desks. The single district with a missing poster and fact sheet⁷⁸ was promptly corrected. Additionally, individual officers at each district were interviewed to ensure they had CCRs in their possession.

Based on the foregoing, the Monitor finds the DPD in continued compliance with subparagraph U62b.

Subparagraph U62c Complaint Process Broadcasts

The DPD previously submitted a copy of the PSA that is broadcast on Comcast Cable. According to the DPD, the broadcast is aired Monday – Friday at 12:00 a.m., 2:00 a.m., 8:00 a.m. and 9:00 a.m.; Monday, Wednesday and Friday at 2:30 p.m. and 3:30 p.m.; and Saturday and Sunday at 12:00 a.m., 2:00 a.m., 8:00 a.m., and 9:00 a.m. As previously reported, the PSA meets the minimum requirements of describing the complaint process.

Based on the foregoing, the Monitor finds the DPD in continued compliance with subparagraph U62c.

Subparagraph U62d Informational Campaign Placards

As described above in connection with subparagraph U62b, the OCR conducted inspections from November 24 to November 26, 2008. All six district stations were inspected and continue to have permanent placards posted in their lobbies. The single district (Central District) with a missing fact sheet and poster was promptly corrected.

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph U62d.

Paragraph U63 – Informational Brochures and Contact Forms

Paragraph U63 requires all officers to carry informational brochures and contact forms in their vehicles at all times while on duty. The DPD must develop a contact form within 60 days of the effective date of the UOF CJ and submit it for review and approval of the DOJ. This contact form must be implemented within 60 days of the review and approval of DOJ. The DPD must

⁷⁸ Central District.

require all officers to inform an individual of his or her right to make a complaint, if an individual objects to an officer's conduct. The DPD must prohibit officers from discouraging any person from making a complaint or refusing to take a complaint.

Background

The Monitor last assessed the DPD's compliance with paragraph U63 during the quarter ending May 31, 2008, finding the DPD in compliance. During inspections conducted that quarter, OCR staff interviewed on-duty officers in each DPD district and determined that they were carrying the required materials or had them in their vehicles.

Current Assessment of Compliance

During the OCR inspections of the DPD districts conducted during the period of November 24 to November 26, 2008, described in the *Current Assessment of Compliance* for paragraph U62, OCR staff also interviewed DPD officers to determine if they were carrying their Citizen Complaint Brochures/Contact Forms as required by paragraph U63. Twelve on-duty officers from six commands were interviewed, each of whom was able to produce the Citizen Complaint Brochures/Contact Forms.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph U63.

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 May 31, 2008. 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 U65-66 during the quarter ending May 31, 2008, finding the DPD in compliance with paragraph U65 and not yet in compliance with paragraph U66. The Monitor last assessed the DPD's compliance with paragraph U64 during the quarter ending November 30, 2007, finding the DPD in compliance. The Monitor's assessment was based on its review of the *EC&CI Audit Report* submitted by DPD on August 31, 2007.

Current Assessment of Compliance

The Monitor's methodology for assessing the DPD's implementation of and compliance with paragraphs U64-66 includes a review of the DPD's *EC&CI Audit Report* findings and a review of the underlying complaint investigations from the audit's population. Because the DPD did not submit the *EC&CI Audit* that was due on August 31, 2008, the Monitor elected to conduct an independent review of a sample of complaint investigations that were completed during the month of September 2008. The Monitor was in the process of conducting this review as of the end of the current quarter.

As a result, the Monitor has not yet completed its evaluation of paragraphs U64-66. The Monitor expects to complete this evaluation during the quarter ending February 28, 2009.

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 May 31, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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 May 31, 2008. The Monitor reviewed the *AOMHC Audit* submitted by the DPD on

January 31, 2008 and conducted supplemental testing by reviewing additional investigations. The Monitor found that the DPD was in compliance with the policy requirements of paragraphs U67-69. Regarding the implementation requirements of paragraph U67, the Monitor found that the DPD was in compliance with subparagraph U67b but not yet in compliance with subparagraphs U67c, d and g; the Monitor was unable to assess compliance with the implementation requirements of subparagraphs a, e and f, and withheld a determination of the DPD's compliance with subparagraph U67h. The Monitor also found that the DPD was in compliance with the implementation requirements of paragraph U69 but not yet in compliance with the implementation requirements of paragraph U68.

Current Assessment of Compliance

The Monitor's methodology for assessing the DPD's implementation of and compliance with paragraphs U67-69 includes a review of DPD's *EC&CI Audit Report* findings and a review of the underlying complaint investigations from the audit's population. Because the DPD did not submit the *EC&CI Audit* that was due on August 31, 2008, the Monitor elected to conduct an independent review of a sample of complaint investigations that were completed during the month of September 2008. The Monitor was in the process of conducting this review as of the end of this quarter. In addition, the Monitor has not completed its evaluation of the in-service investigator training conducted by the DPD pursuant to subparagraph U67f.

Based on the foregoing, the Monitor has not yet completed its evaluation of paragraphs U67-69. The Monitor expects to complete its independent review of investigations during the quarter ending February 28, 2009.

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 August 31, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 28, 2009.

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending May 31, 2008. 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 May 31, 2008, at which time the Monitor found the DPD in compliance with all of the requirements of the paragraph. 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 on April 7, 2008. The Monitor reviewed the meeting minutes and noted that the Committee's discussion centered on policy issues.

Current Assessment of Compliance

The *Policy Focus Committee* met again on December 15, 2008. The Monitor obtained and reviewed the minutes from that meeting, noting that the Committee's discussion, again, 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 May 31, 2008, finding the DPD in compliance. 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*.

Current Assessment of Compliance

During the current quarter, the Monitor periodically accessed the DPD's website, noting that Directive 305.1, *Detainee Intake*, Directive 401.1, *Performance Evaluations*, Directive 305.9, *Fingerprinting and Identification of Detainees*, and Directive 401.13, *Management Awareness System*, were posted for review and comment during the current assessment period.

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

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 August 31, 2008, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 28, 2009.

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 U88c⁷⁹ and paragraph U89.⁸⁰

⁷⁹ Subparagraph U88c requires the issuance of a Request for Proposal (RFP). 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 obviated the need for an RFP. As a result, the Monitor will no longer assess the DPD's compliance with subparagraph U88c.

⁸⁰ Paragraph U89 requires the DPD to develop an interim system to identify patterns of conduct by DPD officers or groups of officers prior to the implementation of the new Risk Management Database. Although the DPD did not achieve compliance with this requirement, as described in the Monitor's Report for the Quarter Ending August 31, 2008, the DPD has begun implementing the MAS. As a result, the requirements for an interim system are now obsolete, and the Monitor will no longer assess the DPD's compliance with paragraph U89.

The Monitor last assessed the DPD's compliance with subparagraphs U88f and g during the quarter ending August 31, 2008, and is scheduled to again assess the DPD's compliance with subparagraph U88g during the quarter ending February 28, 2009.⁸¹

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; 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;

⁸¹ Subparagraph U88f includes the requirements for a beta version of the risk management database. Although the DPD did not achieve compliance with these requirements, as described in the Monitor's Report for the Quarter Ending August 31, 2008, the DPD has begun implementing the MAS. As a result, the Monitor will no longer assess the DPD's compliance with subparagraph U88f.

- 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 U79-81 and U86-87 during the quarter ending May 31, 2008, finding that the DPD was not yet in compliance with paragraphs U79-81 and U86-87. The MAS was not yet fully developed or operational. As reported in the Monitor's Report for the Quarter Ending May 31, 2008, the DOJ and the DPD were meeting on a monthly basis and working toward full implementation.

Current Assessment of Compliance

As described in the Monitor's Report for the Quarter ending August 31, 2008, in a letter to the Court on July 28, 2008, the City represented that on July 24, 2008, MAS was being implemented by the DPD. Implementation was planned in the Northwestern and Western Districts during the week of July 28, 2008, and in the Northeastern, Eastern and Southwestern Districts and the Criminal Investigations Bureau during the week of August 4, 2008. The City intended to complete implementation in all remaining commands (mainly administrative) on August 11, 2008. On August 12, 2008, in an email to DOJ, DPD reported that the roll-out of the MAS department-wide was "proceeding smoothly."

During the last quarter, the Monitor attended meetings regarding MAS implementation with the DPD and DOJ. The operation of the MAS was scheduled to be reviewed by a DOJ expert and the Monitor in January 2009.⁸²

Based on the foregoing, the Monitor has not yet completed its evaluation of the DPD's compliance with the implementation requirements of paragraphs U79-81 and U86-87.

⁸²After the end of the quarter, on January 12-13, 2009, the Monitor, DOJ and DOJ's expert spent two days evaluating the MAS, and DOJ's expert provided on-site feedback to the City and the DPD. The results of the assessment will be included in the Monitor's Report for the Quarter Ending February 28, 2009.

B. PERFORMANCE EVALUATION SYSTEM

This section comprises one paragraph, paragraph U91. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2008, and is scheduled to again do so during the quarter ending February 28, 2009.

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,⁸³ 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 subparagraphs U94b and U95a and paragraphs U96-98 during the quarter ending August 31, 2008; with subparagraph U95c during the quarter ending February 29, 2008; and with paragraphs U92-U93 and subparagraphs U94a, U94c, and U95b during the quarter ending November 30, 2007.

The Monitor again assessed the DPD's compliance with paragraph 92, subparagraphs U94a and U95b, and paragraph U99 during the current quarter. The results of our current assessments follow.

Paragraph U92 – Audit Protocol

Paragraph U92 requires the DPD to develop an Audit Protocol to be used by all personnel when conducting audits. The Audit Protocol must establish a regular and fixed schedule for all audits required by both the UOF CJ and COC CJ to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

Background

The Monitor last assessed the DPD's compliance with paragraph U92 during the quarter ending November 30, 2007, finding the DPD in compliance with the requirements of the paragraph. The Monitor evaluated the 2007/2008 Audit Protocol submitted by the DPD and determined that audits were scheduled with sufficient frequency and the protocol included appropriate standards for conducting and reviewing such audits. In addition, the DPD provided adequate training on

⁸³ 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.

the Audit Protocol to its audit personnel and maintained signed annual confidentiality declarations from all audit personnel.

Current Assessment of Compliance

On August 31, 2008, the DPD submitted its 2008/09 Audit Protocol. The Monitor conducted a review of the content of the protocol and determined that the UOF CJ and COC CJ audits were scheduled with sufficient frequency therein. Similar to the previous Audit Protocols submitted, the 2008/09 protocol contains acceptable standards for conducting and reviewing such audits in accordance with *Generally Accepted Government Auditing Standards*.

