

REPORT OF  
THE INDEPENDENT MONITOR  
FOR THE  
DETROIT POLICE DEPARTMENT



REPORT FOR THE QUARTER ENDING  
NOVEMBER 30, 2003

Issued January 20, 2004

**Kroll**

*Office of the Independent Monitor  
of the Detroit Police Department*

## **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).<sup>1</sup> 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"<sup>2</sup> of the Consent Judgments. On July 18, 2003,<sup>3</sup> 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, with the assistance of Kroll, Inc., as the Independent Monitor in this matter. This is the first report of the Independent Monitor.

During the quarter ending November 30, 2003, the Monitor examined 78 paragraphs or subparagraphs of the UOF CJ and 36 paragraphs or subparagraphs of the COC CJ. Of these, the City and the DPD complied with 1 and failed to achieve compliance with 107;<sup>4</sup> although the Monitor commenced reviews of the remaining 6 paragraphs, they have not yet been fully evaluated.<sup>5</sup>

Despite the fact that the City and the DPD only achieved full compliance with one paragraph of the Consent Judgments, the Monitor recognizes the progress that has been made in the following areas, among others:

- The DPD acted quickly to develop a compliance unit by creating the Civil Rights Integrity Bureau (CRIB).<sup>6</sup> Despite frequent staffing changes and continuing staffing shortages, the CRIB staff has generally been cooperative and open to fulfilling the CRIB's role as defined in the Consent Judgments.
- Under the COC CJ, the Holding Cell Compliance Committee (HCCC) has been developed by the DPD and has been holding weekly meetings since September 2003. The HCCC has been actively working with other relevant city agencies including the Detroit Fire Department

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<sup>1</sup> 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).

<sup>2</sup> 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").

<sup>3</sup> The "effective date" of the Consent Judgments.

<sup>4</sup> The Monitor determined that the DPD partially complied with 3 paragraphs during the quarter. As explained in the Introduction to this report, paragraphs for which the DPD has achieved partial compliance receive an overall assessment of non-compliance.

<sup>5</sup> For each paragraph, the Monitor's review and findings, to-date, are included in this report.

<sup>6</sup> As described in the Introduction, the CRIB was created to coordinate the DPD's compliance efforts with the Consent Judgments.

(DFD) and the Detroit Department of Health (DDOH). There have been a number of achievements toward compliance under the COC CJ that are outlined in this report.<sup>7</sup>

- The DPD and the Office of the Chief Investigator (OCI)<sup>8</sup> have implemented most of requirements of an informational campaign to inform citizens about how to file a complaint and to provide various forums where complaints can be filed.
- The DPD has developed and attempted to implement a number of the auditable forms that are required by the Consent Judgments. The Monitor has identified some deficiencies in the forms and the underlying policies related to the forms have not been developed. Nevertheless, the DPD's efforts are recognized, as these auditable forms, once fully developed, will be of great assistance in determining whether certain reforms required by the Consent Judgments are being effectively implemented throughout the Department.
- Although the proposed policy has not been developed in a timely manner, the Monitor recognizes that the DPD has demonstrated a clear effort to move forward on the issues concerning prompt judicial review for every person arrested by the DPD.<sup>9</sup>

Major areas of concern identified during the quarter ending November 30, 2003 include the following, among others:

- The Monitor's overriding concern is the inability of the DPD to revise or develop effective policies that adhere to the requirements of the Consent Judgments. The Consent Judgments require extensive policy development and revision throughout. Achieving compliance in the policy revision area is integral to achieving compliance with all other substantive provisions of the Consent Judgments.
- An apparent lack of communication within the DPD in general, between Bureaus within the DPD, and between the DPD and the OCI regarding issues related to the Consent Judgments are a major barrier to achieving compliance.
- The DPD faces serious staffing shortages across the board. In connection with the Consent Judgments, these shortages are particularly acute in the CRIB's Audit Team and in the Training Bureau. The DPD will be unable to meet the requirements of the Consent Judgments without hiring additional staff, with the appropriate expertise, and making additional resources available in these and other areas.

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<sup>7</sup> In general, there may be some efforts toward compliance that the DPD has made that are not included in this report. As explained in the Introduction section, the Monitor is scheduled to review certain paragraphs during certain quarters. Throughout the report, the schedule for the Monitor's review is outlined. This does not effect the due dates that the DPD and the City must adhere to that are outlined in the Consent Judgments.

<sup>8</sup> Under the direction of the Board of Police Commissioners (BPC), the OCI receives and conducts investigations of external (citizen) complaints.

<sup>9</sup> See paragraph U49.

- The training curricula revisions called for in the Consent Judgments cannot effectively be developed prior to the development of the policy, without consultation with the affected DPD units or without working with the individuals assigned to draft or revise the policy. Once again, the DPD must engage in effective training development by linking it with the completion and approval of the policy revisions called for in the Consent Judgments.
- A large number of the COC CJ paragraphs deal with physical remediation efforts. While the DPD is still in the strategic development stages with most of these paragraphs, the time is rapidly approaching when substantial financial resources will be required to implement specific physical remediation efforts.<sup>10</sup> The City and the DPD will be unable to meet court-mandated deadlines without substantial financial resources. The City has had ample time to develop a plan for ensuring that requests for funds are acted upon in a timely fashion, since the DOJ highlighted this issue as early as July 2001.
- The Monitor is exceptionally concerned about the physical conditions at the 3<sup>rd</sup> and 4<sup>th</sup> Precincts. Both of these precincts are in such poor states of condition that the City has decided to close them by 2005. Both currently maintain holding cells, and as such, must meet the COC CJ standards. The physical remediation efforts needed to bring both of these precincts up to acceptable standards will be significant. Given the fact that these two precincts are scheduled to be closed in 18 months, and the fact that the new facility that is currently being constructed will not maintain holding cells, the DPD must make an immediate decision as to whether the holding cells in both of these facilities should be shut down immediately or whether scarce resources will be spent on upgrading these short-term facilities.
- The DPD, and the City, need to ensure that individuals assigned to assist the DPD in meeting its obligations under the Consent Judgments, particularly the COC CJ, are available to meet the needs of the task. The Monitor is concerned that individuals who have been assigned critical responsibilities are not being provided with enough flexibility with their other obligations to meet the needs of the Consent Judgments. Individuals assigned to this process must understand the critical nature of the effort they are undertaking, and as such, must be able to make appropriate time in their schedules to attend all meetings and meet all deadlines. While the Monitor is pleased that the City has stated that it will ensure that critical personnel are made available when necessary, the Monitor wants to ensure that the individuals assigned to work on the COC CJ, from the DPD or other City agencies, have the authority and latitude from their organizations to devote the time necessary to achieve their goal.

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<sup>10</sup> Efforts required under paragraphs C22 and C34, in particular.



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## SECTION ONE: INTRODUCTION

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On June 12, 2003, the DOJ and the City filed two Consent Judgments with the United States District Court for the Eastern District of Michigan. 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, with the assistance of Kroll, Inc.,<sup>11</sup> as the Independent Monitor in this matter. This is the first report of the Independent Monitor.

As outlined in the History Section below, the DOJ's investigation began, in part, based upon the September 2000 request by the Mayor of the City of Detroit and other interested persons that the DOJ review the DPD's use of force (UOF).<sup>12</sup> The DOJ launched an investigation in December 2000 of the UOF and conditions in the DPD holding cells pursuant to its authority granted under the Violent Crime Control and Law Enforcement Act of 1994, 42 United States Code § 14141. The DOJ later expanded its investigation to include the DPD's arrest and detention policies and practices.<sup>13</sup>

The DOJ's investigation, lasting over two and one-half years, was conducted with the full cooperation of the City. During the investigation, the DOJ made recommendations for changes in the DPD's policies and procedures regarding use of force, conditions in holding cells, and arrest and detention policies and practices by issuing three technical assistance letters dated March 6, 2002, April 4, 2002 and June 5, 2002. The DOJ met with the Chief of Police and DPD command staff regarding the substance of the technical assistance letters, and regarding the DOJ's participation in pre-consent judgment working groups created by the DPD to facilitate reform.

The DPD attempted to engage in reform efforts, based on the DOJ's recommendations, for more than one year prior to the filing of the Consent Judgments. Nevertheless, the reforms did not progress in a timely manner, and the DOJ filed a complaint against the City and DPD. The complaint alleged that the City and the DPD "through their acts and omissions, are engaging in a pattern or practice of conduct by Detroit Police Department officers of subjecting individuals to uses of excessive force, false arrests, illegal detentions and unconstitutional conditions of confinement. The defendants have failed to adequately train, supervise, and monitor police officers; to investigate, review and evaluate use of force incidents; to investigate alleged

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<sup>11</sup> The Monitoring Team Leaders are Joseph Buczek, Hazel deBurgh, Ronald Filak, Thomas Frazier, and Jeffrey Schlanger.

<sup>12</sup> Throughout this report, the acronym "UOF" will be utilized for both "Use of Force" and "Uses of Force."

<sup>13</sup> The investigation was expanded in May 2001.

misconduct, and to discipline officers who are guilty of misconduct; to review and evaluate the basis of seizures and warrantless arrests and secure timely judicial review of such arrests; to protect detainees from undue risks of harm; and to implement effective systems to ensure that management controls adopted by the Detroit Police Department are properly carried out.”<sup>14</sup> The DOJ and the City believe that the Consent Judgments, rather than contested litigation, represent the best opportunity to address the DOJ’s concerns.<sup>15</sup>

The COC CJ primarily deals with the conditions of the holding cells, including fire safety, emergency preparedness, medical and mental health, prisoner safety, environmental health and safety, persons with disabilities, food service, personal hygiene, and use of force and restraints. It contains 112 paragraphs, most of which have specific requirements that must be implemented by the DPD. The COC CJ shall terminate two years after its effective date if the DPD and the City have substantially complied with each of its provisions and have maintained substantial compliance for at least one year.<sup>16</sup>

The UOF CJ primarily concerns use of force policies and practices and arrest and detention policies and practices. It contains 154 paragraphs, most of which have specific requirements that must be implemented by the DPD. The UOF CJ shall terminate five years after its effective date if the DPD and the City have substantially complied with each of its provisions and have maintained substantial compliance for at least two years.<sup>17</sup>

Both Consent Judgments deal with reforms concerning incident documentation, investigation and review, external complaint processing and investigation, management and supervision issues, and training. They also require the DPD to develop an internal audit function, a risk management database, and a performance evaluation system. By way of the Consent Judgments the City and the DPD agreed to adhere to aggressive deadlines for implementation. Each provision is due within 90 days of the effective date of the Consent Judgment unless another time frame is specified in a given paragraph.<sup>18</sup>

The DPD and the City have faced organizational and implementation challenges in the first months following the effective date of the Consent Judgments. In response to the requirements of the Consent Judgments, in July 2003, the DPD formed a new bureau called CRIB, headed by a Deputy Chief, to coordinate compliance efforts throughout the Department.<sup>19</sup> The Monitor has been working closely with CRIB in conducting compliance reviews. Similar to the DPD in

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<sup>14</sup> Complaint, Case no. 03-72258. The complaint, Consent Judgments and technical assistance letters are publicly available at [www.usdoj.gov/crt/split/dpd/detroit\\_cover\\_2.html](http://www.usdoj.gov/crt/split/dpd/detroit_cover_2.html).

<sup>15</sup> Paragraphs U7 and C7.

<sup>16</sup> Paragraph C106.

<sup>17</sup> Paragraph U148.

<sup>18</sup> Paragraphs U145 and C103.

<sup>19</sup> Paragraphs U140 and C95.

general, CRIB has undergone major leadership and staffing changes since the effective date of the Consent Judgments.<sup>20</sup>

With regard to implementation of the provisions in the Consent Judgments, the DPD is out of compliance with the majority of the requirements. Although the DPD has made substantial efforts in some areas, fully described throughout this report, the Department faces major challenges in various areas that are integral to achieving compliance. The most prevalent of these is policy development, which must take place in an effective manner before many of the other reforms can take place.

Under the terms of the Consent Judgments, the Monitor has the following duties, among others:<sup>21</sup>

1. Conduct compliance reviews to ensure that the City and the DPD have implemented and continue to implement all measures required by the Consent Judgments.<sup>22</sup>
2. Offer the parties technical assistance regarding compliance with the Consent Judgments.<sup>23</sup>
3. Make recommendations to the parties regarding measures necessary to ensure full and timely implementation of the Consent Judgments.<sup>24</sup>
4. File quarterly reports detailing the City's compliance with and implementation of the Consent Judgments. More frequent reports may be issued, as the Monitor deems appropriate.<sup>25</sup>
5. Maintain regular contact with the parties.<sup>26</sup>
6. Direct the DPD to reopen for further investigation any investigation that the Monitor determines to be incomplete.<sup>27</sup>

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<sup>20</sup> The DPD underwent a major leadership change during the first quarter. After the resignation of the Chief of Police Jerry Oliver on October 31, 2003, former Assistant Chief Ella Bully-Cummings was appointed as Acting Chief of Police by Mayor Kwame M. Kilpatrick.

<sup>21</sup> The Monitor is an agent of the Court and is subject to the supervision and orders of the Court, consistent with the Consent Judgments. Paragraphs U131 and C86.

<sup>22</sup> Paragraphs U138 and C93.

<sup>23</sup> Paragraphs U132 and C87.

<sup>24</sup> Paragraphs U133 and C88.

<sup>25</sup> Paragraphs U134, U142, C89 and C97.

<sup>26</sup> Paragraphs U132 and C87.

<sup>27</sup> Paragraphs U139 and C94. The Monitor may only direct DPD to reopen investigations within a reasonable period following the investigation's conclusion and prior to the official communication of the disposition to the subject officer(s).

The Monitor is committed to carrying out the duties outlined in the Consent Judgments. It is beneficial that the Monitor was appointed early in this process. Since the appointment, the Monitor has been in regular contact with all parties with regard to various issues concerning the Consent Judgments and compliance reviews. The Monitor has scheduled compliance reviews of the various paragraphs in the Consent Judgments on a rotating quarterly basis. This report contains the compliance reviews of the paragraphs that were scheduled for review during the first quarter in which the Consent Judgments were in effect, the quarter ending November 30, 2003. The Monitor's compliance review schedule has no effect on the deadlines outlined in the Consent Judgments; rather, it allows the Monitor to focus on certain issues on a quarterly basis. Since the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,<sup>28</sup> the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments.<sup>29</sup>

In a future report, the Monitor will include a "Report Card," which will summarize the *overall* grade of compliance with each paragraph and subparagraph<sup>30</sup> of the Consent Judgments.<sup>31</sup> While the Report Card will provide a "snapshot" of the DPD's compliance with each of the substantive provisions of the Consent Judgments, eventually it will also serve as a tool to evaluate the DPD's progress in complying with those provisions.

To assist the reader, the Monitor has attached, as Appendix A, a listing of acronyms that frequently appear in this report. This list will be updated as each quarterly report is issued.

The Monitor is currently developing "Methodologies to Aid in Determination of Compliance with the Consent Judgments" (the Methodologies) in consultation with the parties.<sup>32</sup> The Methodologies will 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.

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<sup>28</sup> 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.

<sup>29</sup> The minimum duration of the COC CJ is eight quarters. The minimum duration of the UOF CJ is twenty quarters.

<sup>30</sup> 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.

<sup>31</sup> A given paragraph or subparagraph may have separate policy, training, implementation and audit requirements, or a combination thereof. If the DPD is found in non-compliance with any one of these requirements, the Monitor will find the DPD in overall non-compliance with that paragraph or subparagraph. This report describes in detail which components the DPD has complied with and which it has not.

<sup>32</sup> The parties received an initial draft of the Methodologies in September 2003. In October 2003, the DOJ provided written comments regarding the initial draft to the Monitor. In addition, the Monitor has had ongoing discussions with the DPD regarding the draft Methodologies.

The Monitor is also dedicated to making this process a transparent one. To that end, we have provided the parties with assessments of compliance throughout the first quarter. The Monitor has also made numerous recommendations and provided technical assistance to the DPD regarding compliance with the Consent Judgments. Furthermore, a draft copy of this report was made available to the parties to provide an opportunity to identify factual errors.<sup>33</sup>

This is the first of many quarterly public reports that will be submitted to the Court by the Monitor outlining the City and the DPD's progress toward compliance with the Consent Judgments.

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<sup>33</sup> As required by paragraphs U142 and C97.

## SECTION TWO: BRIEF HISTORY<sup>34</sup>

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### A. Use of Lethal Force

In May 2000, the *Detroit Free Press* published a series of articles entitled “Detroit Police: Lethal Force, Lasting Questions” which was the result of a four month investigation into fatal shootings by DPD officers and the investigations that followed.<sup>35</sup> The first article in the series alleged that Detroit “leads the nation’s largest cities in the rate of fatal shootings by police...according to a Free Press analysis of FBI statistics.”<sup>36</sup> Other facts revealed by the series, some of which were disputed by police and City officials, were equally disturbing:

- Detroit, with nearly 1 million residents, averaged nearly 10 fatal police shootings per year in 1990-98. New York City, with 7.3 million residents, averaged 28 fatal shootings per year during the same period.<sup>37</sup>
- Calculating fatal shootings using the FBI’s standard measure, 100,000 residents, Detroit had a rate of 0.92 fatal shootings per 100,000 residents, towering over New York’s rate of 0.39 and Los Angeles’ 0.56. Houston ranked second with 0.68.<sup>38</sup>

According to the *Free Press*, the investigation uncovered the following:

- The City does not know how much it spends on shooting lawsuits and does not carefully track officers who fire their weapons.<sup>39</sup>
- In conducting investigations of fatal shootings by police, investigators often accept the word of officers over civilians, overlook witnesses with damaging evidence and fail to get basic, scientific tests.<sup>40</sup>

The *Free Press* also outlined steps that the City could take, according to police officials, civic leaders and other experts:<sup>41</sup>

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<sup>34</sup> This section briefly outlines a portion of the relevant history leading up to the Consent Judgments as background information. It is not meant to contain a full dissertation of the entire history, or cite all articles and events during this time period.

<sup>35</sup> David Ashenfelter, Joe Swickard, Corey Dade and others, *Detroit police: Lethal Force, lasting questions*, May 15-18, 2000.

<sup>36</sup> David Ashenfelter and Joe Swickard, *Detroit Cops are deadliest in the U.S.*, May 15, 2000.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Joe Swickard, *U.S. Attorney monitors big rise in complaints*, May 17, 2000.

<sup>40</sup> *Id.*

<sup>41</sup> David Ashenfelter and Joe Swickard, *Higher-level action needed, critics say*, May 18, 2000.

- Create an early warning system to identify problem-prone officers and cross-reference officers by lawsuits, citizen complaints, injured prisoners, shootings and disciplinary problems, among other things.<sup>42</sup>
- Develop better record keeping. The City Law Department should track the cost of lawsuit settlements and judgments by department and type of incident and make them publicly available. The City also needs to compile basic statistics on the number of officers who are disciplined or charged in shootings and make the information available to the public.
- Promote more openness. The findings and results of the police shooting investigations should be open.
- Promote more cooperation. The Police and Law Departments need better communications so police can learn from mistakes that result in legal losses. The Law Department should routinely share settlement memos and case assessment information- already provided to City Council - with the Police Department.

## B. The City's Response

During the same time period as the *Free Press* investigation was reported, then-Detroit Mayor Dennis Archer took action by ordering the transfer of the responsibility for investigating police shootings from the DPD Homicide Section to the Department's Internal Controls Division.<sup>43</sup> Critics contend that the Homicide section's special assignment squad was failing to do an aggressive job of investigating officers by ignoring evidence, witnesses and other information that should have raised questions about officers' accounts of the shootings.<sup>44</sup> Until a departmental reorganization in 1994, the Internal Controls Division investigated nonfatal police

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<sup>42</sup> There have been several other recommendations by other entities that the DPD should develop an early warning system. In a January 1997 report by consultants Merrick Bobb and Julio Thompson, who were hired by the DPD to conduct a comprehensive review, one of the recommendations was to create a computerized risk management tracking system. Other recommendations included the following: consolidate personnel management and liability functions under one command including recruitment, selection and training, Internal Affairs, risk assessment and the investigation and evaluation of all shootings and other serious force incidents; appoint a General Counsel for the DPD; create a city-wide committee to oversee and monitor all substantial litigation involving the DPD; broaden DPD's scrutiny of officer-involved shootings and high-risk uses of force by creating an Internal Affairs Section (IAS) rollout team; expand the jurisdiction of the DPD Board of Review to consider not only officer-related fatalities but all high-risk incidents which result in the activation of the IAS rollout team; develop new procedures for the reporting and documenting of the use of force; overhaul the investigation of public or citizen complaints investigations particularly those conducted by the OCI; reevaluate hiring procedures; expand the array of non-lethal force options; expand the role of the Risk Assessment Section; and increase the role of civilians and professionals within the DPD. *Executive Summary by Special Counsel to the Detroit Police Department*, January 1997. Many of these recommendations were also made by the DOJ, first in the technical assistance letters and then in the Consent Judgments. Furthermore, Amnesty International made recommendations for DPD reform including the development of an early warning system.

[http://www.amnestyusa.org/countries/usa/police\\_brutality/detroitpolice.html](http://www.amnestyusa.org/countries/usa/police_brutality/detroitpolice.html).

<sup>43</sup> Corey Dade, *Archer takes homicide off the case*, May 16, 2000.

<sup>44</sup> *Higher Level*, May 18, 2000.

shootings.<sup>45</sup> According to the *Free Press*, the Division was damaged by a 1994 departmental reorganization that put more officers on the streets at the expense of the unit.<sup>46</sup> Experts recommended that the unit be run by a deputy chief, rather than an inspector, to give it more clout.<sup>47</sup> According to former Mayor Archer, after the *Free Press* profiled the deadly shootings by six police officers during the summer of 2000, he made the change in investigatory procedures, and then two more questionable shootings took place.<sup>48</sup> It was at that time that the formal request for assistance from the DOJ was made.<sup>49</sup>

Then-Mayor Archer issued a written request to the DOJ, asking them to come in and investigate the following issues:<sup>50</sup>

- a) to investigate fatal shootings for the past five years where Detroit police officers were involved;
- b) to evaluate DPD's investigation procedures;
- c) to evaluate the City's interrelations with the Wayne County Prosecutor and the U.S. Attorney's Offices (USAO) regarding future cooperation; and
- d) to review the outcomes of questionable use of deadly force and make any recommendations and findings regarding each officer, if any.

### **C. The DOJ's Investigation and the DPD's Efforts**

The DOJ began its investigation of DPD's use of force and conditions in DPD holding cells in December 2000. In the meantime, new Mayor Kwame M. Kilpatrick took office in January 2001 and a new police chief, Jerry Oliver, was appointed in February 2002. With the DOJ investigation pending, Chief Oliver reorganized the Department, obtaining approvals from the Mayor, the BPC and the City Council.<sup>51</sup> The organizational changes included adding two additional Assistant Chiefs to bring the total to three;<sup>52</sup> elevating Risk Management from a Section to a Bureau headed by a Deputy Chief; creating a Training Bureau; reorganizing the Professional Standards Bureau into a Professional Accountability Bureau (PAB) which includes an Internal Affairs Division (IAD) headed by a Commander; creating a Force Investigation Section (FIS) from the force investigation unit; among other changes.