In response to a related document request, the DPD submitted documentation that adequately demonstrated the dissemination of the protocol and the conduct of training processes and confidentiality statements for DPD members conducting audits.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U92.

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, PIs, and allegations of misconduct (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) PI investigations, and c) AOM investigations. The Monitor has similarly split its evaluation of this paragraph into three separate evaluations (subparagraphs U94a, U94b and U94c).

Background

The Monitor last assessed the DPD's compliance with subparagraph U94a during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. In its first *UOF Investigations Audit*, which was submitted on August 31, 2007, the 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.

The Monitor last assessed the DPD's compliance with subparagraph U94b during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance. The *PI Investigations Audit* submitted by the DPD AT on February 29, 2008, contained both qualitative performance-related deficiencies and quantitative errors that significantly affected the overall quality of the audit. The Monitor identified deficiencies in ten of the 13 investigations reviewed by the AT. The next audit of this topic is required to be submitted by February 28, 2009.

The Monitor last assessed the DPD's compliance with subparagraph U94c during the quarter ending November 30, 2007, finding the DPD in compliance. The Monitor concluded that the *Combined AOM Audit* submitted by the DPD on July 31, 2007 was a thorough and quality audit.

Current Assessment of Compliance

Subparagraph U94a – Use of Force Investigations Audit

In order to assess the DPD's compliance with subparagraph U94a, the Monitor reviewed the *Use of Force Investigations Audit (UOF Audit) Report* submitted by the DPD AT on its required due date of August 31, 2008. The Monitor also reviewed the associated audit work plan, working papers and fieldwork documents.⁸⁴ This is the second audit of UOF investigations submitted by the DPD. The Monitor's findings, which have been discussed with the AT, are as follows:

- The AT selected a two-month time period from March 1 through April 30, 2008⁸⁵ to identify all closed UOF and AOF investigations in the commands, including the OCI, FI, and JIST.⁸⁶ The AT identified a total of 65 investigations during this time period: 52 command, eight OCI,⁸⁷ three FI,⁸⁸ and two JIST.⁸⁹ The AT appropriately sampled the command and OCI investigations and stopped testing after a review of the first 13 of the 44 command investigations based on non-compliant results at an error rate of +/-10%.
- The AT's selected time period resulted in insufficient closed FI/JIST investigations to review (five in two months). The Monitor notes that the FI/JIST closed 136 investigations⁹⁰ during the annual period since the last audit of this topic,⁹¹ from June 2007 through May 2008,

⁸⁴ Due to the small population size, the Monitor reviewed all 18 of the investigations included in the audit, which consisted of ten command, three OCI, three FI, and two JIST investigations.

⁸⁵ The AT also requested all investigations that closed in February, but excluded the seven FI/JIST investigations identified because they had closed more than six months prior to the audit submission date.

⁸⁶ The JIST includes both FI and homicide investigators.

⁸⁷ The AT only included AOF investigations conducted by the OCI when/if it was determined as a result of the investigations that officers had actually used force. The AT intended to include all other AOF (non-UOF) in the OCI (paragraph U97) audit due by August 31, 2008; however, that audit was not submitted.

⁸⁸ The three FI investigations included two AOF investigations in which no force occurred.

⁸⁹ The two JIST investigations were both CFDs.

⁹⁰ There were 25 FI and 111 JIST investigations closed in this period.

⁹¹ The prior *UOF Audit's* time period for closed FI/JIST investigations was April 1 through May 31, 2007. In that audit, the AT identified no FI and one JIST investigation. The Monitor found that audit deficient and provided the AT with feedback that the AT "should have extended its time period in order to evaluate additional... investigations."

averaging 11 investigations closed per month. As a result, the time period selected for this audit was not representative of the extent of FI/JIST investigations conducted by the DPD. The AT should have recognized this shortcoming in the planning stages of its audit and taken steps to address the problem.

- The AT conducted thorough completeness tests, which resulted in the identification of 17 additional command UOF incidents that should have been but were not reported by the commands when initially requested by AT. The AT's testing and analysis in this area also identified several systemic problems, including investigations that should have been closed but were not, missing investigative files, UOF incidents that were not investigated as required, and, most significantly, seven UOF incidents that were initially identified by the OCI as allegations of force that were in fact UOF incidents that were not reported by the officers.
- The AT included assessments of all substantive paragraphs related to this topic and identified deficiencies within all ten investigations. As a result of this testing, the AT correctly found the DPD in overall non-compliance with paragraphs U27-30, U32-36 and U38-40⁹² and in compliance with paragraph U37. While the Monitor concurs with the AT's overall conclusions and related recommendations, the Monitor identified several additional concerns that were not identified by the AT, as described immediately below.
- Subparagraph U32f requires, in part, that investigators evaluate all uses of force, including the officer's tactics. The AT concluded that 14 of the 18 investigations were compliant with subparagraph U32f and the remaining four investigations were not compliant, as certain elements of the force used had not been evaluated. The Monitor found that none of the 18 investigations included an "evaluation" of all of the officers' tactics surrounding the force incident, which means that none of the 18 investigations were compliant with the requirements of subparagraph U32f. Rather, the investigators merely restated the facts as reported by the officers.⁹³ The AT failed to recognize this deficiency and consequently did not include recommendations to address this issue.⁹⁴
- Subparagraph U36a requires, in part, that preliminary command UOF investigations be completed within ten days of the incident and that the final command UOF investigation be

⁹² In some cases, the AT found that although the DPD was not yet in overall compliance with the primary paragraph, some of the investigations complied with certain subparagraphs and/or components within the primary paragraphs, and appropriately reported that information. This information was contained in Appendix B, *DPD Compliance by Paragraph*, of the *UOF Audit Report*.

⁹³ Three of the investigations (one FI and two JIST) did evaluate "some" elements of the officers' tactics, such as those related to foot pursuits, and separating from partner officers; however, other critical tactical elements, such as the officer's drawing of the firearm, were not evaluated by the investigator.

⁹⁴ The Monitor has had ongoing discussions with the DPD regarding the subparagraph U32f requirements. In summary, the DPD now agrees that subparagraph U32f requires investigators to evaluate tactics in addition to the type of force used, and that the term "tactics" refers to the officer's actions surrounding the UOF incident.

completed within 30 days of the incident.⁹⁵ The DPD's audit appropriately tested for compliance with the 30-day requirement, but did not test for compliance with the 10-day requirement. The Monitor noted that none of the preliminary UOF investigations were completed within 10 days.

- Subparagraph U36c requires, in part, that all command UOF investigations be forwarded to FI within seven days of completion. The AT could not determine if FI had received these investigations. According to the AT, FI had staffing issues and was unable to provide the AT with such information at the time of the AT's request. The AT should have conducted follow-up steps to ensure this information was available and could be assessed.
- The audit report was concise and made good use of tables; however, the Monitor noted several grammatical and spelling errors that might have been reduced with increased supervisory review. The AT included an Appendix to the audit report illustrating compliance by UOF CJ paragraph; however, the Monitor noted several areas where the Appendix was incomplete.
- Except for the concerns noted above, the AT's matrix questions and other working papers were well-formatted and well-organized, and demonstrated sufficient testing of the elements necessary to conclude on each objective. The AT made appropriate and useful recommendations within the audit where the DPD was non-compliant, except in the case of the subparagraph U32f requirements described above.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U94a. In arriving at this conclusion, the Monitor identified two substantial performance-related deficiencies: the issues associated with the selection of an appropriate audit time period and the scope-related issues associated with the AT's testing of subparagraph U32f. The Monitor also identified material performance-related issues, associated with the AT's testing of subparagraphs U36a and U36c, that had some affect on the quality of the audit.

Recommendations

As recommended in the Monitor's Report for the Quarter Ending August 31, 2008, the Monitor again suggests that the AT separately assess each of the subparagraph U32f requirements, and that the AT staff use subject matter experts (e.g., tactics training experts) if uncertain in their assessments.

Subparagraph U94c – Allegations of Misconduct Investigations Audits

The AT submitted the *AOM Investigations Audit* on its due date of August 31, 2008. The Monitor has completed its review of the audit report, audit working papers and its sample of

⁹⁵ The timing requirements for preliminary investigations are also contained in the DPD's TD 04-7, which requires Supervisory Investigation Reports to be completed within ten days.

misconduct investigations reviewed by the AT, and has met with the AT to discuss several concerns identified during the Monitor's review. The Monitor recently received follow-up information from the AT regarding these issues and will complete its analysis of these issues and conduct a closeout meeting with the AT in the next quarter. The Monitor will report its findings and the DPD's compliance with subparagraph U94c upon completion of its review.

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 next audit of this topic is due to be submitted by May 31, 2009.

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 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 28, 2008, finding that the DPD was not yet in compliance, as the *Witness Identification and Questioning Audit* submitted in August 2007 contained a number of deficiencies, including overlapping objectives that resulted in duplicate testing and inconsistent findings.

Current Assessments of Compliance

Subparagraph U95b – Investigatory Stop and Frisk Practices Audit

During the current quarter, the Monitor completed its review of the *Stop and Frisk Practices Audit Report* submitted by the DPD AT on its required due date of August 31, 2008, as well as

the associated audit work plan, working papers and fieldwork documents. The Monitor's findings, which have been discussed with the DPD AT, are as follows:

- The AT randomly selected four days, one in each of February, March, April and May 2008, to gather its source documents. Although documents selected in February 2008 occurred over six months prior to the submission of the audit report, the Monitor welcomed the one-day-per-month approach used by the AT. However, given the limited staffing resources, the amount of time required to acquire the source documentation, and the fact that the DPD is moving closer to compliance with the UOF CJ paragraph requirements being tested, the AT could consider reducing the review to no more than three days, as it had done in the prior audit of this topic.
- The AT's work on gathering and ensuring the completeness of its source documents, the officers' and investigators' activity logs, and the sample selection process was well performed.⁹⁶ However, the following population identification issues were observed:
 - One of the 16 investigatory stops reviewed by the AT should not have been included as a stop, as the contact was a result of a warrant arrest (i.e. directed, rather than self-initiated, contact). The incorrect inclusion of this as a stop negatively affected the audit's assessment of compliance because the AT found that no reasonable suspicion had been articulated by the involved officers when, in fact, no reasonable suspicion was required.
 - One of the 15 investigatory stop and frisks reviewed by the AT should not have been included as a frisk, as the individual in question was already under arrest and the search was therefore incident to the arrest, rather than a frisk (i.e. pat-down for weapons/officer safety). Similar to the above issue, the incorrect inclusion of this as a frisk had a negative impact on the audit's assessment of compliance because the AT found that there was no reasonable suspicion for this frisk, when it was not required.
 - The audit determined that officers had not articulated reasonable suspicion for four of the 15 investigatory stops reviewed. For three of these four, the log indicated that the involved officers had "talked to" (i.e. consensual contact) the individuals related to the police activity, and the "stop" checkboxes related to these three activities were not marked. Based on the fact that the officers had acquired and included individuals' names and addresses on the respective logs, the AT determined that these three activities were investigatory stops rather than consensual contacts and further concluded that the officers had not articulated reasonable suspicion for the related stops. While the Monitor agrees that these three activities appear to be stops, if they were actually consensual contacts then reasonable suspicion was not required. Given the uncertainty of the nature of these activities, the AT should have identified this uncertainty in its audit report and provided a

⁹⁶ The AT manually identified a population of 1,643 stops and 265 stop and frisks from its review of 2,280 activity logs. After stratifying over the 24 applicable districts and commands, sample sizes were determined to be 124 stops and 86 stop and frisks. With the exception of the frisks component for duration of police activity, testing was appropriately curtailed at a +/-10% error rate (16 stops and 15 frisks) due to an early evaluation of non-compliance.

recommendation to address. As is described in the *Current Assessment of Compliance* for paragraph U45, the DPD should instruct officers on how to log these activities (i.e. stop versus “talked to”) to ensure proper recordation of each.