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<sup>45</sup> Archer, May 16, 2000.

<sup>46</sup> *Higher Level*, May 18, 2000.

<sup>47</sup> *Id.*

<sup>48</sup> Letter to the Editor by Mayor Dennis W. Archer, *City took action on police report*, January 3, 2001.

<sup>49</sup> *Id.*

<sup>50</sup> PR Newswire, *Detroit Mayor Dennis Archer Completes First Step in Police Reform Initiatives*, September 26, 2000. The DOJ also received requests from other interested persons.

<sup>51</sup> The DPD reorganization plan was approved as of May 2002.

<sup>52</sup> Each Assistant Chief has a portfolio. The portfolios are operations, administrative and investigations.

#### **D. The DOJ's Investigation Expands to Arrest and Detention Issues**

Dating back to early 2000, the USAO has expressed concern with the DPD's arrest and detention (A&D) policies, practices, procedures and processes.<sup>53</sup> Initially, concerns centered largely on unconstitutional A&D practices within the DPD's homicide section.

The DOJ expanded its investigation to include arrest and witness detention issues in May 2001. The DPD agreed to address these issues, primarily by ending such practices and instituting a comprehensive training program to ensure they did not re-occur. However, the Monitor understands that the continued review<sup>54</sup> of the DPD A&D practices, conducted jointly by the USAO and the DOJ, only heightened concern that the DPD continued making warrantless arrests without probable cause; continued arresting and detaining witnesses, family members and friends of suspects without proper judicial authority; and failed to adhere to prompt judicial review standards.<sup>55</sup> The reviews were expanded beyond the DPD's homicide section and other special enforcement sections to all DPD precincts, across the board.

#### **E. The DOJ's Technical Assistance Letters and the DPD's Response**

In the course of its investigation the DOJ issued three technical assistance letters. In a letter dated March 6, 2003, the DOJ outlined issues and concerns regarding use of force and use of force reporting, intake and tracking of external complaints, external complaint investigations and dispositions, criminal and internal investigations, risk assessment and management, early warning system, policy planning, discipline and in-service and field training. The April 4, 2003 letter discussed the DOJ's concerns with regard to the DPD's holding cells. The issues raised concerned fire safety including fire suppression and detection and occupant protection among others. Finally, the June 5, 2003 letter discussed the DOJ's concerns regarding arrest policies and practices, arrest of suspects, and detention policies and practices.

The Monitor understands that the DOJ advised the DPD that its promise to change A&D policies and practices and alter related training programs remained unfulfilled. The letter directed the DPD to amend arrest policies and detention practices, and provided specific guidance on proper definitions, practices and procedures. It also directed the DPD to circulate new policies and procedures to all precincts and commands.

After receiving the technical assistance letters, the DPD developed internal working groups to address the issues identified by the DOJ. The DPD worked with the DOJ during this process and submitted various documents to the DOJ for review. The DPD began revising its policy manual

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<sup>53</sup> The USAO received unsolicited reports of unconstitutional arrests and detention practices from citizens.

<sup>54</sup> The Monitor understands that continued review included interviews of DPD personnel, private citizens and representatives of the Wayne County Prosecutor's Office. The DOJ also conducted observations of holding cells that included interviewing individuals held pursuant to arrests and/or as witnesses and participating in ride-alongs.

<sup>55</sup> Several examples were provided by the DOJ that included the detention of a girlfriend of a murder suspect. The girlfriend had just given birth prior to detention, and as a result of her detention, could not care for her newborn child. The DPD was unable to establish that the girlfriend was involved with the murder in any way.

in July 2002 attempting to use best practices and Commission on Accreditation for Law Enforcement Agencies (CALEA) standards. The Planning and Inspections Section was reorganized into a Planning and Accreditation Section to ensure that CALEA standards remain a part of the policy-making process. A new policy manual was issued in March 2003.

Despite the DPD's efforts and the cooperative process that took place, adequate reform did not take place to the DOJ's expectations. In June 2003, the DOJ filed a complaint against the City and the DPD. On July 18, 2003, the Court entered the two Consent Judgments that are the subject of this report.

## **SECTION THREE: COMPLIANCE ASSESSMENT - THE USE OF FORCE AND ARREST AND WITNESS DETENTION CONSENT JUDGMENT**

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This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending November 30, 2003.

### **I. USE OF FORCE POLICY**

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#### *Overview*

Paragraphs U14-26 of the UOF CJ require the DPD to make significant changes to its 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. The DPD is required to provide its revised UOF policies to the DOJ for review and approval; policy revisions must be submitted to the DOJ within three months of the effective date of the UOF CJ (by October 18, 2003).

During the quarter ending November 30, 2003, the Monitor reviewed paragraphs U14-19 of the UOF CJ. The relevant draft policies related to paragraphs U14-19 were submitted to the DOJ by the DPD on October 31, 2003. The DOJ and the Monitor informally identified a number of deficiencies in these and other proposed policies. On November 25, 2003, the DPD withdrew all of the policies from DOJ review and from the Monitor's consideration so that further revisions could be made.

While the policy revisions are being drafted, the DPD has not identified any administrative messages or teletypes that have been issued regarding the impending changes to the DPD's use of force policy.<sup>56</sup> The Monitor's recommendations with regard to policy development appear following paragraph U19.

The Monitor is scheduled to further review the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.<sup>57</sup>

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<sup>56</sup> Paragraphs U141 and C96 require that the City file a status report with the Monitor and the DOJ delineating all steps taken during the reporting period to comply with each substantive provision of the Consent Judgments. This status report must be filed 120 days after the effective date of the Consent Judgments and every three months thereafter. The City and the DPD filed its 120-day status report with the Monitor and the DOJ on November 17, 2003. The report did not identify any administrative messages or teletypes in this area.

<sup>57</sup> As described below, those paragraphs included in this section of the UOF CJ that were not reviewed during the current reporting period (paragraphs U20-26) are scheduled for review during the quarter ending February 29, 2004.

**A. GENERAL USE OF FORCE POLICIES****Paragraph U14 - Revision of Policy (Definition of UOF)**

Paragraph U14 requires the DPD to revise its UOF policies to define force as that term is defined in the UOF CJ.<sup>58</sup>

***Current Assessment of Compliance***

The DPD revised Directive 304.2 “Use of Force” and submitted it to the DOJ for review and approval on October 31, 2003.<sup>59</sup> The DPD subsequently withdrew the policy from the DOJ’s consideration on November 25, 2003 to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U14.

**Paragraph U15 - UOF Continuum**

Paragraph U15 requires the UOF policy to incorporate a UOF continuum that:

- a) identifies when and in what manner the use of lethal and less than lethal force are permitted;
- b) relates the force options available to officers to the types of conduct by individuals that would justify the use of such force; and
- c) states 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.

***Current Assessment of Compliance***

The DPD revised Directive 304.2 “Use of Force” and submitted it to the DOJ for review and approval on October 31, 2003. The DPD subsequently withdrew the policy from the DOJ’s consideration on November 25, 2003 to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U15.

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<sup>58</sup> According to paragraph U145, unless otherwise specified, the DPD is required to implement each and every provision of the UOF CJ within 90 days of its effective date (by October 16, 2003). There is a similar paragraph in the COC CJ (paragraph C103). The Monitor periodically schedules reviews of paragraphs on a quarterly basis over the life of the Consent Judgments. Although the Monitor’s review takes place after the due dates for certain paragraphs, this has no impact on these due dates and the DPD’s requirement to comply with them.

<sup>59</sup> According to paragraph U18, the DPD is required to revise its UOF policy within three months of the effective date of the UOF CJ (which would have been October 18, 2003). The policy must be submitted to the DOJ for review and approval.

**Paragraph U16 - Opportunity to Submit**

Paragraph U16 requires the UOF policy to reinforce that individuals should be provided an opportunity to submit to arrest before force is used and provide that force may be used only when verbal commands and other techniques that do not require the UOF would be ineffective or present a danger to the officer or others.

***Current Assessment of Compliance***

The DPD revised Directive 304.2 “Use of Force” and submitted it to the DOJ for review and approval on October 31, 2003. On November 25, 2003, the DPD withdrew the policy from the DOJ’s consideration to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U16.

**Paragraph U17 - Prohibition on Choke Holds**

Paragraph U17 requires the UOF policy to prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.

***Current Assessment of Compliance***

The DPD revised Directive 304.2 “Use of Force” and submitted it to the DOJ for review and approval on October 31, 2003. On November 25, 2003, the DPD withdrew the policy from the DOJ’s consideration to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U17.

**Paragraph U18 - Revision of Policy within 3 Months**

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.

***Current Assessment of Compliance***

The DPD revised Directive 304.2 “Use of Force” and submitted it to the DOJ for review and approval on October 31, 2003. On November 25, 2003, the DPD withdrew the policy from the DOJ’s consideration to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U18.

**Paragraph U19 - Strike to Head Equals Deadly Force**

Paragraph U19 requires the UOF policy to provide that a strike to the head with an instrument constitutes a use of deadly force.

***Current Assessment of Compliance***

The DPD revised Directive 304.2 “Use of Force” and submitted it to the DOJ for review and approval on October 31, 2003. On November 25, 2003, the DPD withdrew the policy from the DOJ’s consideration to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U19.

***Recommendations***

The Monitor reviewed the proposed UOF policy (Directive 304.2) prior to its withdrawal by the DPD. The Directive attempted to incorporate the requirements of numerous UOF CJ paragraphs appearing between paragraphs U14 and U41, involving policy revisions in the following areas: UOF; Use of Firearms; Intermediate Force Device; Chemical Spray; General Investigations of Police Action; UOF and Prisoner Injury Investigations; and, Review of Critical Firearm Discharges and In-custody deaths. The DPD attempted to make these policy revisions required by the UOF CJ by building upon the existing DPD UOF policy. As a result, the proposed UOF policy (Directive 304.1) was lengthy and overwhelming. In addition, for this and other policy revisions, some of the language from the Consent Judgment paragraphs was added to the proposed policy, verbatim, without being effectively incorporated into the existing text, or without being sequentially numbered consistent with the existing text.

The Monitor recommends that the DPD obtain technical assistance on effective policy development procedures. This will assist the DPD in making determinations about what information should be included within a policy, how the information should be organized and what is more appropriately addressed in other supporting documents or in training. The Monitor has offered to provide the DPD with technical assistance in this area. As of November 30, 2003, the DPD had not accepted this offer.

**B. USE OF FIREARMS POLICY**

The Monitor is scheduled to assess the DPD’s compliance with this section of the UOF CJ (paragraphs U20-23) during the quarter ending February 29, 2004.

**C. INTERMEDIATE FORCE DEVICE POLICY**

The Monitor is scheduled to assess the DPD’s compliance with this section of the UOF CJ (paragraph U24) during the quarter ending February 29, 2004.

#### **D. CHEMICAL SPRAY POLICY**

The Monitor is scheduled to assess the DPD's compliance with this section of the UOF CJ (paragraphs U25-26) during the quarter ending February 29, 2004.

## II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

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### *Overview*

Paragraphs U27-41 of the UOF CJ require that the DPD make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injury, critical firearm discharges 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 Garrity statements<sup>60</sup> and develop an auditable form to document any prisoner injury, UOF, allegation of UOF and instance where an officer draws a firearm and acquires a target. The DPD Shooting Team must respond to and investigate all critical firearms discharges and in-custody deaths, and the DPD must develop a protocol for conducting investigations of critical firearm discharges. Finally, the UOF CJ requires the DPD to create a command level force review team that is charged with critically evaluating and reporting on critical firearms discharges and in-custody deaths.

During the quarter ending November 30, 2003, the Monitor reviewed paragraphs U27 and U34-41. The relevant draft policies (Directive 304.2 “Use of Force”) related to these and other paragraphs were submitted to the DOJ by the DPD on October 30, 2003.<sup>61</sup> On November 25, 2003, the DPD withdrew this policy and all others from the DOJ’s consideration to make further revisions.

Although none of the policy revisions have been approved and implemented for these paragraphs, the DPD has developed an auditable form (UF-002) as required by paragraph U34, which is discussed further below.

The DPD has also made revisions to the FIS Standard Operating Procedures (SOP) to incorporate the requirements of paragraphs U27-38. The FIS SOP is discussed under paragraph U38.

The Monitor is scheduled to further review the DPD’s compliance with these paragraphs (U27 and U34-41) during the quarter ending May 31, 2004.<sup>62</sup>

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<sup>60</sup> 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. 492 (1967). This paragraph will be reviewed during the quarter ending February 29, 2004.

<sup>61</sup> This Directive also purports to satisfy the requirements of paragraphs U28-30, and U32-33. The Monitor will review these paragraphs during the quarter ending February 29, 2004; however, compliance with all of the paragraphs mentioned is dependent on the ability of the DPD to effectively draft and revise its policies.

<sup>62</sup> As described below, those paragraphs included in this section of the UOF CJ that were not reviewed during the current reporting period (paragraphs U28-33) are scheduled for review during the quarter ending February 29, 2004.

## **A. GENERAL INVESTIGATIONS OF POLICE ACTION**

The Monitor is scheduled to assess the DPD's compliance with the majority of the paragraphs included in this section of the UOF CJ (paragraphs U28-33) during the quarter ending February 29, 2004. The Monitor's assessment of paragraph U27 follows.

### **Paragraph U27 - Revision of General Investigation Policies**

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.

### ***Current Assessment of Compliance***

The DPD revised Directive 304.2 "Use of Force" and submitted it to the DOJ for review and approval on October 31, 2003.<sup>63</sup> The DPD chose to include the revisions required by paragraph U27 (and other investigative procedure paragraphs U28-30 and U32-33) in its Use of Force policy. On November 25, 2003, the DPD withdrew the policy from the DOJ's consideration to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U27.

## **B. UOF AND PRISONER INJURY INVESTIGATIONS**

### **Paragraph U34 - Documentation of UOF and Prisoner Injury**

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

### ***Current Assessment of Compliance***

On October 22, 2003 the DPD issued an Administrative Message to All Commands. It referenced teletypes 03-06366-68 ("Auditable Forms - Use of Force Arrest and Witness Detention Consent Decree"). The Administrative Message required the immediate use of eight auditable forms, created by CRIB, for compliance with the data capture requirements of

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<sup>63</sup> According to paragraph U18, the DPD is required to revise its UOF policy within three months of the effective date of the UOF CJ (which would have been October 18, 2003). The policy must be submitted to the DOJ for review and approval.

paragraphs U34, U43, U45, U48, U51, U53 and U57. The forms were uploaded onto the DPD's Intranet for immediate use. Also attached were guidelines for most forms. These forms were placed into use approximately 96 days after the effective date of the UOF CJ.

The Monitor reviewed the form and accompanying guidelines that pertain to paragraph U34, Form UF-002. The Monitor determined that the form placed into service might adequately address the documentation requirements only of paragraph U34.<sup>64</sup> However, the DPD identified Directive 304.2 ("Use of Force") as the policy that includes the requirements of this paragraph<sup>65</sup>, and mandates that any UOF must be documented on the auditable form UF-002.<sup>66</sup> As mentioned above, although previously submitted to the DOJ, on November 25, 2003, the DPD withdrew the policy from the DOJ's consideration to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U34.

### **Paragraph U35 - Notification Requirements**

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

- a) Officers to notify their supervisors following any UOF or prisoner injury.
- b) That upon such notice, a supervisor must respond to the scene of all UOF that involve a firearm discharge, a visible injury or a complaint of injury. A supervisor must respond to all other UOF on a priority basis. Upon arrival at the scene, the supervisor must interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive needed medical attention.
- c) The supervisor responding to the scene to notify the IAD of all serious UOF, UOF that result in visible injury, UOF that a reasonable officer should have known were likely to result in injury, UOF where there is evidence of possible criminal misconduct by an officer or prisoner injury.
- d) IAD 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 IAD to delegate all other UOF or prisoner injury investigations to the supervisor for a command investigation.

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<sup>64</sup> Given that the form was only recently introduced, the Monitor opted not to assess its utilization during this quarter.

<sup>65</sup> The DPD's 120-Day Status Report (November 17, 2003).

<sup>66</sup> Nevertheless, the DPD has begun to use this auditable form. The completed forms are being submitted to CRIB.

***Current Assessment of Compliance***

The DPD revised Directive 304.2 “Use of Force” to include the requirements of this and other related paragraphs and submitted it to the DOJ for review and approval on October 31, 2003. On November 25, 2003, the DPD withdrew the policy from the DOJ’s consideration to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U35.

***Paragraph U36 - Command Investigation Time Limits***

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

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

***Current Assessment of Compliance***

The DPD revised Directive 304.2 “Use of Force” to include the requirements of this and other related paragraphs and submitted it to the DOJ for review and approval on October 31, 2003. On November 25, 2003, the DPD withdrew the policy from the DOJ’s consideration to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U36.

**C. REVIEW OF CRITICAL FIREARM DISCHARGES AND IN-CUSTODY DEATHS*****Paragraph U37 - Creation of Shooting Team***

Paragraph U37 requires the DPD’s Shooting Team, which is composed of officers from the Homicide Section and IAD, to respond to the scene and investigate all critical firearms discharges and in-custody deaths.

***Current Assessment of Compliance***

The DPD revised Directive 304.2 “Use of Force” to include the requirements of this and other related paragraphs and submitted it to the DOJ for review and approval on October 31, 2003. On

November 25, 2003, the DPD withdrew the policy from the DOJ's consideration to make further revisions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U37.

### **Paragraph U38 - Protocol for Investigations of Critical Firearm Discharges**

Paragraph U38 requires the DPD to develop a protocol for conducting investigations of critical firearm discharges 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.

### ***Current Assessment of Compliance***

The DPD revised Directive 304.2<sup>67</sup> regarding review of critical firearm discharges, in-custody deaths and creation of a shooting team.<sup>68</sup> The DPD further reports that a protocol is "being developed." The Monitor was informed by CRIB that the protocol is in the FIS SOP.

The Monitor reviewed the FIS SOP, which purports to have been revised to include the requirements of paragraphs U27-38, and identified a number of instances in which the DPD failed to include requirements of the UOF CJ. For example, there is no mention of the "prohibition of group interviews" or the "signed refusal statement by the complainant/witness," as required by paragraph U29c.<sup>69</sup> Another area of concern identified by the Monitor is that the FIS SOP requires that *material* witnesses be interviewed, rather than requiring that *all* witnesses be interviewed. Because of these and other deficiencies in the document, the FIS SOP must undergo further revisions in order to fully comply with the requirements of the UOF CJ.<sup>70</sup>

Furthermore, the protocol required by this paragraph must include the items outlined in the paragraph, as well as the requirements of paragraphs U27-36. Several of the paragraphs in U27-36 require that the DPD implement policy revisions. As outlined above, the DPD has withdrawn

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<sup>67</sup> As mentioned throughout this report, this proposed policy was submitted to the DOJ for review and approval and was subsequently withdrawn for further revisions.

<sup>68</sup> The DPD's 120-Day Status Report (November 17, 2003).

<sup>69</sup> The other requirements of paragraph U29c appear in the FIS SOP.

<sup>70</sup> The Monitor has prepared and will forward to the DPD a memorandum addressing these and other deficiencies in the FIS SOP.

the relevant policy and is in the process of making further revisions. These policy revisions are necessary to the development of an effective protocol under paragraph U38.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U38.

### **Paragraph U39 - Command Level Force Review Team**

Paragraph U39 mandates that the DPD must require a command level force review team (CLFRT) to evaluate all critical firearm discharges and in-custody deaths. The team must be chaired by the Deputy Chief who directly supervises IAD. The DPD must establish criteria for selecting the other members of the team.

### ***Current Assessment of Compliance***

Please refer to the Monitor's assessment of paragraph U41, which includes the Monitor's assessment of paragraphs U39-41.

### **Paragraph U40 - Time Limits for Command Level Force Review Team**

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

- a) complete its review of critical firearm discharges that result in injury and in-custody deaths within 90 days of the resolution of any criminal review and/or proceedings and all other critical firearm discharges 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.

### ***Current Assessment of Compliance***

Please refer to the Monitor's assessment of paragraph U41, which includes the Monitor's assessment of paragraphs U39-41.

### **Paragraph U41 - Aggregate Review**

Paragraph U41 requires the Chair of the CLFRT to annually review critical firearm discharges 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 critical firearm discharge and in-custody death investigations, to the Chief of Police.

### *Current Assessment of Compliance*

The DPD revised Directive 101.9 “Special Purpose Committees” to include the creation of the CLFRT and submitted the Directive to the DOJ on October 14, 2003.<sup>71</sup> The DPD submitted documents entitled “Force Review Team Directive and Standard Operating Procedures” to the DOJ and the Monitor with a cover letter dated October 14, 2003. The Monitor provided the DPD with oral recommendations to correct the deficiencies in the proposed policy and SOP. The DOJ outlined its various concerns with the DPD’s submission in a letter dated November 19, 2003. The Monitor understands that the DPD is making revisions based upon the DOJ and the Monitor’s concerns and the requirements of the UOF CJ.<sup>72</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U39-41.

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<sup>71</sup> The DPD’s 120-Day Status Report (November 17, 2003).

<sup>72</sup> The Monitor requested and received, at the end of the first quarter, the DPD’s criteria for the selection of members of the CLFRT as required by paragraph U38. The Monitor will review the DPD’s submission in conjunction with the next review of these paragraphs during the quarter ending May 31, 2004; however, before the team can become operational, the DPD must develop an effective policy creating and defining the role of the team.

### III. ARREST AND DETENTION POLICIES AND PRACTICES

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#### *Overview*

Paragraphs U42-60 of the UOF CJ require the DPD to make significant changes to its policies, policies, practices and procedures related to arrests, 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. The DPD, for many of these areas, must also develop auditable forms to document officer violations of the UOF CJ requirements or to capture certain events, such as detaining a material witness.

During the quarter ending November 30, 2003, the Monitor reviewed paragraphs U42-53 and U58. The relevant draft policies related to these and other paragraphs were submitted to the DOJ by the DPD on October 31, 2003. On November 25, 2003, the DPD withdrew this policy and all others from DOJ consideration for further revisions. Although none of the policy revisions have been approved and implemented for these paragraphs, the DPD has placed into service auditable forms that attempt to address documentation requirements, discussed below.

The Monitor is scheduled to further review the DPD's compliance with these paragraphs (U42-53, U58-59) during the quarter ending May 31, 2004.<sup>73</sup>

#### A. ARREST POLICIES

##### *Paragraph U42 - Revision of Arrest Policies*

Paragraph U42 requires the DPD to revise its arrest policies to define arrest and probable cause as those terms are defined in the UOF CJ and prohibit the arrest of an individual with less than probable cause.

##### *Current Assessment of Compliance*

The DPD revised Directive 202.1 ("Search and Seizure") and submitted it to the DOJ and the Monitor on October 31, 2003. The DPD subsequently withdrew the policy on November 25, 2003 to make further revisions.<sup>74</sup>

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<sup>73</sup> As described below, those paragraphs included in this section of the UOF CJ that were not reviewed during the current reporting period (paragraphs U54-57, U60) are scheduled for review during the quarter ending February 29, 2004.

<sup>74</sup> Although policy was withdrawn, resulting in the DPD's failure to comply with the paragraph U145 requirement of implementation within 90 days of the effective date of the UOF CJ, the Monitor notes that an initial review of the

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U42.

### **Paragraph U43 - Review of All 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 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.

### ***Current Assessment of Compliance***

On August 21, 2003, Deputy Chief Ronald Haddad issued an Interoffice Memorandum (“Haddad Memo”) to all 13 precincts that put into immediate effect arrest review procedures designed to meet the requirements of paragraph U43. Specifically, the Haddad Memo required that the Officer In Charge (OIC) of the desk assume responsibility for reviewing the circumstances surrounding each arrest coming into his or her command. The OIC is also responsible for documenting each review, noting on a Preliminary Complaint Report (PCR) any arrests not supported by probable cause and requiring the immediate release of any prisoner where the arrest was not supported by probable cause.

The Monitor determined that although the DPD complied with certain provisions of paragraph U43 as a result of the Haddad Memo, it neither requires a review of each arrest within 12 hours nor does it require the memorialization of those arrests not supported by probable cause or for which a warrant was not requested on a separate auditable form.

On October 22, 2003, the DPD issued an Administrative Message to All Commands, which referenced teletypes 03-06366-68 (“Auditable Forms - Use of Force Arrest Witness Detention Consent Decree”). The Administrative Message required the immediate use of eight auditable forms, created by CRIB, for compliance with the data capture requirements of paragraphs U34, U43, U45, U48, U51, U53 and U57. The forms were uploaded onto the DPD’s Intranet for immediate use. Guidelines for most of the forms were attached. These forms and guidelines were distributed for use by the DPD approximately 96 days after the effective date of the UOF CJ.

The Monitor reviewed the forms and accompanying guidelines<sup>75</sup> that pertain to paragraph U43, Forms UF-001 and UF-004. The Monitor determined that the forms placed into service might

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directive indicated that the proposed revised arrest policies did not meet the requirements of paragraph U42 in that they failed to address the definition of probable cause as defined in the UOF CJ.

<sup>75</sup> The relevant guidelines quote the text of the paragraph verbatim and, in bullet point format, expand upon the text by identifying the OIC’s responsibilities.

adequately address the documentation requirements of paragraph U43.<sup>76</sup> However, the Administrative Message, attached guidelines and Forms UF-001 and UF-004, like the Haddad Memo, fail to identify the 12-hour reporting requirements.<sup>77</sup> Lastly, Directive 202.1, which the DPD submitted to the DOJ and the Monitor and subsequently retracted, contained instructions on the completion of arrest review and documentation. The Monitor is of the opinion that the proposed policy was not clear and could have resulted in confusion in the field.<sup>78</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U43.<sup>79</sup>

### *Recommendations*

The Monitor recommends that Forms UF-001 and UF-004 be edited to include verbiage citing the requirement to complete the respective auditable form within 12 hours of determining insufficient probable cause or failure to obtain a warrant for arraignment.

## **B. INVESTIGATORY STOP POLICIES**

### *Paragraph U44 - Revision of Policies*

Paragraph U44 requires the DPD to revise its investigatory stop and frisk policies to define investigatory stop and reasonable suspicion as those terms are defined in the UOF CJ. The policy must specify that a frisk is authorized only when the officer has a reasonable suspicion to fear for his or her safety and that the scope of the frisk must be narrowly tailored to these specific reasons.

### *Current Assessment of Compliance*

On October 23, 2003, the DPD provided to the DOJ and the Monitor proposed Directive 202.2 (Search and Seizure) intended to satisfy the requirements of paragraphs U44 and U45.<sup>80</sup> The Monitor reviewed the proposed Directive and determined that the definition of “investigatory stop and frisk” included the language required under paragraph U44. In addition, the circumstances under which an officer may conduct a frisk search, as specified in the Directive, complied with paragraph U44 requirements. However, the DPD withdrew Directive 202.2 from

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<sup>76</sup> The Monitor noted that the DPD AT has been the recipient of completed Forms -001 and -004. However, given that the forms were only recently introduced, the Monitor opted not to assess its utilization during this quarter.

<sup>77</sup> As stated, the Guidelines cite paragraph U43 verbatim; however, instructions contained below this definition fail to address both 12-hour time requirements.

<sup>78</sup> “If the officer in charge of the precinct station desk or of the case determines that there is not sufficient probable cause to detain the person they shall be immediately released **and memorialized in writing within 12 hours of arrest.**”

<sup>79</sup> Other policy requirements of paragraph U43 are addressed by paragraph U42.

<sup>80</sup> The DPD has since retracted the Directive and withdrawn it from the review of the DOJ and the Monitor.

review effective November 25, 2003. Therefore, the policy outlined in the Directive has not yet been implemented. Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U44.

### **Paragraph U45 - Documentation Requirement**

Paragraph U45 requires the DPD to document all investigatory stops and frisks by the end of the shift in which the police action occurred. The DPD must also 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.

### ***Current Assessment of Compliance***

As stated under paragraph U44 above, the DPD effectively retracted the proposed policy in this area. As explained below, the DPD has failed to issue policy and guidance regarding the requirement that all investigatory stops and frisks be documented by the end of the shift in which the police action occurred.

On October 22, 2003, the DPD issued an Administrative Message via teletype to all DPD personnel mandating the use of several auditable forms, including a form to document within 24 hours instances in which investigatory stops and frisks have occurred that are unsupported by reasonable suspicion.

The Monitor reviewed the form that pertains to paragraph U45, Form UF-003, and determined that it does not adequately address the requirements of the paragraph. Unlike other forms issued, the DPD failed to include guidance on form UF-003. Furthermore, the 24-hour requirement is not included on Form UF-003 and the form fails to address stops and frisks independent of each other.

The CRIB AT has recently received auditable forms from precincts documenting investigatory stops and frisks that were unsupported by reasonable suspicion.<sup>81</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U45.

### ***Recommendations***

The Monitor recommends that the DPD issue guidance to the field regarding the appropriate completion of Form UF-003.

The Monitor recommends that the DPD include on Form UF-003 an indication that the form must be completed within 24 hours for any investigatory stop or frisk that occurs without reasonable suspicion.

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<sup>81</sup> Given that the form was only recently introduced, the Monitor opted not to assess its utilization during this quarter.

The Monitor recommends that the DPD edit Form UF-003 to change the box on this form from “Unsupported Reasonable Suspicion for Stop and Frisk” to “Unsupported Reasonable Suspicion for Stop and/or Frisk.”

## C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

### Paragraph U46 - Revision of Policies

Paragraph U46 requires the DPD to revise its witness identification and questioning policies to comply with the revised arrest and investigatory stop policies. The DPD must prohibit the seizure of an individual without reasonable suspicion, probable cause or consent of the individual and require that the scope and duration of any seizure be narrowly tailored to the reasons supporting the police action. The DPD must prohibit the conveyance of any individual to another location without reasonable suspicion, probable cause or consent of the individual.

### *Current Assessment of Compliance*

On October 23, 2003, the DPD provided to the DOJ and the Monitor proposed policy revisions intended to address paragraph U46 requirements.<sup>82</sup> A review of the proposed policy determined that it did not fully meet the requirements of paragraph U46.<sup>83</sup>

- The DPD has not differentiated between an ordinary witness and a material witness and how each is managed pursuant to the revised arrest and investigatory stop policies.
- Regarding the requirement that it prohibits the seizure of an individual without reasonable suspicion, DPD policy fails to define “Unlawful Detention,” nor does it prohibit unlawful arrest (seizure) or detention of an individual unless the conditions of “reasonable or probable cause” exist.<sup>84</sup> It is also the Monitor’s contention that the DPD’s definition of “Illegal Arrest” in DPD manual section 202.1-4 is more in line with the definition of unlawful detention.
- The DPD has not established policy that prohibits the conveyance (as defined by “k” of the UOF CJ) of any individual to another location without reasonable suspicion, probable cause or consent.

The Monitor notes that the policy requires that the scope and duration of any seizure be narrowly tailored to the reasons supporting the police action, as mandated by paragraph U46.

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<sup>82</sup> The DPD has since retracted the policy and withdrawn it from review by the DOJ and the Monitor.

<sup>83</sup> As in some other instances, the Monitor began reviewing this proposed policy prior to its withdrawal.

<sup>84</sup> The Monitor believes it appropriate for the DPD to include verbiage advising officers that a witness is allowed to leave the scene of an incident or crime absent reasonable suspicion. It is not unlikely that a witness will articulate a commitment to attend work or school, or retrieve a child and that the officer should attempt to obtain contact information so that the witness may be interviewed at a time and place convenient to the witness. An officer cannot simply detain a witness because it is easier for the officer to interview the witness at that time.

Finally, the Monitor determined that the DPD has yet to establish a policy designed (a) to identify officers who seize and or convey an individual for witness identification and questioning without reasonable suspicion, probable cause or consent; (b) to provide for additional training as needed; and (c) to administer discipline, if necessary.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U46.

### ***Recommendations***

The Monitor recommends that the DPD revise Directive 202.1-9 by defining “Witness” and including procedures for managing witnesses in the field or at the precinct.

The Monitor recommends that the DPD revise Directive 202.1-2 (or another appropriate section) by defining “Unlawful Detention.” In addition, language must be added prohibiting unlawful arrest (seizure) or detention of an individual unless the conditions of “reasonable or probable cause” exist.

The Monitor recommends that the DPD remove the language “Every detention is a seizure...” from Directive 202.2-4.8 and place it under the section that pertains to lawful and unlawful detentions.

### ***Paragraph U47 - Submission to the DOJ within 3 months***

Paragraph U47 requires the DPD to develop revised witness identification and questioning policies within three months of the effective date of the UOF CJ. The revised policies must be submitted for review and approval of the DOJ. The DPD must then implement the revised witness identification and questioning policies within three months of the review and approval of the DOJ.

### ***Current Assessment of Compliance***

On October 23, 2003, submitted proposed witness identification and questioning policies to the DOJ for review and approval by way of an Inter-Office Memorandum, dated October 17, 2003, referencing the “Submission of Copies of Directives 203.11, 202.1, 202.2. Memorandums and teletype to implement auditable forms use of force consent decree paragraphs 46-48.” In addition, a two-page proposed auditable form (CRIB-UF-005) designed to document an interview, interrogation or conveyance was included. The DPD has since retracted the policy and withdrawn it from the review and approval by the DOJ.

The Monitor’s review of the proposed policy determined that it failed to fully address witness questioning policies and conveyances. Specifically, the policy did not state that a witness cannot and should not be detained or that a witness has a right to refuse to talk to the police. In addition,

the Monitor could not identify, where cited,<sup>85</sup> the requirements of conveying and individual to another location without reasonable suspicion, probable cause or consent of the individual.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U47.<sup>86</sup>

### **Paragraph U48 - Documentation of Interviews and Interrogations**

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

### ***Current Assessment of Compliance***

Included in the October 22, 2003 Administrative Message via teletype, was a requirement that all DPD personnel utilize an auditable form (UF-005) to document instances in which interrogations, interviews and conveyances have occurred that are unsupported by reasonable suspicion within 24 hours. Furthermore, Section B of this form requires the individual completing the form to identify the facts to validate 'the no probable cause, reasonable suspicion or consent finding.'

Guidelines issued in connection with the Administrative Message include paragraph U48, verbatim, but succeeding bullet point instructions fail to articulate documentation requirements. The guidelines also fail to articulate the requirement that the review and, if applicable, the generation of the auditable form must be completed within 12 hours. Furthermore, Form UF-005 fails to indicate that the form must be completed within 12 hours of the interview, interrogation or conveyance where the policy is violated. The Monitor reviewed Directive 203.9-3 *Definitions: interviews and interrogations* noting that current policy fails to require the documentation of interviews, interrogations and conveyances.

Based on the foregoing, the Monitor finds the DPD in non-compliance with the provisions of paragraph U48.

### ***Recommendations***

The Monitor recommends that the DPD include on Form UF-005 an indication that the form must be completed within 12 hours of the interview, interrogation or conveyance that violates policy.

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<sup>85</sup> Proposed policy submitted to the DOJ for review and approval included a communication stating that policy revisions for conveyances were included. However, the Monitor's review of the DPD's submission to the DOJ did not identify any such policy revisions.

<sup>86</sup> The Monitor will assess the DPD's compliance with the requirement to implement revised witness identification policies once the DPD resubmits the policy to the DOJ and the DOJ reviews and approves it.

## D. PROMPT JUDICIAL REVIEW POLICIES

### Paragraph U49 - Revision of Policies and Requirement of Arraignment Within 48 Hours

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

### *Current Assessment of Compliance*

The DPD submitted proposed Directive 202.1 to the DOJ and the Monitor on October 23, 2003.<sup>87</sup>

Prior to the DPD's withdrawal, the Monitor reviewed the proposed Directive and determined that it fails to meet the requirements of the UOF CJ. Specifically, the reference to "within a reasonable period of time" in the first paragraph of Section 202.1-8 is inconsistent with the UOF CJ's definition of prompt judicial review, as well as the subsequent discussion in the second paragraph of Section 202.1-8.<sup>88</sup> In addition, the proposed Directive fails to emphasize that the UOF CJ's time frame for prompt judicial review is for a period *up to* and not to exceed 48 hours. In some instances this could be five hours and in other 30 hours. The Monitor is concerned that the DPD might interpret this to mean all arrests have no less than 48 hours and that this time period is an investigatory period.<sup>89</sup>

In an effort to address some of these issues, the Monitor and DPD personnel met with members of the Wayne County Prosecutor's Office,<sup>90</sup> as well as the Detroit City Court during the quarter. Specific topics discussed included the possibility of night court or adjustments in court hours to provide the DPD with the ability to obtain an arrest warrant and arraign an arrestee within the same day, as well as the initiation of two cut-off times by which paperwork must be submitted for the scheduling of an arraignment. From these discussions, the Wayne County Prosecutor's Office, the Wayne County Sheriff's Office, the Court and the DPD have agreed to two arraignment periods, Monday through Friday.<sup>91</sup>

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<sup>87</sup> The DPD has since retracted the policy and withdrawn it from review by the DOJ and the Monitor.

<sup>88</sup> It is the Monitor's contention that "as soon as possible" is the appropriate term.

<sup>89</sup> For example, in situations where officers witness a drug transaction and arrest the involved individuals, the Monitor contends that it should not take 48 hours to arraign these individuals. The DPD's desire to elicit a confession from those involved is not a predicate for delaying the process of completing paperwork and submitting it to the prosecutor for a warrant request. The DPD must stress in its policy that every arrest that is supported by probable cause, at that time, should also be adequately documented for immediate presentation to a prosecutor to facilitate a speedy presentation before a magistrate.

<sup>90</sup> Going forward, CRIB members will meet with representatives from the Wayne County Prosecutor's Office during the first week of each quarter.

<sup>91</sup> It is anticipated that the two-arraignment system will be implemented on January 5, 2004.

Notwithstanding the shortcomings in the proposed policy, as described above, as well as the DPD's failure to implement proposed policy within the time frame specified in the UOF CJ, the Monitor notes that the DPD has demonstrated a clear effort to move forward on this issue. The Monitor is encouraged by the progress made to date, and commends all involved parties for recognizing that it is easier for the DPD to accomplish this task with their cooperation.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U49.

### **Paragraph U50 - Requirement of Warrant Request**

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

### ***Current Assessment of Compliance***

As previously described, the DPD submitted and then retracted proposed Directive 202.1, which includes a policy change requiring that a warrant request be submitted to the prosecutor's office within 24 hours of arrest.<sup>92</sup>

DPD personnel met with representatives of the Wayne County Prosecutor's Office during this quarter discuss expanding the responsibilities of Assistant District Attorneys (ADAs) assigned to precincts to review non-fatal shooting arrests. The Monitor understands that the Wayne County Prosecutor's Office will expand the responsibilities of these ADAs so that they may review the merits of all arrests and assist in the timely submission of warrant requests, however this informal consultation will not satisfy or toll the requirement that the warrant be formally submitted within 24 hours of the arrest.

Although meetings with the Wayne County Prosecutor's Office have yielded results in improving the timeliness of requests, the DPD has failed to establish the required policy, procedure and processes.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U50.

### **Paragraph U51 - Documentation of Late Request for Arraignment Warrants and Late Arraignments**

Paragraph U51 requires the DPD to document on an auditable form all instances in which an arraignment warrant is submitted more than 24 hours after the arrest, and all instances in which an arrestee is not presented for arraignment within 48 hours of arrest in which extraordinary circumstances delayed the arraignment. The documentation must occur by the end of the shift in which there was:

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<sup>92</sup> The timeliness of policy implementation is a compliance requirement of paragraph U49; it does not impact the DPD's compliance with paragraph U50.

1. a failure to request an arraignment warrant within 24 hours;
2. a failure to comply with the prompt judicial review policy; or
3. an arraignment delayed because of extraordinary circumstances.

### ***Current Assessment of Compliance***

As described above in connection with paragraphs U49 and U50, the DPD submitted to the DOJ and the Monitor and subsequently retracted proposed policy revisions. The DPD issued an Administrative Message on October 22, 2003 mandating the use of form UF-004 to document instances in which a warrant request is not submitted within 24 hours and/or the arrestee is not presented for arraignment within 48 hours.

The Monitor reviewed Form UF-004 and determined that it addresses the documentation requirements of paragraph U51, with two exceptions: The form fails to include on its face reference to the 24-hour warrant request requirement and 48-hour prompt judicial review requirement and it fails to record the time the arraignment warrant was submitted. The CRIB AT has since received auditable forms from precincts documenting arrests unsupported by probable cause or for which a warrant was not sought.<sup>93</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U51.

### ***Recommendations***

The Monitor recommends that the DPD include on Form UF-004 an indication that the form must be completed whenever a warrant request is not obtained within 24 hours of an individual's arrest and/or whenever an arrestee is not presented for arraignment within 48 hours of arrest.

The Monitor recommends that the DPD provide a field on Form UOF-004 to record the time the arraignment warrant was submitted.

## **E. HOLD POLICIES**

### **Paragraph U52 - Revision of Policies**

Paragraph U52 requires the DPD to revise its hold policies to define a hold as that term is defined in the UOF CJ and require that all holds be documented. The policy must establish a timely and systematic process for persons in DPD custody who have holds issued by a City of Detroit court to have those holds cleared by presenting the arrestee to the court from which the

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<sup>93</sup> Given that the form was only recently introduced, the Monitor opted not to assess its utilization during this quarter.

warrant was issued or the setting and posting of bond where applicable. The fact that an arrestee has not been arraigned or charged on the current arrest shall not delay this process.

### ***Current Assessment of Compliance***

In a letter dated October 23, 2003, the DPD forwarded to the DOJ and the Monitor proposed Directive 305.1, which purports to meet the requirements of paragraph U52.<sup>94</sup> Among other things, the policy provides a definition of a hold that is consistent with the UOF CJ, requires that all holds be documented, and requires that the arrestee be presented to the court to clear the hold regardless of whether or not the arrestee has been arraigned or charged for the current arrest. The proposed policy also requires that the OIC of the desk document on an auditable form each instance in which a hold is not processed within 24 hours on a daily basis.

However, the Monitor reviewed the proposed hold policy prior to its withdrawal and determined that it did not satisfy the UOF CJ requirement for the development of a systematic process. The DPD has not documented the steps involved to ensure that an arrestee is presented for a hold and to identify the method by which holds will be documented. As such, a timely systematic process has not been defined.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U52.

### **Paragraph U53 - Documentation of all Holds**

Paragraph U53 requires the DPD to document all holds, including the time each hold was identified and the time each hold was cleared. The DPD must document on an auditable form each instance in which a hold is not processed within twenty-four hours on a daily basis.

### ***Current Assessment of Compliance***

Proposed Directive 305.1<sup>95</sup> includes the requirement that each hold is documented; however, it fails to identify who is responsible for documenting the hold and the method by which holds are to be documented. On October 22, 2003, the DPD issued an Administrative Message to all Command Staff, which, among other things, provided Form UF-007 to be used to document all holds that are not processed within twenty-four hours.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U53.

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<sup>94</sup> The DPD has since retracted the policy and withdrawn it from review by the DOJ and the Monitor.

<sup>95</sup> Please refer to the Current Assessment of Compliance section under paragraph U52.

## F. RESTRICTION POLICIES

The Monitor is scheduled to assess the DPD's compliance with this section of the UOF CJ (paragraphs U54-55) during the quarter ending February 29, 2004.

## G. MATERIAL WITNESS POLICIES

The Monitor is scheduled to assess the DPD's compliance with this section of the UOF CJ (paragraphs U56-57) during the quarter ending February 29, 2004.

## H. DOCUMENTATION OF CUSTODIAL DETENTION

### Paragraph U58 - Revision of Policy

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

- a) the individual's personal information;
- b) the crime(s) charged;
- c) the date and time of arrest and release;
- d) the date and time the arraignment warrant was submitted;
- e) the name and badge number of the officer who submitted the arraignment warrant;
- f) the date and time of arraignment;
- g) the date and time each warrant was lodged and cleared, if applicable; and,
- h) the custodial status of the arrestee e.g. new arrest, material witness or extradition.

### *Current Assessment of Compliance*

During the quarter ending November 30, 2003, the Monitor reviewed various DPD forms to assess whether they capture the information required by paragraph U58.<sup>96</sup>

DPD's PCR (DPD Form 108) serves a dual purpose, in that it is utilized for reporting crimes, as well as arrests made by DPD personnel. A box labeled "Arrest(s) Yes/No" is checked "yes" when an arrest is made. The arrestee's personal identifier information is then documented in the narrative portion of the report. The type of crime charged is documented in the box marked

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<sup>96</sup> Via a letter dated October 23, 2003, the DPD forwarded to the DOJ and the Monitor proposed arrest documentation policy. The DPD has since retracted the policy and withdrawn it from review by the DOJ and the Monitor.

“Report On”. The date and time of arrest is documented in the boxes marked “Occurred on or Between / Reported to Police On.” However, there are no designated areas on the report to document the following information:

- the arrestee’s release, date and time;
- the date and time of arraignment warrant was submitted;
- the name and badge number of the officer who submitted the arraignment warrant;
- the date and time of arraignment;
- the date and time each warrant was lodged and cleared if applicable; and
- the custodial status of the arrestee e.g. new arrest, material witness, or extradition.