The correct identification of a population for this audit is challenging; however, the audit report did not highlight problems faced by the AT in identifying the population, which resulted directly from the DPD’s poor or incorrect completion of the activity logs with respect to stop and frisk activity. Additionally, while the Monitor noted that the recently revised activity logs have improved some administrative aspects of the DPD’s stop and frisk reporting and the associated AT auditing (log submission requirements, supervisory review deadlines and detention duration), given the problems noted above, the AT should have made recommendations to assist in clarifying the correct documentation requirements.

- The scope of the audit addressed all relevant sections of the UOF CJ. Overall, the AT appropriately found that the DPD has not yet met the requirements of paragraphs U44, U45 and U59.⁹⁷ As discussed above and below, some issues were identified during the Monitor’s review; however, these issues did not affect the AT’s overall findings:
 - The activity logs documenting one of the 16 investigatory stops and one of the 15 investigatory stop and frisks were incorrectly found by the AT to have been received by the end of the officers’ shifts when the supervisory receipt signature was dated the following day.
 - Two of the 15 investigatory stop and frisks were incorrectly found by the AT to have been supported by reasonable suspicion, when no evidence of reasonable suspicion was documented.
- In the process of completing the audit, the AT identified two significant patterns of stop and frisk activity. The first pattern concerned a high incidence of unsupported frisks in the Northeastern District, which resulted in the issuance of a Corrective Action Notice by the AT requiring officers to articulate the justification for such action.⁹⁸ The second pattern concerned officers requesting consent to search a vehicle without receiving written documentation. The Monitor commends the AT’s initiative in identifying these issues; however, the first pattern was not identifiable within the audit working papers submitted to the Monitor,⁹⁹ and the second pattern was not included in the audit report, only within the audit work plan. The Monitor suggests that the presentation of such important issues be improved and fully disclosed in future audits.

⁹⁷ The Monitor notes that the frisk component of the testing met compliance for reasonableness of duration of police interaction.

⁹⁸ This pattern had the effect of increasing the overall number of stop and frisk incidents identified by the AT in the 2008 audit relative to previous years.

⁹⁹ The AT stated that the first pattern was evident during its review of the 2,280 activity logs to identify the audit population.

- A number of numerical errors were identified in the report, the most significant being that incorrect results for the requirement for the written documentation of stops were transferred from the audit testing matrices to both the report's detailed and summary sections.¹⁰⁰ Furthermore, the detailed results for the testing of auditable forms for stop and frisks were omitted. The overall report quality had improved compared to the previous audit, although the report would benefit from a reduction in the number of tables containing limited information regarding sample selection and detailed testing results.

Based on the above findings, the Monitor finds this audit partially compliant with the requirements of paragraph U95b. In arriving at this conclusion, the Monitor found there to be one substantial performance-related deficiency: the issues associated with the identification of an accurate population. In addition, the Monitor identified a number of quantitative, material and administrative errors that had some impact on the overall audit quality.

Recommendations

- The Monitor recommends that the AT reassess and reorganize the audit matrices to align with their Appendix, limiting the questions to those that are relevant to the revised activity logs, and ensuring that the questions correlate to the particular paragraph component that is being assessed
- The Monitor recommends that the AT conduct a more thorough review of each of its audit reports and associated documents to identify and correct errors prior to submission.

Subparagraph U95c – Witness Identification and Questioning Audit

During the current quarter, the Monitor completed its review of the *Witness Identification and Questioning Audit Report* submitted by the DPD AT on August 31, 2008 and the associated audit work plan, working papers and fieldwork documents,¹⁰¹ and held a preliminary meeting with the AT to discuss its findings. The Monitor has recently received additional information from the AT which was necessary in order to complete our review. The Monitor will continue to meet with the DPD AT and will report its findings and the DPD's compliance with subparagraph U95c upon completion of its review.

¹⁰⁰ The report summary and detail notes the results as being 7/16; however, the matrix results were 12/16 (both are out of compliance).

¹⁰¹ The Monitor selected for review 100% of the sample reviewed by the AT for the interviews/interrogations and conveyances associated with investigations other than homicide investigations. Additionally, the Monitor reviewed a randomly selected sample using a one-tailed test, a 95% confidence interval, and an error factor of +/-4%.

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 May 31, 2008, 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 October 2, 2008. A member of the Monitor's team was in attendance. The meeting included, among other things, a discussion of the adequacy of reports when detaining juveniles, evidence control procedures, officers charged with criminal offenses, calling crime lab personnel as witnesses, and the tracking of Material Witness Detainers.

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 August 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending February 28, 2009.

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 August 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending February 28, 2009.

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 May 31, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph 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 May 31, 2008, finding that the DPD was not yet in compliance, as it had 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.

Current Assessment of Compliance

The DPD's Curriculum Design and Development Team (CDDT) submitted a Semi-Annual Report pursuant to paragraph U106 to the Monitor and the DOJ on October 15, 2008. The report purported to cover paragraph U106, subparagraphs U107a, b, d, e, and f, and paragraph U109, among others. The Monitor reviewed the report and found numerous deficiencies. Furthermore, the document was incomplete, in that the paragraphs identified were not sufficiently covered in the report. The Monitor met with the DPD on November 25, 2008 to discuss the report, its

scope, underlying methodologies, and conclusions. The DPD agreed that during the next quarter it will provide the Monitor with the procedures it will employ to compile the report on a semi-annual basis.

The report's deficiencies related to paragraphs U107 and U109 are discussed in the *Current Assessment of Compliance* sections for those paragraphs below.

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 May 31, 2008, finding that the DPD was not yet in compliance, as it had not yet implemented the requirements of subparagraphs a through f of paragraph U107. The Monitor met with members of the DPD's CDDT to discuss the requirements of the paragraph and indicated again that the DPD's response under paragraph U106 does not adequately demonstrate its compliance with the type of management approach that is required by paragraph U107. The Monitor indicated that completion of the Michigan State Police (MSP) Instructor Development training program may be problematic, since programs are routinely cancelled due to low enrollment. To mitigate this problem, the Monitor 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 had not yet responded to this offer.

Current Assessment of Compliance

As described in the *Current Assessment of Compliance* for paragraph U106, above, the DPD attempted to include subparagraphs U107a, b, d, e, and f in the semi-annual report it issued pursuant to paragraph U106; however, none of these subparagraphs were fully covered in the report and it failed to adequately address the requirements of these subparagraphs. The Monitor provided the DPD with feedback on the report during a meeting held on November 25, 2008.

With regard to subparagraph U107c, the DPD provided resumes for DPD instructors which provided the title of instructor training courses that had been attended. Without additional information, the Monitor was not able to substantiate the level of instructor development based on the resumes. During the same meeting listed above, the Monitor questioned the quality and sufficiency of some of the instructor development courses listed. The department agreed to provide additional information regarding the qualifications of its instructors. In addition, the Monitor maintained its offer of TA to the DPD in the form of an Instructor Development Class.

Specifically, with regard to subparagraph U107f, in order to conduct the required needs assessment, the DPD reviewed the conclusions of lawsuits alleging officer misconduct and recommendations and findings from DPD AT audit reports. Although this information is useful, these reviews do not constitute a training needs assessment. The DPD also indicated that a Job Task Analysis conducted by the Michigan Commission on Law Enforcement Standards (MCOLES) in 2006 was a needs assessment. The Monitor disagrees.

Based on the foregoing, the Monitor finds that the DPD has not yet implemented the requirements of subparagraphs a through f of paragraph U107 and, as a result, 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 May 31, 2008, finding that the DPD was not yet in compliance. In its *19th Quarter Status Report*, the DPD indicated that it still intends to fulfill the requirements of this paragraph by utilizing the MITN system to capture all training records for sworn members. Although the DPD indicated that it continued to enter training records into MITN to track DPD sworn personnel training, 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 reported 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.

Current Assessment of Compliance

According to the DPD, they are continuing to work toward fulfilling the requirements of this paragraph by utilizing the MITN system to capture all training records for sworn members. According to the DPD, they have assigned additional personnel to this project, and continue to enter training records into MITN. As of November 2008, the DPD estimated that training records will be current within six months. The method for capturing all training records for non-sworn members is still under review as of the end of the reporting period.

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. The Monitor was 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, the Monitor indicated that 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.

Current Assessment of Compliance

During the current quarter, the Monitor commenced observing classroom presentations of approved lesson plans, including the scenarios contained therein. Based on these observations, the Monitor identified the need for modifications to the scenarios, as well as the lack of facilitation skills of some instructors. The Monitor shared the details of these observations during a review meeting held on November 25, 2008. The DPD continues to work toward effective construction and facilitation of scenarios in all relevant training sessions.

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 May 31, 2008, finding the DPD in compliance.

Current Assessment of Compliance

As previously reported, a member of the Monitoring Team had been attending quarterly meetings between the DPD and the City Law Department. In March of 2008, the City raised concerns about the presence of the Monitor compromising confidential attorney-client discussions. As a result, the Monitor has not attended the meetings since March. The DPD has reported that a meeting took place on October 23, 2008. The Monitor has renewed its request for all non-privileged minutes and meeting notes to verify the occurrence of the meetings.

Based on the foregoing, the Monitor has not yet evaluated the DPD's 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 May 31, 2008, finding that the DPD was not yet in compliance. Despite previous requests, including one sent during that quarter, the Monitor still had not been provided with the specific information requested regarding the initial UOF CJ training. In response to the most recent document request, the DPD provided sign-in sheets for three days of "Consent Decree" training without providing the additional specific information requested. The Monitor also still had not received documentation indicating that non-DPD City employees other than managers from

Neighborhood City Halls had received copies and an explanation of the UOF CJ,¹⁰² to include rosters or other information identifying which City agency the employees were from.