A review of the DPD Form 192 (Arrest Ticket), which is filled out at the time an arrestee is booked into police custody, revealed that the following information is included as required by paragraph U58:

- the arrestee’s name, address, age/sex/race, date of birth, hair and eye color, height and weight and complexion;
- the initial charge; and
- the final charge

Missing from DPD Form 192 is the following required information:

- the date and time of the arrestee’s release;
- the date and time when the arraignment warrant was submitted;
- the name and badge number of the officer who submitted the arraignment warrant;
- the date and time of arraignment;
- the date and time each warrant was lodged and cleared, if applicable; and
- the custodial status of the arrestee e.g. new arrest, material witness or extradition.

A review of the DPD Form 532 (Court Case Envelope), which is used to house all documents submitted for an arraignment warrant on a DPD arrestee, revealed that the following information is included as required by U58:

- the name and personal identifiers of the arrestee;
- the crime(s) charged;
- the date and time when the arraignment warrant was submitted;

- the name and badge number of the officer who submitted the arraignment warrant;
- the date and time of arraignment; and
- the date and time each warrant was lodged and cleared.

Missing from the form is the custodial status of the arrestee e.g. new arrest, material witness or extradition information.

A review of the DPD Form number 478 (Traffic Case Envelope), utilized by DPD officers to house those reports that support a misdemeanor arrest (Preliminary Complaint Records, etc.), revealed that the following information is included as required by U58:

- the name of the arrestee and residence address;
- the crime charged;
- the date and time of arrest;
- the date when the arraignment warrant was submitted;
- the name and badge number of the officer who submitted the arraignment warrant;
- the date of arraignment; and
- the date when the warrant was lodged and cleared.

Missing from the form is the following required information:<sup>97</sup>

- the time of the arrest with no release information on the form;
- the time when the arraignment warrant was submitted;
- the time when the warrant was lodged and cleared; and
- the custodial status of the arrestee e.g. new arrest, material witness or extradition.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U58.<sup>98</sup>

### ***Recommendation***

The Monitor recommends that the DPD modify the current DPD Form 108 (Preliminary Complaint Record) by adding the arrestee identifier information from the DPD Form 192 (Arrest

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<sup>97</sup> DPD Form 478 is used for low-grade misdemeanor arrests and would not be utilized for the processing of a material witness or extradition arrestee.

<sup>98</sup> The Monitor notes that the DPD is in the process of creating a computerized DPD Form 108, which is due for implementation in April 2004.

Ticket). The Monitor further recommends that a second page be added (with a separate form number) to capture pertinent court processing information, such as:

- the date and time of the arrestee's release;
- the date and time when the arraignment warrant was submitted; and
- the name and badge number of the officer who submitted the arraignment warrant.

## I. COMMAND NOTIFICATION

### **Paragraph U59 - Time Limits for Written Reporting of Violations**

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 7 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.

### **Current Assessment of Compliance**

The DPD issued a memorandum on September 23, 2003, entitled "Procedures for Submitting Review of Arrest Forms," which, among other things, detailed the reporting requirements of paragraph U59. Members of CRIB provided specialized training, utilizing a PowerPoint presentation, to DPD Assistant Chiefs, Deputy Chiefs and Commanders in conjunction with the issuance of this memorandum. The Monitor is currently reviewing material provided by the DPD to determine whether the DPD is in compliance with the requirements of the paragraph.

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph U59. The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

### **Paragraph U60 - Daily Reporting Requirement**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

## IV. EXTERNAL COMPLAINTS

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### *Overview*

Paragraphs U61-69 of the UOF CJ require that the DPD 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 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.<sup>99</sup>

During the current period of review, the Monitor determined that the DPD and the OCI were working on two separate tracks in attempting to meet the requirements of the UOF CJ. For example, in accordance with paragraph U63, the DPD made a timely submission of an informational brochure and contact form to the DOJ for review and approval on September 11, 2003.<sup>100</sup> However, the Monitor learned that despite the fact that the informational brochure/contact form described the procedure for filing external complaints, which the OCI is ultimately responsible for, the OCI had not reviewed the form that DPD submitted. Furthermore, the OCI had developed its own informational brochure and contact form, in addition to other items required by the UOF CJ. Apparently, there was a lack of communication between the DPD and OCI. Therefore, although the Monitor was not scheduled to review the external complaint paragraphs during the quarter ending November 30, 2003, the Monitor chose to review the paragraphs and encourage the DPD and the OCI to work together.

The Monitor met with the DPD and the OCI to discuss the revisions to the external complaint policies, the informational campaign and the OCI's recently revised SOP. As described below, the Monitor provided the OCI and the DPD with verbal and written comments regarding the OCI's SOP. The DPD and the OCI continue to revise their external complaint policies, informational campaign plan and SOP based on comments provided by the DOJ and the Monitor and in accordance with the requirements of the UOF CJ.

The Monitor is scheduled to further review the UOF CJ requirements regarding the external complaint process (paragraphs U61-69) during the quarter ending May 31, 2004.

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<sup>99</sup> The OCI reports to the BPC and is responsible for conducting all external complaint investigations.

<sup>100</sup> Paragraph U63 requires DPD to develop a contact form within 60 days of the effective date of the Consent Judgment. The contact form must be submitted to the DOJ for review and approval. Please refer to the Monitor's assessment of paragraph U63 for additional information regarding the development of the informational brochure/contact form and submissions by the DOJ and the Monitor.

**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 the OCI and the DPD regarding the receipt, investigation and review of external complaints. At a minimum, the plan must specify each agency's responsibility for receiving, recording, investigating and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; and, how, when and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints.

***Current Assessment of Compliance***

The Monitor understands that the DPD is revising Directive 102.6 to meet the requirements of paragraph U61; however, the Directive is still under review by the DPD.

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

**Paragraph U62 - Informational Campaign**

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 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.

***Current Assessment of Compliance***

On November 17 and 18, 2003, the Monitor visited all thirteen DPD precincts to determine whether the DPD had distributed complaint forms and fact sheets, and posted informational posters and placards describing the complaint process, as required by paragraph U62. The DPD and the OCI have made substantial progress towards compliance with the requirements of this paragraph. Of the thirteen precincts, one precinct did not have the informational poster or a placard posted describing the complaint process. In addition, the placards at various precincts were in paper form. According to the OCI, the placards will be made permanent shortly.<sup>101</sup> The

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<sup>101</sup> The Monitor has been informed that the OCI has taken on the responsibility of carrying out the informational campaign required under this paragraph.

Monitor understands that the fact sheets required by this paragraph are still being revised and are not yet available for distribution.

The Monitor also visited three libraries and two city halls, and found that all of these locations have a Xerox copy form of the informational poster. The fact sheets are not yet available for placement at these locations. For reasons described below in the recommendations section, the OCI did not distribute complaint forms to these locations.

The OCI provided the Monitor with a copy of a signed acknowledgement list indicating that all precincts, city halls and branch libraries had received the informational posters and placards.

The Monitor requested and recently received a copy of a videotape of the public service announcement (PSA) that is designed to meet the requirements of paragraph U62c. The Monitor understands that this PSA is currently being broadcast. The Monitor will review the PSA to determine whether it meets the requirements of this paragraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U62.

### ***Recommendations***

The OCI's current practice is not to distribute pre-numbered complaint forms to any locations outside of the OCI and the DPD for control purposes. Instead, the OCI issues contact forms, which would be made into formal complaints, with a number, upon the OCI's receipt of the contact form. Paragraph U62 requires complaint forms to be distributed to city halls and libraries. Citizens must also be able to actually file a complaint via the Internet. Upon request, the complaint forms must also be made available to community groups and at community centers. The Monitor recommends that the OCI modify its current practice by providing complaint forms to these various locations.<sup>102</sup>

### **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 the DOJ. The DPD must 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.

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<sup>102</sup> The OCI could remove the pre-printed sequential numbers from the complaint forms, assign a number once the complaint is received, and notify the complainant of the complaint number when the acknowledgment of the receipt of the complaint is made, thereby complying with the paragraph U66 requirement that each complaint is assigned a unique identifier that will be made available to the complainant.

### ***Current Assessment of Compliance***

On September 11, 2003, the DPD submitted a proposed informational brochure, which included a contact form, to the DOJ for review and approval.<sup>103</sup> The DOJ provided comments in a letter dated September 16, 2003. The DPD then resubmitted the proposed informational brochure/contact form on October 3, 2003; and the DOJ provided written comments on October 14, 2003. The DPD began working with the OCI on the development of the informational brochure and contact form and resubmitted another version on October 23, 2003. On December 4, 2003, the DOJ provided written comments regarding this submission, and indicated that the submission did not address concerns identified in the DOJ's initial response of September 16, 2003.

According to the DPD, the OCI is making further revisions to the informational brochure/contact form.

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

#### **A. INTAKE AND TRACKING**

##### **Paragraph U64 - Policies Regarding Intake and Tracking**

Paragraph U64 requires the DPD and the 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.

### ***Current Assessment of Compliance***

The DPD issued Teletype 03-06205 on October 17, 2003 requiring that all external complaints must be taken and documented appropriately. The DPD is revising Directive 102.6 "Filing Citizen Complaints" and directive 404.1 "Definitions" to meet the requirements of this paragraph. Directive 404.1 was submitted to the DOJ and the Monitor but was subsequently retracted on November 25, 2003 for further revisions. The Monitor understands that Directive 102.6 is still under review by the DPD.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U64.

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<sup>103</sup> As noted in the overview section above, the DPD had not consulted the OCI on the proposed informational brochure.

**Paragraph U65 - Factual Account by Intake Officer**

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.

***Current Assessment of Compliance***

The DPD is revising Directive 102.6 "Filing Citizen Complaints" to meet the requirements of this paragraph. The Monitor understands that Directive 102.6 is still under review by the DPD.<sup>104</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U65.

**Paragraph U66 - Unique Identifier**

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

***Current Assessment of Compliance***

The DPD is revising Directive 102.6 "Filing Citizen Complaints" to meet the requirements of this paragraph. The Monitor understands that Directive 102.6 is still under review by the DPD.<sup>105</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U66.

**B. EXTERNAL COMPLAINT INVESTIGATION**

**Paragraph U67 - Revision of External Complaint Investigations Policy**

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 the OCI or, if the complaint alleges potentially criminal conduct by an officer, by IAD;

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<sup>104</sup> It is noted that OCI has included the requirements of paragraph U65 in its SOP, which applies to OCI staff. The DPD must make its own procedural modifications applicable to DPD.

<sup>105</sup> The Monitor's recommendations with regard to assigning a unique identifier to all complaints appear under paragraph U62.

- 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 the appropriate agency within five business days;
- d) require that complainants be periodically kept informed of complaint status;
- e) develop written criteria for IAD and OCI investigator applicants;
- f) implement mandatory pre-service and in-service training for all IAD and OCI investigators;
- g) require IAD and the OCI to complete all investigations within 60 days of receiving the complaint; and
- h) require that, upon completion of investigation, the complainant must be notified of its outcome.

### ***Current Assessment of Compliance***

The DPD is revising Directive 102.6 "Filing Citizen Complaints" to meet the requirements of this paragraph. The Monitor understands that Directive 102.6 is still under review by the DPD.

The OCI has attempted to include the requirements of this paragraph and paragraphs U68 and U69 in revisions to its SOP.<sup>106</sup> The Monitor reviewed the OCI SOP and determined that it failed to include some of the requirements of paragraph U67 and the related external complaint paragraphs. The Monitor met with the OCI on November 18, 2003 to provide oral recommendations based on the review of the OCI SOP. The Monitor will provide written recommendations to the DPD and the OCI. The Monitor understands that the OCI is currently revising the SOP based on the Monitor's recommendations and the requirements of the UOF CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U67.

### **Paragraph U68 - External Complaint Review Process Time Limits**

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

- a) the Chief Investigator to complete his or her review of OCI investigations within seven days of the supervisor's review;
- b) the Board of Police Commissioners to complete its review of OCI investigations within 45 days of the Chief Investigator's review; and

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<sup>106</sup> While the Monitor notes that it is appropriate and necessary to make these revisions to the OCI SOP so that it incorporates the requirements of the Consent Judgments, this paragraph requires a policy change. Therefore, DPD must make and implement the appropriate policy revisions in order to achieve compliance.

- c) the Chief of Police to complete his or her review of external complaints within 7 days of the Board of Police Commissioner's review.

### ***Current Assessment of Compliance***

The DPD is revising Directive 102.6 "Filing Citizen Complaints" to meet the requirements of this paragraph. The Monitor understands that Directive 102.6 is still under review by the DPD.

As described above, under the Monitor's assessment of paragraph U67, the OCI has attempted to include the requirements of this paragraph in revisions to its SOP. The Monitor reviewed the revisions and determined that the OCI failed to include some of the requirements of paragraph U68 and the related external complaints paragraphs. For example, the OCI SOP states that all "sustained" complaints must be reviewed by the Chief Investigator and BPC, rather than requiring that *all* OCI investigations be reviewed, as mandated by paragraph U68.

The Monitor met with the OCI on November 18, 2003 to provide oral recommendations based on the review of the OCI SOP. The Monitor will provide written recommendations to the DPD and the OCI. The Monitor understands that the OCI is currently revising the SOP based on the Monitor's recommendations and the requirements of the UOF CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U68.

### **Paragraph U69 - External Complaint Dispositions**

Paragraph U69 mandates that each allegation in an administrative external complaint investigation must 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.

### ***Current Assessment of Compliance***

As described above, under the Monitor's assessment of paragraph U67, the OCI has attempted to include the requirements of this paragraph in revisions to its SOP. The Monitor reviewed the revisions and determined that the requirements of paragraph U69 regarding external complaint dispositions were included. It is noted that the dispositions required by paragraph U69 were also included in the proposed informational brochure/contact form, which is still under revision.

The Monitor will conduct further reviews to determine whether investigators are being trained on the required dispositions and whether they are being implemented in external complaint investigations.

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph U69. The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending May 31, 2004.

## V. GENERAL POLICIES

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Paragraphs U70-77 of the UOF CJ require the DPD to develop, revise, and/or enforce a variety of general policies. As described immediately below, the Monitor assessed paragraphs U70-71 during the quarter ending November 30, 2003, finding the DPD in non-compliance with each.

The Monitor is scheduled to assess the DPD's compliance with the majority of the paragraphs in this section of the UOF CJ (paragraphs U72-77) during the quarter ending February 29, 2004.

### **Paragraph U70 - Clear Definitions of Terms**

Paragraph U70 requires that the DPD clearly define all terms when creating, revising and augmenting policy.

#### ***Current Assessment of Compliance***

Among the proposed policy revisions submitted to the DOJ and the Monitor and then retracted was Directive 404.1 that specifically defines certain key terms. In order to assess the DPD's compliance with paragraph U70, the Monitor cross-referenced all terms in existing and proposed DPD policy to the UOF CJ. The Monitor is concerned that although the DPD has inserted key components of the Consent Judgment into proposed policy revisions, it has failed to address the continuity of changes. For example, although the DPD inserted verbiage that defines a critical firearm discharge, the proposed policy discussing Category 1 UOF fails to appropriately address or refer to critical firearm discharges. Furthermore, the DPD's definition of serious UOF fails to identify neck restraints as a serious UOF and fails to include in its deadly force policy that a strike to the head with an instrument constitutes a use of deadly force.

As discussed earlier in this report,<sup>107</sup> the Monitor also identified inconsistencies in properly and clearly differentiating between a potential material witness and witnesses to an incident or crime in connection with the DPD's witness identification and questioning policies.

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

### **Paragraph U71 - Community Comment on Proposed Policy Revisions**

Paragraph U71 requires the DPD to continue making 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.

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<sup>107</sup> Please refer to the Monitor's assessment of compliance with paragraph U46.

### ***Current Assessment of Compliance***

Interviews of DPD personnel determined that as of December 19, 2003, the DPD had yet to finalize all locations at which proposed policy would be available to the community for review, comment and education. Verbal representations were made that the DPD planned on providing information at BPC meetings. The Monitor verbally indicated that this would not satisfy the requirements of the UOF CJ, in that these meetings occur too infrequently, and at times and locations that are not necessarily convenient to the majority of the community. Furthermore, the DPD had yet to identify the procedures and processes for posting proposed policies to its website to allow the community to educate themselves and to review and comment directly.

On December 22, 2003, the Monitor noted that the DPD's website posted policies in the following areas:<sup>108</sup>

- Arrests
- Arrest Tickets
- Bonding
- Canine
- Chemical Spray
- Eyewitness Identification
- Firearms
- Holding Cells
- In-Car Video Cameras
- Infectious Diseases
- Medical Attention for Prisoners
- Prisoner Processing
- Search and Seizure
- Use of Force

An inquiry of the DPD determined the policies posted are the DPD's proposed policy revisions that were submitted to the DOJ and the Monitor during October 2003 and effectively retracted for further revisions on November 25, 2003.

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<sup>108</sup> Anyone accessing the DPD's website need only point and click on any of these areas to retrieve the draft policies. However, as of December 30, 2003, the information described above was retracted from the DPD website.

The user is provided with two different means for making comments on the proposed policies. The user may respond directly via e-mail, or complete a printable form that may be mailed or sent via facsimile to the DPD.

In summary, although the DPD has established a website for the posting of proposed policies, there are no procedures or processes in place regarding how the website will be maintained, and who within the DPD will receive, review and disseminate, and respond to the comments.<sup>109</sup>

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

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<sup>109</sup> On December 12, 2003, the Monitor requested that the DPD provide a status report for paragraph U71, including information on progress made to date toward compliance. On December 23, 2003, the Monitor was informed by CRIB that "the information will be available approximately 20 business days from this date (December 23, 2003)." The Monitor acknowledged CRIB's statement that the DPD would not provide the full report until a later date; however, the Monitor requested that, at minimum, the DPD provide the Monitor with information on progress made to date, if any. As of December 31, 2003, the DPD had not provided this information.

## VI. MANAGEMENT AND SUPERVISION

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### *Overview*

Paragraphs U78-105 of the UOF CJ require 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.

### **Paragraph U78 - Development of Risk Management Plan**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

#### **A. RISK MANAGEMENT DATABASE**

Paragraphs U79-U90 provide 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. The Monitor was scheduled to review paragraphs U80-83 and U86-87 during the quarter ending November 30, 2003. The Monitor also reviewed paragraph U88a-c during this quarter.

The Monitor met with the DPD Risk Management Group and CRIB to discuss the newly created risk management plan documents<sup>110</sup> and their various timelines for submission. Although the UOF CJ paragraph regarding the RFP was not scheduled for review by the Monitor during the quarter ending November 30, 2003, the Monitor chose to review all three risk management documents provided by the DPD during the quarter.

Drafts of the Data Input Plan, Report Protocol and RFP were submitted to the DOJ on October 3, 2003 to allow the DOJ to become familiar with the documents and to seek informal comments. The DOJ submitted a letter to DPD on October 14, 2003 providing informal comments and outlining its concerns regarding the drafts. The DPD submitted revised documents on November 3, 2003, and on November 5, 2003 the Monitor responded with verbal and written comments. The DOJ issued a letter on December 4, 2003, confirming its understanding that the DPD was continuing to revise the risk management documents based on the comments provided by the Monitor and in accordance with the requirements of the UOF CJ.

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<sup>110</sup> The Data Input Plan, Report Protocol and Request for Proposal (RFP).

The Monitor is scheduled to further review the UOF CJ requirements regarding the risk management database (paragraphs U79-U90) during the quarter ending May 31, 2004.<sup>111</sup>

### **Paragraph U79 - Expansion of Risk Management System**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

### **Paragraph U80 - Risk Management Database Information**

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 firearm discharge reports and firearm discharge investigations;
- i) all incidents in which an officer draws a firearm and acquires a target;
- j) all complaints and complaint investigations, entered at the time the complaint is filed and updated to record the finding;
- k) all preliminary investigations and investigations of alleged criminal conduct;
- l) all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers, or agents, resulting from DPD operations or the actions of DPD personnel, entered at the time proceedings are initiated and updated to record disposition;
- m) all vehicle and foot pursuits and traffic collisions;

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<sup>111</sup> As described below, a review of those paragraphs included in this section of the UOF CJ that were not reviewed during the current reporting period (paragraphs U79, U84-85, U89-90) is scheduled for the quarter ending February 29, 2004.

- 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.

### ***Current Assessment of Compliance***

On October 3, 2003, the DPD submitted drafts of the Data Input Plan, Report Protocol and RFP to the DOJ and the Monitor.<sup>112</sup> In a letter dated October 14, 2003, the DOJ provided comments on the draft documents. The DPD submitted revised documents on November 3, 2003, and on November 5, 2003 the Monitor responded with verbal and written comments. On December 4, 2003, the DOJ submitted a letter confirming its understanding that the DPD was continuing to revise the risk management documents based on the comments provided by the Monitor and in accordance with the requirements of the UOF CJ.

The draft Data Input Plan purported to include the items listed in paragraph U80 and other paragraphs related to the risk management database. However, the Monitor reviewed the draft

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<sup>112</sup> According to UOF CJ Paragraph U88a, the Data Input Plan must be submitted to the DOJ for review and approval within 90 days of the effective date of the UOF CJ. The DPD is required to share drafts of the document to allow the DOJ to become familiar with the document as it is developed and to provide informal comments. Under paragraph U88b, the Report Protocol and a RFP must be submitted to the DOJ for review and approval by September 30, 2003. The DPD is also to share drafts of these documents. The RFP should be issued by October 31, 2003, according to paragraph U88c.

plan and determined that the DPD failed to include a number of reports, investigative files and other items required by paragraph U80.<sup>113</sup>

The Monitor met with the DPD Risk Management Group and CRIB on October 3, 2003 and again on November 5, 2003 to provide oral and written recommendations based on the Monitor's review of the first and second drafts of these documents. The Monitor understands that the DPD is currently revising these documents based on these recommendations.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U80.

### **Paragraph U81 - Identifying Information for Officers and Civilians**

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).

### ***Current Assessment of Compliance***

The draft Data Input Plan that the DPD provided to the Monitor and the DOJ purported to include the requirements of paragraph U81 and those other paragraphs related to the risk management database.<sup>114</sup> However, the Monitor reviewed the draft plan and determined that the DPD failed to include the paragraph U81 requirement regarding identifying information for officers and civilians.

The Monitor met with the Risk Management Group on October 3, 2003 and again on November 5, 2003 to provide oral and written recommendations based on the Monitor's review of the first and second drafts of these documents. The Monitor understands that the DPD is currently revising the documents based on these recommendations.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U81.

### **Paragraph U82 - Data Input Plan**

Paragraph U82 requires the DPD to prepare, for the review and approval of the DOJ, a Data Input Plan for including appropriate fields and values of new and historical data into the risk management database and addressing data storage. The Data Input Plan must detail the specific fields of information to be included and the means for inputting such data; specify the unit responsible for inputting data, the deadlines for inputting the data in a timely, accurate, and

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<sup>113</sup> The Monitor specifically identified these deficiencies in its November 5, 2003 oral and written comments to the DPD.

<sup>114</sup> Please refer to the Overview for this section, as well as the Monitor's assessment of paragraph U80, for background and a chronology regarding the documents submitted to the DOJ and the Monitor.

complete manner; specify the historical time periods for which information is to be input and the deadlines for inputting the data in an accurate and timely fashion; and require that the data be maintained in a secure and confidential manner.