Current Assessment of Compliance

The Monitor still has not received information previously requested regarding initial training provided to all City and DPD employees whose job responsibilities are affected by the UOF CJ. Previously, the Monitor specifically requested that the dates and subject matter of the training be provided in addition to the applicable paragraph numbers that the training covered. The documentation provided by the DPD did not include these specifics. Furthermore, the DPD has provided no documentation indicating that initial training has been conducted within 120 days of the implementation of each provision of the UOF CJ. With regard to in-service training, during the current quarter, the DPD commenced in-service training that covers the training paragraphs in the UOF CJ and several additional topics. This training is still in progress.

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 May 31, 2008. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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;

¹⁰² As reported in the Monitor's Reports for the Quarters Ending November 30, 2005, May 31, 2006, November 30, 2006, May 31, 2007, November 30, 2007 and May 31, 2008.

- 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 May 31, 2008, finding that the DPD was not yet in compliance. In its *19th Quarter Status Report*, the DPD indicated that it continued to train DPD members on the approved *Monadnock PR-24 Collapsible Baton Lesson Plan* and, as of that time, approximately 1,000 DPD members had been trained. However, the DPD had not delivered training using the approved *Use of Force Lesson Plan*. The DPD indicated that it was devising a roll-out plan for the training. The Monitor had not received a schedule for delivery of this training course as of the end of that quarter.

Current Assessment of Compliance

In its *21st Quarter Status Report*, the DPD indicates that it continues to train DPD members on the approved *Monadnock PR-24 Collapsible Baton Lesson Plan*. The DPD has begun delivery of Annual In-Service Training, including its approved Use of Force Lesson Plan. The Monitor attended this training and provided feedback to the DPD during a meeting held on November 25, 2008. In addition to other issues related to the use of force training that were raised during that meeting, the Monitor indicated that it found the section on Handling the Mentally Ill seriously deficient. The Monitor will re-evaluate this training and provide additional feedback. In the meantime, the DPD has not yet trained a sufficient number of officers to

achieve compliance, and at least one of the instructors is not following the approved lesson plan for this training.

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 May 31, 2008. 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 May 31, 2008. During that quarter, the Monitor reviewed and approved the *Firearms Tactical Training and Qualification Lesson Plan* submitted by the DPD. 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. However, the Monitor did not complete its evaluation of the DPD's implementation of the firearms training protocol as of the end of that quarter.

Current Assessment of Compliance

The Monitor has not yet completed its evaluation of the implementation of the DPD's approved firearms training protocol. The Recruit Firearms Lesson plan has not been submitted to the Monitor; the DPD anticipates submitting it during the quarter ending February 28, 2009.

Based on the foregoing, the Monitor has not completed evaluation of the implementation 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 May 31, 2008. 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 determine 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 May 31, 2008, finding that the DPD was not yet in compliance. The DPD had not begun to deliver training using the approved *Law of Arrest Search and Seizure Lesson Plan*. The DPD

has indicated that it was devising a roll-out plan for the training. The Monitor had not received a schedule for delivery of this training course as of the end of that quarter.

Current Assessment of Compliance

The DPD is delivering Annual Arrest and Citizen Interaction Training using the approved *Law of Arrest Search and Seizure Lesson Plan* as part of Annual In-Service Training. The Monitor observed this training and provided feedback regarding deficiencies noted¹⁰³ to the DPD during a meeting held on November 25, 2008. The Monitor congratulates the DPD on the content and quality of this training, and is confident that once the noted critiques are addressed, the technical requirements of the paragraph will be met. In any event, the DPD has not yet trained a sufficient number of officers to achieve compliance with this paragraph.

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 August 31, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 28, 2009.

F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 28, 2009.

G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 28, 2009.

¹⁰³ The Monitor's primary critique was that while the instructor's classroom presence and delivery were excellent, the presentation did not adhere to the lesson plan closely enough. The Monitor suggested closer adherence to the lesson plan to ensure that items are not skipped. Alternatively, the lesson plan could be re-written to more closely suit the instructor's presentation, and any back-up instructor must then follow this revised lesson plan.

H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2008, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 28, 2009.

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 November 30, 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.¹⁰⁴ The Monitor last assessed the DPD's compliance with paragraphs C14-21 during the quarter ending August 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending May 31, 2009.

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 August 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending May 31, 2009.

¹⁰⁴ 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.

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 unless the policies directly responsive to the paragraphs are revised. The Monitor also assessed the DPD compliance with paragraphs C26-27 and C30-34 during the quarter ending February 29, 2008. The Monitor again assessed the DPD’s compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C26 – Identification and Response to Medical Mental Health Needs

Paragraph C26 requires the DPD to ensure the appropriate identification of and response to detainees’ medical and/or mental health conditions. The DPD’s compliance with paragraph C26 is dependent on the annual review of the CMMHSP by qualified medical and mental health professionals at least once a year and prior to any revisions to the program as required by paragraphs C27-29 and achieving implementation requirements of paragraphs C27-C33.

Background

The Monitor last assessed the DPD’s compliance with paragraph C26 during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance, as it was not yet in compliance with the implementation requirements of paragraphs C27-32.

Current Assessment of Compliance

As described below, the Monitor has not completed its evaluation of the DPD’s compliance with the implementation requirements of paragraphs C27 and C30-32. As a result, the Monitor has not yet completed its assessment of the DPD’s compliance with paragraph C26.

Paragraphs C27-29 – Screening Program Development; Minimum Standards for Screening Program; Minimum Standards for Medical Protocols

Paragraph C27 requires the DPD to develop and implement a comprehensive medical and mental health-screening program that must be approved in writing by a qualified medical and mental health professional. Upon this review and approval, the screening program (as part of the CMMHSP) must be submitted to the DOJ for review and approval prior to being implemented. Thereafter, the program must be reviewed and approved in writing by a qualified medical and mental health care professional at least once every year, and prior to any revisions to the program.

Paragraph C28 requires that the DPD have a Detainee Screening Program that minimally enables DPD staff to identify individuals with medical or mental health conditions or who are at risk of committing suicide or have been on heightened observation for suicide risk during prior incarcerations, and persons who have contraindications to chemical spray. Furthermore, the process must require the DPD staff to follow standard intake procedures for each individual entering into DPD custody and require that intake screening be conducted within two hours of intake and through a verbal exchange between the DPD and detainee. Finally the process must incorporate all health information pertaining to a detainee acquired by the arresting or transporting officer.

Paragraph C29 provides the minimum standards for the medical protocols required under the comprehensive medical and mental health-screening program. The protocols must identify the specific actions the DPD must take in response to the medical information acquired during the detainee screening or detention. They must also require prior supervisory review and written approval, absent exigent circumstances, of all decisions made in response to acquired medical information.

Under the current methodology for assessing compliance with these paragraphs, paragraphs C28-29 are now considered “policy-only” paragraphs, and the implementation requirements for these paragraphs are assessed under paragraph U27.¹⁰⁵

Background

As mentioned above, during the quarter ending February 29, 2008, the Monitor found the DPD in compliance with paragraphs C28 and C29, which are policy-only paragraphs. During that same quarter, the Monitor also found that the DPD was not yet in compliance with paragraph

¹⁰⁵ As described in the Monitor’s Report for the Quarter Ending February 29, 2008, at the request of the City, the Monitor modified its original methodologies relative to paragraphs C27-29. Prior to that quarter, the DPD’s compliance with paragraph C27 was dependent on the annual review of the CMMHSP by qualified medical and mental health professionals at least once a year and prior to any revisions to the program as required by paragraphs C27-29 and achieving implementation requirements of paragraphs C28-C33.

C27 because it had not fully implemented the policy required under paragraphs C28-29. The Monitor recommended that the DPD modify its Detainee Intake Form (DIF) to include a section that allows documentation of the specific time a detainee enters a DPD holding facility; the Monitor also recommended that the DPD, through written directive, require staff to include this documentation as part of the detainee intake screening process.

Current Assessment of Compliance

The Monitor's methodology for assessing the DPD's implementation of paragraphs C28-29, and resultant compliance with paragraph C27, includes both on-site inspections of all DPD facilities containing holding cells and the Detroit Receiving Hospital (DRH), and a review of the *Medical and Mental Health Programs and Policies Audit* submitted by the DPD AT. Although the Monitor conducted on-site inspections of all DPD facilities containing holding cells during the current quarter,¹⁰⁶ the AT did not submit an audit of its Medical and Mental Health Programs and Policies. As a result, the Monitor has not yet completed its evaluation of the DPD's compliance with paragraph C27.

Paragraph C30 – Infectious Disease Policy

Paragraph C30 requires the DPD to develop and implement a policy on infectious disease control in consultation with qualified medical health professionals. The policy must establish appropriate housing of detainees believed to have infectious diseases and mandate measures to prevent the spread of infectious diseases, such as proper handling of bio-hazardous materials. Once implemented, the policy must be reviewed and approved, in writing, by qualified medical health professionals on an annual basis and prior to any changes or alterations to the plan.

Background

The Monitor last assessed the DPD's compliance with paragraph C30 during the quarter ending February 29, 2008, finding the DPD in compliance with the policy requirements of paragraph C30; however, the Monitor withheld a determination of the DPD's overall compliance with the paragraph based on the limited population identified for testing compliance with this paragraph in the *Medical and Mental Health Programs and Policies Audit*. The Monitor recommended to the AT that in future audits, the AT should either consider extending the population to capture a statistically sufficient number of incidents or make strong recommendations to the DPD to develop and implement checks so that a separate population of applicable incidents can be readily identified and tested.

¹⁰⁶ The Monitor conducted on-site inspections of the Northwestern, Western, Northeastern, Eastern, and Southwestern Districts and DRH on November 28, 29 and 30, 2008. These inspections were conducted in order to evaluate compliance with a number of COC CJ requirements, including paragraphs C26-34.

Current Assessment of Compliance

The Monitor's methodology for assessing the DPD's compliance with paragraph C30 includes both on-site inspections of all DPD facilities containing holding cells and DRH and a review of the Medical and Mental Health Programs and Policies Audit submitted by the DPD AT. As described above, the Monitor conducted on-site inspections of all DPD facilities containing holding cells during the current quarter; however, the AT did not complete an audit of its Medical and Mental Health Programs and Policies. As a result, the Monitor has not yet completed its assessment of the DPD's compliance with paragraph C30.

Paragraph C31 – Detainee Health Information Protocol

Paragraph C31 requires the DPD to develop and implement procedures for updating and exchanging detainee health information. These procedures must ensure that detainee health information is properly recorded at intake, and that it is readily available to all relevant medical and transporting personnel in a manner consistent with relevant federal and state confidentiality statutes. The procedures must also ensure that detainees' health information is continually updated to include any additional relevant information acquired during their detention.

Furthermore, these procedures must ensure that the information is documented and communicated between consecutive shifts. Finally, they must ensure that detainees' health information travels with them when they are transferred to another facility.

Background

The Monitor last assessed the DPD's compliance with paragraph C31 during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance. Although the DPD implemented the Platoon Daily Detail Summary (PDDS) (DPD 659a) at all district facilities containing holding cells during the evaluation period, the Monitor found that staff were not using the form to consistently document the communication of relevant detainee information between shifts or to continually update and/or incorporate any additional relevant detainee health information acquired during detention. The Monitor also determined that DPD policies and practices comply with the requirement to record detainee health information upon intake and make it readily and immediately available to relevant medical and transporting staff.

Current Assessment of Compliance

The Monitor's methodology for assessing DPD compliance with paragraph C31 includes both on-site inspections of all DPD facilities containing holding cells and DRH and a review of the *Medical and Mental Health Programs and Policies Audit* submitted by the DPD AT. As described above, the Monitor conducted on-site inspections of all DPD facilities containing holding cells during the current quarter; however, the AT did not complete an audit of its

Medical and Mental Health Programs and Policies. As a result, the Monitor has not yet completed its assessment of the DPD's compliance with paragraph C31.

Paragraph C32 – Prescription Medication Policy

Paragraph C32 requires the DPD to develop a Detainee Prescription Medication Policy, in consultation with qualified medical and mental health professionals, which ensures detainees are provided with prescription medications as directed. The policy must be approved in writing by medical and mental health professionals and submitted to the DOJ for review and approval within three months of the effective date of the UOF CJ. The DPD must implement the policy within three months of the DOJ's approval. Thereafter, the policy must be reviewed and approved, in writing, by qualified medical and mental health professionals on an annual basis and prior to any revisions to the policy.

Background

The Monitor last assessed the DPD's compliance with paragraph C32 during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance, as it had not effectively implemented all of the requirements of the paragraph, including the recording of relevant information regarding the administration of prescription medication on an auditable form. Additionally, DPD staff failed to ensure that all unused medications prescribed at DRH or other treating hospitals are provided to detainees upon their release from DPD custody.

Current Assessment of Compliance

The Monitor's methodology for assessing the DPD's compliance with paragraph C32 includes both on-site inspections of all DPD facilities containing holding cells and DRH and a review of the Medical and Mental Health Programs and Policies Audit submitted by the DPD AT. As described above, the Monitor conducted on-site inspections of all DPD facilities containing holding cells during the current quarter; however, the AT did not complete an audit of its Medical and Mental Health Programs and Policies. As a result, the Monitor has not yet completed its assessment of the DPD's compliance with paragraph C32.

Paragraph C33 – Suicide Precaution Clothing

Paragraph C33 requires the DPD to provide appropriate clothing to all individuals placed under suicide watch while in detention.

Background

The Monitor last assessed the DPD's compliance with paragraph C33 during the quarter ending February 29, 2008, finding the DPD in compliance.

Current Assessment of Compliance

In order to assess the DPD compliance with paragraph C33, the Monitor evaluated the implementation of this paragraph by conducting on-site inspections of all DPD buildings containing holding cells and DRH, as described above. During these inspections, the Monitor determined that an adequate supply of suicide clothing was maintained at each of the five districts with holding cells. In addition, all six staff members interviewed by the Monitor during the inspections properly articulated their responsibilities regarding responding to a detainee identified as a suicide risk.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph C33.

Paragraph C34 – Suicide Hazard Removal

Paragraph C34 requires the DPD to remove or make inaccessible all suicide hazards in holding cells, including exposed pipes, radiators and overhead bars.

Background

The Monitor last assessed the DPD compliance with paragraph C34 during the quarter ending February 29, 2008, finding the DPD in compliance. The Monitor determined that there were no suicide hazards in any holding cells being utilized by the DPD to hold detainees.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph C34 during the current quarter, as described above, the Monitor conducted on-site inspections of all DPD district facilities containing holding cells and DRH. During these inspections, the Monitor determined that there were no suicide hazards in any holding cells currently being utilized by the DPD.

Based on the foregoing, the Monitor finds that the DPD is in continued compliance with paragraph C34.

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 compliance with paragraphs C35-38 during the quarter ending February 29, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C35-38 – Ensure Safety Level; Security Screening of Prisoners; Cell Check Policies; and Observation Cell Policy

Paragraph C35 requires the DPD to ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures.

Paragraph C36 requires the DPD to develop and implement a prisoner security screening program for all buildings containing holding cells. At a minimum, this program must:

- a. establish protocols based upon objective, behavior-based criteria for identifying suspected crime partners, vulnerable, assaultive or special management prisoners who should be housed in observation cells or single-occupancy cells; and
- b. require that security screening information is documented and communicated between consecutive shifts.

Paragraph C37 requires the DPD to develop and implement procedures for the performance, documentation and review of routine cell checks in all holding cells to ensure safe housing. At a minimum, these procedures will require that cell checks on the general population are performed at least twice per hour and that cell checks on prisoners in observation cells and DRH holding cells are performed every 15 minutes, unless constant supervision is required, and that detention officers document relevant information regarding the performance of cell checks in an auditable log.

Paragraph C38 requires the DPD to record in a written policy and implement a procedure that requires detention officers to provide continual direct or on-site remote observation of all observation cells while they are occupied.

Background

The Monitor last assessed the DPD compliance with paragraphs C35-38 during the quarter ending February 29, 2008, finding that the DPD was in compliance with paragraph C38, as the DPD's audit and the Monitor's supplemental on-site inspections confirmed that the DPD had implemented a policy and enacted a procedure for providing continual direct remote observation of all observation cells that are occupied. However, the Monitor concluded that the DPD was not yet in compliance with paragraph C35, subparagraphs C36a and b, and paragraph C37. The DPD was not yet in compliance with paragraph C35 due to its lack of compliance with paragraphs C36-37. The DPD was not yet in compliance with subparagraph C36a because it failed to follow its policy that requires DPD staff to make decisions regarding cell assignment and level of supervision based on objective behavior-based criteria and to document said

decisions on the appropriate DPD forms. The DPD was not yet in compliance with subparagraph C36b because it failed to consistently meet requirements regarding procedures for documenting and communicating security screening between shifts. The DPD was not yet in compliance with paragraph C37 due to its failure to consistently perform and document cell checks on the general population and detainees in observation cells.

Current Assessment of Compliance

In order to assess the DPD compliance with paragraphs C35-38, the Monitor reviewed the *Detainee Safety Audit* submitted by the DPD AT on July 31, 2008.¹⁰⁷ The Monitor also conducted supplemental on-site inspection of all DPD buildings containing holding cells, as described above. The following reflect the findings of the audit and Monitor:

Paragraph C35 -- Assurance of Safety

The audit and the Monitor's supplemental on-site inspections determined that the DPD is not yet in compliance with the requirements of paragraph C35 based on its failure to comply with the requirements of paragraphs C36-38.

Subparagraph C36a – Security Screening of Prisoners

- The audit report found that the DPD failed to: document security screening information on DPD approved forms, properly house detainees based on objective behavior-based criteria; and consistently document the correct level of supervision and cell assignment.
- The Monitor observed the following during the on-site inspections: several instances in which DPD staff failed to document the level of supervision and or cell assignment number on DPD-approved forms;¹⁰⁸ several instances of lack of supervisors' signatures upon initial detainee intake and or detainee return from the hospital;¹⁰⁹ districts that are still maintaining hard copies of the previously used Detainee Intake forms that contain differing assessment information; and conveyance officers delivering detainees to the DRH who continue to use hard-copy DIF forms to capture detainee intake information.

Subparagraph C36b – Security Screening of Prisoners

The DPD revised its Platoon Daily Detainee Summary Log and in May of 2008 directed staff to begin using the log for documenting communication of security screening information between consecutive shifts.

¹⁰⁷ The *Detainee Safety Audit* is separately evaluated under paragraph C69 of this report.

¹⁰⁸ Northeastern, Eastern, and Northwestern Districts.

¹⁰⁹ Southwestern, Northeastern, and Eastern Districts.

- The *Detainee Safety Audit* found that: the relevant information documented on the PDDS and the Detainee File Folder (DFF) was not consistent; the relevant information documented on the PDDS and the DIF was not consistent; the relevant information documented on the PDDS and the Cell Assignment Detainee Security Screening form was not consistent; and outgoing and incoming DPD staff did not consistently document their name, rank/badge, date and time of ending tour on the PDDS.
- The Monitor observed the following during the on-site inspections: several instances of the relevant information documented on the PDDS either missing or different from the information documented on the corresponding DIF and or DFF.¹¹⁰

Paragraph C37 – Cell Check Policies

- The *Detainee Safety Audit* found that: cell checks for the general detainee population were regularly performed and accurately documented in 11 of 16 documents reviewed; supervisory review and approval of the cell check logs were observed in 16¹¹¹ of 16 documents reviewed; staff performed and documented cell checks on detainees in observation cells, which require 15-minute checks, in 12 of 17 documents reviewed; relevant information was documented on the MMHRML on 12 of 17 documents reviewed; 12 of 17 documents reviewed contained the required staff information; and eight¹¹² of 17 documents reviewed contained the required supervisory information.
- The Monitor observed the following during the on-site inspections:
 - Cell checks were regularly performed and contained the relevant information, including staff and supervisor signatures.
 - Two instances involving detainees that were assigned to single-occupancy cells and placed on normal thirty-minute checks, although DPD staff identified that the detainees had conditions requiring that they be placed in observation cells and subject to either 15-minute checks or continual observation per DPD policy.¹¹³
 - DPD staff assigned to DRH stated that they are required to perform normal checks on detainees in their holding cell every 30 minutes.¹¹⁴

¹¹⁰ Northeastern and Eastern Districts.

¹¹¹ This result was adjusted from 15 of 16 following the Monitor's review of the AT's audit.

¹¹² This result was adjusted from nine of 17 following the Monitor's review of the AT's audit.

¹¹³ Northwestern District.

¹¹⁴ DPD Directive 305.5 Detainee Health Care- 305.5-7.2 requires staff to monitor all detainees every 15 minutes.

Paragraph C38 – Observation Cell Policy

Based on its review of the audit and the results of its supplemental on-site inspections, the Monitor determined that the DPD is not yet in compliance with the paragraph C38 requirement to implement a policy and enact a procedure for providing continual direct on-site remote observation of all observation cells that are occupied.