### ***Current Assessment of Compliance***

The Monitor reviewed the draft Data Input Plan that the DPD provided to the Monitor and the DOJ<sup>115</sup> and determined that the DPD failed to include a number of items required by paragraph U82.<sup>116</sup> The Data Input Plan did include the DPD's intentions to maintain the data in a secure and confidential manner.

The Monitor met with the Risk Management Group on October 3, 2003 and again on November 5, 2003 to provide oral and written recommendations based on the Monitor's review of the draft Data Input Plan. The Monitor understands that the DPD is currently revising the Data Input Plan based on these recommendations and the requirements of the UOF CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U82.

### ***Recommendations***

The Monitor recommends that, in addition to identifying specific fields of information, the Data Input Plan should explicitly indicate that the list of reports and databases to be inputted into the risk management system is by no means exhaustive. This statement will take into account any anticipated or future reports or auditable forms that may be included in the risk management system.

### **Paragraph U83 - Report Protocol**

Paragraph U83 requires the DPD to prepare, for the review and approval of the DOJ, a Report Protocol for the risk management database that details the types of routine reports the DPD must generate and pattern identifications the DPD must conduct. The Report Protocol must:

- a) require the automated system to analyze the number of incidents and average level of activity for each individual officer and for all officers in a unit, and to identify patterns of activity for each data category;
- b) establish thresholds for the numbers and types of incidents requiring a review by an officer's supervisor of whether the officer or group of officers is engaging in at-risk behavior; and

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<sup>115</sup> Please refer to the Overview for this section, as well as the Monitor's assessment of paragraph U80, for background and a chronology regarding the documents submitted to the DOJ and the Monitor.

<sup>116</sup> The Monitor included these items in its written comments to the DPD, which were provided in November 5, 2003.

- c) require the database to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.

### ***Current Assessment of Compliance***

The Monitor reviewed the draft Report Protocol that the DPD provided to the Monitor and the DOJ<sup>117</sup> and determined that the DPD failed to include the following items required by paragraph U83: The ability to analyze each data category by all officers in a unit for any reports listed and the ability to analyze the average level of activity or identification of patterns of activity for each data category by individual officer and all officers by a unit. In addition, the Report Protocol did not outline intentions to establish thresholds for the numbers and types of incidents that require a review for at-risk behavior, nor is it evident that the database will have the ability to generate monthly reports describing the data and data analysis.

The Monitor met with the Risk Management Group on October 3, 2003 and again on November 5, 2003 to provide oral and written recommendations based on the Monitor's review of the Report Protocol. The Monitor understands that the DPD is currently revising this Report Protocol based on these recommendations and the requirements of the UOF CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U83.

### **Paragraph U84 - Review Protocol**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

### **Paragraph U85 - Modular Development of Database**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

### **Paragraph U86 - Common Control Number**

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.

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<sup>117</sup> Please refer to the Overview for this section, as well as the Monitor's assessment of paragraph U80, for background and a chronology regarding the documents submitted to the DOJ and the Monitor.

### ***Current Assessment of Compliance***

The Monitor reviewed the drafts of the Data Input Plan and Report Protocol that the DPD provided to the Monitor and the DOJ<sup>118</sup> and determined that the DPD failed to include the requirements of paragraph U86 regarding the common control number to be used for cross-referencing.

The Monitor met with the Risk Management Group on October 3, 2003 and again on November 5, 2003 to provide oral and written recommendations based on the Monitor's review of these first and second drafts of these documents.<sup>119</sup> The Monitor understands that the DPD is currently revising the documents based on these recommendations and the requirements of the UOF CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U86.

### ***Paragraph U87 - Information Maintained in Database***

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.

### ***Current Assessment of Compliance***

The Monitor reviewed the drafts of the Data Input Plan and Report Protocol that the DPD provided to the Monitor and the DOJ<sup>120</sup> and determined that the DPD failed to include the requirement that the City maintain all personally identifiable information in the database for certain periods of time.

The Monitor met with the Risk Management Group on October 3, 2003 and again on November 5, 2003 to provide oral and written recommendations based on our review of the first and second drafts of these documents. The Monitor understands that the DPD is currently revising the documents based on these recommendations and the requirements of the UOF CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U87.

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<sup>118</sup> Please refer to the Overview for this section, as well as the Monitor's assessment of paragraph U80, for background and a chronology regarding the documents submitted to the DOJ and the Monitor.

<sup>119</sup> The DPD came up with a proposed solution for identifying a common control number during the meeting with the Monitor; however, additional drafts of the documents that incorporate this solution have not been submitted since November 3, 2003.

<sup>120</sup> Please refer to the Overview for this section, as well as the Monitor's assessment of paragraph U80, for background and a chronology regarding the documents submitted to the DOJ and the Monitor.

**Paragraph U88 - Schedule for Database**

Paragraph U88 requires the DPD to develop and implement the new risk management database according to the following schedule:

- a) within 90 days of the effective date of the UOF CJ, the DPD must submit the Data Input Plan to the DOJ for review and approval within 30 days, and prior to this, share drafts of the Data Input Plan with the DOJ;
- b) by September 30, 2003, the DPD must submit the Report Protocol and a Request for Proposals to the DOJ for review and approval within 30 days, and prior to this, share drafts of such documents with the DOJ;
- c) by October 31, 2003, the DPD must issue the Request for Proposals.<sup>121</sup>

***Current Assessment of Compliance***

In its submissions of the drafts of the Data Input Plan, Report Protocol and RFP,<sup>122</sup> the DPD has failed to make the substantive changes necessary to gain the DOJ's approval as required by paragraphs U88a and b. The Monitor met with the Risk Management Group on October 3, 2003 and again on November 5, 2003 to provide oral and written recommendations based on the Monitor's review of the first and second drafts of these documents. The revised documents have not been submitted to the DOJ for review and approval.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U88a-c.

***Recommendations***

The DPD has indicated that many of the requirements in the paragraphs relating to the development of the risk management system ask for specific data and information that the DPD may not have access to or may not have developed at this time. However, these paragraphs require the DPD to draft specific plans, including the identification of deadlines, historical periods, and thresholds for review of officer conduct, among other things. The plans are not complete without outlining the specific requirements listed in the UOF CJ paragraphs. Accordingly, rather than failing to fully address the requirements of the paragraphs, the DPD must make the policy decisions necessary in order to sufficiently complete the plans.

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<sup>121</sup> Paragraphs U88d-g are not being assessed during the current reporting period, as they require that the DPD submit the Review Protocol by March 30, 2004 and select a contractor to create the risk management database by May 31, 2004. The City shall have a beta version of the risk management database ready for testing by June 30, 2005 and the risk management database shall be operational and fully implemented by December 31, 2005.

<sup>122</sup> Please refer to the Overview for this section, as well as the Monitor's assessment of paragraph U80, for background and a chronology regarding the documents submitted to the DOJ and the Monitor.

**Paragraph U89 - Interim System to Detect Patterns of Behavior**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

**Paragraph U90 - Modification Protocol**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

**B. PERFORMANCE EVALUATION SYSTEM**

**Paragraph U91 - Performance Evaluations**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

**C. OVERSIGHT**

***Overview***

Paragraphs U92-105 of the UOF CJ require the DPD to establish an internal audit process,<sup>123</sup> which is critical to effective oversight of the DPD and is central to the reform efforts.

During the quarter ending November 30, 2003, the Monitor reviewed paragraphs U92-U99 of the UOF CJ.

The UOF CJ mandates that the DPD perform quarterly audits of all precincts and specialized units on a number of specific aspects of policing, including UOF investigations, prisoner injuries, misconduct investigations, arrests, stops and frisks, the handling of witnesses, custodial detention practices, and complaint investigations. The UOF CJ also mandates that the DPD perform periodic random reviews of scout car camera videotapes for training and integrity purposes, periodically survey the scout car camera video recording equipment,<sup>124</sup> and meet regularly with local prosecutors about any issues in officer, shift or unit performance.

Each of these oversight provisions requires the DPD to examine a variety 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.

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<sup>123</sup> Paragraph U92.

<sup>124</sup> CRIB personnel informed the Monitor that the DPD requires precinct supervisors to review scout car camera videotapes and document those reviews on their supervisor's logs.

The DPD responded by establishing an Audit Team within CRIB on July 28, 2003, which is responsible for the planning and conduct of most of the audits required by the UOF CJ. The AT is also responsible for completing an Audit Protocol for all DPD audits. By December 31, 2003, the AT consisted of eight sworn members (including one inspector, one lieutenant, four sergeants and two police officers).

The Monitor is scheduled to further review the UOF CJ requirements regarding oversight, including those paragraphs that were not reviewed during the current reporting period, during the quarter ending February 29, 2004.

### **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 the UOF CJ<sup>125</sup> to ensure the audits occur on a quarterly basis and cover all DPD units and commands. Paragraph U145 requires this Audit Protocol to be completed and implemented by October 16, 2003.

### ***Current Assessment of Compliance***

As requested by the DPD, during the quarter ending November 30, 2003, the Monitor provided technical assistance to the AT regarding the content and standards to be articulated in the Audit Protocol. As of the date of this report, the provision of technical assistance is ongoing.

The Monitor's technical assistance has involved reviewing and providing input on several drafts of the Audit Protocol, and providing training/advice regarding certain issues addressed in the Audit Protocol, including:

- the scope of each of the audits required by the Consent Judgments, including the audits in both the UOF CJ and the COC CJ;
- the population to be tested in each of the audits;
- audit planning, fieldwork and reporting standards;
- the review and approval process for all audits and related reports; and
- confidentiality and independence issues.

As described in the sections that follow, the Monitor also provided technical assistance regarding statistical sampling and planning for the first audits that are expected to be completed by the AT in 2004; this technical assistance is ongoing.

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<sup>125</sup> This Audit Protocol must also address the audits required by the COC CJ (paragraphs C65-72).

Although the DPD has been developing an Audit Protocol with input from the Monitor, as of the date of this report, the DPD has not yet submitted a final Audit Protocol to be used by all DPD personnel conducting audits.

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

### **Paragraph U93 - Audit Reporting Requirements**

Paragraph U93 requires the DPD to issue a written report on the results of each audit to the Chief of Police and to each precinct or specialized unit commander. The commander of each precinct and specialized unit must review all audit reports regarding employees under his or her command and, if appropriate, take disciplinary or non-disciplinary corrective action. Paragraph U93 also requires each audit report to examine whether there is consistency throughout the DPD.

### ***Current Assessment of Compliance***

The Audit Protocol being developed by the AT in connection with paragraph U92 will specifically address reporting requirements. However, no audits were submitted by the DPD as of November 30, 2003.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U93.

### **Paragraph U94 - Audits of UOF, Prisoner Injuries and Misconduct Investigations**

Paragraph U94 requires the DPD to conduct quarterly audits covering all units and commands (including command, IAD and Homicide Section) that investigate UOF, prisoner injuries, and allegations of misconduct. These audits must include evaluating the accuracy of the incident, the collection of evidence and the appropriateness of the conclusions.

### ***Current Assessment of Compliance***

Compliance with paragraph U94 will be achieved when quality audits are submitted each quarter for each of these audit topics. The DPD has not yet commenced any of these audits.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U94.<sup>126</sup>

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<sup>126</sup> Paragraph U94 requires audits of three different types of investigations - UOF, prisoner injuries, and allegations of misconduct. Based on the protocol that has been drafted to date by the AT, the UOF and Prisoner Injuries audits are likely to be combined into one audit, and the Misconduct Investigations audit will be separate. Accordingly, for ease of reporting, the Monitor will be splitting paragraph U94 into the following two subparagraphs: U94a - Audits of UOF & Prisoner Injuries and U94b - Audits of Misconduct Investigations.

**Paragraph U95 - Audits of Probable Cause, Stop and Frisk, and Witness Handling**

Paragraph U95 requires the DPD to conduct quarterly audits of arrests, stops and frisks, and the handling of witnesses. Such audits must cover all precincts and specialized units and must evaluate the scope, content, duration and voluntariness of the police interaction. These audits must also include a comparison of arrests to warrants and warrants to judicial findings.

***Current Assessment of Compliance***

As requested by the AT, during the quarter ending November 30, 2003, the Monitor provided technical assistance regarding the draft audit workplans and auditable forms for the Arrest and Stop and Frisk audits. The Monitor has also been providing technical assistance regarding the audit population and sampling requirements for these audits and has provided specific information regarding the following sections of the workplans:

- Operational Definitions;
- Standards;
- Compliance Measures;
- Analysis; and
- Population/Data Collection.

Compliance with paragraph U95 will be achieved when quality audits are submitted each quarter on each of these audit topics. The DPD has indicated that it expects the Arrest and Stop and Frisk Audits to be submitted by May 2004. The Witness Handling Audit is expected to be submitted by August 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U95.<sup>127</sup>

**Paragraph U96 - Audits of Custodial Detention Practices**

Paragraph U96 requires the DPD to conduct quarterly audits of the DPD's custodial detention practices, including evaluating the length of detention between the time of arrest and the time of arraignment. Such audits must be conducted covering all precincts and specialized units.

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<sup>127</sup> Paragraph U95 requires audits of three different types of police activity - probable cause (arrests), stops and frisks, and witness identification and questioning documentation. For ease of reporting, the Monitor expects to break paragraph U95 into the following three subparagraphs: U95a - Audits of Arrests, U95b - Audits of Stops and Frisks, and U95c - Audits of Witness Handling.

### ***Current Assessment of Compliance***

As requested by the AT, during the quarter ending November 30, 2003, the Monitor provided technical assistance regarding the draft audit workplan and the audit population. This technical assistance is ongoing.

Compliance with paragraph U96 will be achieved when a quality audit of this topic is submitted each quarter. This audit is not yet completed, and is not expected to be completed until the quarter ending May 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U96.

### **Paragraph U97 - OCI Audits of External Complaints and Investigations**

Paragraph U97 requires the Chief Investigator of the OCI to designate an individual or entity to conduct quarterly audits that examine external complaints and complaint investigations. The Chief Investigator must review all audit reports regarding officers under OCI command and, when appropriate, take non-disciplinary corrective action or disciplinary action.

### ***Current Assessment of Compliance***

Compliance with paragraph U97 will be achieved when quality audits of this topic are submitted each quarter. As of December 31, 2003, the OCI had not designated an individual or entity to conduct quarterly audits as required by this paragraph and the Monitor had not yet provided technical assistance regarding the completion of such audits.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U97.

### **Paragraph U98 - Videotape Reviews**

Paragraph U98 requires the DPD to conduct and document periodic random reviews of scout car videotapes for training and integrity purposes. The DPD must also conduct periodic random surveys of scout car video recording equipment to ensure proper working order.

### ***Current Assessment of Compliance***

The DPD conducts precinct-level supervisory review of the scout car videotapes, which is an important aspect of oversight and is mandated by U101 for specific incidents (prisoner and officer injuries, UOF, pursuits, etc.). However, this practice does not meet the requirements of paragraph U98; since it requires that the reviews of videotapes and equipment must be random, rather than specified and must be conducted on a periodic or "regularly scheduled" basis. This process will require the expertise of DPD personnel capable of ensuring a random selection from a specified population.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U98.

**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.

***Current Assessment of Compliance***

According to the DPD, Quarterly Community Prosecution Meetings have been developed between the DPD and the Wayne County Prosecutor's Office, and meetings were held on October 3 and October 8, 2003.<sup>128</sup> The DPD submitted a letter to the DOJ and the Monitor outlining its efforts to comply with this paragraph.

The Monitor is unaware of any issues that have been identified as a result of these meetings, and is planning on conducting further reviews to determine whether the meetings comply with paragraph U99 requirements.

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph U99. The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

**D. USE OF VIDEO CAMERAS**

The Monitor is scheduled to assess the DPD's compliance with this section of the UOF CJ (paragraphs U100-102) during the quarter ending February 29, 2004.

**E. DISCIPLINE**

The Monitor is scheduled to assess the DPD's compliance with this section of the UOF CJ (paragraphs U103-105) during the quarter ending February 29, 2004.

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<sup>128</sup> This information is provided in the DPD's 120-day status report.

## VII. TRAINING

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### *Overview*

Paragraphs U106-123 of the UOF CJ direct 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 UOF CJ provides specific requirements for review and reporting on these issues to the Monitor and the DOJ. The Department must also select and train trainers, evaluate all training, conduct needs assessments, and create and maintain individual training records for all officers.

During the quarter ending November 30, 2003, the Monitor reviewed each of the paragraphs included in the Training section of the UOF CJ. The Monitor met with DPD personnel, including the Training Director and staff and the CRIB, to discuss the overall plan for training delivery, assessment, and tracking. A substantial portion of the training required under the UOF CJ is based on Departmental policy, which is currently under revision. Lesson plans based on these policies cannot be completed until final policy approval is given.

The Training Bureau completed four lesson plans, and transmitted them to the CRIB for review. The Monitor made a formal document request for the plans, and received them at the end of the reporting period. As a result, the Monitor has not yet reviewed the lesson plans. However, the Monitor is concerned that these lesson plans were developed without the underlying policies being finalized.

The DPD Training Bureau has requested one additional Curriculum Development Specialist through City channels. Even if approved, the volume of backlogged work cannot be accomplished in a timely manner without the addition of substantial resources.

The Monitor is scheduled to further review the UOF CJ's training requirements (paragraphs U115-123) during the quarter ending February 29, 2004. The Monitor is scheduled to further review the UOF CJ's training requirements (paragraphs U106-114) during the quarter ending May 31, 2004.

### A. OVERSIGHT AND DEVELOPMENT

#### ***Paragraph U106 - Coordination of 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.

### ***Current Assessment of Compliance***

The DPD has not developed a plan to coordinate and review all UOF and A&D training or to produce a report of such reviews to the Monitor and the DOJ. Furthermore, the reviews cannot take place until the policies are revised and training is developed and delivered.

Based on the foregoing, the Monitor finds the DPD in non-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 A&D training;
- b) develop UOF and A&D 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 A&D are responsive to the knowledge, skills and abilities of the officers being trained.

### ***Current Assessment of Compliance***

The Michigan Commission on Law Enforcement Standards (MCOLES) certifies the DPD Training Academy and prepares the recruit curriculum for all basic police training, statewide. The DPD has not developed or implemented any of the procedures or processes necessary to accomplish any of the areas outlined in U107 (a-f). Furthermore, the UOF and A&D training curricula have not been fully developed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U107.

### **Paragraph U108 - Individual Training Records**

Paragraph U108 requires the DPD to create and maintain individual training records for all officers, documenting the date and topic of all pre-service and in-service training completed on or after the effective date of the UOF CJ.

### ***Current Assessment of Compliance***

As with paragraph C74, the DPD will utilize the MCOLES Michigan Information and Tracking System (MITN) to meet the requirements of paragraph U108. As described in connection with

the assessment of paragraph C74, the Monitor will assess the completeness and accuracy of the system after implementation, training, and audit.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U108.

### **Paragraph U109 - Approved Lesson Plans / Scenario-Based Training**

Paragraph U109 requires the DPD to ensure that only mandated objectives and approved lesson plans are taught by instructors and that instructors engage students in meaningful dialogue regarding particular scenarios, preferably taken from actual incidents involving DPD officers, with the goal of educating students regarding the legal and tactical issues raised by the scenarios.

### ***Current Assessment of Compliance***

The Monitor understands that the In-Service Training Protocols have been submitted to CRIB for review. Once the protocols have been reviewed and approved, the subsequent lesson plans and training methodologies have been developed and approved, and the appropriate scenarios have been identified and developed, the Monitor will review the In-Service Training Protocols to determine compliance with the requirements of paragraph U109.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U109.

### ***Recommendations***

The Monitor understands that the DPD has recently decided to rely upon subject-matter expertise in selecting instructors. This is a positive step. The Monitor also recommends that the DPD take communication and facilitation skills into consideration in the selection of instructors.

### **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.

### ***Current Assessment of Compliance***

The Monitor understands that the DPD has completed Directive 101.4-1, which discusses the responsibility of the Risk Management Bureau to liaise with the City Law Department on behalf of the DPD regarding civil lawsuits and that these meetings have been taking place. It is unclear whether any information gleaned from this process has been distributed to the DPD Risk Management and Training Bureaus and whether action has been taken as a result. The Monitor will review the meeting protocol and the quarterly meeting results to ensure that mitigation of

future suits on jointly identified issues are effectively addressed through policy development and training within the DPD or other relevant City agencies.<sup>129</sup>

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.

### ***Current Assessment of Compliance***

The Monitor understands that CRIB and the DPD Training Bureau have attended roll calls in all precincts, trained the officers on the content of the UOF CJ, and provided copies of the both Consent Judgments to Departmental personnel. The Monitor requested and recently received<sup>130</sup> the training curricula and sign-in sheets from the UOF CJ training. The Monitor is in the process of reviewing these materials to determine compliance.<sup>131</sup>

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph U111.

## **B. UOF TRAINING**

### **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;

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<sup>129</sup> The DPD has represented that the meetings are taking place; however, the Monitor has not yet been provided with any additional detail, including meeting dates, attendees or reports.

<sup>130</sup> These documents were received at the end of the quarter.

<sup>131</sup> The Monitor will also be reviewing these materials to determine whether City employees (non-DPD) whose job responsibilities are affected by the Consent Judgments also received training.

- c) examples of scenarios faced by DPD officers and interactive exercises that illustrate proper UOF decision making, including the use of deadly force;
- d) the circumstances in which officers may draw, display, or point a firearm, emphasizing: officers should not draw their firearm 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 firearm when pursuing a subject suspected of committing only a misdemeanor;
- a) the proper use of all intermediate force weapons;
- e) 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;
- f) interacting with people with mental illnesses, including instruction by mental health practitioners and an emphasis on de-escalation strategies;
- g) factors to consider in initiating or continuing a pursuit;
- h) 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
- i) consideration of the safety of civilians in the vicinity before engaging in police action.

### ***Current Assessment of Compliance***

The Monitor understands that the UOF training plans have been updated and the DPD Training Bureau submitted a copy of the lesson plan, including the course outline and objectives to CRIB on October 16, 2003. This lesson plan was not provided to the Monitor; therefore, it was requested and recently received<sup>132</sup> through the established document request procedure. The Monitor will review the lesson plan and supporting documents; however, as discussed more fully below under paragraphs U121 and U122, the Monitor is concerned that UOF training has been developed prior to the completion of the UOF policy revisions called for in the UOF CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U112.

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<sup>132</sup> The Monitor received these documents after the quarter ended.

## C. FIREARMS TRAINING

### 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 firearm instructors critically observe students and provide corrective instruction regarding deficient firearm 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.

### *Current Assessment of Compliance*

The Monitor understands that the Firearms Protocol has been developed. The Monitor requested and recently received<sup>133</sup> the protocol through the established document request procedure.

The Monitor understands that the bi-annual qualification requirement was implemented Department-wide prior to the effective date of the UOF CJ.<sup>134</sup> The Monitor has not yet conducted an evaluation of the status of the DPD's firearms qualification requirements.

Finally, the Monitor understands that training records that will record whether all officers and supervisors complete the bi-annual firearms training and qualification will be contained in the MITN system when implemented. The Monitor is in the process of reviewing the protocol and conducting other reviews to determine implementation and compliance. However, the Monitor is concerned that the training protocol has been developed prior to the DPD's completion of its use of firearms policy revisions required by paragraphs U20-23.<sup>135</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U113

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<sup>133</sup> The Monitor received the protocol after the first quarter ended.

<sup>134</sup> However, the DPD currently lacks an appropriate facility at which night firearms training can be conducted as required by U113b. The Monitor understands that the DPD is exploring its options.

<sup>135</sup> DPD withdrew Directive 304.1 "Firearms" from the DOJ and the Monitor's consideration on November 25, 2003 for redrafting.

**D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING****Paragraph U114 - Annual Arrest and Police-Citizen Interaction Training**

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

- a) the DPD arrest, investigatory stop and frisk and witness identification and questioning policies;
- b) the Fourth Amendment and other constitutional requirements, including: advising officers that the “possibility” that an individual committed a crime does not rise to the level of probable cause; advising officers that the duration and scope of the police-citizen interaction determines whether an arrest occurred, not the officer's subjective, intent or belief that he or she affected 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.

***Current Assessment of Compliance***

On October 23, 2003, the DPD Training Bureau staff met with the Wayne County Prosecutor’s Office to develop a plan to achieve compliance with paragraph U114. The Monitor understands that the DPD is currently updating the objectives and lesson plan with the assistance of the Prosecutor’s Office. It is noted that the training development cannot be completed until the relevant policies are revised under paragraphs U42-48.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U114.

**E. CUSTODIAL DETENTION TRAINING****Paragraph U115 - Annual Custodial Detention Training**

Paragraph U115 requires the DPD to provide all DPD recruits, officers and supervisors with annual training on custodial detention. Such training must include DPD policies regarding arrest, arraignment, holds, restrictions, material witness and detention records.

### ***Current Assessment of Compliance***

DPD Policy Directive 305.3, Precinct Cellblocks, was submitted to the DOJ and the Monitor and was subsequently withdrawn on November 25, 2003. According to the City, the policy is being redrafted. The DPD cannot effectively develop a lesson plan on custodial detention until the policies are completed and approved as required by paragraphs U42-58. Therefore, the Monitor will review the lesson plans, training delivery methodologies, and pre/post comprehension testing once the policy is approved and lesson plans are completed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U115.

### **Paragraph U116 - Advise Officers not to Delay Arraignment**

Paragraph U116 requires the DPD to advise officers that the DPD arraignment policy shall not be delayed because of the assignment of the investigation to a specialized unit, the arrest charge(s), the availability of an investigator, the gathering of additional evidence or obtaining a confession.

### ***Current Assessment of Compliance***

Please refer to the Monitor's assessment of paragraph U117, which includes the Monitor's assessment of paragraphs U116 and U117.

### **Paragraph U117 - Advise Officers that Material Witness Designation is a Judicial Determination**

Paragraph U117 requires the DPD to advise officers that whether an individual is a material witness, and whether that material witness should be committed to custody, is a judicial determination.

### ***Current Assessment of Compliance***

On October 17, 2003<sup>136</sup>, the DPD issued an Administrative Message<sup>137</sup> to be read at seven consecutive roll calls at all commands. This message instructed officers that, pursuant to the requirements of the UOF CJ, the arraignment of detainees is not to be delayed for any of the reasons listed in paragraph U116. It likewise ordered that the status of material witnesses and their detention were matters for judicial determination.

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<sup>136</sup> DPD's 120-day status report states that this Teletype was issued on October 17, 2003 in the body of the report and October 14, 2003 in the appendix.

<sup>137</sup> Teletype 03-06196 entitled "Delay of Detainees Arraignment."

It should be noted that the “arrest policy” referred to in paragraph U116 has not been completed.<sup>138</sup> Paragraph U116 can only be effectively implemented once the prompt judicial review policies under paragraphs U49-51 are completed approved and implemented. Similarly, paragraph U117 relies upon the development and implementation of material witness policies under paragraphs U56-57, which also have not been completed.

The Monitor will review the roll call sign-in rosters, further review the teletype and conduct other reviews in the next scheduled review period. However, the policy revisions covering prompt judicial review and material witnesses must be completed, approved and implemented before the DPD can achieve compliance under paragraphs U116-117.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U116 and U117.

## F. SUPERVISORY TRAINING

### Paragraph U118 - Training on the Evaluation of Written Reports

Paragraph U118 requires the DPD to provide supervisors with training in the appropriate evaluation of written reports, including what constitutes a fact-based description, the identification of conclusory language not supported by specific facts and catch phrases, or language that so regularly appears in reports that its inclusion requires further explanation by the reporting officer.

#### *Current Assessment of Compliance*

The DPD has yet to develop the curriculum for supervisor training.

It should be noted that the DPD Training Bureau is inadequately staffed in order to simultaneously develop the number of lesson plans required by the UOF CJs. The Monitor understands that the City is discussing the need for additional curriculum developers internally. The Monitor understands that a job description has been written and forwarded to the City’s Human Resources Department and preliminary meetings have been held with Wayne State University to identify curriculum development professionals.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U118.

### Paragraph U119 - Leadership and Command Accountability Training

Paragraph U119 requires DPD supervisors to receive leadership and command accountability training and to learn techniques designed to promote proper police practices. This training must

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<sup>138</sup> The Arrest policy, Directive 202.1, was submitted to the DOJ and the Monitor and subsequently withdrawn.

be provided to all DPD supervisors within 30 days of assuming supervisory responsibilities and must be made part of annual in-service training.

### ***Current Assessment of Compliance***

The lesson plan for this training has not yet been approved by the DPD. The leadership course description, lesson plan and training schedule for newly promoted Lieutenants and Sergeants have been submitted to CRIB for review. The materials were not provided to the Monitor; therefore; the Monitor requested and recently received<sup>139</sup> the items through the established document request procedure. The Monitor is in the process of reviewing the documents.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U119.

### ***Paragraph U120 - Risk Assessment Training***

Paragraph U120 requires the DPD to provide training on risk assessment and risk management to all DPD supervisors, including the operation of the risk management database.

### ***Current Assessment of Compliance***

The Training Bureau has requested information pertaining to the development of this training from the Risk Management Bureau on two separate occasions. The information has not yet been provided. In any event, the risk management database<sup>140</sup> has not yet been developed although the DPD states that it has developed an interim system<sup>141</sup> on which DPD supervisors should be trained. The training required by U120 has not been developed or implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U120.

### ***Recommendations***

The lack of effective communication between two DPD Bureaus outlined above is indicative of systemic policy development and implementation problems throughout the Department as it relates to the Consent Judgments.<sup>142</sup> The Monitor recommends that the DPD develop a communications system with regard to compliance with the Consent Judgments that incorporates all relevant DPD units. One possible way of achieving this would be to assign a CRIB liaison to

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<sup>139</sup> The documents were received after the end of the first quarter.

<sup>140</sup> The development of the risk management database is covered by paragraphs U79-90.

<sup>141</sup> The DPD is required to develop an interim system to identify patterns of conduct by DPD officers or groups of officers under paragraph U89.

<sup>142</sup> For example, the Monitor previously identified communication problems between DPD and OCI with regard to external complaints.

each DPD unit so that CRIB can ensure that communications between DPD units are taking place in an effective manner that helps achieve compliance.

## G. INVESTIGATOR TRAINING

### Paragraph U121 - Training for Evaluating Credibility

Paragraph U121 requires the DPD to provide training on appropriate burdens of proof, interview techniques and the factors to consider when evaluating officer, complainant or witness credibility to all officers who conduct investigations to ensure that their recommendations regarding dispositions are unbiased, uniform and legally appropriate.

#### *Current Assessment of Compliance*

Please refer to the Monitor's assessment of paragraph U122, which includes the Monitor's assessment of paragraphs U121 and U122.

### Paragraph U122 - Handling External Complaints

Paragraph U122 requires the DPD to provide all supervisors charged with accepting external complaints with appropriate training on handling external complaints that emphasizes interpersonal skills. The DPD must provide training on the DPD external complaint process, including the role of the OCI and IAD in the process, to all new recruits and as part of annual in-service training.

#### *Current Assessment of Compliance*

DPD has not developed training to meet the requirements of paragraph U121. With regard to paragraph U122, the Monitor understands that the Training Bureau has tentatively scheduled a forty-hour training program for the OCI. This training, scheduled to begin after January 2004, will include training for DPD supervisors charged with accepting and handling external complaints and will emphasize interpersonal skills. It will also train new recruits on the external complaint process and the role of the OCI and IAD.

The materials used to develop the lesson plans for this training have been provided to CRIB for review. The Monitor is concerned that the Training Bureau has developed this training program prior to the completion, approval and implementation of the policy revisions pertaining to external complaints called for by paragraphs U61, U64 and U67. Furthermore, the training program is scheduled to train new recruits on the external complaint process, which is currently under revision to meet the requirements of the UOF CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U121 and U122.

## ***Recommendations***

Throughout the training related paragraphs, the Consent Judgments require training curricula and protocols to be developed for policies that are to be revised under other paragraphs in the Consent Judgments.<sup>143</sup> It is the Monitor's contention that the training curricula cannot effectively be developed prior to the development of the policy, without consultation with the effected DPD units or without working with the individuals assigned to draft or revise the policy. The Monitor recommends that the DPD engage in effective training development by linking it with the completion and approval of the policy revisions called for in the Consent Judgments.

### **H. FIELD TRAINING**

#### ***Paragraph U123 - Enhancement of FTO Program***

Paragraph U123 requires the DPD to develop, subject to DOJ approval, a protocol to enhance the FTO program within 120 days of the effective date of the UOF CJ. The protocol must address the criteria and method for selecting and removing the FTOs and for training and evaluating FTOs and trainees.

#### ***Current Assessment of Compliance***

The Monitor understands that the DPD has completed research for a national review of best practices related to FTO programs. The DPD has not yet developed a protocol to enhance its FTO program.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U123.

## **VIII. MONITORING, REPORTING, AND IMPLEMENTATION**

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#### ***Paragraph U139 - Reopening of Investigations Deemed Incomplete***

The Monitor is scheduled to report on this paragraph during the quarter ending May 31, 2004.

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<sup>143</sup> At minimum, the following training paragraphs that were reviewed this quarter require policy revisions: C75, C76, C78, U112-117, and U121-122.

## **SECTION FOUR: COMPLIANCE ASSESSMENT - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT**

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This section contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending February 29, 2003.

### **I. FIRE SAFETY POLICIES**

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#### *Overview*

Paragraphs C14-22 of the COC CJ require the DPD to develop, implement, and train specific fire safety policies and procedures and develop and implement a comprehensive fire safety program in all DPD facilities that maintain holding cells.<sup>144</sup>

Each of these provisions requires the DPD to examine a variety of issues, but a common theme among them all is the requirement to ensure that adequate fire safety precautions are being undertaken at all DPD facilities that maintain holding cells and that all DPD facilities that maintain holding cells comply with the Life Safety Code.

During the quarter ending November 30, 2003, the Monitor reviewed the majority of the paragraphs included in this section of the COC CJ (paragraphs C16, C18, C20-22). The Monitor determined that the DPD, via the HCCC, has attempted to respond to the requirements of the COC CJ by working closely with the DFD to develop the necessary plans. The Monitor acknowledges the hard work the DPD and the DFD have demonstrated in attempting to comply with these paragraphs. However, a considerable amount of additional effort is required, as the DPD has been unable to comply with the deadlines mandated under this section of the COC CJ.

Except where noted below, the Monitor is scheduled to continue its review of the DPD's compliance with these paragraphs during the quarter ending February 29, 2004.

#### **Paragraph C14 - Life Safety Code Compliance**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.<sup>145</sup>

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<sup>144</sup> The term "holding cell" is defined in Definitions section of the COC CJ (Section I, Paragraph k) to include any room or area in which individuals in DPD custody are confined, including cells at the DPD precinct stations, specialized units, and the Detroit Receiving Hospital (DRH).

<sup>145</sup> According to paragraph C103, unless otherwise specified, the DPD is required to implement each and every provision of the COC CJ within 90 days of its effective date (by October 16, 2003). There is a similar paragraph in the UOF CJ (paragraph U145). As explained in the Introduction, the Monitor periodically schedules reviews of paragraphs on a quarterly basis over the life of the Consent Judgments. Although the Monitor's review takes place

### **Paragraph C15 - Detection, Suppression and Evacuation Programs**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

### **Paragraph C16 - Fire Safety Program Development**

Paragraph C16 requires the DPD to develop a fire safety program in consultation with, and receive written approval by, the DFD. As part of the overall program, the DFD must evaluate the need for, and if necessary, the DPD must install fire rated separations, smoke detection systems, smoke control systems, sprinkler systems and/or emergency exits for holding cells and buildings that contain them. The approved plan must be submitted for review and approval of the DOJ within three months of the effective date of the COC CJ.

### ***Current Assessment of Compliance***

The Monitor reviewed the DPD's efforts during the quarter ending November 30, 2003 to develop a fire safety program. During the quarter, the HCCC and its members, in particular the DFD Fire Marshall's office, have been conducting precinct assessments to determine which precincts need physical fire mitigation efforts.

The HCCC and the DFD have been examining the status of the already-existing fire separations, smoke detection systems, smoke control systems and emergency exits, as well as the need for sprinkler systems, at the 12 precincts that maintain holding cells.<sup>146</sup> They found that all 12 precincts that maintain holding cells need varying amounts of investment vis-à-vis the installation of comprehensive smoke detection and audible alarm systems. Specifically, while all 12 precincts currently maintain integrated smoke detection systems, many of the systems do not function properly and none of the precincts that maintain holding cells have smoke detection systems that cover the entire structure; the systems only cover the holding cell areas, with limited annunciation capabilities.<sup>147</sup> In addition, some of the older facilities need significant investments to ameliorate the overall poor physical condition of the facility and ensure that proper fire

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after the due dates for certain paragraphs, this has no impact on these due dates and the DPD's requirement to comply with them.

<sup>146</sup> As of December 31, 2003, neither the DPD nor the DFD had undertaken a review of the holding cells in the DRH. The holding cells at the DRH are also subject to COC CJ provisions that address holding cells (e.g. paragraphs C16 and C22).

<sup>147</sup> The Monitor's assessment of the smoke detection systems in the various precincts indicates that while all of the systems are integrated into an audible alarm system, the alarm only annunciates at the front desk. During follow up questioning by the Monitor, some DPD officers indicated that when activated, the alarm could easily be heard everywhere in the building, while other officers indicated that the alarm could only be heard from specific areas within the precinct. The Monitor has not yet begun an independent evaluation of the annunciation capabilities of the alarms as the DPD readily admitted that the systems do not meet the requirements of the COC CJ.

separation is maintained and appropriate smoke controls are in place.<sup>148</sup> The 3<sup>rd</sup> and 4<sup>th</sup> precincts are in particularly poor condition. Both facilities were constructed in the early 1920's and, while they have undergone some modernization, little investment has been made in their physical plants.

During the quarter, the Monitor determined that the DPD has yet to develop the fire safety program mandated by paragraph C16; a summary of the DPD's activities related to the development of the program follows. In mid-September 2003, the DPD provided the DFD with copies of the individual precinct fire safety plans. These plans were reviewed and approved by the DFD, whereupon they were submitted to the Monitor. Upon reviewing the individual plans, the Monitor determined that they did not meet either the stated or implicit requirements of the COC CJ and were returned to the DPD. On October 30, 2003 the Monitor disseminated a memo entitled "Comments and Recommendations Regarding the Detroit Police Department Individual Precinct Emergency/Fire Evacuation Plans (Precincts 2 through 13)," which included detailed findings and provided recommendations to the DPD regarding the development of effective precinct fire safety plans. The DPD continues to work with the DFD to develop the appropriate plans, with technical assistance being provided by the Monitor. These plans, when completed, will serve as the basis for the overall fire safety program mandated by paragraph C16.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C16.

### **Paragraph C17 - Fire Safety Program Implementation**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending November 30, 2004

### **Paragraph C18 - Fire Safety Interim Measures**

Paragraph C18 requires the DPD to implement interim Fire Safety measures for all DPD facilities that maintain holding cells. The measures must address such issues as proper alarm activation; emergency reporting by prisoners; and, automated back-up systems for life safety equipment (i.e. emergency lighting, signage, fire alarms, smoke detection systems) for buildings that contain holding cells. In addition, the interim measures must reduce the spread of smoke and fire via the stairwells, garages, hazardous rooms and exposed pipes.

### **Current Assessment of Compliance**

The Monitor reviewed the DPD's efforts during the quarter ending November 30, 2003 to implement interim Fire Safety measures for all DPD facilities that maintain holding cells. The

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<sup>148</sup> As of December 31, 2003, the Monitor had not been provided with an official assessment of the need to retrofit existing structures that maintain holding cells with sprinkler systems. According to information provided to the Monitor by the DFD, the addition of sprinkler systems to the holding cell areas would not necessarily afford any additional protection, as the facilities in question are largely constructed of cement or masonry.

Monitor is encouraged by the overall progress, described below, that the DPD has made in meeting the mandates of paragraph C18, even though compliance has not yet been fully achieved.

An analysis of the DPD's efforts indicates that substantial progress has been achieved in developing and implementing interim fire safety measures to ensure that prisoners can immediately alert the guards in the event of an emergency. The DPD accomplished this by ensuring that at least one DPD officer is stationed within the cellblock area at all times. The Monitor conducted unannounced assessments of 8 separate precincts to determine if DPD officers were stationed within the cellblock area. In each assessment, the Monitored determined that a DPD officer was in fact stationed within the cellblock area.

The DPD has also made progress in procuring and installing automated back-up power systems for life safety equipment. The DPD has entered into an extended agreement with DTE Energy to supply and maintain integrated, automatic back-up generators for all DPD precincts. These generators will be connected directly into each precinct's infrastructure and will automatically provide emergency power in the event of a power failure. DPD expects delivery of the generators to occur in the spring of 2004.<sup>149</sup>

The HCCC has conducted an assessment, with the assistance of the DFD, of all DPD facilities that maintain holding cells in an effort to identify and address the issues of smoke reduction in emergency stairwells, garages, hazardous rooms and exposed pipes. However, the Monitor is unaware of any concerted effort by the DPD to address the issues uncovered by this assessment. During numerous tours of the various precincts, the Monitor identified fire doors that were unsecured, improperly installed non-fire rated doors on emergency stairwells, and gaps in fire separations, especially around pipes and conduits that transect the fire walls in some of the older precincts.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C18.

### **Paragraph C19 - Safety Equipment Testing**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

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<sup>149</sup> Currently DPD and DTE are working with an outside contractor to prepare concrete slabs, which need to be laid prior to delivering and installing the back up generators. As of November 30, 2003, both the DPD and DTE expected all of the slabs to be poured prior to the onset of winter; however, should a delay develop or the weather turn unseasonably cold, the pouring of the slabs will need to be postponed until spring, which in turn will delay the delivery and installation of the emergency generators.

### **Paragraph C20 - Smoking Policy**

Paragraph C20 requires the DPD to immediately enforce its no-smoking policy in all holding cells or provide ashtrays and ensure that the holding cells are constructed and supplied with fire rated materials.<sup>150</sup>

### ***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraph C20 for the quarter ending November 30, 2003, the Monitor reviewed the DPD smoking policy and conducted site assessments of 9 of the 12 precincts that maintain holding cells, as well as the holding cells in the DRH to determine if the current 'no smoking' policy was being actively implemented and enforced.

The DPD policy, which is located in the Detroit Police Department Manual under section 3.3.4-4 states:

*In accordance with the Michigan Clean Indoor Air Act, P.A. 198 of 1986 and P.A. 296 of 1988, smoking is prohibited throughout department facilities.*

The DPD also issued Teletype 00-01961 on March 22, 2000, which restates the policy described above. The Monitor conducted unannounced precinct assessments at 9 precincts and the DRH to determine if the 'no-smoking' policy was being actively enforced. These on-site assessments provided no indication or evidence that individuals have been, or were being allowed to smoke within the confines of the precinct. Interviews with DPD personnel and prisoners indicated that the no-smoking policy is being actively enforced. In addition, the Monitor reviewed prisoner possession logbooks, which indicated that smoking materials, matches and lighters were being confiscated prior to incarceration.

Although the Monitor's site assessments indicate that the 'no-smoking' policy is clearly being enforced, the Monitor has been unable to locate any recent Department-wide communications that provide DPD personnel with a clear understanding of this policy. To the best of DPD personnel's knowledge, there have been no recent official communications regarding the 'no-smoking' policy. Furthermore, interviews of senior Department personnel indicate that there has been no recent Department-wide communication regarding the 'no smoking' policy.

While the DPD has failed to disseminate a Department-wide communication within the last three years regarding the 'no smoking' policy, the officers and commanders in the field are aware of the policy and are enforcing it appropriately.<sup>151</sup>

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<sup>150</sup> In practical terms, a "fire rated" product aids in reducing the risk of flashover in a major fire due to its diminished ability to support combustion.

<sup>151</sup> The Monitor has recommended to the DPD that Department-wide communications regarding the 'no smoking' policy be disseminated to the field on an annual basis. This will ensure that all Department personnel are aware of the policy and enforce it appropriately.

Based on the foregoing, the Monitor finds the DPD in compliance paragraph C20.

### **Paragraph C21 - Storage of Flammable Liquids**

Paragraph C21 requires the DPD to immediately ensure the proper storage of all flammable and combustible liquids in all detention cell areas, buildings that house detention cells, and connected structures, including garages.

#### ***Current Assessment of Compliance***

The Monitor reviewed DPD efforts during the quarter ending November 30, 2003 to comply with paragraph C21. The Monitor was pleased to learn that the DPD moved swiftly to conduct a needs assessment and purchased 13 flammable liquid storage lockers. These lockers, which meet local and state regulations for the storage of flammable liquids, were purchased with the assistance and approval of the DFD, which provided the necessary technical specifications.

The lockers were delivered to the precincts by November 30, 2003; however, they have not yet been installed. Once the installation process is complete, the DPD will disseminate a detailed memo from the Facilities Management Section of the DPD that will provide specific instructions on the use and care of the cabinets. The DPD is confident that this will be fully achieved by February 2004.<sup>152</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C21.

### **Paragraph C22 - Removal of Cane Ceiling Tiles**

Paragraph C22 requires the DPD to immediately identify and remove all highly-flammable cane ceiling tiles from all buildings that house holding cells.

#### ***Current Assessment of Compliance***

A review of DPD efforts in this area indicates that the DPD, in conjunction with the DFD, has conducted a thorough assessment of all 12 DPD precincts that maintain holding cells to determine which precincts have cane ceiling tiles. Of the 12 precincts that have holding cells, only two, the 4<sup>th</sup> and 10<sup>th</sup> precincts, have been identified as having such ceiling tiles.