- The *Detainee Safety Audit* found the following during the on-site inspections:
 - No detainees were observed in the observation cells in three of the five districts and DRH.
 - In two of the five districts, there were detainees in the observation cells either because of overcrowding issues or for precautionary issues. The AT's audit noted that the individuals held for precautionary measures, one of whom had been provided with medication by the DRH for mental health issues, did not require the completion of a mental or medical high-risk monitoring log. However, paragraph C38 requires that detainees in observation cells be monitored and DPD policy requires that individuals with past or current mental illness should be considered high-risk detainees and monitored accordingly.
 - The on-site remote monitoring cameras were in operable condition in four of the five districts and in the DRH.
- The Monitor observed the following during the onsite inspections:
 - No detainees were observed in the observation cells in one of five districts and the DRH.
 - In four of five districts, there were detainees in observation cells either because of overcrowding issues or, according to DPD staff, for precautionary issues not requiring the completion of a mental or medical high-risk monitoring log. As noted above, individuals with past or current mental illness in observation cells should be considered high risk detainees and monitored accordingly.
 - The on-site remote monitoring cameras were in operable condition in two of five districts and the DRH.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C35, subparagraphs C36a and b, and paragraphs C37-38.

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.¹¹⁵

The Monitor last assessed the DPD's compliance with paragraphs C39-43 and C45 during the quarter ending May 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending February 28, 2009.

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 again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs C47-48 – Accommodations for Persons with Disabilities and Policy Concerning the Detention of Persons with Disabilities

Paragraph C47 requires the DPD to ensure that persons with disabilities are provided with reasonable accommodations.

Paragraph C48 requires the DPD to develop and implement a policy concerning the detention of individuals with disabilities in consultation with qualified medical and mental health professionals. The policy must be approved in writing by qualified medical and mental health professionals; thereafter, the program must be reviewed and approved in writing by qualified medical and mental health professionals at least every year and prior to any revisions to the program.

Background

The Monitor last assessed the DPD's compliance with paragraphs C47-48 during the quarter ending February 29, 2008. The Monitor withheld determination of compliance regarding

¹¹⁵ 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 C47 after concluding that the findings in the *Medical and Mental Health Programs and Policies Audit* submitted by the DPD on January 31, 2008 were unreliable due to the limited number of applicable incidents within the audit sample used by the AT to assess compliance. The Monitor found that the DPD was not yet in compliance with paragraph C48 because the DPD did not meet the implementation requirements of the paragraph. The DPD had fitted one district (Northeastern District) with handicapped toilets and designated it as the facility to accommodate detainees with disabilities. Although the DPD has issued Teletype 67-02505 to update the written direction regarding the housing of detainees requiring handicapped commodes, Directive 305.1 *Detainee Intake/Assessment*, had not been updated to reflect this new process, nor were the changes reviewed and approved by a medical professional prior to making them, as required by paragraph C48.

Current Assessment of Compliance

The Monitor's methodology for assessing the DPD implementation of paragraphs C47 and C48 includes both on-site inspections of all DPD facilities containing holding cells and DRH and a review of the Medical and Mental Health Programs and Policies Audit submitted by the DPD's AT. As described above, the Monitor conducted on-site inspections of all DPD facilities containing holding cells during the current quarter; however, the AT did not submit an audit of its Medical and Mental Health Programs and Policies. As a result, the Monitor has not completed its assessment of the DPD's compliance with paragraphs C47 and C48.

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 May 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending February 28, 2009.

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 May 31, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending February 28, 2009.

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 August 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending February 28, 2009.

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 PI investigation 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 May 31, 2008, and elected to defer its evaluation during the quarter ending August 31, 2008. 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 PI investigation policies.

Background

During the quarter ending August 31, 2008, the Monitor began but had not completed its review of the *PIHC* and *UOFHC Audits* that were submitted on July 31, 2008. These two audits

included a total of 12 investigations conducted at the command level, all of which occurred in holding cells. The Monitor elected to defer its assessment of the DPD's compliance with paragraphs C55-57 in order to assess the DPD's compliance in conjunction with the review of the audits.

Current Assessment of Compliance

During the current quarter the Monitor completed its assessment of the *PIHC* and *UOFHC Audits* that were submitted by the DPD on July 31, 2008.¹¹⁶ The audits identified two command investigations of PI incidents and ten investigations of UOF incidents that occurred in holding cells. In these twelve investigations, the AT evaluated whether the DPD is investigating PIs and UOF that occur in holding cells in compliance with the DPD's general investigation policies, UOF investigation policies and PI investigation policies, as required by paragraphs C55-57.¹¹⁷

Similar to previous audits conducted by the DPD AT, the audit correctly found that the DPD is not yet compliant with paragraphs C55-57, as the policies governing investigations of UOF and PI that occurred in holding cells have not been adequately implemented. A summary of the *PIHC Audit* findings in connection with the requirements for these investigations is described in the *Current Assessment of Compliance* for paragraphs U27-36, above. The *UOFHC Audit* reported findings similar to those described in the *Current Assessment of Compliance* for paragraphs U27-36, above, and found that command supervisors are not conducting canvasses of the holding cells / holding cell areas or area hospitals, which prevented investigators from identifying potential civilian witnesses to the use of force incidents.

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 C55-57.

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.

¹¹⁶ The *UOFHC Audit* is separately evaluated under subparagraph C65a of this report and the *PIHC Audit* is separately evaluated under subparagraph C65b of this report.

¹¹⁷ The AT indicated that these paragraphs were tested as part of its assessment of the related UOF CJ paragraphs (paragraphs U27-36).

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending May 31, 2008. 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.

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 complaint investigations and review.

Background

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending May 31, 2008, finding that the DPD was in compliance with paragraph C58 and in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraph C59. The Monitor conducted its assessment in conjunction with its review of the *AOMHC Audit* submitted by the DPD on January 31, 2008, which included three external complaints regarding incidents that occurred in a holding cell. The audit found that although the incidents were appropriately investigated by IA due to the seriousness of the allegations, the investigations were non-compliant with paragraph C59 due to several deficiencies in their conduct and review.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs C58-59 during the current quarter, the Monitor reviewed the *AOMHC Audit* submitted by the DPD on July 31, 2008.¹¹⁸ The *AOMHC Audit* reviewed five 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. Similar to previous audits, the *AOMHC Audit* again found that the DPD was in compliance with the requirements of paragraph C58, as all five complaints had been accepted and processed consistent with the DPD's external complaint policies. The audit also again concluded non-compliance with paragraph C59, as one of the five investigations did not attempt to resolve all material inconsistencies between witness statements and did not determine if the officer's

¹¹⁸ Refer to the *Current Assessment of Compliance* for subparagraph C65c for details regarding this audit and the Monitor's assessment of it.

conduct was justified. The audit also found that four of the five investigations were not completed in a timely manner as required by the DPD's external complaint policies.

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

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 May 31, 2008. 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 C61 requires the DPD, in developing, revising and augmenting policies, to ensure all terms contained within the COC CJ are clearly defined.

Background

The Monitor last assessed the DPD's compliance with paragraph C60 during the quarter ending May 31, 2008, at which time the Monitor found the DPD in compliance with all of the requirements of the paragraph. 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 on April 7, 2008. The Monitor reviewed the meeting minutes and noted that the Committee's discussion centered on policy issues.

Current Assessment of Compliance

The *Policy Focus Committee* met again on December 15, 2008. The Monitor obtained and reviewed the minutes from that meeting, noting that the Committee's discussion, again, 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 May 31, 2008, finding the DPD in compliance. 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*.

Current Assessment of Compliance

During the current quarter, the Monitor periodically accessed the DPD's website, noting that Directive 305.1, *Detainee Intake*, Directive 401.1, *Performance Evaluations*, Directive 305.9, *Fingerprinting and Identification of Detainees*, and Directive 401.13, *Management Awareness System*, were posted for review and comment during the current assessment period.

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-annual audits that assess and report on issues affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells.¹¹⁹

The Monitor last assessed the DPD's compliance with paragraphs C62-64, the Fire Safety Audit requirement of paragraph C66, and paragraphs C67, C68, and C70 during the quarter ending August 31, 2008; with subparagraphs C65b and c and paragraphs C71-C72 during the quarter ending May 31, 2008; and with subparagraph C65a, the Holding Cell Compliance Committee

¹¹⁹ 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.

(HCCC) requirement of paragraph C66, and paragraph C68 during the quarter ending February 29, 2008.

The Monitor again assessed the DPD's compliance with subparagraphs C65a-c, the HCCC requirement of paragraph C66, paragraphs C69, C71 and C72 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, PIs, and AOM in holding cells.

In order to address the requirements of paragraph C65, the DPD AT has historically conducted three separate audits of a) investigations of UOF in holding cells, b) investigations of PIs 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 (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 its failure to submit the *UOFHC Audit* that was due on January 31, 2008.

The Monitor last assessed the DPD's compliance with subparagraphs C65b and C65c during the quarter ending May 31, 2008, finding the DPD in compliance with the requirements of these subparagraphs.

Current Assessment of Compliance

Subparagraph C65a – Holding Cells Use of Force Investigations Audit

In order to assess the DPD's compliance with paragraph C65a, the Monitor reviewed the *UOFHC Audit Report* submitted by the DPD AT on the required due date of July 31, 2008. The Monitor also reviewed the related work plan and conducted an assessment of all ten of the investigations included in the audit.

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

- The AT selected a three-month time period from February 1 through April 30, 2008 to review closed investigations of UOF incidents that occurred in a holding cell. The AT

identified and reviewed ten applicable command investigations and did not identify any applicable FI or JIST investigations during this time period.¹²⁰

- The AT conducted thorough completeness tests of all populations. In regards to the FI and JIST populations, the AT found no additional investigations that should have been included in this population. The AT's review of desk and cellblock blotter entries, auditable forms, and FCN resulted in the identification of four additional command UOF incidents that should have been but were not reported by the commands when requested by the AT. Similar to previous audits of this topic, this audit again appropriately reported that the lack of a tracking system continues to be a problem.
- The AT properly included assessments of all substantive paragraphs related to this topic and identified deficiencies within all ten investigations. As a result of this testing, the AT correctly found the DPD in overall non-compliance with paragraphs U27-28, U30, U32, and U35-36 and in partial compliance with paragraphs U29 and U34. The AT should have, but did not specifically report on the DPD's compliance with paragraphs C55 and C56; however, based on the AT's assessment of the investigations, the DPD is non-compliant with these paragraphs. While the Monitor concurs with the AT's overall conclusions as described above, the Monitor identified several additional concerns that were not identified by the AT, as described immediately below:
 - Similar to the issue described in the *Current Assessment of Compliance* for subparagraph U94a above, the AT failed to correctly assess the subparagraph U32f requirement regarding investigators' evaluations of officers' tactics. The AT incorrectly concluded that all ten investigations were compliant with subparagraph U32f because the investigations had assessed the type of force used; however, none of the investigations included an evaluation of all of the officers' tactics surrounding the force incidents.
 - The AT incorrectly concluded that one of the ten investigations had not complied with subparagraph U35a, which is the requirement for officers to report a UOF or PI to a supervisor following such incidents. The Monitor determined that the officers had not used force, the individual did not complain of an injury until the following day, and the officers completed the appropriate notification and auditable form upon notification that the detainee had complained of an injury.
 - Also similar to the issue described in the *Current Assessment of Compliance* for subparagraph U94a above, the AT failed to assess subparagraph U36a regarding the ten-day requirement for the completion of preliminary command UOF investigations.
- The audit report was well written and made good use of tables. The AT included an Appendix to the audit report illustrating compliance by Consent Judgment paragraph. The AT's matrix questions and other working papers were well-formatted and well-organized,

¹²⁰ No CFDs, in-custody deaths as a result of a UOF, or incidents involving chemical spray in holding cells were identified.

and demonstrated sufficient testing of the elements necessary to conclude on each objective. Except as noted above, the AT made appropriate recommendations within the audit where the DPD was non-compliant.

Based on the foregoing, the Monitor finds the DPD in partial compliance with subparagraph C65a. In arriving at this conclusion, the Monitor found there to be one substantial performance-related deficiency: the scope issue associated with evaluating tactics as required by subparagraph U32f. The Monitor also identified two material performance-related issues, those associated with the AT's testing of subparagraphs U35a and U36a, that had some effect on the quality of the audit.

Subparagraph C65b –Prisoner Injuries in Holding Cells Audit

In order to assess the DPD's compliance with subparagraph C65b, the Monitor reviewed the *PIHC Audit Report* submitted by the AT on July 31, 2008, and the related audit work plan. The Monitor also conducted an assessment of the two investigations included in the 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 July 31, 2008, and appropriately selected a three-month time period from February 1 through April 30, 2008 to identify closed investigations. The AT identified and reviewed two command investigations and no FI or JIST investigations of UOF incidents that occurred in a holding cell during this time period.¹²¹
- The audit properly included all of the substantive paragraphs related to this topic and conducted suitable completeness tests. As a result of this testing, the audit identified three incidents of prisoner injuries that should have been investigated but were not. Similar to previous audits of this topic, the audit again appropriately reported that the lack of a tracking system continues to be a problem.
- The AT completed detailed working papers regarding the two investigations that covered all audit objectives, and the Monitor was able to reconcile the findings reported for each of the audit objectives to the supporting work papers. The AT made appropriate recommendations within the audit where the DPD was non-compliant.
- The Monitor identified several reporting errors, which were discussed with the AT in order to correct them and improve future audits. These errors, however, did not impact the AT's compliance assessments and had only minor impact on the overall quality of the audit.

¹²¹ No CFDs, in-custody deaths as a result of a UOF, or incidents involving chemical spray in holding cells were identified.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with subparagraph 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 July 31, 2008 and the related audit working papers. The Monitor also conducted an assessment of all five of the investigations included in the 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 July 31, 2008 and appropriately selected a six-month audit time period from November 1, 2007 through April 30, 2008 to identify and review all closed investigations of AOMHC conducted by IA and DPD commands. The AT identified and reviewed a total of five IA investigations and no command investigations of incidents that occurred in DPD holding cells.
- 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 four audits of this topic, the AT again reported that due to the lack of a suitable and consistent tracking systems, the AT was unable to determine whether any AOM incidents occurred within the command holding cells. The Monitor concurs with these observations.
- The AT properly included all of the substantive paragraphs related to this topic.¹²² Although the audit was not required to 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.
- 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 Consent Judgment paragraphs to the investigations reviewed, and correctly concluded that the DPD was in compliance with the requirements of paragraphs U29-30, U32-33, U58, U61, U65-67 and U68 and in non-compliance with the requirements of paragraphs U27 and U59. The AT also found the DPD in partial compliance with paragraph U28.
- The AT's working papers were well-formatted and well-organized, and the audit report included an Appendix illustrating compliance by Consent Judgment paragraph. 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.

¹²² The five 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 for investigations of external complaints (paragraphs U67-69) were also applicable.

Based on the foregoing, the Monitor finds that the DPD remains 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.¹²³

Background

During the quarter ending August 31, 2008, the Monitor requested and subsequently received documentation regarding HCCC meetings, including agendas, minutes taken, and audio recordings of these meetings whenever minutes were not available. Certain of these materials were not provided until after the end of that quarter, which the Monitor needed to review in order to conclude its assessment of the DPD's compliance with the HCCC requirement of paragraph C66. The Monitor's last assessment of the DPD's compliance with the HCCC requirement of paragraph C66 occurred during the quarter ending February 29, 2008, at which time the Monitor found the DPD in compliance.

The Monitor last assessed the DPD's compliance with the Fire Safety Program audit requirement of paragraph C66 during the quarter ending August 31, 2008, finding the DPD in non-compliance because the DPD did not submit an audit of its Fire Safety Program and Policies (FSPP), which was due by July 31, 2008. The Monitor is next scheduled to evaluate this component of paragraph C66 during the quarter ending February 28, 2009.

Current Assessment of Compliance

HCCC Requirement of Paragraph C66

On September 15, September 24, and October 2, 2008, the DPD submitted electronic files of the tape-recorded HCCC meetings along with the Agendas for all HCCC meetings held in May, June, July, and August 2008, as well as the most recent roster of HCCC members. The Monitor reviewed these materials and determined that the HCCC met twice per month during the period requested and the meetings were attended by members with appropriate expertise in the topic areas discussed. The tape-recordings of the meetings indicate that the content of the meetings was related to areas where the DPD was not yet in compliance, and remedies were discussed to

¹²³ The scope of such audits must include an evaluation of smoke detectors and sprinklers, the back-up power systems, and the DPD's fire equipment.

further the DPD towards implementation of the COC CJ-required policies, programs and procedures. Although not every meeting covered every required topic, the meetings as a whole covered the required material over time, since there were multiple meetings each month.

As identified in the Monitor's Report for the Quarter Ending August 31, 2008, the Monitor also attended a scheduled HCCC meeting on September 25, 2008, which was attended by appropriate HCCC members who discussed issues in areas pertinent to achieving compliance with various COC CJ provisions. The Monitor reported then that the HCCC members present took an active role in discussing remedies to solve recently identified issues and ways to move the DPD towards full compliance with the COC CJ requirements.

Based on the foregoing, the Monitor finds the DPD in compliance with the HCCC Requirement of paragraph C66.

Paragraph C69 – Audit of Detainee Safety Programs and Policies

Paragraph C69 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD's detainee safety programs and policies for all DPD buildings containing holding cells.

Background

The Monitor last assessed the DPD's compliance with paragraph C69 during the quarter ending February 29, 2008, finding the DPD in compliance. The Monitor determined that the *Detainee Safety Program and Policies Audit* submitted on January 31, 2008 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 *Detainee Safety Program and Policies (Detainee Safety) Audit Report* submitted by the DPD AT on July 31, 2008 and the associated audit work plan, working papers and fieldwork documents.¹²⁴ The Monitor's findings, which have been discussed with the DPD AT, are as follows:

- The audit report was submitted on a timely basis by the required due date of July 31, 2008 and included a review of relatively recent security administration procedures and documentation. Specifically, the AT selected a seven-day audit time period in February 2008 to gather arrestee source documents for the principal audit tests on the security screening of new detainees, and a two-month period from April to May 2008 for review of the *Medical and Mental High Risk Monitoring Logs*. Assessment of communication of security

¹²⁴ The Monitor randomly selected a sample using a one-tailed test, a 95% confidence interval, and an error factor of +/-4%.

information between shifts was reviewed for one day in June 2008 and on-site inspection work was performed in July 2008.

- 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 C69. Overall, the AT found the DPD in compliance with paragraph C38, but not yet in compliance with paragraphs C35-37 or the training requirements of paragraph C77. The Monitor disagrees with the finding for paragraph C38 (see detail below) and finds all relevant paragraphs not yet in compliance.
- The AT's work in gathering and ensuring the completeness of its source documents was well performed. However, the Monitor identified a number of issues with the sampling procedures for two of the six audit objectives. For both objectives, an incorrect sample size was selected as a result of incorrect logic in the sample stratification worksheets. Additionally, for one objective, the expected population was used for sample selection, as opposed to the actual population, and the audit did not review the selected sample in the order in which it was selected.
- The Monitor identified a total of 14 fieldwork errors in the AT's testing of the following areas: the forms and logs related to the detainee security screening program requirements of paragraph C36; the communication of security screening information between DPD shifts as required by subparagraph C36b; the performance, documentation and supervisory review of the general population of detainees as required by paragraph C37; and the performance, documentation and supervisory review of the high-risk detainees. While these errors did not result in any changes to the AT's overall findings of non-compliance¹²⁵ for paragraphs C35-C37, they affected the overall quality of the audit.
- This was the first time the AT had tested the *Platoon Daily Detainee Summaries*, which are employed by the DPD as a means of communicating important detainee security and medical information between DPD shifts at the holding cell facilities. The AT's audit approach was to check the information on the summaries back to the individual detainee file folders and intake forms; however, the testing did not identify that the intake forms indicated that four detainees were suspected crime partners and three feared being harmed while being held and, therefore, required accommodation in single cells. This important information should have been included on *Platoon Daily Detainee Summaries*.¹²⁶ Furthermore, the audit approach as executed did not address whether all detainees with specific issues that should have been captured on the *Platoon Daily Detainee Summaries* were actually captured. The AT has

¹²⁵ There was one exception to this: the AT's findings relating to supervisory review of the general detainee population changed from partial compliance to full compliance.

¹²⁶ Based on the forms available to the Monitor, one of these detainees was placed in the district's bull pen. The others appear to have been held in single cells, but it cannot be determined whether the detainees were actually held alone in these cells; certainly one of the detainees was held in the same single cell as another detainee at the time the *Platoon Daily Detainee Summary* was completed.

discussed possible alternative audit approaches with the Monitor to properly address this in future audits of this topic.

- In the prior audit of this topic, the Monitor agreed with the AT's recommendation that cell checks at the DRH should be performed every 15 minutes as required by subparagraph C37a. However, this issue was not addressed or properly evaluated in the current audit; specifically, the AT incorrectly tested the DRH logs to the 30-minute standard, as it did in the prior audit, as opposed to the required 15-minute standard.
- Also in the prior audit, the Monitor agreed with the AT's testing approach and accompanying recommendation that all cell check logs (for both general and high-risk detainees) be amended to separate the review and approval sections in order to determine whether the log had been simply "reviewed" or "reviewed and approved" by the supervisor. Again, this issue was not evaluated in the current audit; it was unclear from the audit matrices what was being tested and how to compare these results to the prior audit results. The use of quality cribnotes could have alleviated such testing problems.
- In regards to the paragraph C38 requirement for the DPD to provide continual direct or on-site remote observation of occupied observation cells, the Monitor disagreed with the AT's conclusions for two of the six districts. In these two cases, the observation and verification audit work identified that at the time of the audit inspection, although one detainee at Eastern District¹²⁷ and one at Western District were being held in observation cells for "precautionary measures," these individuals were not being monitored as required by paragraph C38 and DPD policy.¹²⁸ The Monitor, therefore, disagrees with the AT's finding of full compliance and finds the DPD in non-compliance with paragraph C38.
- Although the audit report was very logically formatted, it was 44 pages in total, including a 14-page executive summary, which is considerably longer than previous *Detainee Safety Audit Reports*. Although part of this increase is attributable to increased paragraph reporting requirements, the text contained a considerable amount of repetition, and the summary could have been improved by including a more in-depth assessment of key issues, explained in a format that would focus the readers' attention.
- The AT included an Appendix to the audit report summarizing compliance by Consent Judgment paragraph; however, the Monitor identified some inaccuracies and missing information, primarily the lack of assessment by subparagraph. The Monitor recommends that, prior to the next audit, the AT reassess and reorganize the audit matrices to make it clear which matrix questions address which paragraph component or subparagraph so that the

¹²⁷ The detainee in Eastern District had been provided medication for mental health issues by the DRH.

¹²⁸ The previous and recently revised Directive 305.1 on Detainee Intake/Assessment, Sections 3.9 and 3.14 require that an individual with past or current mental illness should be considered a high-risk detainee and monitored accordingly.

information will flow readily into the Appendix. This will have the added benefit of ensuring the matrix questions address the current versions of the forms being tested.

Based on the above findings, the Monitor finds this audit non-compliant; as a result, the DPD is no longer in compliance with the requirements of paragraph C69. In arriving at this conclusion, the Monitor identified a number of issues and associated errors related to the quantitative audit work, in particular the problems identified with the testing of the *Platoon Daily Detainee Summaries* required by subparagraph C36b and the assessment of the observation cell requirements required by paragraph C38. In addition, the Monitor identified several material and administrative errors that had an impact on the overall audit quality.

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C71 during the quarter ending May 31, 2008, finding the DPD in compliance, as the *Detainee Food Service Program (FSP) and Personal Hygiene Practices Audit* submitted on January 31, 2008 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 the required due date of July 31, 2008. The Monitor also reviewed the audit work plan, audit matrices, and supporting documentation.¹²⁹

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

- The audit was conducted by members of the AT with the involvement of the HCCC as specifically required by paragraph C71.¹³⁰ It also included objectives to cover all relevant sections of the COC CJ and selected appropriate populations for each objective. Similar to previous audits of this topic, the AT included three on-site inspections per district.

¹²⁹ 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.

¹³⁰ 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.

- The audit concluded that the DPD was not yet in compliance with paragraphs C49-50 and was in partial compliance with paragraph C51. Based on its review, the Monitor concurs with the audit’s findings.
- In arriving at conclusions of “in compliance,” in several areas of testing and reporting, the AT incorrectly rounded up results, rather than either reporting them “as is” (e.g., 93.3%) or rounding down (e.g. 93%).¹³¹ However, these errors did not impact the AT’s overall assessment of compliance for the related paragraphs in these particular instances.
- In calculating compliance, the AT excluded several testing criteria that were tested during the audit fieldwork.¹³² Because they were excluded, fewer attributes were assessed in the audit, which impacted overall compliance calculations for the relevant objectives. No written explanations were provided in the audit report, work plan, matrices, or crib notes regarding these exclusions. The AT should have provided a documented explanation for these exclusions and/or included these test results in its compliance calculations.
- The AT incorrectly calculated and reported overall compliance by COC paragraph in the Appendix by adding the *percentages* for each individual test and averaging these *percentages* to find the overall compliance rate¹³³ (and, again, the AT inappropriately rounded up the compliance results). The AT should have calculated all *attributes* that were compliant (or non-compliant) and divided by all *attributes* tested to determine the overall compliance rate. This mathematical error was not discovered during the audit review process.
- Other than the above exceptions, the reported findings were supported by well-organized working papers that reconciled to the underlying documentation (logs). The AT reproduced and included almost an entire Excel worksheet in the audit report rather than summarizing the detailed working papers and reporting the results of the analysis of those results.
- The Monitor identified several other material and administrative qualitative issues in the AT’s detailed working papers and audit report, such as the incorrect transfer of data from the detailed working papers to the audit report, mathematical errors, the improper inclusion of blank worksheets in the audit matrices, and the inclusion of excessive and redundant detail in the audit report. These issues had some affect on the overall quality of the audit.

¹³¹ As described in the Monitor’s Methodologies section above, full compliance is achieved when the results are greater than 94%.

¹³² For example, the following criteria were tested but not used to calculate compliance: whether food containers were clean and maintained properly; whether all refrigerated food was stored in the refrigerator until served; and, whether or not the temperature-measuring device was in the warmest part of the refrigerator. These excluded criteria had been included in the compliance calculations in previous audits of this topic.

¹³³ For example, the AT incorrectly added 87% + 100% + 100% + 100% + 87% totaling 474% and divided 474% by 5 tests to arrive at 95%.

Based on the above findings, the Monitor finds that this audit is non-compliant and, as a result, the DPD is no longer in compliance with the requirements of paragraph C71. In arriving at this conclusion, the Monitor identified two substantial performance-related deficiencies: the flaws in the mathematical calculations of compliance and the scope problems related to the exclusion of testing criteria in the calculations of compliance. In addition, the Monitor identified several material and administrative errors that had some impact on the overall audit quality.

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 May 31, 2008, finding that the DPD was not yet in compliance. The DPD had submitted audits required by the COC CJ and had distributed the audit reports to the Chief of Police and COs as required by this paragraph. However, the DPD had not provided sufficient documentation evidencing that corrective action had been taken in connection with the employee-specific findings relating to each of the audits submitted.

On June 12, 2008, the Monitor provided to OCR staff an electronic spreadsheet to track and follow up on the audit findings and notifications to COs, and the associated documentation of each item requiring specific disciplinary or non-disciplinary corrective action. The OCR was amenable to implementing the Monitor's suggested tracking process.

Current Assessment of Compliance

On July 31, 2008, the DPD AT submitted a total of seven COC CJ required audits.¹³⁴ The OCR distributed the audit reports to the Chief of Police and COs as required. The DPD also submitted a *Response to Audit Recommendations Report* for three of the seven audits in order to address the audit findings that relate to systemic DPD-wide problems.

In connection with the requirement for COs to take action to address the audit findings specific to employees under their commands, during the current quarter the DPD submitted documentation evidencing that some corrective action was taken by the district COs in response to the seven audits submitted on July 31, 2008. Specifically, the DPD and/or COs took all

¹³⁴ The *UOFHC Audit*; the *PIHC Audit*; the *AOMHC Audit*; the *EPP Audit*; the *Detainee Safety Programs Audit*; the *EH&S Audit*; and, the *Food Service Programs Audit* were submitted on July 31, 2008.

necessary and appropriate action in connection with one of the seven audits submitted (the *EPP Audit*); and three of the July 2008 audits (the *AOMHC Audit*, the *EH&S Audit* and the *Food Service Programs Audit*) did not have any employee-specific findings requiring follow-up. Some of the COs also took some action in connection with the remaining three audits; however, as of the end of the current quarter, no documentation was submitted in connection with the following “employee-specific” audit findings:

- The *UOFHC Audit* found that an officer in the Eastern District had not reported a use of force and the resulting PI.
- The *PIHC Audit* found that a supervisor failed to initiate an investigation in response to a detainee who had attempted suicide.
- The *Detainee Safety Programs Audit* found that several employees had not performed and/or had not properly documented required cell checks.

According to the OCR staff and the City’s 21st *Quarter Status Report*, DPD COs are required to document any corrective action taken in response to the audit findings in an inter-office memorandum that was recently implemented by the OCR. The OCR has also recently assigned a staff member to coordinate the follow-up on DPD audits, which will entail identifying, tracking and following up on the required actions resulting from the audits. The OCR coordinator has also begun meeting with the COs directly in order to discuss the audits’ findings and ensure that any required action is taken and written documentation is prepared by the COs. OCR staff has indicated that the coordinator will contact the Monitor and set up an ongoing dialog to ensure all significant employee-related audit findings are addressed resulting from future audits.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C72. The Monitor commends the DPD for documenting the actions taken to address the audit findings that are related to DPD systems or processes that need to be improved, as well as its informal training at the district or unit level, and encourages the DPD to implement a system or process for ensuring that the COs take action on all significant employee-specific audit findings.

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.¹³⁵

¹³⁵ 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, 2008. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending May 31, 2008. 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 May 31, 2008, finding that the DPD was not yet in compliance. In its 19th *Quarter Status Report*, the DPD indicated that it still intends to fulfill the requirements of this paragraph by utilizing the MITN system to capture all training records for sworn members. Although the DPD indicated that it continued to enter training records into MITN to track DPD sworn personnel training, 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 reported 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.

Current Assessment of Compliance

According to the DPD, they are continuing to work toward fulfilling the requirements of this paragraph by utilizing the MITN system to capture all training records for sworn members. According to the DPD, they have assigned additional personnel to this project, and continue to enter training records into MITN. As of November 2008, the DPD estimated that training records will be current within six months. The method for capturing all training records for non-sworn members is still under review as of the end of the reporting period.

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

This quarter, the City and the DPD worked toward retrofitting the districts containing holding cells to comply with the Life Safety Code in order to meet the court-ordered deadline of December 31, 2008. Significantly, the City and the DPD effectively retrofitted the districts and cells before the deadline.

As previously reported, the DPD continues to face challenges to compliance, many of which are related to the lack of adequate or complete documentation and lack of supervisory review. Although there is still some resistance to some of the reforms required by the Consent Judgments within the DPD, the City and DPD executive leadership have demonstrated that they are committed to achieving substantial compliance.

Sheryl Robinson Wood
Independent Monitor

February 2, 2009

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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
DFE	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
FCN	Force Control Number

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
NCH	Neighborhood City Hall
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
WCSO	Wayne County Sheriff's Office
WIQD	Witness Identification and Questioning Documentation