The DPD is currently working on a strategy for dealing with these two precincts. As of the drafting of this report, the HCCC has determined that it will be more cost-effective to close down the holding cells within the 4<sup>th</sup> Precinct rather than invest in the remediation efforts required to

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<sup>152</sup> The Monitor will request copy of the Facilities Management Memo to ensure that it provides an appropriate level of detail regarding the care and use of the storage lockers. The Monitor also plans on conducting on-site inspections to ensure that the lockers are being properly utilized.

bring the precinct up to Consent Judgment standards.<sup>153</sup> The Monitor has been informed that the DPD is currently working on a remediation plan for the 10<sup>th</sup> precinct and is accepting bids on the removal and replacement of the cane ceiling tiles.

While the Monitor is pleased with the progress the HCCC has made in identifying the precincts that have cane ceiling tiles, and developing remediation strategies to effectively deal with the problem, the fact remains that the DPD has yet to remove the tiles.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C22.

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<sup>153</sup> In late November 2003, the HCCC drafted a memo to the leadership of the DPD requesting that the DPD close down the holding cells in both the 3<sup>rd</sup> and 4<sup>th</sup> Precincts. As of this report, no official decision has been made regarding this request.

## **II. EMERGENCY PREPAREDNESS POLICIES**

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Paragraphs C23-25 of the COC CJ require the DPD to develop and implement emergency preparedness plans for all DPD facilities that maintain holding cells. These procedures and policies are to be designed to ensure that each precinct, and the entire Department, has a clear understanding of what actions are required in the event of an emergency.

During the quarter ending November 30, 2003, the Monitor reviewed paragraph C24. The Monitor determined that the DPD has responded to the paragraph's requirements by working closely with the DFD under the auspices of the HCCC to develop the necessary plans. However, the DPD has been unable to comply with the mandates established in the paragraph.

The Monitor is scheduled to review paragraphs C23 and C25 during the quarter ending February 29, 2004, and will further review the DPD's compliance with paragraph C24 during the quarter ending May 31, 2004.

### **Paragraph C23 - Ensure Safety Level**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

### **Paragraph C24 - Emergency Preparedness Program Development**

Paragraph C24 requires the DPD to develop a comprehensive emergency preparedness program, which receives the written approval of the DFD, for all DPD detention facilities. The program must be submitted for the review and approval of the DOJ within three months of the effective date of the COC CJ. The program must include an emergency response plan for each building that contains holding cells that identifies staff responsibilities in the event of a fire-related emergency. In addition, it must require performance and documentation of fire drills for each building that contains holding cells on all shifts once every six months.

### ***Current Assessment of Compliance***

During the quarter ending November 30, 2003, the Monitor reviewed DPD procedures and activity in connection with fire drills and determined that the DPD is documenting fire drills in a precinct logbook, which the DPD hopes to use as the basis for an auditable log, although this process has yet to be finalized. The Monitor's independent review of precincts' logbooks indicates that the precincts appear to be conducting fire drills on a monthly basis for each precinct and each shift.

Based on comments and technical assistance provided by the Monitor during the quarter ending November 30, 2003, the DPD is working with each precinct to develop individual precinct fire

safety/emergency response plans under the direction of the DFD. Once these plans are completed, they will be integrated into an overall Department-wide emergency preparedness program, which will be developed in conjunction with the DFD. However, a comprehensive program for all DPD detention facilities has not yet been developed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C24.

**Paragraph C25 - Key Control Policies**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending February 29, 2004.

### **III. MEDICAL AND MENTAL HEALTH CARE POLICIES**

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#### *Overview*

Paragraphs C26-34 of the COC CJ require the DPD to develop and implement a series of medical and mental health care policies for prisoners. 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 needs of their prisoners. The DPD must develop these programs with the assistance of a qualified medical and mental health care expert and the policies and procedures must be approved by the DOJ prior to being implemented.

During the quarter ending November 30, 2003, the Monitor reviewed each of the paragraphs included in this section of the COC CJ (paragraphs C26-34). The Monitor found that the DPD has responded to the requirements of these paragraphs by working closely with the DDOH and the DRH to develop the required policies, procedures and protocols.

During the quarter, the DPD focused most of its energies on redrafting old health care policies and developing new procedures to meet the requirements of the COC CJ. Although the DPD has worked diligently on the issues involved, significant additional effort will be required to achieve compliance with the paragraphs included in this section.

The Monitor is scheduled to further review the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

#### **Paragraph C26 - Identification and Response for Special Needs**

Paragraph C26 requires the DPD to ensure the appropriate identification of and response to prisoners' medical and/or mental health conditions.

#### ***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraph C26 for the quarter ending November 30, 2003, the Monitor reviewed the DPD's ongoing efforts to develop and implement procedures for identifying individual prisoners who have medical and/or mental health care needs and provide appropriate medical response. The DPD determined that the development of a new Detainee Intake Form is the best method to ensure that the DPD identifies these prisoners and provides the appropriate medical treatment. During the quarter, the DPD Medical and Mental Health Units worked diligently with the DDOH to develop and implement an updated Detainee Intake Form (form D.P.D 651).

Through this ongoing effort, the DPD developed an interim<sup>154</sup> Detainee Intake Form (D.P.D 651 (rev 10-03)), which has been distributed to, and is required to be utilized by all precincts that maintain holding cells.<sup>155</sup> The form provides specific information and questions that prisoners can answer to assist DPD officers in identifying the medical or mental health care needs of their prisoners. It must be completed within 2 hours of a prisoner's intake via verbal exchange with the prisoner. Special Order 03-29, dated June 16, 2003, provides specific instructions on the use of the form.

The Detroit Police Medical Section has reviewed DPD form 651 and indicated that the form is based on sound practices and is acceptable for use within the Department. The Monitor has not yet evaluated the DPD's utilization of this form; this evaluation is scheduled for the quarter ending May 31, 2004.<sup>156</sup>

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph C26.

### **Paragraph C27 - Screening Program Development**

Paragraph C27 requires the DPD to develop and implement, within three months of the effective date of the COC CJ, a comprehensive medical and mental health screening program that must be approved in writing by a qualified medical<sup>157</sup> and mental health<sup>158</sup> professional. Upon their review and approval, the screening program will 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.

### ***Current Assessment of Compliance***

As of November 16, 2003, the DPD had drafted a new policy concerning medical and mental health screening. The policy was drafted with the full cooperation and approval of both a qualified medical professional and a mental health professional, which both signed off on the

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<sup>154</sup> The form is considered an 'interim' response because it does not satisfy the requirements of paragraphs C27-29. The DPD is working with both a medical and mental health care professional to develop the final version of the Intake Form.

<sup>155</sup> On October 7, 2003, the DPD disseminated Teletype 03-06050 that instructs the precincts to utilize DPD 651 (rev10-03).

<sup>156</sup> The DPD's efforts to ensure an appropriate response to prisoners' medical and/or mental health conditions is dependent on the development of a comprehensive medical and mental health screening program required by paragraphs U27-29. This screening program, including the Detainee Intake Form, must be submitted to the DOJ for review and approval.

<sup>157</sup> The term 'qualified medical professional' is defined in the COC CJ as an individual who is currently licensed by the State of Michigan to deliver the health care services they have undertaken to provide.

<sup>158</sup> The term 'qualified mental health professional' is defined in the COC CJ as an individual who is currently licensed by the State of Michigan to deliver the mental health services they have undertaken to provide.

policy. The updated policy has been submitted to the Monitor for review. Once the review process is completed, the policy will be submitted to DPD leadership for approval, and then the entire program will be forwarded to the DOJ for review and approval prior to implementation.

While the DPD is working on the comprehensive medical and mental health screening program (CMMHSP) policy, an overall programmatic approach appears to be lacking. The DPD is having difficulty mapping out the totality of the program, which will include specific policy and procedures, appropriate forms, implementation and training. Until such time as the entire program is developed and implemented, the DPD will be unable to achieve compliance with this paragraph.<sup>159</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C27.

### **Paragraph C28 - Minimum Standards for Screening Program**

Paragraph C28 stipulates the minimum required standards that need to be implemented in the new DPD detainee screening program: The program must provide a mechanism to enable DPD officers to identify individuals with medical or mental health conditions or who are at risk of committing suicide. Furthermore, the process must require that the DPD follow a standard intake procedure 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 prisoner. Finally the process must incorporate all health information pertaining to a prisoner acquired by the arresting or transporting officer.

### ***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraph C28 during the quarter ending November 30, 2003, the Monitor reviewed the efforts of the DPD and the DDOH<sup>160</sup> to develop a standardized screening procedure for all precincts, utilizing the Detainee Intake Form, to be used by every precinct as new prisoners are processed into the system.

Currently, the DPD is utilizing interim updated Detainee Intake Form (form DPD 651 rev 10-03), which mandates that new prisoners be processed within two hours of their intake.<sup>161</sup> Furthermore, the new screening process allows for the DPD to screen for medical and/or mental illness concerns that would necessitate proper medical attention.

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<sup>159</sup> Training is not included in the Monitor's assessment of DPD's compliance with the paragraphs in this section as paragraph C76 specifies the training requirements in connection with medical and mental health screening.

<sup>160</sup> As a member of the DPD HCCC, the DDOH has been working closely with the DPD on developing appropriate standards for the new Detainee Screening Program.

<sup>161</sup> Please refer to the Monitor's assessment of paragraph C26 for additional information regarding the interim intake form.

A review of the interim form indicates that it does not allow for notes and/or updates to be provided by detention officers or transporting officers should a prisoner's condition change. The DPD has identified this shortcoming, as well as other potentially problematic shortcomings, and is currently developing a more comprehensive process that will allow officers to pass along critical medical, safety and security information in a timely and more methodical fashion.

The Monitor also reviewed the DPD Medical Attention for Prisoners policies during the current reporting period. The Monitor determined that the policies make no mention of, or reference to, any of the new procedures or forms that are being developed or implemented. The Monitor is concerned about this omission, and believes that the policies need to be revisited and redrafted to ensure that they are comprehensive in nature.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C28.

### **Paragraph C29 - Minimum Standards for Medical Protocols**

Paragraph C29 provides the minimum standards for the medical protocols required under the detainee intake process: The protocols must identify the specific actions the DPD must take in response to the medical information acquired during the prisoner 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.

### ***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraph C29 for the quarter ending November 30, 2003, the Monitor reviewed the DPD's ongoing efforts to update and improve the Detainee Intake Form (Form DPD 651) and the procedures utilized to question detainee about their medical and mental health status.

The Monitor determined that the current version of the updated form (Form DPD 651 rev 10-03) does not include any information or instructions to DPP officers regarding the appropriate responses to medical information acquired during the initial prisoner screening process or during subsequent incarceration within the precinct. The DPD is currently working with the DDOH to develop an updated version of the Detainee Intake Form that will address this issue. In addition, the DPD and DDOH are working on a process to track and audit the new forms to ensure that all proper information has been acquired and that Department personnel took appropriate actions.

The Monitor notes that current medical screening policy indicates that prior supervisory review and written approval, absent exigent circumstances, is required prior to a prisoner being transported to DRH for medical attention.<sup>162</sup>

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<sup>162</sup> The current policy calls for the DPD to transport all prisoners who either indicate that they have a medical condition, or who are identified as having a medical need, to the DRH. There are no known circumstances when a prisoner who needs medical attention is not transported to the DRH for medical attention.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C29.

### **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. 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.

### ***Current Assessment of Compliance***

The Monitor reviewed the DPD's efforts during the quarter ending November 30, 2003 to develop and implement an infectious disease control policy for all its facilities that maintain holding cells. The Monitor determined that the DPD is still working through a number of issues regarding the technological and physical requirements involved in developing and implementing the policy. Specifically, the DPD is assessing its own capabilities regarding the movement of air within the holding cell areas, and the use of ultraviolet light to control the spread of infectious diseases.

According to medical experts, under the standard put forth by the Occupational Safety & Health Administration (OSHA), the DPD facilities must have at least six air changes per hour to ensure the control of infectious diseases. The DPD has authorized a local contractor to undertake a study of air changes in each precinct. The contractor to the DPD has submitted preliminary findings; however, the Monitor has requested that the contractor review these findings to ensure their accuracy.<sup>163</sup>

In addition, the DPD indicates that the DDOH has reviewed and approved the updated policies on the control of infectious diseases and is awaiting signature by DDOH leadership. Once the leadership has signed off on the policies, they will be forwarded to the Monitor for review and compliance assessment.

Finally, while a new training program has not yet been developed, the Training Bureau is reviewing the draft policies, and will await final approval prior to rolling out an updated training program.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C30.

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<sup>163</sup> Initial findings indicated that all holding cell areas exceeded the stated mandatory minimums for air exchanges. The Monitor, having been briefed on these findings, has requested that these measurements be retaken and that the criteria and exact methodology for conducting the tests be submitted, along with the updated results, in a written report.

### **Paragraph C31 - Prisoner Health Information Protocol**

Paragraph C31 requires the DPD to develop and implement procedures for updating and exchanging prisoner health information. These procedures must ensure that prisoner 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 prisoners' 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 prisoners' health information travels with them when they are transferred to another facility.

### ***Current Assessment of Compliance***

The Monitor reviewed the DPD's efforts during the quarter ending November 30, 2003 to develop policies and implement procedures for updating and exchanging prisoner health information. Currently the DPD is investigating the use of an 'envelope' or 'packet' system that will allow DPD detention and police officers to note all pertinent medical, safety and security information. This type of system is currently being employed by a number of major urban police departments, and is considered to be an effective means of ensuring that critical information is maintained with a prisoner.

This system would be used in conjunction with the new Detainee Intake Form (form DPD 651 rev 10-03) to allow for the recording, updating and exchanging of prisoner health information. It would also enable the DPD to ensure that any additional relevant information acquired during an individual's detention is captured and communicated to all individuals who maintain a 'need to know.'<sup>164</sup> However, the Monitor is unaware of any effort to ensure that the information collected is maintained in a manner consistent with relevant state and federal confidentiality statutes.

In regards to training, the DPD will develop the training to allow for appropriate implementation once it has developed the exact policies and procedures required to meet the mandates of the COC CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C31.

### **Paragraph C32 - Prescription Medication Policy**

Paragraph C32 requires the DPD to develop a Prisoner Prescription Medication Policy in consultation with qualified medical and mental health professionals that ensures prisoners 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

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<sup>164</sup> Specifically, this includes officers involved in the transportation of prisoners, officers located in other facilities, or officers on consecutive shifts.

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.

### ***Current Assessment of Compliance***

The Monitor reviewed the DPD's efforts during the quarter ending November 30, 2003 to develop a Prescription Medication Policy. The Monitor determined that the DPD has completed the development of a Prescription Medication Policy with the assistance of a qualified medical and mental health expert; however, initial feedback indicates that further effort is required. Specifically, the DPD will need to develop appropriate SOPs that detail the implementation requirements of the policies. Once these modifications are incorporated, the policies will be circulated in draft form to senior DPD personnel for approval, prior to being sent to the DOJ for review and approval.<sup>165</sup>

The Monitor also conducted unannounced site assessments of precincts to observe the procedures in place in connection with prisoner prescription medications. The Monitor visually inspected medication logbooks<sup>166</sup> and locked medication storage cabinets, and conducted interviews with prisoners and DPD officers in the cellblocks. The Monitor determined that each precincts visited was actively ensuring that prisoners are being provided with prescription medications as directed by a medical or mental health professional.

While the Monitor is pleased with the process described above, we note that the DPD has not developed a standardized format for the Prescription Medication Logbooks. As such, the individual precincts determine what information they capture in the logbook. This may lead to situations in which some precincts do not capture critical information and/or some prisoners are provided with incorrect medications or dosages.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C32.

### ***Recommendations***

The Monitor recommends that the DPD develop a standard format for the Prescription Medication Logs to ensure that critical information is captured and available on a consistent basis.

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<sup>165</sup> Paragraph C32 requires the procedures to be submitted to the DOJ for review and approval within three months of the effective date of the Consent Judgment.

<sup>166</sup> Each precinct maintains a prescription medication log book to track medications provided to prisoners, ensuring that the medications are being provided to the appropriate individuals and that information is being transferred from one shift to the next.

**Paragraph C33 - Suicide Watch Garb**

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

***Current Assessment of Compliance***

The Monitor reviewed DPD efforts during the quarter ending November 30, 2003 to provide appropriate clothing to prisoners placed under suicide watch. Through interviews with DPD leadership and various precinct officers, the Monitor determined that the DPD sends all individuals who have been identified as being potential suicide risks to one of four precincts.<sup>167</sup>

The Monitor conducted interviews with DPD officers in the four precincts identified as suicide watch precincts, as well as other precincts within the DPD, to determine if the officers were familiar with, and adhering to, the procedures regarding the treatment of prisoners identified as potential suicide risks. The Monitor also conducted a physical assessment of the four precincts, reviewing the clothing identified for use with prisoners who may be suicidal and the procedures by which these prisoners are detained. The Monitor determined that the precincts have been provided with appropriate suicide clothing, and the clothing is distributed to high-risk prisoners.

A review of the DPD policy on Cellblocks does not reference suicide cells or suicide garments for high-risk prisoners.<sup>168</sup> Furthermore, current DPD training does not address these issues, but the DPD is working on incorporating them into pre-existing training.

Based on the foregoing, the Monitor finds the DPD in compliance with the implementation requirements, but in non-compliance with the policy<sup>169</sup> and training requirements of 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.

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<sup>167</sup> There are two precincts identified as primary precincts (one in the east sector and one in the west sector) and two identified as secondary precincts. Precincts are directed to send all of their suicide watch prisoners to the primary precincts, or to the secondary precincts in the event the suicide watch cells within the primary precincts are unavailable.

<sup>168</sup> According to the DPD, a policy revision that addresses this issue is being drafted and should be available by December 18, 2003.

<sup>169</sup> In this instance “policy” refers to the written policy, procedure, protocol or other method that the DPD will develop to ensure the sustained adherence to the requirements of this paragraph.

### ***Current Assessment of Compliance***

The Monitor reviewed DPD efforts to comply with paragraph C34 during the period ending November 30, 2003 and determined that the DPD has undertaken an assessment of all 12 precincts that maintain holding cells in order to determine what suicide hazards exist within the cellblocks. The DPD's review indicated that there are over 114 items that need to be addressed in the various cellblocks, as they may be considered suicide hazards. A significant number of these hazards (approximately 50) are associated with the 3<sup>rd</sup> and 4<sup>th</sup> precincts, both of which are scheduled to be closed in early 2005, when a new larger precinct will be constructed and the two precincts merged.<sup>170</sup>

The DPD is considering closing down the holding cell facilities in the 3<sup>rd</sup> and 4<sup>th</sup> precincts now, as opposed to waiting until 2005. This will ensure that resources destined for upgrading existing holding cell facilities are not invested in structures nearing the end of their operational usefulness. The Monitor believes that this course of action would significantly enhance the physical remediation efforts throughout the Department. Furthermore, it will be exceptionally difficult for the DPD to achieve compliance with this and other paragraphs that require physical remediation while the 3<sup>rd</sup> and 4<sup>th</sup> precincts remain open, given the poor physical condition of their facilities.

The DPD has also drafted an extensive report detailing all of the physical remediation efforts that are required to ensure compliance with paragraph C34. This report has been submitted to the DPD leadership, and comments from the leadership are expected to be returned by the middle of December. The HCCC is working with the leadership to approve the report and obtain funding authorization for the remediation effort. While the Monitor is pleased with the HCCC and DPD efforts to assess the level of remediation needed to achieve compliance with this paragraph, the Monitor is concerned about the DPD's failure to act in a more timely fashion with decision-making in connection with the issues surrounding the 3<sup>rd</sup> and 4<sup>th</sup> Precinct, as well as the suicide hazards that exist throughout the holding cells, Department-wide.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C34.

## **IV. PRISONER SAFETY POLICIES**

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The Monitor is scheduled to assess the DPD's compliance with this section of the COC CJ (paragraphs C35-38) during the quarter ending February 29, 2004.

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<sup>170</sup> The new facility will have responsibility for both the 3<sup>rd</sup> and 4<sup>th</sup> precincts; however, it will not maintain any holding cells.

## **V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES**

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The Monitor is scheduled to assess the DPD's compliance with this section of the COC CJ (paragraphs C39-46) during the quarter ending February 29, 2004.

## **VI. POLICIES CONCERNING PERSONS WITH DISABILITIES**

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The Monitor is scheduled to assess the DPD's compliance with this section of the COC CJ (paragraphs C47-48) during the quarter ending February 29, 2004.

## **VII. FOOD SERVICE POLICIES**

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### *Overview*

Paragraphs C49-50 of the COC CJ require 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.

During the quarter ending November 30, 2003, the Monitor reviewed both paragraphs included in this section of the COC CJ. As part of this effort, the Monitor reviewed DPD food service for prisoners, and the manner in which food is stored. Overall, the Monitor found that the DPD has made considerable progress on this issue and has demonstrated a considerable level of implementation compliance in this section. The Monitor realizes that the DPD has been working on developing the associated policies that correspond to the new procedures that have been implemented; however, as of the drafting of this report, these policies had yet to be finalized.

The Monitor is scheduled to further review the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

### **Paragraph C49 - Food Storage and Service**

Paragraph C49 requires the DPD to ensure that food is stored and served in a sanitary manner and in compliance with state and local health codes.

### ***Current Assessment of Compliance***

The Monitor reviewed the DPD's efforts during the quarter ending November 30, 2003 to develop a new food storage and service program. The Monitor determined that the DPD has developed a new food service and storage program; however, it has failed to develop the

corresponding policies.<sup>171</sup> According to the HCCC, both a DHD sanitarian and a registered dietician have signed off on the program. The Monitor has submitted a document request to the DPD, requesting a copy of the new food service plan, as well as copies of the approval letters from both the DDOH sanitarian and the registered dietician.

The Monitor conducted unannounced site assessments at 9 of the 12 precincts that house detention cells. During these visits, the Monitor reviewed the precincts' food service logbooks to compare the number of sandwiches received and distributed to the number of sandwiches left after distribution. In addition, the Monitor conducted independent interviews with DPD officers and prisoners to determine whether the food was being properly distributed on a regular basis. The Monitor determined that prisoners in each of these facilities are served once during a shift

The Monitor also observed the precincts' food handling procedures during each site assessment. The Monitor observed that each sandwich arrived at the precinct in a sealed 'zip-lock baggie' with a description and expiration date. A corrections officer wearing appropriate sanitary gloves served each prisoner. Each evening, the precincts conduct an audit of all leftover sandwiches, and any sandwich past the expiration date is discarded. Detainees have the choice between baloney, salami and peanut butter & jelly sandwiches, as well as juice and water. Each sandwich was clearly labeled and dated. A check of the refrigerator indicated that the sandwiches and juice were being stored at the correct temperature and that unused sandwiches are disposed of in an appropriate manner.<sup>172</sup>

However, the DPD's efforts to fully ensure that food is stored and served in a sanitary manner is dependent on the development of a comprehensive food service policy as required by paragraph U50.

Based on the foregoing, the Monitor finds the DPD in compliance with the implementation requirements, but in non-compliance with the policy requirements of paragraph C49.<sup>173</sup>

### **Paragraph C50 - Development of Food Service Policies**

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

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<sup>171</sup> See paragraph C50.

<sup>172</sup> The DPD now obtains its food on a daily basis from an outside vendor. The food is stored in refrigerators in each precinct that has holding cells. The Monitor will continue these assessments in future quarters.

<sup>173</sup> The training requirements associated with paragraph C49 are included under paragraph C78.

### ***Current Assessment of Compliance***

The Monitor reviewed DPD efforts during the quarter ending November 30, 2003 to develop and implement a comprehensive food service policy. The Monitor determined that the DPD has developed and implemented a new food service program, but policies are still being developed by the DPD and DDOH.

According to the HCCC and the DDOH, a qualified dietician has approved of the meal plan, and a qualified sanitarian has approved of the overall program.<sup>174</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C50.

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<sup>174</sup> An outside contractor manages the new program.

## VIII. PERSONAL HYGIENE POLICIES

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### *Overview*

Paragraph C51, which is the sole paragraph in this section of the COC CJ, requires the DPD to provide all prisoners with access to personal hygiene items such as soap, toothbrushes, toilet paper, comb, deodorant and feminine hygiene products.

The Monitor reviewed paragraph C51 during the quarter ending November 30, 2003; the Monitor is scheduled to further review the DPD's compliance with the paragraph during the quarter ending May 31, 2004.

### *Paragraph C51 - Availability of Personal Hygiene Items*

Paragraph C51 requires the DPD to make available personal hygiene kits to all prisoners being held within DPD holding cells. The kits must include soap, toothbrushes, toothpaste, toilet paper, a comb, deodorant and feminine hygiene products. The DPD must implement this provision within one month of the effective date of the COC CJ.

### *Current Assessment of Compliance*

During the quarter ending November 30, 2003, the Monitor reviewed the DPD's efforts to provide personal hygiene kits to prisoners and determined that the DPD is providing such kits to prisoners in all DPD holding cell facilities.

A review of the most recent purchase order, dated September 9, 2003, indicates that the DPD purchased 100,000 hygiene kits, which include soap, deodorant, toothpaste, a disposable toothbrush, three moist towelettes and hand lotion. The Monitor inspected the precincts and determined that these kits are provided to each prisoner prior to the distribution of food. The Monitor determined that sanitary napkins are available for female prisoners by request.

The DPD is currently drafting the language for a Teletype that will be sent to all precincts providing instructions on how the kits are to be utilized.

Based on the foregoing, the Monitor finds the DPD in compliance with the implementation requirements, but in non-compliance with the policy requirements of paragraph C51.

## **IX. USE OF FORCE AND RESTRAINTS POLICIES**

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The Monitor is scheduled to assess the DPD's compliance with this section of the COC CJ (paragraphs C52-54) during the quarter ending February 29, 2004.

## **X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW**

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The Monitor is scheduled to assess the DPD's compliance with this section of the COC CJ (paragraphs C55-57) during the quarter ending February 29, 2004.

## **XI. EXTERNAL COMPLAINTS**

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The Monitor is scheduled to assess the DPD's compliance with this section of the COC CJ (paragraphs C58-59) during the quarter ending February 29, 2004.

## **XII. GENERAL POLICIES**

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Paragraphs C60-61 of the COC CJ require the DPD to ensure that all terms are clearly defined in policy that it develops, revises, and augments, and to make proposed policy revisions available to the community. As described immediately below, the Monitor assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2003, finding the DPD in non-compliance with each.

The Monitor is scheduled to further review the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

### **Paragraph C60 - Clear Definitions of Terms**

Paragraph C60 requires that the DPD clearly define all terms when creating, revising and augmenting policy.

#### ***Current Assessment of Compliance***

Among the proposed policy revisions submitted to the DOJ and the Monitor and then retracted was Directive 404.1 that specifically defines certain key terms. After reviewing terms included in this Directive and other proposed policies, the Monitor is concerned that where the DPD has inserted key components of the Consent Judgments into policy revisions, it has failed to effectively incorporate the terms. As with the UOF CJ, revisions to policy that include definitions are, in many instances, simply a regurgitation of definitions and phrases contained within the COC CJ; they do not contain additional information requisite for implementation. As with the UOF CJ, again, the COC CJ contains minimum provisions for the investigation of prisoner injuries. Given that policy revisions remain incomplete, and in all likelihood will include newly created or revised forms, definitions are incomplete.

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

### **Paragraph C61 - Community Comment on Proposed Policy Revisions**

Paragraph C61 requires the DPD to continue making 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.

#### ***Current Assessment of Compliance***

Interviews of DPD personnel determined that as of November 30, 2003, the DPD had yet to finalize all locations at which proposed policy would be available for review, comment and education. Verbal representations were made that the DPD planned on providing information at

BPC meetings. The Monitor verbally indicated that this would not satisfy the requirements of the COC CJ, in that these meetings occur too infrequently, and at times and locations that are not necessarily convenient to the majority of the community. Furthermore, the DPD had yet to identify the procedures and processes for posting proposed policies to its website to allow the community to educate themselves and to review and comment directly.

On December 22, 2003, the Monitor noted that the DPD's website posted policy for the following areas:<sup>175</sup>

- Arrests
- Arrest Tickets
- Bonding
- Canine
- Chemical Spray
- Eyewitness Identification
- Firearms
- Holding Cells
- In-Car Video Cameras
- Infectious Diseases
- Medical Attention for Prisoners
- Prisoner Processing
- Search and Seizure
- Use of Force

An inquiry of the DPD determined the policies posted are the DPD's proposed policy revisions submitted to the DOJ during October 2003 and effectively retracted for further revisions on November 25, 2003.

The user is provided with two different means for making comments on the proposed policies. The user may respond directly via e-mail, or complete a printable form that may be mailed or sent via facsimile to the DPD.

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<sup>175</sup> Anyone accessing the DPD's website need only point and click on any of these areas retrieve policy. However, as of December 30, 2003, the information described above was retracted from the DPD website.

In summary, although the DPD has established a website for the posting of proposed policies, there are no procedures or processes in place regarding how the website will be maintained, and who within the DPD will receive, review and disseminate, and respond to the comments.

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

### **XIII. MANAGEMENT AND SUPERVISION**

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#### *Overview*

Paragraphs C62-72 of the COC CJ require the DPD to operate its holding cells in compliance with its comprehensive risk management and to routinely evaluate the operation of the 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 quarterly audits. The DPD must also create a HCCC, which is responsible for assuring and evaluating compliance with the requirements of the COC CJ. The HCCC is therefore critical to the effective oversight and reform of the DPD's holding cells.

The COC CJ mandates that either the DPD or the HCCC evaluate compliance with the COC CJ by performing regularly scheduled quarterly audits of all buildings containing holding cells for the following topics: 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.

Each of these provisions requires the DPD/HCCC to audit a variety of issues, but a common theme among them all is the requirement to assess and report on issues impacting the well-being of the staff and prisoners in the DPD's holding cells.

The DPD responded by forming an AT within the HCCC on November 20, 2003, which has responsibility for planning and conducting most of the audits required by the COC CJ. The DPD also formed an AT within CRIB to assist in this process. By December 31, 2003, a total of 13 personnel were assigned to conduct such audits on behalf of the HCCC,<sup>176</sup> and two were assigned from CRIB's AT to assist with such audits

The Monitor is scheduled to further review the DPD's compliance with the audit-related paragraphs (C65-72) of this section of the COC CJ, and assess for the first time the DPD's compliance with the non-audit-related paragraphs (paragraphs C62-64), during the quarter ending February 29, 2004.

#### **Paragraph C65 - Audits of Holding Cell UOF, Prisoner Injuries and Misconduct Investigations**

Paragraph C65 requires the DPD to conduct quarterly audits covering all DPD units and commands (including command, IAD and Homicide Section) that investigate uses of force, prisoner injuries, and allegations of misconduct in holding cells. The audits must include

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<sup>176</sup> Nine AT members are from the DPD, two are from the DHD, and two are from the DFD.

evaluating the accuracy of the incident, consistency of investigations, the collection of evidence and the appropriateness of the conclusions.

### ***Current Assessment of Compliance***

Compliance with paragraph C65 will be achieved when quality audits are submitted each quarter for this audit topic. The DPD has indicated that these audits will be combined with the audits required by paragraph U94. The DPD has not yet commenced these audits.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C65.<sup>177</sup>

### **Paragraph C66 - HCCC to Assure Compliance with the COC CJ & Conduct Fire Detection, Suppression & Evacuation Audits**

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 quarterly audits of all facilities that house holding cells to evaluate and report upon compliance with fire detection, suppression and evacuation programs as detailed in the COC CJ.

For ease of reporting, the Monitor has split paragraph C66 into the following two components:

- C66a - HCCC to Assure Compliance with the COC CJ
- C66b - HCCC Fire Detection, Suppression & Evacuation Audits

### ***Current Assessment of Compliance***

#### *HCCC to Assure Compliance with the COC CJ*

The DPD has formed a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. The HCCC is meeting on a weekly basis to:

- oversee the development of the policies required by the COC CJ; and
- oversee the inspections<sup>178</sup> into the current state of the holding cells' conditions relative to the requirements of the COC CJ.

Although the HCCC is making some progress, the holding cells policies have not yet been developed and implemented, and the HCCC's inspections do not constitute an audit.

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<sup>177</sup> As with paragraph U94, for ease of reporting, the Monitor will be splitting paragraph C65 into the following two subparagraphs: C65a - Audits of Holding Cell UOF & Prisoner Injuries and C65b - Audits of Holding Cell Misconduct Investigations.

<sup>178</sup> The HCCC is conducting inspections as the first step in planning the audits required by the COC CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C66a.

*HCCC Fire Detection, Suppression & Evacuation Audits*

Members of the HCCC have conducted a number of informal inspections to assess the status of the precincts relative to their compliance with the fire detection, suppression and evacuation programs as detailed in the COC CJ. However, such inspections do not constitute an audit, and a formal audit report has not been completed on the findings from such inspections.

Although the HCCC has made progress with these inspections, compliance will only be achieved when quality audits of fire detection, suppression and evacuation programs are submitted each quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C66b.

**Paragraph C67 - HCCC Emergency Preparedness Audits**

Paragraph C67 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate emergency preparedness. Paragraph C67 also identifies a number of topics to be included in the scope of such audits.

***Current Assessment of Compliance***

Compliance with paragraph C67 will be achieved when quality emergency preparedness audits are submitted each quarter. Although the HCCC has conducted a number of site visits and informal inspections that are helpful to the planning process for the audits to be conducted in this area, such inspections do not constitute an audit.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C67.

**Paragraph C68 - HCCC Medical/Mental Health Audits**

Paragraph C68 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate medical/mental health programs. Paragraph C68 also identifies a number of topics to be included in the scope of such audits.

***Current Assessment of Compliance***

Compliance with paragraph C68 will be achieved when quality medical/mental health audits are submitted each quarter. Although the HCCC has conducted a number of site visits and informal inspections that are helpful to the planning process for the audits to be conducted in this area, such inspections do not constitute an audit.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C68.

**Paragraph C69 - HCCC Detainee Safety Programs and Policies Audits**

Paragraph C69 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate detainee safety programs and policies. Paragraph C69 also identifies a number of topics to be included in the scope of such audits.

***Current Assessment of Compliance***

Compliance with paragraph C69 will be achieved when quality audits are submitted each quarter on detainee safety programs and policies. Although the HCCC has conducted a number of site visits and informal inspections that are helpful to the planning process for the audits to be conducted in this area, such inspections do not constitute an audit.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C69.

**Paragraph C70 - HCCC Environmental Health and Safety Programs Audits**

Paragraph C70 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate environmental health and safety programs. Paragraph C70 also identifies a number of topics to be included in the scope of such audits.

***Current Assessment of Compliance***

Compliance with paragraph C70 will be achieved when quality audits of holding cell environmental health and safety programs are submitted each quarter. Although the HCCC has conducted a number of site visits and informal inspections that are helpful to the planning process for the audits to be conducted in this area, such inspections do not constitute an audit.

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

**Paragraph C71 - HCCC Food Service Program Audits**

Paragraph C71 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate food service programs. Paragraph C71 also identifies a number of topics to be included in the scope of such audits.

***Current Assessment of Compliance***

Compliance with paragraph C71 will be achieved when quality audits of holding cell food service programs are submitted each quarter. Although the HCCC has conducted a number of site visits and informal inspections that are helpful to the planning process for the audits to be conducted in this area, such inspections do not constitute an audit.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C71.

**Paragraph C72 - Audit Reporting Requirements**

Paragraph C72 requires the DPD to submit all audit reports to the Chief of Police and provide copies to each precinct and specialized unit commander. The commander of each precinct and specialized unit must review all audit reports regarding employees under his or her command and, if appropriate, take disciplinary or non-disciplinary corrective action.

***Current Assessment of Compliance***

No audits have been submitted by the DPD / HCCC as of November 30, 2003 on the conditions in the DPD's holding cells.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C72.

## XIV. TRAINING

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### *Overview*

Paragraphs C73-78 of the COC CJ require 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.

During the quarter ending November 30, 2003, the Monitor reviewed each of the paragraphs in this section of the COC CJ. The Monitor met with the DPD, the Training Director and staff, the HCCC and the CRIB to discuss the overall plan for training delivery, assessment, and tracking. A substantial portion of the training required under the COC CJ is based on Departmental policy, which is currently under revision. Lesson plans based on these policies cannot be completed until final policy approval is given.

The Monitor made a formal document request for the Police Detention Officer (PDO) training lesson plan. The documents provided were a collection of existing in-service training lesson plans detailing thirty-two hours of instruction, including first aid. These documents were provided at the end of the reporting period, and have not been reviewed by the Monitor. In any event, this seems to be a dramatically insufficient amount of training hours for PDO staff, and is potentially a source of great concern to the Monitor.

The DPD Training Division has requested one additional Curriculum Development Specialist through City channels. Even if approved, the volume of backlog of work cannot be accomplished in a timely manner without the addition of substantial resources.

The Monitor is scheduled to further review the DPD's compliance with these Paragraphs during the quarter ending August 31, 2004.

### **Paragraph C73 - Training of Detention Officers**

Paragraph C73 requires the DPD to provide comprehensive pre-service and in-service training to all detention officers.

### ***Current Assessment of Compliance***

According to the Training Bureau, the completed PDO comprehensive lesson plan has been submitted to CRIB for review; it has neither been implemented by the DPD nor provided to the Monitor. The Monitor requested and recently received the lesson plan<sup>179</sup> through the established

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<sup>179</sup> The Monitor received these documents after the quarter ended (i.e. after November 30, 2003).

document request procedure. The Monitor will review the plan for completeness, instructional methodology, and pre- / post-test comprehension.<sup>180</sup> This paragraph is scheduled for further review during the period ending August 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C73.

### **Paragraph C74 - 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 for all training completed on or after the effective date of the COC CJ.

### ***Current Assessment of Compliance***

As referred to in the Monitor's assessment of paragraph U108, MCOLES has provided its MITN to the DPD. The Monitor understands that this statewide-automated training tracking system will be utilized by the DPD to meet the requirements of paragraph C74.

Training on MITN was not complete as of November 30, 2003.<sup>181</sup> Once the training is completed, the Department will participate in a pilot test of the system. Assessment of the completeness and accuracy of the system will occur after implementation, training, and validation.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C74.

### **Paragraph C75 - Emergency Preparedness Training**

Paragraph C75 requires the DPD to provide all detention officers, supervisors of detention officers and members of the HCCC with annual training in emergency preparedness. Such training must include drills and substantive training in the following topics:

- a) emergency response plans and notification responsibilities;
- b) fire drills and use of fire extinguishers and other fire suppression equipment;
- c) key control drills and key control policies and procedures; and
- d) responding to emergency situations, including scenarios detention officers likely will experience.

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<sup>180</sup> It should be noted that the underlying policies for this training have not been fully developed or implemented. Effective policy development is necessary to ensure that the lesson plan is complete. This applies throughout all of the training paragraphs in this section.

<sup>181</sup> DPD staff was scheduled to receive training on MITN during the week of December 8, 2003.

### ***Current Assessment of Compliance***

The PDO lesson plan, which the Monitor understands is under review by CRIB, includes the emergency preparedness topics required by paragraph C75.<sup>182</sup> As noted above, the Monitor recently received a copy of the lesson plan through the established document request procedure. The Monitor will review the plan for completeness, instructional methodology, and pre- / post-test comprehension. However, the Monitor is concerned the underlying emergency preparedness program required by paragraph U24 has not yet been developed; therefore, an effective training program cannot be implemented. This paragraph is scheduled for further review during the period ending August 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C75.

### **Paragraph C76 - Medical/Mental Health Screening Program Training**

Paragraph C76 requires the DPD to provide all detention officers, supervisors and members of the HCCC with annual training in the medical/mental health screening programs and policies. Such training must include and address the following topics:

- a) prisoner intake procedures and medical and mental health protocols, including protocols for transferring or housing prisoners with infectious diseases, disabilities and/or requiring increased monitoring;
- b) recording, updating and transferring prisoner health information and medications;
- c) the prescription medication policy, including instructions on the storage, recording and administration of medications; and
- d) examples of scenarios faced by detention officers illustrating proper intake screening and action in response to information regarding medical and mental health conditions.

### ***Current Assessment of Compliance***

The Monitor understands that the PDO lesson plan includes curriculum on medical and mental health training. It was not been provided to the Monitor; therefore, the Monitor requested and recently received the lesson plan through the established document request procedure. The Monitor will review the plan for completeness, instructional methodology, and pre- / post-test comprehension. However, the Monitor is concerned the underlying medical/mental health screening programs and policies required by paragraphs U26-32 have not yet been developed; therefore, an effective training program cannot be implemented. This paragraph is scheduled for further review during the period ending August 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C76.

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<sup>182</sup> It appears that the DPD intends for the PDO lesson plans to cover supervisors and members of the HCCC in several training paragraphs.

**Paragraph C77 - Detainee Safety Training**

Paragraph C77 requires the DPD to provide all detention officers, supervisors and members of the HCCC with annual training in detainee safety programs and policies. Such training must include and address the following topics:

- a) the security screening program, including protocols for identifying and promptly and properly housing suspected crime partners, vulnerable, assaultive or special management prisoners;
- b) protocols for performing, documenting and obtaining supervisory review of holding cell checks;
- c) protocols concerning prisoners in observation cells, including protocols for direct and continual supervision, for spotting potential suicide hazards and providing appropriate clothing; and
- d) examples of scenarios faced by detention officers illustrating appropriate security screening, segregation and monitoring techniques.

***Current Assessment of Compliance***

The Monitor understands that lesson plans for this training are currently being written, although most of the lesson plans are contingent upon the completion and approval of underlying protocols. The development of the underlying policies and procedures for this training, required by paragraphs C35-38, will be evaluated by the Monitor in the quarter ending February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C77.

**Paragraph C78 - Environmental Health and Hygiene Training**

Paragraph C78 requires the DPD to provide all detention officers, supervisors and members of the HCCC with annual training in environmental health and safety and hygiene. Such training must include and address the following topics:

- e) cellblock cleaning and maintenance protocols; and
- f) sanitary food preparation and delivery protocols.

***Current Assessment of Compliance***

The Monitor understands that the PDO lesson plan under review by CRIB contains the Department protocols for the storage, handling and distribution of prisoner meals and maintenance of refrigerators. As mentioned above, the Monitor requested and recently received the lesson plan through the established document request procedure. The Monitor will review the plan for completeness, instructional methodology, and pre- / post-test comprehension. The Monitor will also assess whether the lesson plan includes training on cellblock cleaning and

maintenance protocols required by paragraphs C39-46. The development of the underlying policies and procedures for this training is essential. The Monitor will evaluate paragraphs C39-46 during the quarter ending February 29, 2004. Paragraphs C49-50 (sanitary food preparation and delivery protocols) are scheduled to be reviewed again during the quarter ending May 31, 2004.

This paragraph is scheduled for further review during the period ending August 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C78.

## **XV. MONITORING AND REPORTING**

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### ***Paragraph C94 - Reopening of Investigations Deemed Incomplete***

The Monitor is scheduled to report on this paragraph during the quarter ending May 31, 2004.

## **CONCLUSION**

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The first quarter of monitoring activity has revealed that the City and the DPD must recognize the level of commitment that is necessary to become compliant with the Consent Judgments. Although the quarter is marked by the DPD's inability to meet the vast majority of the deadlines set forth in the Consent Judgments, the Monitor is encouraged by the systems that are being put into place that will assist the DPD in achieving compliance in the future. Successes include the development of the CRIB, of the Audit Team, of the HCCC, and of a team dedicated toward the development of the Risk Management System, among other positive steps. Although other significant concerns have been identified in this Report, the overriding failure has been the inability of the DPD to develop effective policies that adhere to the requirements of the Consent Judgments. As the Monitor has noted, achieving compliance in the policy revision area is integral to achieving compliance with all other substantive provisions of the Consent Judgments.

Over the next quarter, the Monitor will continue to familiarize itself with the DPD, conduct compliance assessments, and offer recommendations and technical assistance. The Monitor will also continue to develop compliance measurement criteria (Methodologies) for all substantive provisions of the Consent Judgments.

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## APPENDIX A:

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

This Appendix provides a listing of acronyms utilized in the Independent Monitor's Quarterly Reports.

<b>ACRONYM</b>	<b>DEFINITION</b>
A&D	Arrest and Detention
AT	Audit Team
BPC	Board of Police Commissioners
CALEA	Commission on Accreditation for Law Enforcement Agencies
CMMHSP	Comprehensive Medical and Mental Health Screening Program
CLFRT	Command Level Force Review Team
COC CJ	Conditions of Confinement Consent Judgment
CRIB	Civil Rights Integrity Bureau
DDOH	Detroit Department of Health
DFD	Detroit Fire Department
DOJ	Department of Justice
DPD	Detroit Police Department
DRH	Detroit Receiving Hospital
FIS	Force Investigation Section
HCCC	Holding Cell Compliance Committee



Office of the Independent Monitor  
of the Detroit Police Department

REPORT OF THE INDEPENDENT MONITOR  
FOR THE QUARTER ENDING November 30, 2003  
Issued January 20, 2004

IAD	Internal Affairs Division
MCOLES	Michigan Commission on Law Enforcement Standards
MITN	Michigan Information and Tracking System
OCI	Office of the Chief Investigator
OIC	Officer in Charge
PAB	Professional Accountability Bureau
PCR	Preliminary Complaint Report
PDO	Police Detention Officer
RFP	Request for Proposal
SOP	Standard Operating Procedures
USAO	United States Attorney's Office
UOF	Use of Force <i>or</i> Uses of Force
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment