Monitor's Third Report

Compliance Levels of the Albuquerque Police Department and the City of Albuquerque with Requirements of the Court-Approved Settlement Agreement

No. CIV 14-1025 RB/KK

July 1, 2016

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1.0 INTRODUCTION

The following document constitutes the Independent Monitor's third report detailing the status of the monitoring function of the Albuquerque Police Department's (APD) response to the Court Approved Settlement Agreement (CASA) between the United States Department of Justice (DOJ) and the City of Albuquerque (the City). The document consists of five sections:

1. Introduction;
2. Executive Summary;
3. Findings Regarding Two- and Three-Month Submissions;
4. Compliance Assessments; and
5. Summary.

On November 14, 2014, the United States Department of Justice entered into a settlement agreement (SA) with the City regarding changes the Parties agreed to make in the management and operations of the APD. This agreement consisted of 278 requirements accruing to the APD, the City of Albuquerque, and related entities, including, for example, the City of Albuquerque's Citizens' Police Oversight Agency (CPOA), and the City of Albuquerque's Police Oversight Board (POB). After approval of the Settlement Agreement by the Court in November, 2014, on January 14, 2015, the Parties selected an independent monitor to oversee and evaluate the APD's response to the requirements of the CASA on January 14, 2015. Dr. James Ginger (CEO of Public Management Resources), and his team of policing subject matter experts (SMEs) in the areas of police use of force, police training, police supervision and management, internal affairs, police-community relations, crisis intervention, and special units were tasked with the responsibility of developing and implementing a monitoring methodology designed to, where possible, evaluate quantitatively each of the 278 individual requirements of the CASA. The monitoring team's proposed methodology was submitted to the parties (The USDOJ, the City of Albuquerque, the APD, and the Albuquerque Police Officers' Association) in March, 2015. The Parties were given time to review and comment on the draft, and the monitor made revisions to the methodology document that were meaningful and suggested an improved document in terms of accuracy, understandability, and style. A Court Order modifying deadlines for the CASA was approved by the Court and filed on September 24, 2015. This document reflects those comments and represents an attempt by the monitoring team to produce the most accurate assessment possible.

In the pages that follow, the monitoring team presents to the Court, the Parties and the residents of the City of Albuquerque, its findings developed from its third site visit. As usual, the monitor's first report, in effect, represents a "baseline"

from which improvements can be crafted. This third report represents an assessment of the progress made since the beginning of compliance efforts. Full disclosure of the monitor's reports will be made by presentation in Court, by in-person discussions with the Parties, and by publication of the report on the Web, and provision of copies of the report on CDs for those who so desire. The reader is reminded that this document is the third step in a multi-year and multi-phase organizational development and planned change process. While the style of the report may be a bit technical, the reader should note that it is meant to inform the Court, applicable law enforcement professionals, and the Parties about the monitor's assessment of the current levels of performance by the APD on the 278 specific tasks required of the City and the APD over the coming years. The reader is reminded that this is still the early phases of a multi-year journey to ensure that the APD operates from and with policies, procedures, and processes that are the nationally articulated standards for effective and Constitutional policing in America. The monitor's reports allow the reader to actually assess progress made by APD since the reform process was initiated in January, 2015. Thousands of man-hours have gone into developing this report in the form of planning, data collection, data analysis, report writing, staffing and production. The third report serves as a review of the effectiveness of the organizational development process engaged in by the APD during the period of December, 2015 through March 2016 (inclusive). Similar processes will be used over the remaining life of the CASA.

2.0 Executive Summary

The Albuquerque Police Department has entered into one of the most complex, far-reaching, and difficult processes known to American policing: a process of organizational development and planned change that, before it is complete, will affect the very core of the agency, changing the way APD functions, plans, and thinks.

This is the third of a planned 10 monitor's reports. Under the Court-Approved Settlement Agreement (CASA), the monitor is to issue public reports on the City's progress over the remaining 41 months, by which point the City intends to have reached substantial and sustained compliance with all provisions of the CASA. This report covers the time period December, 2015 through March, 2016.

As this report discusses in detail, great challenges lie ahead for the Albuquerque Police Department and the City of Albuquerque, but there are many indications of APD's and the City's strong commitment to this effort. This executive summary provides an overview of what the monitoring team has observed so far in these very early stages, a fuller discussion of which can be found in the body of the report. The summary then provides an explanation of where we are in the process, given some modifications that the City and the Department of Justice recently requested the Court to make to deadlines in the CASA. Finally, the summary explains more about how this report is organized and where the reader can find more information about specific components of the CASA.

2.1 Overview of This Report's Conclusions

APD has demonstrated a commitment to reform. It has begun the process of revising policies, creating new tracking and accountability systems, and putting other critical components into place that will serve it well in the years to come. Nevertheless, a tremendous amount of work lies ahead, and this report necessarily reflects that reality. APD has taken only the first few steps down a very long road.

This summary covers the nine substantive areas laid out in the CASA:

I. Use of Force;

II. Specialized Units;

III. Crisis Intervention;

IV. Policies and Training;

V. Misconduct Complaint Intake, Investigation, and Adjudication;

VI. Staffing, Management and Supervision;

VII. Recruitment, Selection, and Promotions;

VIII. Officer Assistance and Support; and

IX. Community Engagement and Oversight.

While each of these topics is covered in greater detail in the body of the report, this executive summary will provide an overview of our conclusions from the core components of the CASA.

2.1.1 Use of Force

As the monitoring team noted in its first and second reports, fostering the constitutional use of force is the primary goal of this entire effort, and every provision of the Court Approved Settlement Agreement (CASA) is aimed, directly or indirectly, at achieving that goal. Doing so will eventually involve an array of components, all working in unison: a strong, clear use of force policy that becomes the basis for training provided across the department; supervision focused on ensuring that officers follow the policy and training in the field; tracking systems that identify issues before critical problems arise; accountability systems that appropriately address issues when and where they arise; and community engagement that fosters collaboration between officers and the communities they serve. APD has successfully developed the first of these components. As of this reporting period, which ended March 31, 2016, the APD received the monitor's approval of its use of force policy. The policy developed and submitted was acceptable to the monitoring team, and to the United States Department of Justice. The delay in achieving compliance was substantive, and as the monitoring team noted in its second report:

> "The difficulty in crafting an acceptable use of force policy during the first two reporting periods is problematic on several levels. First, it highlights a general difficulty exhibited by the department in a critical area of management and oversight of the policing function: crafting of effective, meaningful, trainable policy to guide officers in the multiple functions and actions that must be coordinated to craft an effective policing process in the City of Albuquerque. Second, of necessity, it delays the start of required department-wide ***training*** related to the appropriate use of force. As a result, the process of developing, organizing, delivering and evaluating use of force training will be stressed, leaving little room for assessment of its effectiveness and revisions to training processes as it progresses. "Similarly, training of supervisors in how to assess, evaluate and review officers' use of force will be similarly delayed. Third, it compresses the timeline to a point that any unanticipated difficulties will be difficult to acknowledge, assess and overcome before they create

> additional issues that must be resolved prior to completing planned training…"

Nonetheless, training regarding use of force began January 25, 2016, two days after receiving approval on the department's proposed use of force policy. The monitoring team, at that time, cautioned APD about the "rush to training" absent adequate time to ensure that the training was modified to reflect very recent changes in policy was risky. As predicted, the training as offered had a few rough edges due to the rush to final preparation, and some critical pieces were omitted or were inaccurately covered (failing to cover adequately critical revisions to the use of force policy). APD is planning training supplements to address these issues, which, while reasonable, cannot be as clear, or as effective, as in-class participation, in the monitor's opinion.

It is important to note that a very similar process later occurred with training related to supervisory use of force investigations. Given the apparent under-staffing (based on observation of the duties of training staff and the numbers of personnel assigned there-to) at the Academy, such "last-minute" training development can be even more problematic than it seems "at the surface."

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures surrounding the review of uses of force, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has been returned to the City for substantial re-write, and was still "pending" as of the end date for this reporting period.

The monitoring team requested the total number of force cases that were investigated by APD during the third reporting period, and asked for supporting documentation relating to those use of force cases. As a result of that request the monitoring team was provided written documentation for **internal assessments of an APD use of force case involving the use of a knee strike to the head of an arrestee**. The monitoring team made a subsequent request for officer lapel videos, and were ultimately provided nine lapel videos through APD's video evidence management system.

Results

APD reported that there was only one use of force case forwarded to IA for investigation during the reporting period. The original date for the "knee strike" incident was October 30, 2015, but the Area Commander did not forward the case to CIRT until November 16, 2015. After a preliminary review by a CIRT investigator the file was returned to his supervisor. The CIRT investigator documented his observations of the case to his

supervisor on December 17, 2015. This time lag is troubling, especially considering the number of **obvious and serious** issues associated with the case that the monitoring team have identified. The CIRT delay may have occurred for a number of reasons, the most obvious being the fact that the Area Commander failed to document some of the most relevant issues concerning the use of force.

The CIRT investigator documented his review and concluded that while making an arrest of a person suspected of stealing a car an officer struck the suspect in the head with a "knee strike," which rendered the suspect unconscious. The monitoring team has noted during its initial review that there are numerous significant issues with the case, not only with the officers' use of force. For instance, the monitoring team identified failures at multiple levels in reporting and investigation (at least one SOP was violated beyond the officers' use of force) and also noted issues with APD's investigative strategy toward the handling of stolen vehicles. The monitoring team learned that the case was being investigated by the IAS, and was expected to be complete during the first week of May 2016. (Note -The monitoring team has not yet reviewed the IAS investigation into the matter.)

However, the monitoring team has reviewed the original reports and lapel videos involving what appears to be an unreported serious use of force. In the opinion of the monitoring team, **this case raises serious questions about proper force reporting and superficial chain of command reviews**. This case also represents an example of what the monitoring team has seen in other use of force investigations, specifically, a lack of rigorous and legitimate oversight and accountability. Because it involved significant reporting, investigation, oversight and accountability failures, the monitoring team continued to track progress on this case (The monitoring team will review the IA file and discuss the findings once it is completed).

The case remained open as it progressed through the required post-investigation review process (this was completed on May 20, 2016, beyond the closing date of the reporting period). The monitoring team has continued to monitor the progress of this case through APD's use of force oversight and accountability system, which has resulted in additional concerns by the monitoring team with respect to the system's efficacy. Therefore, as a result of further review, the monitoring team have broadened in scope and deepened the focus for review of the case. **Based upon the multi-faceted nature and wide scope of this case, spread over almost eight months, and implicating every component of APD's force oversight system, the monitoring team will issue a comprehensive review of this case, and related cases, in a "Special Report" to the Court and the Parties, scheduled for late July**. The results of that interim report will be reported to the parties and the Court upon its completion and incorporated in IMR-4.

The issues that have thus far been identified are significant, systemic, and multi-faceted, and require focus and alacrity from APD in addressing and resolving each. The following represent a non-exhaustive list of initial findings:

- Across the board, the monitoring team has found that the components in APD's system for overseeing (and holding officers accountable for) the use of force, for the most part, has failed. Hence, the serious deficiencies revealed point to a deeply-rooted systemic problem.
- The deficiencies, in part, indicate a culture low accountability is at work within APD, particularly in chain of command reviews.
- The system often failed to properly address reporting deficiencies and other policy violations, including vehicle pursuits, use of OBRDs, and the use of profanity.
- Despite the issuance of multiple alerts, the Department's EIS failed to result in appropriate, effective reviews. The follow-up actions taken were based upon incomplete data and were of little effect in changing the officer's underlying behavior.
- Because incidents were regarded as discrete, stand-alone events, prior cases were disregarded or overlooked, and no case integration occurred. This resulted in significant, developing patterns being missed in the case of at least two involved officers.
- Mistakes or misconduct led to reporting failures, delayed investigations, and the loss of potential evidence, including key statements.
- Three months elapsed from the issuance of the first EIS Alert until the time that any sort of intervention took place. Intervening uses of force were not discovered, though additional EIS Alerts were issued over the course of the investigation.
- In two separate December 2015 memos, a sergeant and a lieutenant express concerns about the officer's extensive use of curse words (two separate uses of force, within two days, are involved). The lieutenant describes the officer's behavior as "an unconscious response to the stress of the situation." Despite concerns about the officer's handling of job-related stress, and a temporary transfer, he remains in an assignment where stressful encounters are common.
- During the IAS investigation, Garrity protections were extended to all witness interviews. Critical information was not shared with an IRT investigator charged with the responsibility of determining criminal liability.
- The IRT investigation was deficient and resulted in a page and a half memo, with no interviews being conducted. The investigation appears based, for the most part, upon review of the original case reports, which, we note, are seriously deficient. The DA's Office was not consulted.
- The monitoring team underscores that operational compliance cannot be properly assessed unless reliable data are generated by APD's use of force oversight and accountability system. Based upon previous case reviews and this case, we have major reservations about the system's ability to produce high-quality, trustworthy data.
- APD, at multiple levels and stages, missed significant opportunities to catch problems early, remediate and resolve them quickly, reinforce good practice, and provide invaluable feedback to the policy and training functions.

2.1.2 Specialized Units

APD's tactical units—the SWAT unit, the canine unit, and the bomb squad—continue to take significant steps toward incorporating the requirements of the CASA into their operations. These units are guided by some of the best policy yet developed at APD. They train on an on-going basis, and they have incorporated scenarios into their training that emphasize de-escalation techniques and the use of the minimum amount of force necessary to resolve an incident. In specific tactical operations, tactical units balanced the number of tactical specialists deployed with crisis negotiators, which impressed the monitoring team because there is often asymmetry between these two critical components in other law enforcement agencies. These policy and training processes have resulted in fewer deaths and injuries attributed to actions of these specialized units over the last year or more.

Likely as a result of these improvements, APD continues to see commendable results from its tactical operations, many of which are resolved without any force being used. The monitoring team reviewed all major tactical operations that occurred during this reporting period. The monitoring team found that incident commanders continued to exhibit great skill and control in the incidents we reviewed, fostering coordinated decision-making that contributed to the use of de-escalation techniques and to there being no need to use force.

2.1.3 Crisis Intervention

The CASA requires the City to establish a Mental Health Response Advisory Committee made up of various stakeholders in the mental health field. The Committee is designed to review policies, training, reports, and data on officers' interactions with individuals with mental illness and, based on those reviews, to provide guidance to APD on how it can improve those interactions.

A myriad of supporting processes combine to affect APD's ability to implement effective crisis intervention. The APD continues the formative stages of building coalitions (with activist groups, UNM, mental health professionals, and citizens) to improve its responses to calls for service involving individuals in crisis. As with any multi-disciplinary, inter-agency activity, change is not easy, and results can take months or years to achieve. APD continues to "work" the process, and the monitoring team expects to be able to report on tangible results in the coming months.

Related issues were noted during the site visit and reporting process for IMR-1, in that concerns were raised in the media relating to the provision of mental health training services available through the APD for persons in crisis, and training provided APD officers regarding responding to those in crisis. Upon the release of a City internal audit report concerning contracting and financial issues related to training in these two areas, questions arose surrounding the APD's training for officers and units tasked to responding to persons in crisis (the Crisis

Intervention Unit [CIU] and the Crisis Outreach and Support Team [COAST]). Upon release of the audit report, which questioned the contracting methods for provision of those services and other issues surrounding training for COAST and CIU, the monitor met with concerned members of City Council to assess the potential issues raised by the audit report. The concern addressed by Council was that, due to potential problems with the contracting process, the quality of the training provided to members of CIU and COAST may have been compromised.

Since this issue surfaced, the City has moved to new training sources for CIT and COAST personnel. At the time of this report, the City has made substantial progress in this new training process, training the vast majority of all field personnel with the new process.

2.1.4 Policy and Training

Adopting policies that comply with the CASA and comport with best practices will be the foundation of APD's reform. Until good policies are in place, little else can be accomplished. As is discussed below, in the section of this summary on where we are in the process, none of the deadlines for policies required by the CASA expired during the reporting period (although the deadline for pending policies to have cleared the Policy and Procedures Review Board has expired). Several issues are inter-twined within the policy process at APD.

- First, all policies required by the CASA are due by June 5, 2016 (as per agreement of the Parties and a revised policy approval stipulation submitted to and approved by the Court)[2, 2];
- Second, the monitoring team will use this as the "trigger date" for due dates associated with all relevant paragraphs of the CASA;
- Third, this process puts APD and the City in a position requiring a remarkably substantial process of developing, writing, assessing, obtaining approval for, and training affected staff (both sworn and civilian) in the implementation of those policies;
- Fourth, the policy "bubble" that will be created by that due date will drastically over-tax all concerned parties, including the APD, which must write, assess, and approve the policy for submission to the monitor and DOJ, and the monitoring staff and DOJ staff who must assess and approve or reject these policies.
- Fifth, the "policy bubble" has affected or will similarly affect APD "down-line" systems, e.g., the training timelines will be compressed, supervisory responses to policy "outliers" will create a similar high-volume spike in the amount of time spent reviewing officer behavior and tactics, and corrective actions will also "spike" as new supervisory protocols confront

[2] In order to ensure clarity and functionality of draft policies, the deadline for some select policies to be submitted to the monitor for review has been pushed back to June 5, 2016.

> current in-field tactics. APD did provide drafts of policies that it developed during and after the reporting period, and the monitoring team can offer some observations based on those drafts and on our assessment of APD's policy development systems. The quality of the policy product has improved, yet policies continue to require careful assessment, evaluation and annotation by the monitoring team and DOJ, and substantial revision by the City. APD has a Policy and Procedures Review Board (PPRB), as required by the CASA, but documentation submitted to the Parties and the monitor indicates that PPRB tends to drastically truncate some submitted policies, to the detriment of quality. APD has created a way for all officers to review and comment on proposed policies (through PowerDMS), again as required by the CASA. APD has recently revised that problematic process (outside the reporting dates for this report) by creating the "Office of Policy Analysis," an amalgam of most of the entities with policy writing responsibility supervised by the Director, Administrative Support Bureau. The monitoring team commend the APD for this step. It shows a commitment to grow capability and function to meet the requirements of the CASA. We will continue to monitor Office of Policy Analysis' (OPA) influence on the quality of policies and procedures.[3]

APD *did* submit to the Parties and the monitoring team an acceptable use of force policy suite; however, successful completion of this policy required an unsustainable level of input, review, comment, and revision by the monitoring team and DOJ. One should note that the City continues to evolve the policy writing process—through the addition of the OPA, adding a technical writer and other improvements—that markedly improved some policies submitted during the third reporting period. With time, the current process should prove to be sustainable. Another key component of developing training is a needs assessment, which must be done so that APD knows what its training program needs to include and how training should be delivered.

The critical piece of that needs assessment process is good policy. In cooperation with the monitoring team, APD has developed an acceptable "early stage" needs assessment process that uses the CASA as a starting point. The monitor has placed the city "on notice" that the preliminary, short-term needs assessment process developed in cooperation with the monitor in order to "get the City started" on its training processes, needs to be modified to more carefully identify needs and training modalities both internally and by assessment of peer organizations as the CASA training process continues.

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[3] For the purposes of clarity and consistency, the monitor notes that as of June 10, 2016, the monitor has approved all of the key CASA-related policies prepared by APD in response to the requirements of the CASA, with the exception of the policy relating to canine deployments and analysis of data relating to those deployments. The Parties have agreed to an interim policy, and the monitor has provisionally approved that policy pending resolution of one outstanding issue related to counting and analyzing canine ***deployments.***

APD has moved forward on some training requirements that do not require policies to be finalized beforehand. It has developed a schedule of training that incorporates all training required by the CASA, and it has briefed all officers on the CASA. Nearly all of these briefings involved command staff, representatives from the City's legal team, and representatives from the Department of Justice, giving officers an opportunity to learn about the CASA from the people who created it.

2.1.5 Internal Investigations and Adjudication

As noted in the monitor's first report: APD's "universe" related to internal investigations and adjudication is separated into three components: APD's Internal Affairs Section (IAS), the Citizen Police Oversight Agency (CPOA), and the Police Oversight Board (POB). Members of the monitoring team revisited these issues for the third report. The monitoring team can report continued impressive results from CPOA and POB for this reporting period. It is clear the new Executive Director has changed the organizations' approaches to policy (CPOA and POB policy was approved (outside the reporting dates for this report)) and, based on observations of completed CPOA investigations, the partial clearance of CPOA case backlogs, and POB meetings, the monitor assesses the current "trajectory" of POB and CPOA to be more than satisfactory. It is clear the new Executive Director has made meaningful positive change.

2.1.6 Staffing, Management, and Supervision

Issues related to APD staffing, management, and supervision are "underway" after the release of a report by Alexander Weiss and Associates. Dr. Weiss was tasked with identifying the levels of staffing required for the APD to meet its requirements of delivering timely police services to the citizens of Albuquerque, and delivered his preliminary findings to the APD during the monitoring team's second site visit, executed during the first week of November, 2015. The report was finalized and submitted to APD during second reporting period. Full written results of Dr. Weiss' work were made available after the end of this reporting period. APD has begun the process of melding the recommendations of Dr. Weiss with the requirements of the CASA. In response to Dr. Weiss' report, the APD has reorganized and restructured during the third reporting period. At this point, APD has begun drafting a staffing plan, with input from the Parties and the monitor.

2.1.7 Recruitment, Selection, and Promotions

Many of the elements of APD's response to the requirements of the CASA related to recruitment, selection, and promotions of officers are also policy intensive. Work continues on policies and procedures supporting these elements of APD personnel sub-systems, and when they have been finalized, the monitoring team will review them fully in a subsequent report.

2.1.8 Officer Assistance Programs

As noted in IMR-1, APD has taken formative steps to meet the requirements of this section of the CASA. In fact, many of the areas addressed here had already been addressed in one form or another by APD. As with the other parts of the APD management oversight system, the requirements stipulated in these sections of the CASA are not yet due. Many of the APD initiatives related to this section are pending development of the department's Early Intervention System, which is in-turn dependent upon implementation of IA-Pro and "blue team" software, develop of which is currently under way and not yet due.

2.1.9 Community Engagement and Oversight

The APD has reached out to the community via establishment of six "Community Policing Councils" (CPCs), one for each operational area command of APD's patrol structure. As noted in the last monitoring team report, the monitoring team found and documented some "growing pains" with the engagement and oversight component of the CASA. The APD has reached out for consultation with experienced community-involvement specialists who have begun a dialogue designed to guide the department through the development of effective-use policies and practices for the established CPCs.

The CPC process has moved past the initial organizational stages, and is beginning to articulate a need for assistance in developing policy and process to effectuate its articulated purpose. An Annual Report for the CPCs is still pending.

2.2 Summary

The first monitor's report was issued more than a year after the CASA was signed by the City, APD, and DOJ. A number of factors led to that delay. First, the City and DOJ endeavored to jointly select the monitor, a process that took longer than anticipated but far less time than if the parties had not been able to reach a consensus candidate and had to resolve the issue in court. Fortunately, the City and DOJ agreed on the candidate—Public Management Resources (PMR)—that was the top choice of an outside group, APD Forward, a broad-based coalition of nine community groups formed to advocate for reform of APD. After selecting PMR, however, funding and contract issues caused further delays, and secure, predictable funding for this undertaking was obtained on May 21, 2015. The monitoring team—currently made up of the monitor, eight subject-matter experts, and a director of operations—made its first full site visit in June.

Due to the monitoring team's late start, conversations that should have been had early on were not had until relatively late in the initial stages of APD's planning and implementation, and some false starts were made. To its credit, APD attempted to forge ahead without substantial guidance and oversight from

a fully funded monitoring team. While laudable, many of these early efforts were not in line with the standards later articulated by the monitoring team to the command staff of APD. Policies had to be revised, rewritten, and reassessed with the monitoring team's input and feedback. Training—which, as a matter of nation-wide practice, cannot begin until the policy that under-girds the training is written, evaluated, and approved—has been justifiably delayed, as discussed above. Officers cannot be held accountable for performance until they are trained in the implementation of the articulated policy. Supervisors cannot be held accountable for enforcing policy among their subordinates until policies are written and promulgated, and then officers trained on them.

The monitoring team continues to be committed to assisting APD's command staff, if so desired, in overcoming this late start by going the extra mile, including, if necessary, working closely with APD in forging new (and revising old) policies, articulating clear guidelines and practices for APD's intensive training of departmental supervisors and managers, assisting APD in building assessment tools designed to identify problematic behaviors, and advising on best practices that can be adopted by APD as it moves forward in its efforts to meet the individual and global requirements of the CASA. The monitoring team continues to have a series of structured conversations with command staff designed to ensure joint understanding of critical concepts relating to implementation of the CASA. (To date these "conversations" have dealt with, understandably, needs assessment for training and training processes themselves, and policy development. While not directly constituting training, these sessions will help the APD understand "process," ensure joint understanding and communication, and remove some of the natural uncertainty in the process that lies ahead.)

As noted in the first executive summary of IMR-1, the City, DOJ, the Monitor, and the Albuquerque Police Officers' Association (APOA)—the labor union that represents APD officers—have also agreed on modifications to the CASA that will make implementation more orderly and the deadlines going forward more realistic. Under these modifications, deadlines for compliance will be based not on when the parties signed the CASA in November 2014—as the deadlines had originally been set—but instead on when United States District Court Judge Robert Brack (the judge presiding over this case) approved the CASA and made it court-enforceable on June 2, 2015. Judge Brack approved these modifications in September 2015, after hearing from the Parties that they supported this change.

As noted above, this report covers December, 2015 through March, 2016. APD has made progress in meeting the CASA's original deadlines, and this report discusses APD's efforts in reaching established deadlines under the CASA. As new deadlines come due in the months and years to come, all requirements will be discussed in this and future monitor's reports.

3.0 Synopsis of Findings

This section provides a summary of the monitoring team's findings regarding compliance with specific requirements of the CASA during the third reporting period (December, 2015-March, 2016). Section 3.0 of the monitor's report is divided into two main parts:

- Accomplishments; and
- Outstanding Issues.

Each of these areas is reported in some detail below, and in greater detail in Section 4.0 of the report.

3.1 Accomplishments

Importantly, APD has accomplished several key milestones during the third reporting period. Most significantly, the department has completed policy development on its use of force suite of policies, submitting for and receiving approval from the monitor for policies outlining accepted practices for Albuquerque Police Department Procedural Orders (APDPOs) 2-52, Use of Force; 2-53, Use of Electronic Control Weapons; 2-54, Use of Force Reporting and Supervisory Use of Force Investigations: and a supporting "definitions" document were completed during the third reporting period. In addition, APD completed and received approval for the following policies: 3-49, Early Intervention System; 1-39, Use of On-Body Recording Devices; and 2-04, Recruiting.

Obviously, APD has "broken the log-jam" on policies. In the months since the end of the third reporting period, newly revised policies have been forwarded to the monitoring team at a rate well exceeding previous rates, and as of the end of the third reporting, the monitor has approved six of 37 "required" policies.[4]

Further, the APD has "re-grouped" its policy development process, combining several previously related tasks, completed by various entities within APD, into a centralized Office of Policy Analysis (OPA) which will broaden the scope of community consultation and input, refines the policy analysis "flow," more clearly articulates responsibilities of the various offices and processes working on the policy process, and incorporates the services of newly hired "technical writers" who will provide the APD much needed technical support in taking disparate policy requirements and distilling them into workable wholes, thus hopefully vastly improving the policy product.

[4] See footnote 2, above.

Moreover, as of the end of this reporting period, the APD began training field officers on the newly developed use of force policy, which constitutes a major milestone for the agency. Members of the monitoring team and representatives of the DOJ reviewed the training and made comments and suggestions to APD based on those reviews.

Based on these elements of APD performance the APD has taken the first steps in a long and arduous series of steps.

3.2 Outstanding Issues

Five critical outstanding issues remain, however, which is to be expected given the "age" of the current project. APD is still in the formative stages of assessment, development, and response to the full requirements of the CASA, and such systems, in the previous experience of the monitor, take time, careful planning, attentive development, and critical self-evaluation. The outstanding issues at this point are:

- Building strong administrative systems to support compliance with the CASA;
- Resolving the "Not Yet Due" paradox ;
- Building a meaningful "Command and Control" function review and assessment of Field Operations activities;
- Building meaningful developmental systems for integrating training, supervision, discipline, and follow-up process development; and
- Creating a culture of accountability within APD.

Each of these issues is discussed in some detail below.

3.2.1 Building Strong Administrative Systems

Based on the monitor's experience in two previous police reform projects initiated by DOJ, most agencies find themselves "under review" by external sources for the same reason: they have failed, and in some cases failed somewhat spectacularly, in establishing clear, effective, and persistent administrative systems to routinely monitor, note, asses, and correct activities that do not ensure Constitutionally-based policing activities. Such failures are not unique. To date, nearly two-dozen American police agencies have needed outside scrutiny to help them assess, develop, install, and "prove" effective internal systems designed to preclude systemic Constitutional failures. APD, in responding to the requirements of the CASA, needs to carefully assess, identify, select, design, and implement a myriad of "administrative systems" designed to ensure that its policing plans, policies, and practices are, and continue to be, Constitutionally based. These administrative systems include:

- Development of clear, concise, trainable, supervise-able, and evaluable policies that are congruent with State and Federal law and "best practices" in the field;

- Routine, methodical, and pervasive assessments of citizen-police interactions to ensure that policing practice conforms to policy;

- Identification and clear and consistent remediation of interactions that do not conform to policy;

- Establishment of "learning cycles" designed to assess interactions that do not conform to policy, identify how and why those interactions occurred, and develop responses to ensure, to the extent possible, they do not occur again; and

- Build feedback loops between policy-training-supervision-discipline-administration and leadership to foster "early warning" of trends that run counter to established policy and practice.

Overlying all of these administrative systems, of course, is focused, determined, and continual leadership from all levels of management staff.

3.2.2 Resolving the "Not Yet Due" Paradox

Most monitor's reports begin, fairly enough, with the monitored agency reported as "not in compliance" on almost all categories. The theory behind that is that the agency must not have been in compliance, or there would be no Settlement Agreement (or, in most cases, consent decree). In the APD's case, the monitor decided to begin with the "not yet due" rubric for several reasons:

- First, the Parties (The City of Albuquerque, the US Civil Rights Division of the Department of Justice) jointly entered into the Agreement, rather than being "ordered" by a judge to do so (thus the difference between "Consent Decree," the nomenclature for almost all early projects of this kind, and "Settlement Agreement" for this project;

- Second, the "not yet due" rubric more reliably reflected the facts-on-the-ground observed by the monitoring team when it first arrived in Albuquerque, where it found a police department struggling to understand, operationally define, and move forward in a reflective way on the individual requirements of the CASA; and

- Third, "not yet due" seemed to reflect fairly and neutrally the status of APD policies, procedures, and operations at the time: a department with a great deal of work ahead, but also a department with an articulated commitment to doing what was required by the CASA.

Given these observations, the monitor decided on the "not yet due" designation for the reforms required to move APD to a Constitutionally oriented policing agency.

That decision by the monitor in no way suggested that the same attributes of policing subject to interpretation of and adherence to Constitutional requirements in the operations of all police agencies in the US were not, somehow, necessary in APD operations. Those requirements, obviously, accrue to all law enforcement agencies in the United States.

The use of the "not yet due" rubric was implemented with the hope that such language would fairly reflect that work remains to be done to bring APD into conformance with Constitutional and "best practices" requirements. It seems, however, that such language created a confusion between the amount of work that needed to be done (and the timelines associated with that work) at APD, and the inviolate requirements of the US Constitution and the penumbra of "best practices" used by American law enforcement agencies designed to implement current Constitutional requirements.

The monitor wants to be perfectly clear: "Not Yet Due" reflects the monitor's informed assessment of what would constitute a reasonable period of time to allot for APD to take the necessary steps in planning, organizing, staffing, directing, assessing, implementing, evaluating and revising organizational responses to the requirements of the CASA. That assessment establishes a timeline of June, 2016 for APD to make meaningful progress toward meeting the requirements of the CASA. Thus, the next monitor's report (IMR-4) will shift from "Not Yet Due" compliance assessments to the standard "In Compliance" or "Not in Compliance" status found in most monitors' reports. At that point, the dichotomy between Constitutional and "best practices"[5] findings and status findings for APD's compliance efforts will come into congruence.

3.2.3 Building a Meaningful "Command and Control" Function for Field Operations Review and Assessment

To date, we have seen little evidence of a coherent "command and control" function establishing clear, attainable, and reasonable processes for supervisory and command review of officers' in-field actions relating to policing practices, particularly use of force. The majority of problematic instances noted in the past three site visits have not resulted in appropriate supervisory and/or command-level reviews, assessments, findings, and responses to behavior that occurs in contradistinction to the requirements of the CASA. For example, this reporting period, the monitoring team noted three incidents of improper or "out of policy" uses of force by a single officer. APD review, apparently, noted only one of those as part of its required supervisory and command review of use of force. In

[5] The monitor notes that the term "best practices" was inserted into the CASA at the City's request, and that the term is actually carefully defined in that document—to the agreement of the Parties at the time the CASA was negotiated.

addition, we often found examples of language from supervisory and command levels "minimizing" or "rationalizing" out-of-policy behavior, as opposed to noting it formally and requiring retraining or other remedial steps to ensure the out of policy behavior was not repeated. Systems designed to achieve this goal appear to be at times "undermined" during training, noting, for example the changes being trained are "required by DOJ," instead of APD owning those changes "for the betterment of the organization." While the monitoring team has noted incidents of excellent supervisory and administrative response to "out of policy behavior," we suggest APD needs to re-double its efforts to ensure that supervisory and command staff are universally "on board" on this critical requirement.

At this point, it appears that the monitoring team is the only systemic overseer of on-street activities of APD's officers. Past notification to the APD of problematic behavior have resulted in piecemeal, uneven, or, in some cases no, responses by APD, even after questionable incidents have been brought to APD's attention by the monitoring team. Officers identified in monitoring reports who needed retraining were not adequately processed for that retraining. Incidents resulting in out-of-policy behavior, such as applications of neck holds, have not been adequately processed (and in fact some evidence related thereto has "gone missing" to routine location and review). It is apparent that some supervisors, in "writing up" reviews of officer behavior, tend to supplement their write-ups with exculpatory, conclusory, or other language minimizing what actually happened. At this point, a lieutenant or commander would be expected to identify such language and counsel the supervisors using such practices. To date we have noted very few instances of such self-initiated corrective behavior on the part of supervisors, lieutenants or commanders.

Until APD is capable of critical self-assessment, compliance with the supervisory and command issues related to use of force, and other critical issues, will be difficult to find. This should be the next step in development of APD's response to the CASA. It appears to the monitoring team that specific training may be required to "jump start" this cultural change.

3.2.4 Building Meaningful Developmental Systems for Integrating Training, Supervision, Discipline, and Follow-up Process Development

Based on the monitor's experience in assessing compliance in other police agencies, the process of compliance requires an integrated approach to organizational development and planned change. Creation of disparate and un-related individual "systems" simply does not work. A complete whole is needed to address fully the issues raised in the CASA. To date, the product produced by the City, and under evaluation at this point in time, appears to be a "collection of parts," as opposed to an integrated system consisting of policy-driven policing, well supervised, carefully self-audited, self-correcting, and evolving along carefully thought-out paths as its environment changes, i.e., a learning

organization, responding to nascent situational cues in a thoughtful, coherent, integrated manner. [6]

The monitor is committed to working with APD over the coming months to build organizational capacity to self-monitor, self-correct, and self-evaluate, just as he has done with the Pittsburgh Bureau of Police and the New Jersey State Police.

3.2.5 Creating a Culture of Accountability within APD

Supervisory response to use-of-force and related issues is delayed because *training* has been delayed (as it cannot be adequately structured without an understanding of the underlying policies). Training is delayed because *policy* was delayed. For example, the Use of Force policy "suite" was approved by the monitoring team in late January, 2016. Training on that topic by APD began only a few days after the supporting policies were finalized, leaving APD training staff very little time to ensure that training curricula were specifically related to new policy. The same issues confronted the monitoring team as they began to assess the quality of training provided by APD to supervisors who will be eventually tasked with reviewing officer use of force processes, identifying issues (if any) with uses of force and other key operational tactics, and establishing remedial recommendations to ensure that errors are eventually eliminated to the extent possible. The critical issue confronting the monitoring team and the APD is to identify why critical components of CASA compliance are continually running behind expectations, and, as a result push problems "down-line." This is particularly critical given the accelerated timeline the City has given itself for compliance with the CASA. A four-year timeline is, in the monitor's experience, very difficult to achieve. We have already seen what we believe to be sacrifices made to quality in the name of alacrity.

At this point, the one critical thing still missing from APD's compliance efforts is the insistence to carefully and neutrally assess behavior based *against* articulated expectations. The monitoring team has noted "clusters" of mismanaged opportunities to note problematic behaviors related to use of force, to respond to those in a meaningful way, and articulate those response processes as expected behavior among supervisory and command personnel. But for the intervention of the monitoring team, we fear these issues would have gone un-remedied.

Examples of such activity include the original "neck hold" case reported in IMR-1, and revisited with APD in IMR-2. As of this date, in the opinion of the monitoring team, there has been inadequate follow up on this issue, and others, raised specifically to APD's attention by conversation, memorandum, and inclusion in the monitoring reports.

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[6] Senge, P. M., *The Fifth Discipline*: The Art & Practice of the Learning Organization, Crown Publishing Group, 2010.

Several issues noted by the monitoring team in earlier reports appear to have gone without adequate response (in the opinion of the monitoring team). In at least one case, when it was clear that the monitoring team was intent on following up on supervisory response to a problematic use of force, the OBRD video that, in our opinion, identified clearly an out-of-policy use of force, "went missing." When the monitoring team noted this overt attempt to gloss over the incident in question, they were told the video, which had been reviewed in a prior reporting period, using standard document selection processes (and thus had to have been adequately entered into APD's systems), was missing due to a "data entry error." This "explanation" seems remarkably problematic to the monitoring team, who cannot understand how a piece of important police evidence can be found one week (and thus had to have been entered into the system properly at least once) could be "mislabeled" a few weeks later, and thus unavailable to investigators at the APD and to the monitoring team[7].

Further, the use of force reporting information selected by the monitoring team for the third monitor's report included several examples of supervisory and command review completely overlooking critical officer action and/or minimizing those actions through "re-casting" them at the supervisory review report stage, and failing to adequately deal with the issues arising from those uses of force. For example, one APD lieutenant had supervisory responsibilities for at least four force review cases that the monitoring team found problematic. None of these appear to have been properly noted at the commander's level. One of the four *did* result in a command referral, but the referral failed to articulate a knee strike to the head (a use of force clearly not allowed by APD policy).

Based on the monitor's experience, these are artifacts of a system that has no, or a minimal, culture of accountability regarding use of force. It may be true that this lack of accountability can be attributable to the factors that led originally to the CASA;[8] however, it is critical to APD's success or failure in attaining compliance that these factors be carefully, routinely, and vigorously confronted and eliminated (through re-training, enhanced observation, and (where necessary) through effective discipline at the patrol, supervisory, and command levels). Until APD generates such self-correcting behavior it cannot, in the monitor's opinion, come into compliance with use-of-force-related paragraphs of the CASA.

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[7] The monitoring team still have their original copy of the video, and hereby offer it to the APD if it is needed to adequately process the issues raised by the monitoring report. To date, to the knowledge of the monitor, these issues have not been adequately addressed by APD. We will follow up on the next site visit to determine if the APD investigates and remediates the processes involved in the "lost video," and if individuals involved in this unusual (in our experience) case of "lost evidence" are appropriately retrained and refocused.

[8] And are thus artifacts of a system and a style of policing that originally brought DOJ to Albuquerque.

In the monitor's experience, the three most dangerous enemies to compliance are:

- Haste,
- Pace, and
- Pieces.

Attacking a project as demanding as reforming a modern American police department while being "in a hurry," is extremely problematic. The monitoring team compare that process as akin to starting construction on a new project without an adequate foundation. Likewise, the monitor has, on multiple occasions repeatedly reminded APD and the City of the differences between, as the old adage goes, the "Law of the School and the Law of the Farm"--best articulated as "One can "cram" for an exam, but One cannot "cram" to grow an Avocado (***that*** process still requires a full year from seed to "feed," and cannot be "rushed" without affecting the quality of the end product). Invariably, "haste" leads to poor planning, and thus a poor foundation.

Similarly, "pace" can negatively affect almost any organizational development project, particularly those as involved and complex as reforming an American police department. Such processes always involve enhanced community outreach, and, as we have experienced in other places, agencies requiring a DOJ "intervention" have more than likely exhausted their "trust" accounts with the local communities. Rebuilding trust is difficult, complex, and in the final analysis, simply takes time—time for the department to demonstrate its earnestness, time for the community to process that demonstration, and time for the parties to trust each other enough to build common solutions. As the monitoring team has often told APD, "sometimes one needs to slow down in order to go fast."

Finally, treating a complex project such as that articulated by the CASA as a bunch of individual pieces is equally as dangerous as being in a hurry or moving too fast. The CASA is written as an integrated whole, with some things not "doable" until other things are "done." To fail to view the CASA in that manner, and instead view it as a bunch of boxes to be checked off, is a critical error. If designed as articulated by the CASA the APD reform effort should be seen as a series of interlocking parts, each dependent upon the other. Virtually none of the "systems" required by the CASA are independent. Instead, each eventually, in one way or another, depends on the other. Outputs become inputs and, eventually, the "system" comes to life and begins to work as designed. In the monitor's experience, this is a critical piece missing in APD's responses to the CASA.

The City's four-year timeline, particularly given the late formal appointment of the monitor (despite the monitoring team's numerous visits with APD prior to the

formal appointment), is the major reason, in the monitor's opinion, for the current attempted pace of development of systems responsive to the CASA's requirements. It is, as we have noted in previous monitoring reports, a remarkably aggressive timeline. If all goes as currently scheduled, policy development will not be completed until after the fifth of June, 2016. The City will then have only five months to use those policies to develop integrated training systems, which is the next great focus, to be followed by significant systems-building to ensure field supervisors and area commands comply. Major work remains to be done on EIS systems development and on development of "command and control" functions designed to allow executive-level personnel to ensure that field operations and other support functions within APD are finely tuned enough to notice nascent problems as they develop, and to foster appropriate management responses to those problems so that they can be corrected before they threaten compliance levels.

This constitutes a remarkably tight timeline for developing the remaining critical pieces of the City's response modalities. The pace of development, in the monitor's judgment, will be remarkably difficult to initiate and sustain while keeping a "command eye" on the high performance levels required by the CASA and the monitoring methodologies.

4.0 CURRENT STATUS

As part of the monitoring team's normal course of business, it established a base-line assessment of ***all*** paragraphs of the CASA for the Independent Monitor's first report, (IMR-1). This was an attempt to provide the Parties with a snapshot of existing compliance levels and, more importantly, to provide the Parties with identification of issues confronting compliance as the APD continues to work toward full compliance. As such, the baseline analysis is considered critical to future performance in the APD's reform effort as it gives a clear depiction of the issues standing between the APD and full compliance. This report, IMR-3, provides a similar assessment, and establishes a picture of progress on APD goals and objectives since the last report.

4.1 Overall Status Assessment

While it is true that the monitoring component of this process began late (due to funding issues, etc.), the monitor is concerned that the City's focus on deadlines (at times to the exclusion of an insistence on quality) is leading to delay in getting quality policies, procedures, and training in place. Again, this is reflective of the four-year timeline allotted for compliance at the City's insistence.

4.2 *Dates of Project Deliverables*

Project deliverables are defined by the Agreement governing the parties' response to the CASA, (DOJ, the City, APD, and the Albuquerque Police Officers' Association (APOA)).

4.3 Format for Compliance Assessment

The Monitor's Reports are organized to be congruent with the structure of the Agreement, and specifically reports, in each section, on the City's and APD's compliance levels for each of the 278 individual requirements of the CASA.

For example, the monitor's reports will be structured into nine major sections, following the structure of the Agreement:

I. Use of Force;

II. Specialized Units;

III. Crisis Intervention;

IV. Policies and Training;

V. Misconduct Complaint Intake, Investigation and Adjudication;

VI. Staffing, Management, and Supervision;

VII. Recruitment, Selection and Promotions;

VIII. Officer Assistance and Support; and

IX. Community Engagement and Oversight;

All future monitor's reports will deal with each of these nine major areas in turn, beginning with APD's response and performance regarding reporting, supervising, and managing its officers' use of force during the performance of their duties, and ending with APD's efforts at community engagement and its ability to facilitate community oversight of its policing efforts.

4.4 *Compliance Assessment Processes*

The following sections discuss the City's compliance efforts over the past four months**.**

4.4.1 Structure of the Task Assessment Process

Members of the monitoring team have collected data concerning the APD's compliance levels in a number of ways: through on-site observation, review, and data retrieval; through off-site review of more complex items, such as policies, procedures, testing results, etc.; through review of documentation provided by APD or the City which constituted documents prepared contemporaneously during the normal daily course of business. While the monitoring team *did* collect information provided directly by APD in response to the requirements of the Agreement, those data were ***never*** used as a sole source of determination of compliance, but were instead used by the monitoring team as explanation or clarification of process. All data collected by the monitoring team were one of two types:

- Data that were collected by using a random sampling process; or
- Selecting ***all*** available records of a given source for the "effective date."

Under no circumstances were the data selected by the monitoring team based on provision of records of preference by personnel from the City or APD. In every instance of selection of random samples, APD personnel were provided lists of specific items, date ranges, and other specific selection rules, or the samples were drawn on-site by the monitor or his staff.

Data requested for the Monitor's third report were selected by March 31, 2016, allowing time for APD to identify, collect and respond to the data request, and to allow members of the monitoring team ample time to sort, organize, assess and evaluate the data provided, prior to writing this report. The same process will be adhered to for all following reports until the final report is written.

4.5 *Operational Definition of Compliance*

For the purposes of the APD monitoring process, "compliance" consists of three parts: primary, secondary, and operational. These compliance levels are described below.

- **Primary Compliance**: Primary compliance is the "policy" part of compliance. To attain primary compliance, APD must have in place operational policies and procedures designed to guide officers, supervisors and managers in the performance of the tasks outlined in the CASA. As a matter of course, the policies must be reflective of the requirements of the CASA; must comply with national standards for effective policing policy; and must demonstrate trainable and evaluable policy components.

- **Secondary Compliance**: Secondary compliance is attained by implementing supervisory, managerial and executive practices designed to (and effective in) implementing the policy as written, e.g., sergeants routinely enforce the policies among field personnel and are held accountable by managerial and executive levels of the department for doing so. By definition, there should be operational artifacts (reports, disciplinary records, remands to retraining, follow-up, and even revisions to policies if necessary, indicating that the policies developed in the first stage of compliance are known to, followed by, and important to supervisory and managerial levels of the agency.

- **Operational Compliance**: Operational compliance is attained at the point that the adherence to policies is apparent in the day-to-day operation of the agency as a whole, e.g., line personnel are routinely held accountable for compliance, not by the monitoring staff, but by their sergeants, and sergeants are routinely held accountable for compliance by their lieutenants and command staff. In other words, the APD "owns" the policies.

As is true, in the monitor's experience, with all of these complex organizational change projects, change is never simple or quick. A great deal of work lies ahead. The APD's command staff is committed to effective change, and, working with the monitoring team, change will indeed come—and will be documented and reported impartially in this and the monitor's reports that will follow. The monitoring team is committed to assisting APD command staff by working closely with the APD in forging new, and revising old policies, articulating clear guidelines and practices for APD's intensive training of the department's supervisors and managers, assisting APD in building assessment tools designed to identify problematic behaviors, and advising on "best practices" that can be adapted by APD as it moves forward in its efforts to meet the individual and global requirements of the CASA.

4.6 Operational Assessment

The following sections of the Monitor's Third Report articulates processes and findings related to each of the 278[9] active elements of the CASA.

The APD and the City have agreed to comply with each of the articulated elements. The monitoring team has provided the Parties with copies of the team's monitoring methodology (a 299 page document) asking for comment. That document was then revised, based on comments by the Parties. This document reflects the monitor's decisions relative to the parties' comments and suggestions on the proposed methodology, and is congruent with the final methodology included in Appendix One of the monitor's first report[10]. The first operational paragraph, under this rubric, is paragraph 14, as paragraph 13 is subsumed under paragraph 14's requirements.

4.6.1 Methodology

The monitor assessed the City and APD's compliance efforts during the third reporting period, using the *Monitor's Manual*, included as Appendix A, in the monitor's first report (see footnote 7). The manual identifies each task required by the CASA and stipulates the methodology used to assess compliance.

4.7 Assessing Compliance with Individual Tasks

APD's compliance with individual tasks for the third reporting is described in the sections that follow.

4.7.1 Assessing Compliance with Paragraph 14

Paragraph 14 stipulates:

"Use of force by APD officers, regardless of the type of force, tactics, or weapon used, shall abide by the following requirements:

a) Officers shall use advisements, warnings, and verbal persuasion, when possible, before resorting to force;
b) Force shall be de-escalated immediately as resistance decreases;
c) Officers shall allow individuals time to submit to arrest before force is used whenever possible;

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[9] Tasks accruing to the United States or the Monitor were not included in this methodology, as the monitor sees his role as evaluating APD and the City entities supportive of APD in meeting its responsibilities under the CASA.

[10] Available at: https://www.justice.gov/usao-nm/file/796891/download

d) APD shall explicitly prohibit neck holds, except where lethal force is authorized;
e) APD shall explicitly prohibit using leg sweeps, arm-bar takedowns, or prone restraints, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons; to overcome active resistance; or as objectively reasonable where physical removal is necessary to overcome passive resistance and handcuff the subject;
f) APD shall explicitly prohibit using force against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons; to overcome active resistance; or as objectively reasonable where physical removal is necessary to overcome passive resistance;
g) Officers shall not use force to attempt to effect compliance with a command that is unlawful;
h) Pointing a firearm at a person shall be reported in the same manner as a use of force, and shall be done only as objectively reasonable to accomplish a lawful police objective; and
I) immediately following a use of force, officers, and, upon arrival, a supervisor, shall inspect and observe subjects of force for injury or complaints of pain resulting from the use of force and immediately obtain any necessary medical care. This may require an officer to provide emergency first aid until professional medical care providers arrive on scene."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistant in order for APD to develop force policies that would meet the provisions of the CASA.

Results

APD has achieved Primary Compliance on all of the requirements set forth in this paragraph with the monitor's approval of Standard Operating Procedure (SOP) 2-52 Use of Force, dated January 8, 2016. However, the requirement in sub-section h) was modified by mutual agreement of the parties to add a Show of Force classification which falls below Supervisory Use of Force investigations. The only reference to Show of Force investigations is found in SOP 2-52 in the Definitions section, designated as Letter S, which provides: "Pointing a firearm or ECW (sparking or painting with the laser) at a person and acquiring a target. This is reportable as a Show of Force and investigated by the officer's chain of command." It does not appear that APD has developed procedures for conducting Show of Force investigations in any of its force-related policies to implement this requirement. Without specific protocols governing Show of Force investigations, APD may encounter wide variations across organizational commands as to how Show of Force incidents are investigated. Likewise, the content of report narratives and the quality of the analysis that that Show of

Force events are subjected to could be inconsistent. The monitoring team feel that this is more an issue of training and supervision than policy, although a "stand-alone" policy on show of force review and assessment may eventually prove necessary.

APD has created a new Show of Force Data Report to document investigations into these cases. It requires the supervisor to conduct a limited investigation (relative to Use of Force investigations), relying chiefly upon the accounts of involved and witness officers and viewing the incident videos. The supervisor's report is then routed through channels (i.e., the chain of command) for further review and approvals. No specific spaces are designated for reviewing command officers to enter any comments. Therefore, APD needs to be diligent in the oversight of Show of Force command reviews and approvals to ensure they are not perfunctory in nature. Further, the narrative portion of the report is unstructured, that is, it provides no specific topical sections, such as legal analysis and tactical considerations, to focus the supervisor's investigation and analysis.

The intent of the compromise to conduct Show of Force investigations is to streamline the handling of those cases, yet still provide sufficient scrutiny to ensure effective oversight and compliance. Based upon our reviews to date, the present level of investigative competency at both the supervisory and command levels falls significantly below that required to meet this requirement.

We report on a sample of Show of Force reviews conducted for this reporting period beginning at Paragraph 46.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.2 Assessing Compliance with Paragraph 15: Use of Force Policy Requirements

Paragraph 15 stipulates:

"APD shall develop and implement an overarching agency-wide use of force policy that complies with applicable law and comports with best practices. The use of force policy shall include all force techniques, technologies, and weapons, both lethal and less lethal, that are available to APD officers, including authorized weapons, and weapons that are made available only to specialized units. The use of force policy shall clearly define and describe each force option and the factors officers should consider in determining which use of such force is appropriate. The use of force policy will incorporate the use of force principles and factors articulated above and shall specify that the use of unreasonable force will subject officers to discipline, possible criminal prosecution, and/or civil liability."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. During this monitoring period extensive technical assistance was provided by the monitoring team toward APD in order for them to develop policies that would meet the provisions of the CASA.

Results

APD has achieved Primary Compliance on all of the requirements set forth in this paragraph with monitor approval of three core force-related policies: SOP 2-52 Use of Force; SOP 2-53 Electronic Control Weapons (ECW); and, SOP 2-54 Use of Force Reporting and Supervisory Force Investigations. APD has committed to clarify and refine their use of force policies by conducting periodic reviews, which will be important as APD begins to train and operationalize the policies and new standards they contain.

The approved policies now provide a solid foundation for the development and delivery of use of force training, which commenced in early 2016 with the presentation of the required 40-hour Use of Force Curriculum (see Paragraph 87 for more detail on the monitoring team's evaluation of course documentation and instruction). Based upon a recent memo from the academy Commanding Officer, APD had completed 4 sessions out of 17 scheduled (23.5%) with a census of 128 officers (14.85% of total strength) through February 2016. At that time she projected that the remaining training, consisting of 13 sessions and a total census of 706 officers, will be completed by the end of May 2016. The attendance rate at that time was projected to be 96.75% (834 officers of all ranks), with various forms of uncontrollable attrition accounting for the 3.25% figure for non-attendees (28 officers at present).

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.3 Assessing Compliance with Paragraph 16: Weapons Protocols

Paragraph 16 stipulates:

"In addition to the overarching use of force policy, APD agrees to develop and implement protocols for each weapon, tactic, or use of force authorized by APD, including procedures for each of the types of force addressed below. The specific use of force protocols shall be consistent with the use of force principles in Paragraph 14 and the overarching use of force policy."

Methodology

Members of the monitoring team have provided extensive technical assistance to APD over the past several months and reviewed multiple versions of the Use of Force policies provided by APD.

Results

APD decided to place Electronic Control Weapons (ECW) in a separate SOP (2-53), which was approved in early January 2016. Policy and procedures for all other tools were retained in existing sections within the main policy--- SOP 2-52 Use of Force, dated January 21, 2016. The Department has also included a 4-hour block of instruction on ECW policies and procedures in the current 40-hour Use of Force Curriculum, scheduled for completion in May 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction. This training will not be completed until June 2016. (See Paragraph 87 for details of the training evaluation)

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.4 Assessing Compliance with Paragraph 17: Weapons Modifications

Paragraph 17 stipulates:

"Officers shall carry only those weapons that have been authorized by the Department. Modifications or additions to weapons shall only be performed by the Department's Armorer as approved by the Chief. APD use of force policies shall include training and certification requirements that each officer must meet before being permitted to carry and use authorized weapons."

Methodology

The monitoring team reviewed APD SOP 2-52 "Use of Force" and SOP 2-55 "Use of Force Appendix" along with other course of business documentation that was requested. During this period members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA.

Results

APD received monitor approval of SOP 2-52 “Use of Force” and within that policy specific language exists in Section 2-52-5-D that addressed provisions of this paragraph. APD also received monitor approval of SOP 2-55 “Use of Force Appendix” that sets forth training requirements that meet the provisions of this paragraph. The monitoring team will continue to evaluate training and other progress toward full compliance with this task. The monitoring team also reviewed extensive course of business documentation related to this paragraph.

The monitoring team noted in IMR-2 that, based upon appropriate Course of Business (COB) documentation, APD successfully completed its transition to Department-provided firearms in 2015, had clear qualification standards for the issuance of patrol rifles, and also had procedures in place to conduct firearms remediation subsequent to qualification failures. APD provided extensive documentation for this reporting period, including a Firearms Remediation Lesson Plan, remediation records of officers who failed to quality, and authorization forms for the issuance of patrol rifles, which attests to the ongoing soundness of these programs.

The monitoring team also reviewed an Excel Spreadsheet “2016 Day Qualifications: Jan. to Feb. 15”. A total of 349 officers are listed, however, the monitoring team found 19 instances of qualification failures (<80), though they were not explicitly shown as such on the worksheet. In another data set on remediation, six records documenting remediation of officers who were qualification failures were found. Because it’s unclear if the data sets are for comparable periods and inclusive, we are unable to say that remediation occurred in 100% or in 32% of the cases (using the ratio of 6/19). The monitoring team will meet with training staff during its next visit to determine the actual level of compliance and discuss how failures are documented and tracked through remediation.

Additionally, the monitoring team also were unable to locate clear procedures for re-qualifying officers returning from various types of authorized leave. This is a risk management and officer safety concern, and inconsistent with contemporary professional standards. For this reporting period we requested data that would verify the existence of such protocols and whether any officers returning from leave status underwent re-qualification before re-assuming field duties. The data that we received was not sufficiently clear to assess compliance.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.5 Assessing Compliance with Paragraph 18: On-duty Weapons

Paragraph 18 stipulates:

"Officers shall carry or use only agency-approved firearms and ammunition while on duty."

Methodology

From a policy standpoint, during the IMR-1 reporting period the monitoring team found that the language contained within APD Procedural Order 2-22 met the requirements of Paragraph 18. However, the monitor has not yet approved an updated version of SOP 2-22, and the standing policy still exists in various iterations. APD received monitor approval of SOP 2-52 "Use of Force" and within that policy specific language exists in Section 2-52-5-D that addressed the provisions of this paragraph. The monitoring team will continue to evaluate training and other progress toward full compliance with this task. The monitoring team reviewed additional course of business documentation to determine if APD supervisors were conducting field inspections related to this paragraph.

Results

The policy provisions set forth above satisfactorily meet the provisions of this paragraph. The monitoring team reviewed APD course of business forms that are used to conduct monthly inspections to verify compliance with equipment and appearance standards. It was determined that there are several variations of the form in use and it was unclear which one, if any, is the currently approved version. It is also unclear if these are stand-alone forms or are appended to an APD policy or procedure. In one version of the report the monitoring team found several different notations regarding "Supervisor's Notes" and "Follow-up/Corrective Actions." The monitoring team believes that version is superior because it flags the need to document follow-up and corrective actions when deficiencies are found. We also recommend that APD consider adding explicit fields for two high-risk items: 1. A complete item-by-item list of required safety equipment (one version does so); and, 2. A specific check-off for proper gun belt placement of an officer's ECW. As a parenthetical, members of the monitoring team have been observing ECW placement in all interactions and observations of APD personnel since early in the monitoring process. In no instances to date, have the members of the monitoring team seen any APD personnel with their service firearm and ECW on the same side of their bodies. We will continue our observations, and will supplement those with roll-call inspections and other mechanisms as the monitoring project proceeds.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.6 Assessing Compliance with Paragraph 19: On Duty Weapons

Paragraph 19 stipulates:

"APD issued Special Order 14-32 requiring all officers to carry a Department- issued handgun while on duty. APD shall revise its force policies and protocols to reflect this requirement and shall implement a plan that provides: (a) a timetable for implementation; (b) sufficient training courses to allow officers to gain proficiency and meet qualification requirements within a specified period; and (c) protocols to track and control the inventory and issuance of handguns."

Methodology

The monitoring team reviewed Course of Business (COB) documentation specific to this paragraph. As reported in IMR-2, APD prepared a December 3, 2015, memorandum entitled "2015 Firearm Transition and Qualification Results." That report concerned APD's continuing effort to transition the entire department to APD authorized weapons. The memorandum reported that except for thirteen (13) members of the department, who were on different types of authorized administrative leave, all sworn personnel had completed the transition training. However, the memorandum provided no other information, including processes or methods to flag those officers, from a training perspective, once the officers return to work. For this reporting period we requested, and received, additional course of business documentation that would verify the existence of such procedures and whether any officers returning from leave status underwent re-qualification before re-assuming field duties. The data that we received were not sufficiently clear to assess Secondary or Operational compliance.

Results

Paragraph 19, sub-section c) requires APD to develop a protocol to "track and control the inventory and issuance of handguns." The monitoring team was provided a copy of an Interoffice Memorandum from an APD Fiscal Officer to the APD Planning unit, dated January 8, 2016, that verified that the required tracking system is fully in place. APD also continues to work with the City Department of Technology to upgrade the current system to enhance security and streamline annual inventory procedures. During its next visit, the monitoring team will meet with the appropriate personnel and conduct a walk-through of the system to further validate compliance. APD is now in compliance with the three sub-sections that comprise the requirements in Paragraph 19.

The monitoring team also reviewed APD Administrative Order 3-75 Department Property, dated November 6, 2012, which set forth detailed procedures for the issuance and control of Department property, including all items within the Department's Tactical Array. We recommend that APD review and update this order in the near future to ensure that it is consistent with any related policies and CASA requirements.

Primary: **In Compliance**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.7 Assessing Compliance with Paragraph 20: Weapons Qualifications

Paragraph 20 stipulates:

"Officers shall be required to successfully qualify with each firearm that they are authorized to use or carry on-duty at least once each year. Officers who fail to qualify on their primary weapon system shall complete immediate remedial training. Those officers who still fail to qualify after remedial training shall immediately relinquish APD-issued firearms on which they failed to qualify. Those officers who still fail to qualify within a reasonable time shall immediately be placed in an administrative assignment and will be subject to administrative and/or disciplinary action, up to and including termination of employment."

Methodology

Members of the monitoring team have provided extensive technical assistance to APD over the past several months and reviewed multiple versions of the Use of Force policies provided by APD. During this period the monitor approved SOP 2-55 "Use of Force Appendix," dated February 12, 2016. SOP 2-55 was promulgated to supplement APD's Use of Force Policy (2-52) and set forth minimum training requirements for various force options, including firearms. The monitoring team also reviewed SOP 2-22 "Firearms and Ammunition Authorization," which exists in different iterations in different locations in the department.

Results

The monitoring team's assessment of SOP 2-55 revealed that APD's requirement to mandate annual firearms training is satisfied in that Procedural Order. APD still needs to reconcile various iterations of Procedural Order 2-22 that exist in different locations and are accessible to APD officers. The issuance of a monitor-approved version of SOP 2-22 should reconcile these procedural deficiencies, but work needs to be done to ensure that firearms remediation protocols are specific and clear.

In our last report we raised several questions about remediation procedures that needed clarification. The monitoring team also commented positively on the remediation efforts that were conducted after qualification failures. The approach of the involved range masters was analytical, supportive, and out-come based. Their work was also well documented. Our questions related to the intervals that were allowed between qualification failures and successful remediation, which we estimated to be as much as seven days. While that is not an extensive risk exposure, it still is of concern because of the severe

consequences of an adverse event involving an "unqualified" shooter. We also asked, "When does an officer lose his privilege to carry a specialized weapon after a qualification failure. Is it immediate or is a seven-day period to remediate and re-qualify permitted?" Both issues require clarification and decision rules that satisfy risk management concerns. Given the severity of potential outcomes and liability exposure, until APD resolves those issues, paragraph 20 remains in the "pending compliance" category.

We also reported questions in Paragraph 17 regarding the level of compliance with existing APD remediation procedures following a qualification failure.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.8 Assessing Compliance with Paragraph 21: Firearms Training

Paragraph 21 stipulates:

"APD training shall continue to require and instruct proper techniques for un-holstering, drawing, or exhibiting a firearm."

Methodology

During this evaluation period APD received monitor approval of SOP 2-52 "Use of Force" and within that policy specific language exists in Section 2-52-5-D that addressed the provisions of this paragraph. The monitoring team will continue to evaluate training and other progress toward full compliance with this task. The monitoring team also reviewed an APD academy lesson plan entitled, "Handgun Training and Certification."

Results

In the view of the monitoring team, APD has met the procedural requirement of this Paragraph, but it is important to note the connection between this Paragraph and APD's development of Show of Force procedures. The proper supervision and collection of data in Show of Force events may have implications on operational compliance with this Paragraph.

In IMR-2 the monitoring team found APD in Policy Compliance with the provisions in Paragraph 21. APD is currently conducting training that covers the operational aspects of displaying a firearm or Taser, and will shortly commence training on the reporting and investigation requirements. The former training will be completed in May 2016. The latter, a 24-hour course on Supervisory Use of Force Investigations, is currently in development and presentations are tentatively scheduled to begin in May 2016.

APD provided a copy of its Handgun Training and Certification Lesson Plan, which is undated, to the monitoring team. We verified that the lesson plan provides detailed instruction on holstering, un-holstering, and re-holstering a firearm in Section 7 Holster on page 17. The monitoring team has yet to attend a Basic Academy or range session in which holstering techniques are taught or reviewed. It remains a follow-up issue that we plan to address during our next visit.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.9 Assessing Compliance with Paragraph 22: Firearm Discharges from Moving Vehicles

Paragraph 22 stipulates:

"APD shall adopt a policy that prohibits officers from discharging a firearm from a moving vehicle or at a moving vehicle, including shooting to disable a moving vehicle, unless an occupant of the vehicle is using lethal force, other than the vehicle itself, against the officer or another person, and such action is necessary for self-defense, defense of other officers, or to protect another person. Officers shall not intentionally place themselves in the path of, or reach inside, a moving vehicle."

Methodology

During this evaluation period APD received monitor approval of SOP 2-52 "Use of Force" and within that policy specific language exists in Section 2-52-3-F that addressed the provisions of this paragraph.

Results

APD, with the approval of SOP 2-52 Use of Force (January 21, 2016), is now in Primary Compliance with the provisions regarding discharging a firearm at a vehicle, though the approved language varies from the original CASA as a result of a compromise between the parties to amend it. The new language allows an officer to fire at a vehicle if the officer believes that the driver is "intentionally driving into the officer", that a reasonable officer "would believe the lethal force will remove the danger", and the discharge will not create "a danger to bystanders". The amended language removes the absolute provision and replaces it with a highly restrictive "in extremis" standard. The provisions in Paragraph 22 are covered in the Department's 40-hour Use of Force Curriculum, which will be completed in May 2016.

The monitoring team requested the investigative files for any Officer-involved Shooting (OIS) that involved a vehicle that were closed out during the reporting period. We were advised that none were. We also reviewed a status report

from the Investigation Response Team (IRT) of pending OIS cases that included eight cases. Five of the cases are from 2015 and remained open between nine to fifteen months (the average is 11.4 months). Three of the cases, including the oldest from January 2015, still need to be completed by the investigator, one is being delivered to the District Attorney's Office, and the last is undergoing a chain of command review. Of the three remaining cases, two of the incidents occurred in early 2016 and the third incident occurred in late December 2015. It is our understanding that several of the eight cases may involve shooting at vehicles. The monitoring team is concerned about the length of time such critical issues appear to take before being resolved by supervisory and command review.

The monitoring team will follow up on the issue of timeliness during its upcoming June site visit.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.10 Assessing Compliance with Paragraph 23: Tracking Firearm Discharges

Paragraph 23 stipulates:

"APD shall track all critical firearm discharges. APD shall include all critical firearm discharges and discharges at animals in its Early Intervention System and document such discharges in its use of force annual report."

Methodology

In our last report the monitor reported that APD was building a comprehensive Early Intervention System (EIS) and an accompanying EIS policy to meet the requirements of Paragraph 23. The EIS **policy** has been approved by the monitoring team. The EIS **system** continues to be "under development."

Results

For this reporting period, the monitoring team requested documentation showing the extent to which the Department has made progress on the requirements in this paragraph. We were informed that "… [a] firearm discharge form (FAD) is currently filled out by the CIRT." We assume that the completed form serves as the source document from which entries are input into the EIS, but that is unclear from the response. No tangible outputs were available for review by the monitoring team as of this time, thus, we have added this item to our follow-up list for our upcoming June site visit. Until the monitor can verify that the FAD is an extant component of the EIS, this paragraph will remain open, pending formal resolution.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.11 Assessing Compliance with Paragraph 24: Use of ECWs

During this reporting period, the monitoring team conducted an in-depth review of four selected cases involving the use of Tasers. The total number of Taser cases reviewed (for the period of December 1, 2015, through February 15, 2016) was 9. The intent was to focus on this type of force investigation in depth to establish a baseline for comparison with future cases. With the approval of SOP 2-53 Electronic Control Weapons (ECW) and the projected completion of a 40-hour Use of Force Curriculum by June 2016, the monitoring team expects that the level of compliance with ECW policy and procedures will climb dramatically. This trend should be further reinforced when a 24-hour Supervisory Use of Force Investigations Curriculum has been developed and will be attended by all APD supervisors. The latter course should set baseline capabilities for supervisors and commanders who are responsible for investigating force events and analyzing officer performance against APD policy and CASA requirements related to ECW use. Substantive feedback is provided in Paragraph 87 concerning the monitoring team's overall assessment of the 40-hour Use of Force Curriculum.

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36 of that policy.

Paragraph 24 stipulates:

"ECWs shall not be used solely as a compliance technique or to overcome passive resistance. Officers may use ECWs only when such force is necessary to protect the officer, the subject, or another person from physical harm and after considering less intrusive means based on the threat or resistance encountered. Officers are authorized to use ECWs to control an actively resistant person when attempts to subdue the person by other tactics have been, or will likely be, ineffective and there is a reasonable expectation that it will be unsafe for officers to approach the person within contact range."

Methodology

The APD has decided to remove the sections dealing with Electronic Control Weapons (ECWs) from the departmental Use of Force policy (PO 2-52) and recast it as a stand-alone directive (PO 2-53). During this monitoring period, members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, and specifically SOP 2-53, and subjected them to evaluation

vis-a-vis best established pattern and practice in the field, and to the requirements stipulated in the CASA.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 24. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction within a 40-hour Use of Force Curriculum, which all officers are scheduled to attend and complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.12 Assessing Compliance with Paragraph 25: ECW Verbal Warnings

Paragraph 25 stipulates:

"Unless doing so would place any person at risk, officers shall issue a verbal warning to the subject that the ECW will be used prior to discharging an ECW on the subject. Where feasible, the officer will defer ECW application for a reasonable time to allow the subject to comply with the warning."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in this paragraph. The new SOP 2-53 "Electronic Control Weapons (ECW)" is covered in a 4-hour block of instruction a 40-hour Use of Force Curriculum, which all officers are scheduled to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.13 Assessing Compliance with Paragraph 26: ECW Limitations

Paragraph 26 stipulates:

"ECWs will not be used where such deployment poses a substantial risk of serious physical injury or death from situational hazards, except where lethal force would be permitted. Situational hazards include falling from an elevated position, drowning, losing control of a moving motor vehicle or bicycle, or the known presence of an explosive or flammable material or substance."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 26. The provisions of the new SOP 2-53 "Electronic Control Weapons (ECW)" are covered in a 4-hour block of instruction a 40-hour Use of Force Curriculum, which all officers are scheduled to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction. Feedback on the overall quality of the 40-hour course curriculum was provided directly to the academy Commanding Officer while the monitoring team was on-site in March 2016. The academy staff were receptive and responsive to that feedback.

Detailed training feedback is provided in Paragraph 87 of this report.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.14 Assessing Compliance with Paragraph 27: ECW Cycling

Paragraph 27 stipulates:

"Continuous cycling of ECWs is permitted only under exceptional circumstances where it is necessary to handcuff a subject under power. Officers shall be trained to attempt hands-on control tactics during ECW applications, including handcuffing the subject during ECW application (i.e., handcuffing under power). After one standard ECW cycle (5 seconds), the officer shall reevaluate the situation to determine if subsequent cycles are necessary. Officers shall consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Officers shall also weigh the risks of subsequent or continuous cycles against other force options. Officers shall independently justify each cycle or continuous cycle of five seconds against the subject in Use of Force Reports."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 27. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction in a 40-hour Use of Force Curriculum, which all officers are scheduled to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.15 Assessing Compliance with Paragraph 28: ECW Drive-Stun Mode

Paragraph 28 stipulates:

"ECWs shall not be used solely in drive-stun mode as a pain compliance technique. ECWs may be used in drive-stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject, so that officers can consider another force option."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP

2-53 “Electronic Control System,” and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA.

Results

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 28. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction the 40-hour Use of Force Curriculum, which all officers are scheduled to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction. More detailed information concerning the force training is provided in Paragraph 87.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.16 Assessing Compliance with Paragraph 29: ECW Reasonableness Factors

Paragraph 29 stipulates:

“Officers shall determine the reasonableness of ECW use based upon all circumstances, including the subject’s age, size, physical condition, and the feasibility of lesser force options. ECWs should generally not be used against visibly pregnant women, elderly persons, young children, or visibly frail persons. In some cases, other control techniques may be more appropriate as determined by the subject’s threat level to themselves or others. Officers shall be trained on the increased risks that ECWs may present to the above-listed vulnerable populations.”

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 “Electronic Control System,” and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA.

Results

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 29. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction the 40-hour Use of Force Curriculum, which all

officers are scheduled to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.17 Assessing Compliance with Paragraph 30: ECW Targeting

Paragraph 30 stipulates:

"Officers shall not intentionally target a subject's head, neck, or genitalia, except where lethal force would be permitted, or where the officer has reasonable cause to believe there is an imminent risk of serious physical injury."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 30. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction the 40-hour Use of Force Curriculum, which all officers are schedule to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.18 Assessing Compliance with Paragraph 31: ECW Restrictions

Paragraph 31 stipulates:

"ECWs shall not be used on handcuffed subjects, unless doing so is necessary to prevent them from causing serious physical injury to themselves or others, and if lesser attempts of control have been ineffective."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 “Electronic Control System,” and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitor has approved the policy and its sections on ECWs.

Results

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 31. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction a 40-hour Use of Force Curriculum, which all officers are scheduled to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.19 Assessing Compliance with Paragraph 32: ECW Holster

Paragraph 32 stipulates:

“Officers shall keep ECWs in a weak-side holster to reduce the chances of accidentally drawing and/or firing a firearm.”

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 “Electronic Control System,” and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitor has approved the policy and its sections on ECWs.

Results

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 32. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction in a 40-hour Use of Force Curriculum, which all officers are scheduled to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

The monitoring team reviewed a sample of APD Monthly Inspection Forms and found that none expressly reported on weak-side Taser positioning. We

recommended in a previous section that a specific field be added to ensure that officers are compliant with this standard, and it appears such action was taken "by memo" and e-mail on March 15, 2016. As with previous site visits, members of the monitoring team performed "convenience" inspections of APD personnel in the course of their site visit by visually noting whether or not the ECW is always in the "weak" side of their uniform equipment. (Note – In addition to regular interactions related to monitoring duties, monitoring team members conducted ride-along details in APD Area Commands) None of these "convenience" inspections have noted any violation of this section of the CASA. As noted in IMR-2, convenience inspections will not suffice as the sole source of verification of this critical piece of policy enforcement. Results of these specific inspections should be maintained for use as demonstration of effective supervision in the event of civil suits relating to supervision of ECW procedures.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.20 Assessing Compliance with Paragraph 33: ECW Certifications

Paragraph 33 stipulates:

"Officers shall receive annual ECW certifications, which should consist of physical competency; weapon retention; APD policy, including any policy changes; technology changes' and scenario- and judgment-based training."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitor has approved the policy and its sections on ECWs.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in late January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 33. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction in a 40-hour Use of Force Curriculum, which all officers are schedule to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.21 Assessing Compliance with Paragraph 34: ECW Annual Certification

Paragraph 34 stipulates:

"Officers shall be trained in and follow protocols developed by APD, in conjunction with medical professionals, on their responsibilities following ECW use, including:

a) removing ECW probes, including the requirements described in Paragraph 35;
b) understanding risks of positional asphyxia, and training officers to use restraint techniques that do not impair the subject's respiration following an ECW application;
c) monitoring all subjects of force who have received an ECW application while in police custody; and
d) informing medical personnel of all subjects who: have been subjected to ECW applications, including prolonged applications (more than 15 seconds); are under the influence of drugs and/or exhibiting symptoms associated with excited delirium; or were kept in prone restraints after ECW use."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitor has approved the policy and its sections on ECWs.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 34. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction in a 40-hour Use of Force Curriculum, which all officers are schedule to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.22 Assessing Compliance with Paragraph 35

Paragraph 35 stipulates:

"The City shall ensure that all subjects who have been exposed to ECW application shall receive a medical evaluation by emergency medical responders in the field or at a medical facility. Absent exigent circumstances, probes will only be removed from a subject's skin by medical personnel."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitor has approved the policy and its sections on ECWs.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraph 35. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction the 40-hour Use of Force Curriculum, which all officers are schedule to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.23 Assessing Compliance with Paragraph 36: ECW Notifications

Paragraph 36 stipulates:

"Officers shall immediately notify their supervisor and the communications command center of all ECW discharges (except for training discharges)."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitor has approved the policy and its sections on ECWs.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in

Paragraph 37. New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction in a 40-hour Use of Force Curriculum, which all officers are schedule to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.24 Assessing Compliance with Paragraph 37: ECW Safeguards

Paragraph 37 stipulates:

"APD agrees to develop and implement integrity safeguards on the use of ECWs to ensure compliance with APD policy. APD agrees to implement a protocol for quarterly downloads and audits of all ECWs. APD agrees to conduct random and directed audits of ECW deployment data. The audits should compare the downloaded data to the officer's Use of Force Reports. Discrepancies within the audit should be addressed and appropriately investigated."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team requested additional documentation and APD protocols that satisfy this paragraph. In response to that request the monitoring team was provided with SOP 2-53 and a memo from APD to the monitor.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, which included the CASA requirement for quarterly downloads of ECW data required in Paragraph 37. The specific requirement to conduct random and directed audits of ECW deployment data was not included, nor was the requirement to compare downloaded data to an officer's use of force reports. This critical piece of policy is still pending as of the preparation of this report. The omission is significant because random and directed audits are an integral oversight measure to ensure compliance with APD policy. Parenthetically, the monitor approved APD SOP 3-49 "Early Intervention System" (EIS) that included "use of force" (generically) as a data source to be collected and tracked.

The monitoring team reviewed a February 23, 2016 memo from an APD Quality Assurance Auditor, to the monitor, that reported that APD will commence ECW

downloads after completion of the supervisory training scheduled in May 2016. He also reported that APD is currently discussing ECW audit protocols and studying best practices on how to analyze ECW data. The monitoring team will watch progress on these issues closely, as APD's findings will most likely impact the quality of use of force data analysis.

New SOP 2-53 Electronic Control Weapons (ECW) is covered in a 4-hour block of instruction in a 40-hour Use of Force Curriculum, which all officers are scheduled to complete by June 2016. The monitoring team attended a recent ECW session and provided generally positive feedback to training staff on the course documentation and the quality of instruction.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.25 Assessing Compliance with Paragraph 38: ECW Reporting

Paragraph 38 stipulates:

"APD agrees to include the number of ECWs in operation and assigned to officers, and the number of ECW uses, as elements of the Early Intervention System. Analysis of this data shall include a determination of whether ECWs result in an increase in the use of force, and whether officer and subject injuries are affected by the rate of ECW use. Probe deployments, except those described in Paragraph 30, shall not be considered injuries. APD shall track all ECW laser painting and arcing and their effects on compliance rates as part of its data collection and analysis. ECW data analysis shall be included in APD's use of force annual report."

Methodology

During this monitoring period, members of the monitoring team reviewed multiple versions of APD proposed Use of Force Policies, and specifically SOP 2-53 "Electronic Control System," and subjected it to best established pattern and practice in the field, and to the requirements stipulated in the CASA. Compliance with this paragraph requires joint inputs from the EIS system that is still under development by APD. Parenthetically, the monitor approved SOP 3-49 "Early Intervention System" that generically included the requirement to collect and track use of force data. The monitoring team also requested any COB documentation that demonstrated APD has conducted an analysis of ECW usage as required by this paragraph (Emphasis on any documentation during this reporting period), any COB documentation that demonstrated APD tracks ECW laser painting and arcing, and any other protocols that would satisfy this paragraph.

Results

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, but the specific requirements of this paragraph were not addressed. In response to the monitoring team's request for data related to this paragraph, APD submitted to the monitor several "Show of Force" reports completed during this monitoring period. Those reports failed to demonstrate compliance with the requirements of this paragraph at the primary level. APD is continuing to develop protocols pertaining to this paragraph and build out its EIS. Within that system they will presumably collect data that be subjected to analysis pertinent to this paragraph.

The monitoring team reviewed a February 23, 2016 memo from an APD Quality Assurance Auditor, to the monitor, that reported that APD will commence ECW downloads after completion of the supervisory training scheduled in May 2016. He also reported that APD is currently discussing ECW audit protocols and studying best practices on how to analyze ECW data. As noted in Paragraph 37, the monitoring team will watch progress on these issues closely, as APD's findings will most likely impact the quality of use of force data analysis.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.26 Assessing Compliance with Paragraph 39: Crowd Control Policies

Paragraph 39 stipulates:

"APD shall maintain crowd control and incident management policies that comply with applicable law and best practices. At a minimum, the incident management policies shall:

a) define APD's mission during mass demonstrations, civil disturbances, or other crowded (sic) situations;
b) encourage the peaceful and lawful gathering of individuals and include strategies for crowd containment, crowd redirecting, and planned responses;
c) require the use of crowd control techniques that safeguard the fundamental rights of individuals who gather or speak out legally; and
d) continue to prohibit the use of canines for crowd control."

Methodology

During this period the monitoring team has worked with APD and provided technical assistance to move APD toward primary compliance with Paragraph 39. APD policy requirements have been subjected to review against best law enforcement practices and compliance with the CASA. For example, the monitor suggested to APD that they review and consider incorporating policy from the Metropolitan DC Police Department (widely recognized as having excellent policy in this area). That suggestion was declined at the time,

although incorporated into later policy. The monitoring team reviewed four different policies that in varying degrees touch upon the requirements set forth in this Paragraph.

Results

As of March 31, 2016, the most recent drafts of SOP 3-19 have not been approved by the monitor, and APD, therefore, is not in primary compliance with Paragraph 39. One draft (FSB SOP 3-19 Response to Demonstrations, dated January 17, 2016) consisted of a single page (Note - This is the policy being distributed in a current 40-hour Use of Force Curriculum being delivered by the academy) and appears to have been superseded by a more recent draft dated March 10, 2016. That version consists of six pages, is generally well written, and includes all of the requirements in Paragraph 39. It also contains a provision that expressly prohibits the deployment of police canines in crowd control situations (Section 3-19-2, sub-section C. 5. a.).

Draft APD SOP 1-46 Emergency Response Team (ERT), dated February 4, 2016, is also fully compliant with the requirements of Paragraph 39 and also includes an express prohibition against the deployment of police canines in crowd control situations (Section 1-46-4, sub-section I. 3. b.). There is another Bureau level SOP---4-12 K-9 Unit, which is undated, but replaces a 2013 version---and a Department-wide SOP---2-45 Use of Canine Unit, dated August 6, 2015---that also expressly prohibits the deployment of police canines in crowd control situations “as a force option” (Section 2-52-2, sub-section B. a.). SOP 4-12 is silent on the use of police canines in crowd control situations. Because the mere sight of police canines can inflame a previously peaceful protest, APD should clarify all of the foregoing restrictions to ensure that the prohibition includes keeping police canines out of sight, except in extreme circumstances. As we noted in the monitor’s last report, the lack of uniformity among related policies, often generated at different organizational levels, is a serious problem that concurrent reviews would largely solve. For instance, the prohibition against the use of police canines in crowd control situations should be universal throughout policies with that common subject matter. The policies should also define the types of police canine assignments that might be warranted as ancillary tasks in such situations (e.g., property protection).

The monitor has established a schedule for reviewing all APD policies that fall within the requirements of the CASA. Once the drafts referred to above are approved, APD will be in Primary Compliance.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.27 Assessing Compliance with Paragraph 40: After Action Reviews

Paragraph 40 stipulates:

"APD shall require an after-action review of law enforcement activities following each response to mass demonstrations, civil disturbances, or other crowded situations to ensure compliance with applicable laws, best practices, and APD policies and procedures."

Methodology

The monitoring team found APD in primary compliance in its last report as SOP 1-46 Emergency Response Team (ERT) (July 8, 2015) expressly required that after-action reviews be conducted after any crowd control incident. The monitoring team requested course of business documentation that demonstrated implementation of APD's requirement to conduct after-action reviews of officer deployments related to Paragraph 40.

Results

In IMR-2 the monitoring team expressed concern, based upon a limited case review, that specific training in preparing operational plans and conducting after-action reviews, followed by the preparation of formal reports, will be essential to achieve the two remaining levels of compliance. Special Operations, for example, now requires specific substantive categories in its reports to ensure that important concerns are addressed. It also requires broad consultation with involved responders as another quality-control measure. Both requirements should be a standard practice Department wide. ERT utilizes a similar structured memo approach for the required reports.

The monitoring team was advised in a recent memo that no after-action reports had been completed during the reporting period, as there were no ERT mobilizations. Consequently, there were no "lessons learned" shared with APD subject-matter experts in crowd control for incorporation into ongoing ERT training. The monitoring team reviewed a revised ERT After Action Review Form. The form is undated (in terms of its origination date), unattributed as an Appendix to any SOP and does not carry a designated form number. The use and utility of this form will be evaluated once the monitoring team is able to review of sample reports that are prepared as a result of an operational deployment. These issues also accrue to deployment of APD patrol personnel for "Response to Demonstrations" in events that result in a Patrol response, but not a "tactical" response.

While additional work may be necessary with respect to the quality of ERT after-action reporting, APD has met the policy requirement of Paragraph 40. The

operational implementation of this Paragraph will be reliant upon the quality of training that is provided to APD and during broader reviews of APD after-action reports. APD should consider the guidance provided in this report, since it provides a view into future evaluations of this Paragraph.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.28 Assessing Compliance with Paragraph 41: Use of Force Reporting Policy

Paragraph 41 stipulates:

"APD shall develop and implement a use of force reporting policy and Use of Force Report Form that comply with applicable law and comport with best practices. The use of force reporting policy will require officers to immediately notify their immediate, on-duty supervisor within their chain of command following any use of force, prisoner injury, or allegation of any use of force. Personnel who have knowledge of a use of force by another officer will immediately report the incident to an on-duty supervisor. This reporting requirement also applies to off-duty officers engaged in enforcement action."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

APD is now in Primary Compliance on this task with approval of SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements (January 2016). APD's Internal Affairs Section has been instrumental in developing two job aides, or checklists, to support the accomplishment of major reporting and investigation tasks. The monitoring team reviewed copies of the two job aides and found both to be well done, comprehensive, and valuable tools that will contribute to quality control. Also, these resources should help remedy concerns the monitoring team has expressed over the lack of structure and continuity within force investigation report narratives. They are a prime example of internal subject matter experts playing a central role in the Department's efforts to implement its reform agenda. The checklists, in effect, provide a model of what performance excellence looks like. The monitoring team has expressed repeatedly to APD that these types of stand-alone forms should be

incorporated and appended directly to their applicable SOP. For instance, the Use of Force Data Report is a stand-alone report as opposed to an appendix to SOP 2-54.

APD has incorporated the use of the above checklists in its upcoming 24-hour Supervisory Use of Force Investigations, which, as of this writing, is in the final design and development stage. These ready-reference checklists encompass major procedural requirements set forth in SOP 2-54. APD intends to provide hands-on training in their use in the 24-hour curriculum, which is an excellent approach to maximizing transfer to field practice. The monitoring team commends IAS staff for the initiative shown in developing the job aides, which should improve training relevance, authenticity, and subsequent near-transfer of critical operational know-how.

It should be noted that IAS staff also created additional job aides, which we view as quality-control tools. These are the artifacts of sound internal processes that create mechanisms to support workplace excellence and discipline, which the monitor alluded to in an earlier report. In a related sense, they also provide concrete evidence of APD's commitment and capability to implement agreed-upon reforms. This is an important step in building organizational capacity to self-regulate in critical work domains. The monitoring team was unable to review the additional items in depth during this reporting period, but we have added them to our follow-up list for the next reporting period.

This particular reform (improved reporting and supervisory use of force investigations) poses a significant challenge to APD. Based on case reviews conducted by the monitoring team (reported on in subsequent paragraphs), APD will require comprehensive training and reinforcement, as well as proper accountability and supervision at all levels to ensure reliable reporting and classification, thorough investigations, and rigorous reviews. Currently, oversight in the form of successive, higher-level reviews is uneven and, in some cases, the level of scrutiny is minimal or totally lacking. Cursory reviews that overlook serious issues constitute lost opportunities for performance improvement, reinforcement of APD standards, recognition of good work, and an erosion of important quality control points. They may also, through supervisory and command-level silence and inaction, unintentionally ratify practices that conflict with APD's reform agenda. We reported specific instances of deficient investigative practices in IMR-2 and do so again in this report for a sample of Show of Force reports, a sample of ECW investigations, and several other levels of investigations. In several cases, we summarize the qualities of effective reporting and investigation.

To provide context for our comments, we emphasize that APD is in the early phase of a major transition from its former system of reporting, classification, and investigation of uses of force to a new one stipulated by the CASA and consistent with contemporary, professional investigative practices. The

Department is presently in the initial stages of a demanding learning curve that it will complete only when policy is transformed into effective training, and training, in turn, is transformed into effective practice. It will take considerable time, effort, and vigilance to make the full transition, but the monitoring team expects significant, steady improvement as reforms gain momentum through relentless oversight, coaching, and direction. Because current practices appear to have a cultural element to them, Department leaders will have to exercise strong oversight and guidance to ensure that those influences do not impede reform efforts.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.29 Assessing Compliance with Paragraph 42: Force Reporting Policy

Paragraph 42 stipulates:

"The use of force reporting policy shall require all officers to provide a written or recorded use of force narrative of the facts leading to the use of force to the supervisor conducting the investigation. The written or recorded narrative will include: (a) a detailed account of the incident from the officer's perspective; (b) the reason for the initial police presence; (c) a specific description of the acts that led to the use of force, including the subject's behavior; (d) the level of resistance encountered; and (e) a description of each type of force used and justification for each use of force. Officers shall not merely use boilerplate or conclusory language but must include specific facts and circumstances that led to the use of force."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results:

APD is now in Primary Compliance on this task with approval of SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements (January 2016). As noted earlier, APD's Internal Affairs Section has been instrumental in developing two job aides or checklists to support the accomplishment of major reporting and investigation tasks. The monitoring team reviewed copies of the two job aides and found both to be well done, comprehensive, and valuable tools that will contribute to quality control. They are prime examples of internal subject matter experts playing central roles in the Department's efforts to

implement its reform agenda. The checklists, in effect, model what performance excellence looks like.

The checklists were developed subsequent to development of a 40-hour Use of Force Curriculum. With their development, APD should assess how to incorporate the use of the Job Aide for Officers in that course or, alternatively, by the use of some form of supplemental training. Even though prior classes will not have been exposed to the tool, there appears to be considerable value in using it in future classes. As with any tool, APD should also continue to refine the checklist, but in accordance with sound principles of checklist development. The present tools are a single page, and that should remain an essential characteristic if modifications are made.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.30 Assessing Compliance with Paragraph 43: Reporting Use of Force Injuries

Paragraph 43 stipulates:

"Failure to report a use of force or prisoner injury by an APD officer shall subject officers to disciplinary action."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance to APD to aid development of force policies that would meet the provisions of the CASA.

Results

The requirement in Paragraph 43 is included in APD SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements (January 2016), which was approved by the monitor. Hence, APD is now in Primary Compliance on this task. The requirement is also included in a 40-hour Use of Force Curriculum; initial instruction began in January 2016 with scheduled completion in June 2016.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.31 Assessing Compliance with Paragraph 44: Medical Services and Force Injuries

Paragraph 44 stipulates:

"APD policy shall require officers to request medical services immediately when an individual is injured or complains of injury following a use of force. The policy shall also require officers who transport a civilian to a medical facility for treatment to take the safest and most direct route to the medical facility. The policy shall further require that officers notify the communications command center of the starting and ending mileage on the transporting vehicle."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-52 Use of Force, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

The requirements in Paragraph 44 are set forth in sub-section 2-52-6 in APD SOP 2-52 Use of Force (January 8, 2016), which was recently approved by the monitor. Hence, APD is now in Primary Compliance on this task. The requirement is also included in the 40-hour Use of Force Curriculum; initial instruction began in January 2016 with scheduled completion expected in June 2016.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.32 Assessing Compliance with Paragraph 45: OBRD Recording Regimens

Paragraph 45 stipulates:

"APD shall require officers to activate on-body recording systems and record all use of force encounters. Consistent with Paragraph 228 below, officers who do not record use of force encounters shall be subject to discipline, up to and including termination."

Methodology

Members of the monitoring team reviewed multiple copies of APD policies, including SOP 1-39 Use of On-Body Recording Devices, and subjected them to best established practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance to APD to guide development of policies that would meet the provisions of the CASA.

Results

The monitor approved APD SOP 1-39, Use of On-body Recording Devices, in late March, 2016. It is not yet clear how APD intends to achieve Secondary Compliance. Moving forward, the monitoring team will review any training Curriculum APD provides related to this task, and examine operational compliance through records and reviews of use of force cases.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.33 Compliance with Paragraph 46: Force Investigations

Paragraph 46 stipulates:

"All uses of force by APD shall be subject to supervisory force investigations as set forth below. All force investigations shall comply with applicable law and comport with best practices. All force investigations shall determine whether each involved officer's conduct was legally justified and complied with APD policy."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-52 Use of Force and 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to contemporary professional standards and practices in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet provisions of the CASA.

The monitoring team has conducted extensive reviews of different levels of force investigations---including Show of Force, Supervisory Use of Force, Serious Use of Force, CIRT, and IRT investigations----over this and the past two reporting periods. Our sample of cases in each reporting period was drawn to ensure representativeness and reflect the full range of APD force options. We also examined a sample of Force Review Board (FRB) cases for each period, including its quarterly sample of Supervisory Use of Force Investigations, K-9

Bite Reviews, and SWAT After-action Reviews. Hence, our reviews spanned the full APD reporting, investigation, chain of command review, and adjudication cycle. Each stage of the cycle is critically important, but the ultimate test is how the components work in concert to ensure effective oversight and accountability.

An important function of the monitoring process is to review Use of Force and Show of Force cases that are being investigated and evaluated within APD to determine if they are being conducted thoroughly and objectively, and to comment on the substance and quality of those cases. For this report the monitoring team has done the following:

1. Followed up on two specific Use of Force cases where dispositions remained unresolved from IMR-2.
2. Reviewed 10 Show of Force cases reported by APD for the period of December 1, 2015, and February 15, 2016.
3. Reviewed four Use of Force Taser cases that were reported and investigated by APD for the period of December 1, 2015, and February 15, 2016.
4. Reviewed and commented on two Serious Use of Force cases that occurred during the period of December 1, 2015, and February 15, 2016, and were not investigated by Internal Affairs, which directly conflicted with the requirements of the CASA.

CASES UNRESOLVED FROM IMR-2

As reported in IMR-2, in preparation of the Independent Monitor's first report (IMR-1) the monitoring team requested a list of all supervisory force investigations for the first reporting period. From that we drew a sample of sixteen (16) cases stratified by type of force. The monitoring team looked at all of the reports in each case and the associated video evidence. There were delays in receiving a full inventory of video evidence, which precluded the monitoring team from completing a full review of fourteen (14) cases. Because they involved potential policy violations, we completed a thorough review of two cases and reported on them in both IMR-1 and IMR-2. The monitoring team also concluded that a third case, which involved a training recommendation by a supervisor, was poorly handled during the post-recommendation phase. In the third case a supervisor submitted a training request to remediate an officer's performance deficiency related to a use of force (OC Spray); however, the monitors determined that the training had in fact not occurred. Of the three cases reported on in IMR-2, the monitoring team noted that proper follow-up by APD only took place in one. Because the remaining two cases still contained significant, unresolved issues, APD was advised that additional follow up on those two cases would occur during the next site visit, which occurred in early March 2016.

The following two cases were reported on in IMR-2, but required additional work on the part of APD to resolve significant issues:

Case #1 CIRT Review

In Case #1, reported on in IMR-1 **AND** IMR-2, the monitoring team documented concerns that during an arrest APD officers attempted to handcuff a highly combative suspect who was violently resisting arrest. Among the issues of concern identified by the monitoring team: 1) APD did not recognize and flag the fact that four (4) ECW cycles were used against the suspect that would constitute a serious use of force (As per CASA 12qq); and APD failed to flag an officer's knee position during the arrest as possibly constituting a neck hold (As per CASA 12gg). If the latter was determined by APD to be a neck hold, that would have constituted lethal force (As per CASA 12aa).

In response to the monitoring team identifying these issues, APD assigned their Critical Incident Review Team (CIRT), functionally located within Internal Affairs (IA), to review the circumstances surrounding Case #1 and make appropriate recommendations. Their report was reviewed by the monitoring team and was also found to be deficient, mainly because the "new" investigation missed the most critical piece of video evidence, the quality of the report was insufficient and the investigator failed to review all the relevant lapel videos pertaining to the event. The monitoring team was especially concerned that the only video not reported on by the CIRT investigator (also missed by subsequent command reviews) was the actual video that gave rise to the concern that a neck hold occurred.

In IMR-2 the monitoring team reported that the CIRT investigation into this case failed to adequately resolve concerns (specifically a potential neck hold) communicated in the monitor's first report (IMR-1). In his investigation, a CIRT detective provided a written narrative and four (4) screen shots **from three** different officer lapel videos that he believed supported his investigative findings and conclusions (Specifically, that the officer in question did not use a neck hold). While the investigator documented reviewing "…all the videos of the incident," he failed to review the lapel video that initially gave rise to the monitoring team's concerns. This failure was seen as remarkably significant, because in the view of the monitoring team a competent investigator would have easily recognized that **there were four, not three**, relevant lapel videos (the videos were number-tagged consecutively, and one tag in the sequence was missing) and would have worked hard to locate that forth lapel video. The fact that there was a lapel video missing from the CIRT investigation was specifically reported in IMR-2 as a serious concern.

In March 2016, the monitoring team met with representatives from CIRT/IA during its regular site visit. During that meeting this case was followed up to determine what had transpired since the delivery of IMR-2. It was immediately clear that the CIRT/IA had done nothing new with the case and appeared confident with their initial finding. However, the monitoring team quickly realized

that CIRT/IA was still unaware that a fourth video existed. The latter fact was particularly troubling because it was specifically referenced in IMR-2, which indicated to the monitoring team that the CIRT/IA representatives did not read the content of IMR-2 pertinent to this case. The case was explored further in the meeting and the monitoring team determined that ***APD still had not resolved this case satisfactorily***. The monitoring team was thus confronted by a poor initial supervisory investigation, an insufficient follow-up CIRT/IA investigation, and more importantly, missing evidence.

The monitoring team was told later that the video was missed internally due to improper data entry, which still did not explain APD's failure. The numbering of the videos in this case was sequential. The fourth, and most important, video was in the middle of that sequence. Therefore, an investigator should have immediately recognized (or at least probed further) that a video associated with the case could be missing.

Following the monitoring team's meeting with CIRT/IA, APD reportedly decided to initiate a new investigation into the case. This case, taken in its totality (this case has lingered with the monitoring team since the summer of 2015), demonstrates an astonishing failure on APD's part. But for the persistence of the monitoring team this case would have been seen as resolved several times by APD. That, and APD would have never reviewed a complete record of the case. It is clear to the monitoring team that review and oversight capabilities need to be developed or enhanced by APD's IA and CIRT functions. The most troubling concern with this case is the fact that the most recent failures occurred within CIRT/IA, which should be setting the standard for proper accountability. This case will be reviewed again during its next site visit. The monitoring team is less than satisfied with the APD's explanation of the missing OBRD video. That video was readily available to the monitoring team during its initial investigation of the event for IMR-1, yet, somehow, it was "missing" when CIRT/IA conducted their follow-up investigation.

As noted in IMR-2, the remediation of faulty CIRT/IA reports are *critical* to the effectiveness of the underlying processes, and will be required to attain compliance with related CASA requirements. The monitoring team strongly suggests a high-level IA investigation of how the video, easily accessible by the monitoring team during its reporting process for IMR-1, came to be "missing" and went undetected by trained, experienced CIRT/IA investigators. We cannot stress strongly enough that, based on the monitor's experience, this is the kind of "error" that can be intentional, and designed to protect or "clear" officers incriminated in an unauthorized and improper use of force.

Case#2

In Case #2, reported in IMR-2 only, the monitoring team identified issues with an APD officer's use of force, as well as failures and inconsistencies in the supervisory force investigation that followed.

In February 2015, an APD officer attempted to conduct a traffic stop, but the suspect vehicle continued on and pulled into the parking area of a hospital emergency room. When the vehicle stopped, the driver exited the car and indicated that her passenger had been stabbed. Later, when the driver failed to comply with the officer's order to get out of the car and instead pulled away with the vehicle, the officer deployed his issued OC spray into the face of the driver. The monitoring team identified a number of concerning issues related to the officer's use of force, but equally as important were the critical failures during a subsequent investigation into that force. A lingering issue with the case was the fact that during the force investigation there was a recommendation by a supervisor that the officer receive specific remedial training from the academy. The monitoring team made a request for the documentation and training materials that were generated that addressed the areas of concern noted during the force investigation.

In a February 18, 2015, memorandum[11] prepared by the officer's sergeant, he documented three specific areas of concern with the actions of the officer. The sergeant recommended that the officer receive refresher training in:

1. The proper use and techniques when administering OC spray;
2. Calling out his position when dealing with a suspicious person/vehicle; and
3. Making sure his camera equipment is working properly and used in accordance with department policy.

As reported on in IMR-2, the documentation provided to the monitoring team by APD raised significant concerns over their internal capability to properly identify performance deficiencies and deliver meaningful remedial training. Likewise, internal processes are lacking in APD to properly oversee and track those situations. The training documentation initially provided by APD addressed none of the areas of concern raised in the sergeant's memorandum, so the monitoring team intended to follow that issue up with APD during its next site visit in March 2016. Like Case #1, that intent was communicated to APD in IMR-2.

While there were a number of concerns expressed by the monitoring team with this case, the one lingering issue concerning remedial training the officer was supposed to receive was not resolved. On August 27, 2015, nearly seven

[11] The memorandum was entitled "Additional Issues of Concern Not Related to the Use of Force Incident." The monitoring team pointed out in previous reports, and reiterates here, that the sergeant's first point concerning the administrating of OC spray **was clearly related to the use of force** and should have been included in the Use of Force Data Report.

months following the event, the monitoring team was notified by APD that the officer never received the mandated training, but that it was scheduled for September 2, 2015. During the second monitoring team visit, in November 2015, members of the monitoring team met with APD and discussed this case yet another time. At that time the monitoring team still had not received training documentation it requested concerning this case. It was learned that the training was only scheduled following the monitoring team requesting training materials related to APD's response to this incident.

The monitoring team was provided a number of training materials related to this incident, including a "Mandatory Training Form," dated July 7, 2015. (Note - The monitoring team was notified in August 2015, that the remedial training was scheduled for September 2, 2015) That information, coupled with APD's acknowledgment that the training was only scheduled after the monitoring team requested the training materials raised questions over the training records that were provided. The monitoring team noted in IMR-2 that these issues may have resulted from administrative breakdowns, but seriously called into question APD's internal processes surrounding remedial training referrals. We remain seriously concerned about the managerial and administrative commitment to and assessment of remedial activities related to internal reviews of officer actions.

During its March 2016 visit the monitoring team discussed this case with APD representatives from CIRT/IA. Based on the sequence of events reported in IMR-2, the monitoring team had recommended this case be referred to IA for review. However, APD IA representatives reported that the documentation previously provided to the monitoring team were not the proper training materials. Reportedly, the officer in this case was transferred to a new assignment, and around that time received remedial training for an entirely different and unrelated event. Miscommunication within APD concerning this officer's need for remedial training led his new command to believe that the officer received his required training in July 2015, when in fact he had never received the training related to the case reported on in IMR-2. Prior to the end of the monitoring team's third visit APD provided the monitoring team training records that verified that in September, 2015 the officer received training that was directly in response to the sergeant's referral memorandum. Notwithstanding the fact the officer finally received the proper training, this case illustrated several failures in force reporting, command oversight, and APD's ability to properly remediate performance through training. It is unclear what, if anything, APD has done to ensure the proper accountability of the supervisors and commanders who allowed these breakdowns to occur.

SHOW OF FORCE CASES REVIEWED

The monitoring team requested Show of Force Cases that occurred between the dates of December 1, 2015, and February 15, 2016, and APD provided reports for 10 cases involving 13 officers.

APD's approved policy and procedures for cases involving only a "Show" of force (of either ECWs or firearms) is an agreed-upon compromise reached by the parties to allow for a less extensive investigation than is required in normal supervisory Use of Force investigations. It still requires a basic supervisory investigation in addition to successive reviews by the involved officer's chain of command. A new Show of Force Data Report is used to capture essential information about the incident and provides space for documenting the investigating supervisor's actions and conclusions in the case.

Specific signature blocks are designated for each chain of command level, ample space is provided for narrative comments. Because a narrative response is not an explicit requirement in the form's instructions, however, some reviewers might conclude that they are only responsible for an approval signature, when the intent of the CASA is just the opposite. This represents a significant flaw in the form that could result in wide disparity in its implementation. Presumably, the intent is to engage command-level reviewers actively in the investigative process and avoid perfunctory, superficial reviews. If so, the current design of the Show of Force Data Report may not meet its intended purpose.

In the sample of cases reviewed, for instance, it is inconceivable to the monitoring team that there would not be narrative comments by higher-level reviewers in some or most cases. We reviewed a sample of four Show of Force cases during this reporting period and noted the following issues:

General Observations:

1. Based upon our reviews to date, the present level of competency concerning the investigation of Show of Force cases is below that which is required to fulfill this intent. The monitoring team expects competency to increase once the 24-hour Supervisory Use of Force (SUF) Investigations Curriculum has been presented to all APD supervisors. However, it's unclear what instruction exists in that course concerning the specific needs of Show of Force investigations. It is critical that APD academy staff consider the feedback contained herein, concerning the investigation of Shows of Force, when developing their training. The monitoring team will evaluate the SUF curriculum to determine if Show of Force procedures, and specific gaps in performance, are thoroughly covered.

2. The relatively low level of engagement by higher-level reviewers remains especially problematic. As noted above, APD provided records for 10 Show of Force cases involving 13 officers. In the cases reviewed there was not a

single narrative comment above the supervisory level, despite obvious issues and questions that a command level review should have identified. These higher review levels are, in effect, critical quality control points. When they function poorly, the performance of APD's system of oversight and accountability for Show of Force cases is seriously degraded.

3. In the opinion of the monitoring team, the single most important quality lacking at this stage is candor, that is, the willingness to investigate these cases **objectively** and deal with issues in a forthright manner. Accountability must be legitimate and practiced at all levels of the organization. Challenging performance that may be questionable or outside policy and procedure is critical to APD's success. The mandate for greater accountability will undoubtedly cause some level of personal discomfort as formerly "un-discussable" issues are now addressed **immediately and directly**. The momentary discomfort, however, always pales when contrasted with the personal and organizational anguish that invariably follows in the wake of a preventable, adverse event. **The establishment of a culture of accountability begins at the top of an organization. Only when command level personnel begin challenging obvious performance deficiencies will change in APD's performance and cultural underpinnings begin**.

4. Perhaps the most critical point in these reviewed investigations is when the narrative accounts are compared to video recordings. That examination will fail more often than not if it is perfunctory or superficial. Consequently, point-by-point methodical comparisons are an essential step. Candor, again, is absolutely essential. For example, the monitoring team often found the officers' reports failed to reflect their actual actions during events covered by those reports, yet, APD supervisors and managers seem to have, in effect, overlooked this exceptionally important fact in their reviews.

5. Accountability at all levels is vital for long-term success. Whenever a primary investigation is regarded as deficient, the work of higher-level reviewers who signed off on that work must be subject to the same scrutiny and rules of accountability. If not, each level, each reviewer represents a lost opportunity to catch errors or issues early and intervene to remediate or resolve them through improved policy, training, discipline, or first-line supervision. The impact of investigative shortcomings and lost learning opportunities is cumulative in nature, and, in time, will cripple an organization's risk management capabilities.

6. There is an overall deficiency in the quality of documentation and the justification for Shows of Force. The monitoring team encountered

narratives that lacked sufficient detail to justify a Show of Force. That is not to say justification did not exist, only that the proper articulation of facts and circumstances contained in the supervisor's report was non-existent or superficial.

7. The monitoring team requested course of business documentation that captured all incidents of Shows of Force during this monitoring period. It was learned that APD could not yet produce such a form, but some data was provided for review. As is detailed later in this report, the monitoring team identified at least one case where a Show of Force, as part of a larger Use of Force investigation, was not reported properly. In that case, an APD officer reported holding his issued firearm in a "low ready" position when in the opinion of the monitoring team the weapon was clearly pointing at a subject for at least some period of time on two occasions in the same event. Once again, it was the monitoring team that noted this issue, not APD supervisory or management personnel.

8. We also noted a fairly pervasive tendency of supervisory personnel "translating" officers' actions very subtly in their (the supervisors') narrative, changing key phrases and statements to more closely fit a rationalization for the use of force, and in some circumstances of officers "editing" their actions in their reports (stating one "fact" when the actual facts were slightly, but importantly different) without the supervisors taking note of same.

Below, the monitoring team has reported on a sample of the Show of Force cases that were provided by APD for this period. The purpose of our review is to provide feedback on the current quality of Show of Force investigations APD supervisors are producing and highlight instances where there is an apparent issue with the manner in which a case was conducted. This feedback should serve as a seminal moment for APD, and forecast issues it may encounter due to the lack of quality and supervisory oversight that at times exists with the investigation of Show of Force events.

Case #1

The incident involved an APD officer who was dispatched to a call where a vehicle was parked in the middle of a roadway. The officer who responded approached the driver of the vehicle and reportedly "…observed signs of intoxication." However, the report reviewed by the monitoring team failed to adequately articulate specific observations that led the officer to believe the suspect was intoxicated. (Note – Later the suspect provided breath samples with a 0.0% result)

The monitoring team reviewed the officer's lapel video and he was seen asking the driver to conduct field sobriety tests. The subject was brought to the front of his vehicle to perform the sobriety tests, and suddenly the subject ran back to

the driver's door and attempted to get back in the car. The officer gave chase and grabbed the subject and attempted to pull him from the vehicle. The officer quickly transitioned to his Taser and pointed it at the subject, who then exited his vehicle, ran a few feet and laid on the ground in the middle of the roadway. The officer requested backup but was able to handcuff the subject without assistance or further force. We note the following conclusions of the monitoring team's review:

1. The officer was courteous and professional with the subject throughout the encounter.
2. When describing the point when the subject reentered his vehicle the supervisor who completed the Show of Force Data Report stated the officer "…was afraid that (the subject) was grabbing for a weapon inside the vehicle and attempted to pull him out of the vehicle. (The officer) could not pull (the subject) out of the vehicle so he took his taser out…" A review of the officer's lapel video showed the officer grabbing the suspect's clothing and attempting to pull him from the vehicle, though only briefly.
3. The length of time that force is used is not a factor supervisors are to consider when deciding whether to investigate an event as a Use of Force as opposed to (or in addition to) a Show of Force. In this case the supervisor articulated that the officer "…attempted to pull…" the subject from the vehicle, and that action is clearly depicted in the video. The report articulated no justification for the supervisor not handling the event as a Use of Force.
4. This case is illustrative to the monitoring team that a lack of accountability within Command level reviews for Show of Force cases could create a harbor for unreported uses of force.
5. The quality of the supervisor's report was poor, since there was no analysis articulated by the supervisor as to the objective reasonableness of the officer's actions concerning the Show of Force.
6. It is unclear to what extent higher-level reviews investigated this event (i.e. By reviewing lapel video). Even still, the written report alone should have caused concern that the actions of the officer may have risen to the level of a use of force.
7. It is unclear if the supervisor ever interviewed the officer or the subject in the case, as there were no lapel videos provided to the monitoring team.

The monitoring team will follow up with APD to determine what actions they have taken to follow up and reconcile the actions of the officer.

Case #2

This case involved the dispatch of two officers to a complaint of criminal trespass in a retail store, during which one of the officers observed the two involved persons complete a hand-to-hand transaction involving possible methamphetamine. The reported Show of Force involved one of the officers

"…paint[ing] the suspect in stand-off mode with his ECD (Taser)." Several attempts to place both suspects into escort holds were unsuccessful, but the narrative is ambiguous about actual physical contact occurring between the officers and the suspects. Despite the resistance, both suspects were quickly controlled and handcuffed.

Overall, it is apparent that the two officers are competent and mindful of coordinating their tactics to control two resistant suspects who are physically separated to some extent. Upon entering the store, one officer met with a store representative and confirmed the existence of a criminal trespass order and the location of the subject of the order. As one officer approaches the man, he observes a hand-to-hand transaction of suspected drugs (from the packaging). The two officers then move quickly to control and handcuff the two men. One officer recovers the suspected baggie containing suspected drugs, as the suspect protests his innocence.

Not only did the officers have reasonable suspicion to detain the subject of the criminal trespass order, the one officer had probable cause to arrest the subjects after witnessing a suspected hand-to-hand drug transaction. The investigating supervisor reported that he viewed the officers' videos and determined that they corroborated the officers' version of events.

After reviewing the report and accompanying videos, the monitoring team has a number of questions, notwithstanding previous comments about the overall quality of the police work in this case.

1. There appears to be significant disconnects between the supervisor's assessment and what appears on the video, with the officers' reports at times not accurately reflecting what is evident from the OBRD. More problematically, we believe, supervisors fail to note these discrepancies in their review-reports. There is also no indication that subsequent reviewers looked at the videos and agreed with the supervisor's assessment. We assume that their signature signifies agreement, but because of a lack of codified Show of Force investigative procedures that remains unclear. We question whether the supervisor's assessments and subsequent "signature agreements" by higher reviewers were based upon a candid, thorough, and accurate review, or whether they were simply "pro-forma."

2. Although the officer reported "painting" the subject in "a stand-off mode", the video appears to show him with the Taser either touching the subject's left chest area or displaying it in close proximity to the subject. Consequently, the term "stand-off mode" seems inaccurate. If our observations are correct, it also raises the question of whether the officer's "touch or close'" deployment of the Taser was consistent with APD policy and training, and

why, in their subsequent reviews, the officers' supervisors did not note this discrepancy.

3. The legal analysis of the basis for the officers' actions and the one officer's Show of Force is sketchy. This is a threshold issue that any investigation should examine closely. The monitoring team, once again, notes that this form uses a "blank sheet" approach, which assumes that all supervisors will address a common set of topics in their investigation. We have found repeatedly that, in contrast, there is a wide variance when this approach is used. Accordingly, **we again recommend that APD consider adding explicit sections to structure the investigative narrative**[12].

4. That the officers' versions of events in their reports are inconsistent with what the videos depict is a serious issue. When investigators and later reviewers fail to candidly assess conflicts between the two, questions about personal and investigative integrity understandably arise. Untruthfulness by an officer is, appropriately, a terminable offense. When the lack of correspondence becomes a central issue in a criminal proceeding or civil lawsuit, the failure of higher-level reviewers to capture and correct such disconnects becomes a serious matter and tarnishes both individual and Department integrity.

5. The monitoring team recommends that this case be referred to the Department's Force Review Board (FRB) for further scrutiny. We further recommend that the FRB address each of the foregoing points to determine factually whether this investigation accords with Department policy and procedures. Specifically, the Board should address the seeming lack of correspondence between the video evidence, the officer's reports, and the supervisor's statement about that evidence, the extent and quality of higher-level reviews, and the decision to not conduct a full supervisory use of force investigation. Finally, although we noted that both officers appear to be competent, one engages in seemingly unprofessional banter with the suspects that should be examined more closely for several reasons:

    a. This may offer an early chance to correct a developing or continuing pattern of problem behavior. If the officer's conduct is found to be problematic, a low-level, informal intervention at an early stage is far

[12] The monitoring team has often noted the wide-scale use of "blank" narrative sections in various report forms utilized by APD. We strongly suggest that reporting forms involving use of force be "segmented" by headers requiring specific types of information, e.g., "Subject Resisted Control by:" or "Commands/Tactics Used by Officer to Effect Control."

preferable to an EIS-based intervention months later (provided the officer has not exhibited a pattern of conduct with this performance deficiency).

b. Banter of this sort is distracting in terms of safety considerations and conducting the business at hand. It is difficult to maintain vigilance while you're conjuring up and firing a string of unprofessional barbs at a suspect. Though some would regard the officer's conduct as innocuous, the monitoring team feels otherwise. It conveys disrespect and undermines trust and cooperation between the department and the communities it serves no. It also questions the ability of the officer to self-regulate.

The monitoring team will follow up with APD to determine what actions, if any, they have done to follow up and reconcile this case[13].

Case #3

This case involved a domestic violence call involving a male subject with a knife. When the sergeant arrived, the other occupants of the house met with him and he immediately escorted them to safety. As other officers arrived the sergeant coordinated their actions and ordered the suspect to step outside the house with raised hands. The suspect immediately started walking toward the sergeant, who was just outside the front door. Knowing that the suspect had assaulted his ex-girlfriend with a knife, the sergeant pointed his firearm, center mass, at the suspect and ordered him to stop. When he didn't seem to understand the commands, the sergeant quickly shifted to Spanish, issued the same commands, and the suspect complied without hesitation.

The reporting lieutenant's assessment of the Show of Force was well done and relied upon use of the three Graham factors as an analytical framework. This is an excellent approach grounded in one element of APD's standard governing the use of force. Because the officer's actions were generally sound and constituted low-level force, there was no need to examine the other two prongs of the APD standard.

The sergeant should be commended for his prompt response and subsequent actions, particularly the quick-witted manner in which he realized the need to shift to Spanish. Given the totality of circumstances, the Show of Force was clearly reasonable. The restraint exercised by the sergeant was exemplary. Some might question the fact that the sergeant permitted the suspect to draw extremely close before commands in Spanish gained compliance. It should be noted that one officer also deployed his Taser as a less-lethal alternative, but it

[13] The APD should note, that as a matter of common practice, the monitoring team will follow up on all issues raised in one report in the subsequent (and if necessary) following reports to ensure that the APD is "doing the right thing" in its supervisory and force-investigations tasks.

was not discharged. Our final question should not be taken as criticism of the sergeant, but it bears asking from the standpoint of incident management. In this case, the sergeant assumed an operational role, which is commendable. However, it took him out of supervisory role with nobody to replace him. In this case all worked out well. However, we know from extensive history---especially the Rodney King case---that incident management functions are degraded when supervisors assume operational roles.

Case #4

This case involved the pursuit of a man reportedly armed with a shotgun. An officer located the man in a nearby store and apprehended him at gunpoint. The man cooperated and the officer holstered his weapon and then handcuffed him quickly and efficiently. At the time the officer had no backup.

1. The officer remained composed and issued firm, clear commands, with which the suspect complied.

2. He holstered his weapon and, without the benefit of backup, closed and handcuffed the suspect who was lying face down on the floor.

3. The video corresponded in all respects with the officer's narrative.

4. The Show of Force was justifiable because of the report that the man was armed with a shotgun (it appears that none was located).

The monitoring team has only raised the issue of handcuffing without backup as a general question of tactical safety. Additionally, the monitoring team is fully aware of APD's staffing crisis that logically creates more situations in which backup is delayed or unavailable. Consequently, APD must remain watchful that field-level impacts of its staffing crisis don't insidiously erode the adherence to sound officer safety practices. This is a critical issue that warrants constant scrutiny to assure that proper tradeoffs are being made.

USE OF FORCE TASER CASES

In preparation of IMR-3 the monitoring team requested data and case numbers for all uses of force, stratified by type, between December 1, 2015, and February 15, 2016, separated by type of force. The monitoring team decided to focus its attention on Taser related cases for three specific reasons: 1) To develop a baseline understanding of the quality of supervisory force investigations related to Taser use; 2) It was expected that other types of force would be used within those cases and could be evaluated; and 3) The CASA prominently included Paragraphs specifically related to Taser use. The

monitoring team learned that there were a total of nine Taser cases reported during the afore-mentioned period of time[14]. From that total three cases were selected for review that represented a 33% sampling rate. Below is a synopsis of cases and monitoring team comments of the cases.

Case #1

Synopsis

APD reports reviewed by the monitoring team indicated that while on patrol an APD sergeant was flagged down by a private citizen and provided information concerning a possible intoxicated driver. At about the same time a "BOLO" (Be On the Look Out) was broadcast over APD radio with information similar to what the citizen provided. The sergeant searched the area and located the suspect vehicle. He documented his observations and how the vehicle was being operated, specifically, that the vehicle was traveling approximately 5-10 miles per hour, swerving from lane to lane and nearly colliding with other vehicles. The officer activated his emergency lights, his PA system, and siren in an attempt to stop the vehicle. The driver of the vehicle failed to stop, continued into a residential neighborhood and pulled into the driveway of home. Based on the written documentation it is unclear whether the sergeant knew by this time that the subject had pulled into his own driveway. However, later in the encounter when communicating with APD dispatch the sergeant reported the "….subject then ran inside of his house and is barricaded," which suggested that the sergeant believed at the time the suspect was at his own home.

The monitoring team reviewed the sergeant's lapel video, which begins shortly before the suspect arrived home. The sergeant is seen approaching the suspect vehicle, now stopped in the driveway, with his firearm drawn and pointed at the suspect. At the same time he issued several commands for the subject to put his hands up and turn around. The sergeant is never heard issuing a command for the subject to remove his hands from his pockets, however, in his written report he indicated the subject "…placed his hands inside his jacket." (Note – Whether the suspect put his hands into his jacket pocket is inconclusive based on video footage, though the suspect's left hand is briefly seen lowering after the officer asked him to put his hands up and interlock his fingers.) The sergeant reported, "…I began to fear the subject was armed, attempting to gain an advantage on (sic) surprise." On the lapel video the subject is heard saying he was going inside (the house), and then is seen calmly walking away from the sergeant, through his garage and into the house. As he entered the house he closed the interior door behind him and pushed the garage door opener, briefly trapping the sergeant inside the garage. The sergeant documented in his report, "…the subject began to run into his garage,"

[14] This number seems remarkably low, and will be re-visited by hand-counting relevant force reports in the fourth report.

which isn't supported by the lapel video. Despite the sergeant documenting his concern that the subject was "armed", as these events unfolded he transitioned down in terms of a force option to his Taser, and fired it at the suspect as he walked away. (Note – The Taser missed the suspect) The sergeant then exited the garage and called for a lieutenant to respond to the scene.

The monitoring team compared the written reports and videos associated with this case and found several inconsistencies and deficiencies that were either missed or ignored at each supervisory level of review. The supervisory force investigation was deficient in terms of the quality, content and analysis of the justification for both the uses and shows of force by the sergeant and others. The force investigation also failed to meet several of the requirements of the CASA. The monitoring team believes the supervisory force investigation, and subsequent command review, failed to ensure a thorough and objective assessment of the event was conducted. Examples include, but are not limited to:

1. The officer's lapel video shows the officer exiting his patrol vehicle, immediately drawing his firearm and pointing it at the suspect, while at the same time issuing commands. However, the sergeant documented in his report he kept his weapon at a "low ready at all times during the (following) events." An APD lieutenant responded to the scene, completed a use of force investigation and concluded the sergeant "…drew firearm his (sic) he had his arm extended, but the barrel was pointed down and he did not acquire a sight picture." That conclusion is not supported by the sergeant's lapel video, though at one point the barrel did point down. Neither the sergeant nor lieutenant documented a Show of Force occurred (by the sergeant), nor did they provide sufficient justification that it was objectively reasonable under the circumstances. Likewise, the command review failed to identify this issue.

2. The monitoring team reviewed an APD lesson plan entitled "Handgun Training and Certification," authored by the Advanced Training Unit (Provided during this reporting period, but undated). In the section "Handgun Presentation" the proper procedure for a low-ready position of a firearm is discussed on page 17, paragraph 7. The lesson plan procedure for a "low-ready" position is described as follows, "If the officer is drawing to challenge, or preparing for the possibility of imminent threat, the handgun should be presented to a "Low Ready" position. (Break) "…instead of punching the handgun toward a target, the handgun is driven forward and downward at an approximate 45 degree angle (below the level of the feet of the target, or so the muzzle does not cover anything you have made the decision to destroy) – Emphasis Added. The sergeant's report that he was in a "low-ready" position is inconsistent not only with what is depicted on the lapel video, but also with academy training (this is a prime example of the report not matching the video, something that, currently, APD supervisors seem not to

note or look for in their review of officers' actions and reports. The monitoring team consider this a major issue, in need of immediate remedial action.

3. Early in the event the suspect began to walk away and into his garage, against the commands of the sergeant, at which time the sergeant transitioned to his Taser and fired it at the suspect from behind. Based on the totality of circumstances, and observations that can be seen on the lapel videos, in the monitoring team's opinion that level of force did not appear proportionate to the circumstances and level of resistance that was encountered.

4. The sergeant documented that the suspect "…began to run into his garage," which is inconsistent with the lapel video footage.

5. The lieutenant who conducted the Use of Force investigation failed to properly document and address two separate instances of a Show of Force by the sergeant. (Note – A second instance occurred later in the event when the suspect exited his house.)

6. Following the arrest of the subject, which occurred in the garage of his home, several APD officers entered and searched the interior of the suspect's house under the guise they were "clearing and securing" the residence, or conducting a "protective sweep." Based on the totality of circumstances it is entirely unclear what the purpose and legal justification was for the search of the house in this case. Statements by the suspect and a neighbor prior to the search indicated that the suspect lived alone at the house. There appears to have been no supervisory or command response to these apparent violations and possible untruthfulness.

7. The command level review of this case appeared perfunctory, and failed to critically assess the quality and content of the supervisory force investigation.

This case presented several concerns to the monitoring team, including an insufficient justification that objective reasonableness existed for the use of a Taser and the sergeant's Show of Force at the onset of the event. There was also no assessment at any supervisory level as to whether the sergeant used the minimum amount of force necessary under the circumstances. The suspect in this case was uncooperative in a manner common with someone who is intoxicated. In the opinion of the monitoring team the officer's immediate show of force seemed unreasonable under the totality of circumstances, and may have actually escalated the situation.

This case will be followed up with APD by the monitoring team during the next site visit.

Case #2

Synopsis

The monitoring team reviewed reports prepared by the primary officer involved in the incident, his lapel video and the supervisory force investigation, including subsequent command reviews. An APD officer reported he observed a vehicle being operated in a dangerous manner, so he decided to conduct a traffic stop. The driver of the vehicle did not immediately comply and continued to drive a short distance through a neighborhood and then came to an abrupt stop in front of a residence. The driver immediately exited the vehicle, walked quickly across the front yard (through snow) toward the front door of the home, and the officer followed. Though the audio portion of the officer's lapel camera had not yet engaged, the video clearly showed the subject was yelling at the officer, and stood with an aggressive stance.

As the audio engaged the level of verbal abuse cast toward the officer by the subject was significant. There was a loud and constant barrage of threats and cursing, and in spite of the officer's attempts to calm the subject the abuse continued. The suspect's aggressive tone, posture and movements would have reasonably led the officer to conclude the suspect posed a threat. Therefore, based on the totality of circumstances, in the opinion of the monitoring team, the officer's decision to exhibit and point his issued Taser at the subject was objectively reasonable and proportional to the threat. The subject was asked to calm down and turn around numerous times; likewise, the officer gave numerous warnings that he would be "Tased" if he did not calm down. During the incident a woman opened the front door (close to where the subject was standing), but the officer asked her go back inside and lock the door, which she did. Though the officer documented that the woman locked door, it is unclear after reviewing the officer's lapel video if the door was actually locked as well as closed.

The subject's abusive and aggressive behavior continued, when he turned suddenly toward the front door of the house in an obvious attempt to open it. In the video the subject's right hand can be seen on the door handle as the officer deployed his Taser. The subject fell to the ground and was taken into custody without the use of any additional type of force. In the opinion of the monitoring team the decision to deploy the Taser was objectively reasonable and the minimum amount of force necessary under the totality of circumstances. Throughout the event the officer remained calm and professional, and gave updates and made requests to APD dispatch.

The monitoring team reviewed the documentation associated with this event and noted that the quality of the supervisory reports and analysis were relatively better than others. It is typically impossible to distinguish between what a supervisor observes or actions he/she takes by simply reviewing their reports.

In this case the sergeant made that distinction easier by his writing style. Also, the sergeant went beyond the event at hand and was able to collect reports from a similar event, involving the same subject, which occurred several weeks earlier. That additional effort and initiative by the sergeant to assemble a complete record of relevant materials is commendable and should be emulated. The lieutenant who reviewed the case provided a meaningful analysis, but the command level documentation appeared perfunctory at best and failed to provide sufficient analysis. Finally, while the officer's use of the Taser appeared justified, and his report was sufficient, his report did not articulate well the seriousness and intensity of the situation he faced. Though it does not change the assessment of the officer's actions, it would have been to his benefit to better articulate the event.

The following additional observations were made of the case, some of which will obviously require follow up on the part of APD:

1. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Notwithstanding previous comments by the monitoring team that directing CASA compliance by way of a memorandum would be ineffective, the monitoring teams is under the impression that order stood at the time of this event.

2. The Use of Force Data Report prepared by the responding sergeant indicated that the duration of the Taser deployment was 30 seconds, which would have constituted a serious use of force (CASA Paragraph 12qq) and required a response by APD Internal Affairs to investigate the event. That Internal Affairs response did not occur. The initial assessment and proper classification of force by a responding field supervisor is critical, therefore, this is seen as an essential issue by the monitoring team. This is especially concerning because the issue was not identified and rectified by subsequent internal (managerial) reviews.

3. The sergeant failed to record interviews with the officer and a witness.

4. The sergeant did not collect sufficient personal information from the witnesses.

5. Once the officer had the suspect handcuffed, for a period of time he was left in a prone position at the exterior of the front door of the home. Other officers arrived and the suspect remained on the ground awaiting EMS. At some point a male, presumably another occupant of the home, opened and stood in the doorway of the home and engaged in a conversation with the officers. The suspect under arrest clearly became agitated and ultimately engaged in a brief, but heated, conversation with the male. This was

counterproductive to an already volatile situation, and worked against any de-escalation of the suspect's demeanor the officers could have hoped to achieve.

This case will be followed up with APD by the monitoring team during the next site visit.

Case #3

Synopsis

The monitoring team reviewed APD reports, videos and the supervisory force investigation in this case. Two APD officers, one of whom was a sergeant, responded to an apartment complex to a call of a disorderly person who reportedly opened another resident's door and asked if they wanted to have sex. When they arrived the officers met with a security officer and the resident whose apartment was approached by the suspect, and confirmed the story. They also learned that the same subject had been creating problems at the complex over the previous several days. They approached the suspect's apartment and spoke with him. The suspect was initially cordial but quickly became loud, argumentative and belligerent toward the officers. Over the next several minutes the officers made several attempts to calm the suspect down, and eventually warned him (on several occasions) that if he did not quiet down he would be arrested for disorderly conduct. On more than one occasion the suspect went back into his apartment, only to come back outside again and continue to yell. At one point the suspect emerged from the apartment with his cat and held it up toward the officers. Reportedly, the cat became agitated and was exposing its claws. The suspect reportedly walked toward the sergeant, and both officers un-holstered their Tasers and warned him to stop and back up, but did not deploy their Taser at that moment. The sergeant was able to grab the suspect's arm and the cat was released, at which time the two officers attempted to make an arrest. Reportedly, the suspect resisted and in order to effect the arrest the officer used her Taser in "drive stun" mode against the suspects back to gain compliance and complete the arrest.

The monitoring team identified several issues related to this case:

1. CASA Paragraph 28 states, "ECW's shall not be used solely in drive-stun mode as a pain compliance technique. ECW's may be used in drive-stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject, so that officers can consider another force option." At the time of this event SOP 2-53 Electronic Control Weapon (ECW) was under revision.

2. Parenthetically, during its last site visit in March 2016, the monitoring team had the opportunity to sit in on a block of instruction concerning ECW use. The academy instructor (understood to be one of APD's Use of Force experts) made clear that the use of an ECW in the fashion used in this case would only make a subject move around from the pain, not necessarily comply with an officer's orders. This is significant for two reasons: 1) The ECW policy is now in effect and incorporates the specific language of the CASA; 2) The instructor's comments were true with or without a standing policy and should have been considered by the supervisor, chain of command and FRB when evaluating this case.

3. A review of officer lapel videos clearly shows that the sergeant and officer involved in the event failed to control the situation and that failure directly contributed to the need to use force. On at least two occasions, after indicating to the suspect that he was "going to jail" they allowed the suspect to reenter his apartment and close the door on them. It was only after the officers lost control of the situation that the suspect exited his apartment with his cat in his hands. While obscured, it appeared that the suspect did approach the sergeant with the cat extended out at the sergeant. To that point the officers did not conduct themselves in a manner suggesting they were in fear for their safety. The Taser was used only after the suspect dropped the cat and the officers were attempting to handcuff him.

4. The sergeant's lapel video lens was covered for almost the entire event, therefore, only the audio portion of the arrest of the suspect could be reviewed. The lack of video was addressed during a Command Review on a Department memo, which is an important step in accountability. However, the memo provides no perspective as to whether this failure on the part of the sergeant is a first time issue, or a reoccurring offense. That is an important distinction to make for officer accountability and future disciplinary steps that may be taken if the offense reoccurs. APD's capability to capture and track these types of offenses across organizational units will be critical to proper accountability.

5. The Command Review identified a second issue not related to the force that was also captured in a departmental memo. An officer who responded to the scene to assist improperly tagged his lapel video recordings. The Commander indicated that the officer was "counseled…and training was provided…" However, the manner in which the "training" was conducted and what records resulted are not documented in the memo for the monitoring team to evaluate. Again, properly recording and archiving these supervisory activities is crucial. These records may exist, but they were not presented as part of the force investigation file the monitoring team reviewed.

6. A lieutenant responded to the scene to conduct the use of force investigation and accompanying Use of Force Data Report. The report documented

specific information, but as is typical with APD reports, it is impossible to distinguish what were actual observations by the lieutenant. Likewise, facts are presented concerning the force that was used, and the circumstances preceding the force, but not his analysis of those facts. He only provided his conclusion that the force was justified.

7. There is no indication that the lieutenant who investigated the force separated and interviewed the officer and sergeant involved in the event while still at the scene. On the lieutenant's lapel video (two were provided) the officer who applied the Taser is spoken with briefly, but the lieutenant failed to properly conduct an interview to obtain facts that would justify the force. The sergeant is never interviewed on the lapel video footage provided to the monitoring team.

8. The lieutenant failed to complete and document a canvass for witnesses despite the fact this was in an apartment complex. Two witnesses were interviewed, but no reported additional attempts were made. The lieutenant failed to include contact information for the witnesses in his report.

9. The lieutenant failed to identify the issues noted during the Command Review.

10. The Command Review was perfunctory and failed to properly document and analyze the facts and circumstances that led to the use of the Taser against the suspect in this case.

SERIOUS USES OF FORCE INVESTIGATED OUTSIDE IA

Paragraph 60 of the CASA requires that in any instance where an APD officer used a serious use of force, as defined in Paragraph 12qq, that event needs to be investigated by members of Internal Affairs. During this monitoring period the monitoring team made a specific request for copies of any use of force case(s) that occurred and were investigated outside of Internal Affairs. As a result of our request, two cases were submitted for review. Properly categorizing force that is used by an APD officer is an essential element for the proper investigation of force events, and as a consequence is essential to achieve compliance with the CASA. The two cases provided to the monitoring team were as follow:

Case #1

Synopsis

While patrolling in the area of a Walmart, two officers (riding together) observed a vehicle drive through some landscaping. They attempted to conduct a traffic stop, but the vehicle failed to stop and drove away. After a pursuit the driver

apparently stopped the vehicle, exited and fled on foot through an alley in a trailer park. An officer gave chase, catching him after he jumped a wall and fell to the ground. The supervisory force investigation reported that the officer holstered his weapon "…once he determined his (the suspect's) hands were free." He also reported that the suspect initially refused to cooperate and give his right arm. Officers reportedly had to pull the suspect's arms from under him to get him handcuffed. The suspect was ultimately transported to the hospital and a short time later the supervisor reportedly was told by one of the officers that the suspect had a broken arm (though he never indicates which arm). The review by the officer's lieutenant and commander also failed to document which arm was broken.

1. The fact that the suspect suffered a broken arm during the arrest elevated this case to a serious use of force, which should have been referred to IA.

2. It is important to note here that the same officer involved in this incident was involved in the second incident reported below. Also, the same officer was involved in the case reported on in Paragraph 76, where CIRT identified an unreported knee strike to a suspect's head. (The monitoring team has numerous concerns with that case, and will follow up with APD IA during its next site visit. The three cases that involved this officer all occurred during a five-week period of time. It is unclear what proactive steps APD took to investigate these cases, and whether they attempted to determine if other similar events occurred involving this officer that were not specifically reviewed by the monitoring team.

3. The documentation in the supervisory force investigation and subsequent Command reviews is extraordinarily poor.

This case will be followed up with APD IA. It is our understanding that subsequent to the initial investigation IA became aware of this case and initiated an investigation. If accurate, the monitoring team will inquire how IA became aware of the case, when they learned about the situation and what the status of their investigation is during the next site visit.

Case #2

Synopsis

A review of the Use of Force Data report prepared by a supervisor indicated that two APD officers were on patrol when they encountered a vehicle with a stolen license plate. They observed a male subject enter the vehicle and drive away. They followed the vehicle until it pulled into a driveway and stopped. The driver of the vehicle (exited the vehicle and) fled on foot with both officers giving chase. The sergeant reported, "Both officers caught up to the driver simultaneously and tackled him to the ground." He also reported that both

officers landed on top of the suspect. The suspect reportedly refused to produce his hands to be handcuffed, at which time one of the officers used an open hand strike to the suspect's elbow to gain control. The suspect complained of shoulder pain. He was later treated at a hospital and it was determined he had a broken collar bone.

The supervisor interviewed the suspect at the hospital, and he claimed that the officers attempted to run him over with their car, tackled him and beat him. He told the supervisor that his broken collar bone was a result of being hit by the officers, not being tackled. **It is unclear if the supervisor initiated an internal affairs complaint as a result of the suspect's statements**.

The supervisor reported that he contacted the Force Investigation Team (FIT) and spoke with a sergeant because the event included a serious injury to the suspect. The FIT supervisor advised that FIT would not be responding since the initial investigation was complete.

1. This case was investigated by the same supervisor that investigated the case described above. The quality of the case review by the lieutenant and Commanding Officer was poorly done and failed to provide an analysis of the justification of the force used by the officers. They also failed to challenge the poor quality of the investigation by the supervisor. For instance, one of the officers wrote in their report that he "…used one knee strike distraction maneuver to the left side of (the suspect's) torso in order to gain control of his arms…" This "distraction maneuver" is not mentioned or addressed at any level of the investigation, nor does it appear to be contained in any formal training on use of force reviewed by the monitoring team.

2. Once again, the quality of the investigation conducted by the supervisor was extraordinarily poor, and he failed to complete and/or document several supervisory responsibilities related to conducting thorough and objective force investigations.

3. The quality of the reports prepared by the officers is insufficient and those reports fail to properly document their justification for each type of force that they used.

4. Like other cases reviewed by the monitoring team, an officer in this case used a euphemistic term ("distraction maneuver") when describing an action they took to gain compliance with a resisting suspect. These terms will be investigated further with APD use of force trainers during the monitoring team's next site visit. Actually, the "distraction maneuver" was a knee strike to the torso, and should have simply been reported as such.

Results

With the recent approval of APD SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements (January 2016), APD is now in Primary Compliance on the requirements in Paragraph 46. As of this writing, APD is in the final stage of designing and developing a comprehensive 24-hour curriculum on supervisory use of force investigations. It plans to make the first presentation of that curriculum in May 2016. Based upon early assessments of course content and documentation the curriculum needed revisions, but will eventually provide the infrastructure to transform the approved policy into effective training with a high rate-of-transfer to field practice.

The monitoring team continues to review and report on force cases that contain problematic issues, and on supervisory force investigations that are poor in quality and deficient in terms of substance. While organizational focus on the conduct of officers who interact with the public is essential, it is equally important that oversight of those activities be critically evaluated. It is unclear what remedial steps, counseling or disciplinary action APD has taken with respect to supervisors and commanders who are submitting force investigations with substantial failures. Organizations that fail to properly collect and analyze information are extremely vulnerable to risk and criticism, and APD appears to be missing critical clues that point to problematic behaviors that are easily being identified by the monitoring team.

For instance, in IMR-2 and IMR-3 the monitoring team has reported on several cases relating to an officer's use of force, and critical failures in Command level reviews. For three cases reported on in this report ---including the two serious uses of force reported above (broken arm and a broken collar bone), and an unreported knee strike to a suspect's head (reported in Paragraph 76) --- one officer was involved in all three events.[15] Likewise, one specific APD lieutenant has had some investigative or reviewing responsibility in five separate use of force cases that the monitoring team has determined to be problematic, and the same Commanding Officer has reviewed four of those cases. The monitoring team will follow up with APD during the next site visit to see what, if anything, they have done to look further into the cases that may have been reported on in this report.

The issues seen by the monitoring team extend beyond the basic failure of APD to implement use of force policies in a timely manner, and deliver new training on those policies. The problem is more fundamental. It's critical to APD's success that professionalism and true accountability are staples throughout its

[15] We note that all three cases occurred within five weeks of one another.

organizational culture. In the view of the monitoring team, until such time that APD supervisors and commanders are held to that higher standard, APD will undoubtedly be the recipient of continued feedback that is critical of their field activities and force investigations. New policies are "out." That is the easy step. APD needs to ensure that they are trained, understood, implemented, and "supervised" across the law enforcement functions exercised by the department.

APD should continue to improve its investigative protocols and practices based, in part, upon the extensive comments that are provided within monitoring reports. Such feedback should be an integral part, among other sources, of any professional, comprehensive training needs assessment. The monitoring team will continue to assess the full spectrum of responses to officer use of force. APD should do the same.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.34 Assessing Compliance with Paragraph 47: Quality of Supervisory Force Investigations

Paragraph 47 stipulates:

The quality of supervisory force investigations shall be taken into account in the performance evaluations of the officers performing such reviews and investigations.

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance to assist APD in developing force policies that would meet the provisions of the CASA.

Results

This requirement is included in approved APD SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements, which moved the Department into Primary Compliance. At some future date, the monitoring team will assess whether this provision is being reflected in performance reviews

when a supervisor continues to conduct sub-standard use of force investigations[16].

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.35 Assessing Compliance with Paragraph 48: Force Classification Procedures

Paragraph 48 stipulates:

APD agrees to develop and implement force classification procedures that include at least two categories or types of force that will determine the force investigation required. The categories or types of force shall be based on the level of force used and the risk of injury or actual injury from the use of force. The goal is to optimize APD's supervisory and investigative resources on uses of force. As set forth in Paragraphs 81-85 below, APD shall continue to participate in the Multi-Agency Task Force, pursuant to its Memorandum of Understanding, in order to conduct criminal investigations of at least the following types of force or incidents: (a) officer-involved shootings; (b) serious uses of force as defined by the Memorandum of Understanding; (c) in-custody deaths; and (d) other incidents resulting in death at the discretion of the Chief.

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

Approved APD SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements included all of the requirements set forth in Paragraph 48, which placed the Department in Primary Compliance. Although APD has adopted the required two-level classification procedures, the monitoring team again notes that the taxonomy does not adequately represent the actual levels of reporting and investigation observed in APD's system. As we noted in our previous report, APD in fact uses five levels to classify use of force incidents and the corresponding investigative responses. These are in ascending order: Non-reportable Force; Show of Force; Supervisory Use of

[16] The issues noted above regarding supervisory reviews of APD officers' use of force are emblematic of the types of supervisory behavior we would expect to be reflected in performance evaluations.

Force Investigations (this is an organizational response and not a level of force; APD should consider renaming it for the sake of consistency); Serious Uses of Force; and OIS/In-custody Deaths. APD has also, independent of CASA requirements, decided to conduct dual investigations ---criminal and administrative--- for all cases at the level of Serious Uses of Force, even where there is no apparent criminal conduct on the part of the officer.

We have suggested that APD adopt a five-level classification scheme in its proposed 24-hour Supervisory Use of Force Investigations Curriculum for the sake of completeness and clarity. We also provided a sample graphic that displays a five-level classification scheme in ascending order, along with the corresponding investigative responses. The monitoring team also continues to work closely with the academy Major and her staff to refine the 24-hour course to ensure that it corresponds closely with both APD policy and CASA substantive requirements. The initial presentation of that curriculum was tentatively set for May 2016.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.36 Assessing Compliance with Paragraph 49

Paragraph 49 stipulates:

Under the force classification procedures, serious uses of force shall be investigated by the Internal Affairs Bureau, as described below. When a serious use of force or other incident is under criminal investigation by the Multi-Agency Task Force, APD's Internal Affairs Bureau will conduct the administrative investigation. Pursuant to its Memorandum of Understanding, the Multi-Agency Task Force shall periodically share information and coordinate with the Internal Affairs Bureau, as appropriate and in accordance with applicable laws, to ensure timely and thorough administrative investigations of serious uses of force. Uses of force that do not rise to the level of serious uses of force or that do not indicate apparent criminal conduct by an officer will be reviewed by the chain of command of the officer using force.

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

During this period the monitor approved APD SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements. That SOP includes all of the requirements set forth in Paragraph 49, which places the Department in Primary Compliance. During its upcoming June 2016 site visit, the monitoring team's tentative work plan includes an initial review of Multi-Agency Task Force (MATF) policy, procedures, and operations.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.37 Assessing Compliance with Paragraph 50: Supervisory Response to Use of Force

Paragraph 50 stipulates:

"The supervisor of an officer using force shall respond to the scene of the use of force to initiate the force investigation and ensure that the use of force is classified according to APD's force classification procedures. For serious uses of force, the supervisor shall ensure that the Internal Affairs Bureau is immediately notified and dispatched to the scene of the incident."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

Approved APD SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements includes all of the requirements set forth in Paragraph 50, which places the Department in Primary Compliance. Both the requirements in this paragraph are included in the Department's 24-hour Supervisory Use of Force Investigations Curriculum, which began in May 2016.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.38 Assessing Compliance with Paragraph 51: Self Review of Use of Force

Paragraph 51 stipulates

"A supervisor who was involved in a reportable use of force, including by participating in or ordering the force being reviewed, shall not review the incident or Use of Force Reports for approval."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

The requirement set forth in Paragraph 51 is included in recently approved APD SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements. The monitoring team has found several violations of this requirement in its prior and current case reviews. These have been discussed with APD staff for their learning value as APD transitions from the policy to the training and operational stages of reform.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.39 Assessing Compliance with Paragraph 52: Supervisory Force Review

Paragraph 52 stipulates:

"For all supervisory investigations of uses of force, the supervisor shall:

a) Respond to the scene, examine all personnel and subjects of use of force for injuries, interview the subject(s) for complaints of pain after advising the subject(s) of his or her rights, and ensure that the officers and/or subject(s) receive medical attention, if applicable

b) Identify and collect all relevant evidence and evaluate that evidence to determine whether the use of force was consistent with APD policy and identifies any policy, training, tactical, or equipment concerns;

c) Ensure that all evidence to establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;

d) Ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses are to be encouraged to provide and sign a written statement in their own words;

e) Ensure that all officers witnessing a use of force incident by

another officer provide a use of force narrative of the facts leading to the use of force;

f) Separate all officers involved in a use of force incident until each has been interviewed and never conduct group interviews of these officers;

g) Ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;

h) Conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask officers or other witnesses any questions that may suggest legal justifications for the officers' conduct;

i) Utilize on-body recording systems to record all interviews;

j) Review all use of force narratives and ensure that all Use of Force Reports include the information required by this Agreement and APD policy;

k) Consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible;

l) Make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force described by the officer and any injuries to personnel or subjects;

m) Obtain a unique tracking number; and

n) Where a supervisor determines that there may have been misconduct in the use of force, immediately notify the Area Commander and the Internal Affairs Bureau."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

APD is now in Primary Compliance on the requirements in Paragraph 52 with approval of SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements. APD's Internal Affairs Section has been instrumental in developing two job aides or checklists to support the accomplishment of major reporting and investigation tasks. The monitoring

team reviewed copies of the two job aides and found both to be well done, comprehensive, and valuable tools that will contribute to quality control. They are prime examples of internal subject matter experts playing central roles in the Department's efforts to implement its reform agenda. The checklists, in effect, model what performance excellence looks like, serve as a quality control measure and help structure force reporting narratives.

APD is also in the final stage of developing a 24-hour Curriculum on Supervisory Use of Force Investigations, which began in May 2016. The monitoring team continues to work closely with training staff to ensure that the instructional content is congruent with CASA and SOP 2-54 requirements.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.40 Assessing Compliance with Paragraph 53: Force Review Timelines

Paragraph 53 stipulates:

Each supervisor shall complete and document a supervisory force investigation Force Report within 72 hours of completing the on-scene investigation. Any extension of this 72-hour deadline must be authorized by a Commander. This Report shall include:

a) all written or recorded use of force narratives or statements provided by personnel or others;

b) documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of the witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;

c) the names of all other APD employees witnessing the use of force;

d) the supervisor's narrative evaluating the use of force, based on the supervisor's analysis of the evidence gathered, including a determination of whether the officer's actions complied with APD policy and state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options; and

e) documentation that additional issues of concern not related to the use of force incident have been identified and addressed by separate memorandum.

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

APD is now in Primary Compliance on the requirements in Paragraph 53 with approval of SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements. APD is also in the final stage of developing a 24-hour Curriculum on Supervisory Use of Force Investigations, which is tentatively scheduled to start in May 2016. The monitoring team continues to work closely with training staff to ensure that the instructional content is congruent with CASA and SOP 2-54 requirements.

Based upon our continuing reviews of use of force investigations, it is clear to the monitoring team that the ability and willingness of investigative supervisors and subsequent chain of command reviewers to conduct objective, thorough, and forthright investigations is essential to APD's success. Yet, we repeatedly find significant issues in our reviews----including a questionable protective sweep, officers proceeding alone in situations where backup is advisable, apparent policy violations, major discrepancies between narrative accounts and video recordings, unprofessional verbal behavior, and incomplete legal analyses---that investigators and reviewers have missed, ignored, or rationalized (e.g., the use of term "tactical profanity"). As importantly, we also found numerous instances of officers exercising admirable restraint, using de-escalation techniques, and resolving tense, conflicted situations with the minimum amount of force necessary. We believe that recognizing outstanding work with a "well done" is as important as identifying and correcting policy violations and performance issues. As we've said repeatedly, Show of Force and Supervisory Use of Force Investigations are crucial opportunities to accomplish important objectives (reinforcement, recognition, and remediation) and APD currently squanders a significant measure of them.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.41 Assessing Compliance with Paragraph 54: Command Review of Force

Paragraph 54 stipulates:

Upon completion of the Use of Force Report, investigating supervisor shall forward the report through his or her chain of command to the Commander, who shall review the report to ensure that it is complete and that the findings are supported using the preponderance of the evidence standard. The Commander shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings.

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

APD is now in Primary Compliance on the requirements in Paragraph 53 with approval of SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements. APD is also in the final stage of developing a 24-hour Curriculum on Supervisory Use of Force Investigations, which began in May 2016. The monitoring team continues to work closely with training staff to ensure that the instructional content is congruent with CASA and SOP 2-54 requirements.

Based upon our reviews to date, we find little evidence that command-level reviewers are fully engaged in the oversight-accountability process. In only one instance did the monitoring team find a reviewer prepared a memo outlining his concerns and intention to take corrective action. In several others the reviewers made brief margin comments that were not particularly substantive. Reviewers in the majority of cases simply added their signature to sometimes seriously deficient investigations. This should be the APD's next focus in implementation of a meaningful use of force strategy for the organization.

On the plus side, we have seen increasing levels of engagement in command-level reviews conducted in the Force Review Board (FRB) process and in After-action Reviews, particularly by Special Operations commanders. These are important measures of progress and indicators of APD's commitment to conduct professional, high-quality investigations and chain of command reviews. The FRB response to these issues has been, in effect, inappropriate leading to the monitor not assigning an in-compliance finding to secondary and operational compliance, which are not due until the monitor's Fourth Report. Primary

compliance, however, is attained on policy which empowers the FRB to investigate effectively events such as these.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.42 Assessing Compliance with Paragraph 55: Force Review Evidence Standard

Paragraph 55 stipulates:

"Where the findings of the Use of Force Report are not supported by a preponderance of the evidence, the supervisor's chain of command shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation. The supervisor's superior shall take appropriate action to address the inadequately supported determination and any investigative deficiencies that led to it. Commanders shall be responsible for the accuracy and completeness of Use of Force Reports prepared by supervisors under their command. "

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

APD is now in Primary Compliance on the requirements in Paragraph 55 with approval of SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements. APD is also in the final stage of developing a 24-hour Curriculum on Supervisory Use of Force Investigations, which is tentatively scheduled to start in May 2016. The monitoring team continues to work closely with training staff to ensure that the instructional content is congruent with CASA and SOP 2-54 requirements.

The monitoring team found no instances in its past or current reviews of force investigations in which a chain of command reviewer questioned a supervisor's findings based upon an "inadequately supported determination", as required in Paragraph 55. In several cases we found obvious legal concerns that were glossed over in the primary investigation and then overlooked in the subsequent chain of command reviews.

Because of the central role played by supervisors and command-level reviewers

in the oversight-accountability process, the monitoring team intends to focus on this issue during the next reporting period. We will also assess whether this issue is being properly addressed in APD's present training program.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.43 Assessing Compliance with Paragraph 56: Force Review Quality

Paragraph 56 stipulates:

"Where a supervisor repeatedly conducts deficient supervisory force investigations, the supervisor shall receive the appropriate corrective and/or disciplinary action, including training, demotion, and/or removal from a supervisory position in accordance with performance evaluation procedures and consistent with any existing collective bargaining agreements, personnel rules, Labor Management Relations Ordinance, Merit System Ordinance, regulations, or administrative rules. Whenever a supervisor or Commander finds evidence of a use of force indicating apparent criminal conduct by an officer, the supervisor or Commander shall suspend the supervisory force investigation immediately and notify the Internal Affairs Bureau and the Chief. The Internal Affairs Bureau shall immediately take over the administrative."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

With the monitor's approval of SOP 2-54 APD has moved into Primary Compliance with Paragraph 56. The provisions of this Paragraph are contained in Section 2-52-4-D. The current use of force evaluation system is too new to include artifacts of "repeated deficient supervisory force investigations." More data over a longer period of time will be required to assess the "repeatedly" element of this paragraph. The monitoring team also believes that this assessment should be deferred until sufficient experience accumulates to assess the impact of the 24-hour Supervisory Use of Force Investigations Curriculum on supervisory performance. The monitoring team has provided substantive feedback in each IMR to serve as an alarm that deficient supervisory investigations and command reviews are an issue.

Primary: **In Compliance**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.44 Assessing Compliance with Paragraph 57: Force Review Board

Paragraph 57 stipulates that:

"When the Commander finds that the supervisory force investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Force Review Board. The Force Review Board shall review the supervisory force investigation to ensure that it is complete and that the findings are supported by the evidence. The Force Review Board shall ensure that the investigation file is forwarded to the Internal Affairs Bureau for recordkeeping."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

APD is now in Primary Compliance on the requirements in Paragraph 57 with approval of SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements.

A requirement of Paragraph 78 is that the Force Review Board (FRB) "…review a sample of supervisory force investigations that have been completed and approved by Commanders every 90 days to ensure that the investigations are complete and timely and that the findings are supported by a preponderance of the evidence…." Hence, this language appears to conflict with the language in Paragraph 57, which requires the Commander who approves a supervisory force investigation to forward it to the FRB for review. No mention is made of a sample, but the FRB has (based upon workload considerations) chosen to follow the language in Paragraph 78, which speaks directly to FRB responsibilities. We find no reason to question that approach.

Accordingly, the FRB sampled and reported on four Supervisory Use of Force investigations (out of a total of 40) in its 3rd Quarter Report, which we reviewed in IMR-2. In that review we found that the FRB was steadily improving its procedures and issuing reports that were thorough and objective, though important issues were still being overlooked in some cases by command-level reviewers and FRB members. We also noted that the FRB has created a structured evaluation form to support the Board's case reviews and document member inputs.

Primary: **In Compliance**

Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.45 Assessing Compliance with Paragraph 58: Reassignment of Force Review

Paragraph 58 stipulates that:

"At the discretion of the Chief, a supervisory force investigation may be assigned or re-assigned to another supervisor, whether within or outside of the Command in which the incident occurred, or may be returned to the original supervisor for further investigation or analysis. This assignment or re-assignment shall be explained in writing."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

APD is now in Primary Compliance on the requirements in Paragraph 58 with the monitor's approval of SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements. The monitoring team did not review compliance with these requirements during the current reporting cycle.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.46 Assessing Compliance with Paragraph 59: Abuse of Force Discipline

Paragraph 59 stipulates:

"Where, after a supervisory force investigation, a use of force is found to violate policy, the Chief shall direct and ensure appropriate discipline and/or corrective action. Where the use of force indicates policy, training, tactical, or equipment concerns, the Chief shall also ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved."

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance in order for APD to also develop force policies that would meet the provisions of the CASA.

Results

With the monitor's approval of SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements, APD is now in Primary Compliance with the provisions of Paragraph 59. The monitor cannot assess further compliance until it reviews the supervisory use of force training scheduled for May, 2016.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.47 Assessing Compliance with Paragraph 60: IAB Force Review

Paragraphs 60 through 77 encompass a set of requirements relating to the policy, procedures, and practices of APD's Internal Affairs Division (IAD), which is a subordinate unit in the Professional Accountability Bureau (PAB). IAD is composed of two subordinate units: Internal Affairs Section and Critical Incident Review Team (CIRT) Unit. The Investigative Response Team (IRT) Unit is a subordinate unit within the Criminal Investigations Division (CID). CIRT handles all Administrative Investigations and focuses specifically on "lessons learned" from its case reviews. IAS investigates all internal complaints involving officers and employees. IRT handles all Criminal Investigations of Officer-involved Shootings (OIS) and In-custody Deaths, working closely with the Multi-agency Task Force (MATF). The monitoring team has several general observations about the CASA requirements set forth in these paragraphs.

1. APD SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. Upon approval, APD will then be in Primary Compliance on all of the policy-related requirements in Paragraphs 60 through 77. Investigations Bureau SOP 2-09 Investigative Response Team, dated December 17, 2015, and SOP 2-31 Investigation of Officer-involved Shootings, Serious Use of Force and In-Custody Deaths, dated December 17, 2015, are also scheduled for review during the same time period.
2. CIRT is a new component that was added after APD did research on a similar unit in the Las Vegas Metropolitan Police Department, which created their unit to fulfill similar requirements in their collaborative agreement with

DOJ. Though it is not a specific requirement of the CASA, its central role in use of force investigations, in our judgment, warrants inclusion in the monitoring team's appraisals of critical APD oversight and accountability processes. CIRT's focus on extracting important "lessons learned" from its case reviews has the potential to dramatically improve officer safety and operational practices. As with all new programs, we expect that repeated cycles of assessment and improvement will build a strong, productive unit.

3. We are aware that clearly defined "cross-walks" between IAD and the Civilian Police Oversight Agency (CPOA) are essential to ensure sound case management and coordination between investigators and program managers. The Police Oversight Board (POB) recently enacted accelerated procedures to process a substantial number of backlogged cases. Once this is accomplished, it will be critical to institute long-term measures to assure timely investigations and case dispositions.
4. IAS has worked closely with Basic Academy staff to develop APD's 24-hour Supervisory Use of Force Curriculum, which is began in May. Their contributions include an excellent set of performance aides for both supervisors and reporting officers. We recommend that a similar checklist be developed for chain of command reviewers.

Paragraph 60 stipulates that:

"The Internal Affairs Bureau shall respond to the scene and conduct investigations of serious uses of force, uses of force indicating apparent criminal conduct by an officer, uses of force by APD personnel of a rank higher than sergeant, or uses of force reassigned to the Internal Affairs Bureau by the Chief. In cases where the Internal Affairs Bureau initiates a criminal investigation, it shall ensure that such investigation remains separate from and independent of any administrative investigation. In instances where the Multi-Agency Task Force is conducting the criminal investigation of a serious use of force, the Internal Affairs Bureau shall conduct the administrative investigation."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. The monitor reviewed

APD's first offering on this policy, and returned it for a major "re-write." The revised policy is due May 14, 2016.

Results

The requirements in Paragraph 60 are set forth in PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, which is under review by the monitor. APD also needs to reflect the new allocation of responsibilities between CIRT and IRT in its organizational chart. There are also legacy references to Force Investigation Team (FIT) in some directives that should be purged and replaced with IRT.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.48 Assessing Compliance with Paragraph 61: Criminal and Civil Force Investigations

Paragraph 61 stipulates:

"The Internal Affairs Bureau will be responsible for conducting both criminal and administrative investigations, except as stated in Paragraph 60. The Internal Affairs Bureau shall include sufficient personnel who are specially trained in both criminal and administrative investigations."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, as it was returned to the City for substantial revision/re-write.

Results

The requirements in Paragraph 60 are set forth in PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, which is under review by the monitor. APD also needs to reflect the new allocation of responsibilities between CIRT and IRT in its organizational chart. There are also legacy references to Force Investigation Team (FIT) in some directives that should be purged and replaced with IRT.

The policy governing the internal affairs component in the APD's system for use of force reporting and investigations is critical to their ultimate success. Once the policy is put in place, a legitimate internal affairs function requires proper training, implementation, management and oversight by all organizational leaders.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.49 Assessing Compliance with Paragraph 62: Revision of IAB Manual

Paragraph 62 stipulates:

"Within six months from the Effective Operational Date, APD shall revise the Internal Affairs Bureau manual to include the following:

a) definitions of all relevant terms;

b) procedures on report writing;

c) procedures for collecting and processing evidence;

d) procedures to ensure appropriate separation of criminal and administrative investigations in the event of compelled subject officer statements;

e) procedures for consulting with the District Attorney's Office or the USAO, as appropriate, including ensuring that administrative investigations are not unnecessarily delayed while a criminal investigation is pending;

f) scene management procedures; and

g) management procedures."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. The monitor continues to work with APD to develop a coherent and "trainable" policy pertaining to their internal affairs function.

Results

The language in this paragraph refers to the "Internal Affairs Bureau", which actually is a division within the Professional Accountability Bureau (PAB). The monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016, and has since be returned for substantial re-write.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.50 Assessing Compliance with Paragraph 63: Staffing IAB

Paragraph 63 stipulates:

"Within ten months from the Effective Date, APD shall ensure that there are sufficient trained personnel assigned to the Internal Affairs Bureau to fulfill the requirements of this Agreement. APD shall ensure that all serious uses of force are investigated fully and fairly by individuals with appropriate expertise, independence, and investigative skills so that uses of force that are contrary to law or policy are identified and appropriately resolved; that policy, training, equipment, or tactical deficiencies related to the use of force are identified and corrected; and that investigations of sufficient quality are conducted so that officers can be held accountable, if necessary. At the discretion of the Chief, APD may hire and retain personnel, or reassign current APD employees, with sufficient expertise and skills to the Internal Affairs Bureau."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016, and has since been returned for major re-write. The internal affairs policy is a critical component in the APD's system for use of force reporting and investigations.

The monitoring team requested a table of organization that listed the current personnel assigned to the IA Bureau.

Results

The requirements set forth in Paragraph 63 have been incorporated into SOP 2-05, which is on the monitor's master policy review schedule. Once that SOP is approved, APD will be in Primary Compliance with this paragraph's requirements.

The monitoring team was not given a formal table of organization for the Internal Affairs Bureau; however, APD provided an organizational chart and a list of personnel that are currently assigned to the IA Bureau. The monitoring team learned that the total assigned personnel included:

1. Commanding Officer (1)
2. Lieutenant (1)
3. Sergeants (2)
4. Police Officers (8)
5. Civilian Assistants and Analysts (4)

APD reported the total personnel assigned to the IA function as 16, with eight assigned to IA and six assigned to CIRT. This number includes four civilians.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.51 Assessing Compliance with Paragraph 64: Training IAB Personnel

Paragraph 64 stipulates:

"Before performing force investigations, Internal Affairs Bureau personnel shall receive force investigation training that includes, at a minimum, the following areas: force investigation procedures; call-out and investigative protocols; proper roles of on-scene counterparts such as crime scene technicians, the Office of the Medical Investigator, District Attorney staff, the Multi-Agency Task Force, City Attorney staff, and Civilian Police Oversight Agency staff; and investigative equipment and techniques. Internal Affairs Bureau personnel shall also receive force investigation annual in-service training."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has

issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has since been returned to the City for complete re-write.

Results

In IMR-2 the monitoring team noted, "There appears to be no coherency to the training content, nor is there any apparent progression from basic to higher levels of training. The monitoring team has seen no evidence of a training plan that outlines in detail the progression from introductory, to specialized, to supervisory work processes and quality control modalities." APD should reflect on the monitoring team's observations of APD, as reported in IMR-2, as they develop a systematic training plan for IA Investigators that will meet the requirements of the CASA. During the third site visit the monitoring team met with IA representatives responsible for Paragraph 64. A robust discussion occurred, during which the monitoring team gave direct feedback concerning IA's current approach to investigator training requirements, and provided technical assistance to ensure APD understood the monitoring team's comments in IMR-2.

Notwithstanding the monitoring team's previous observations, based on its review of the full list of training courses that IAD provided it is possible that a formal training plan can be developed readily from the list. APD should develop a tiered approach and group courses into Essential, Advanced, and Professional Development, or according to a similar classification scheme. For instance, the Essential tier might include Cognitive Interviewing, Officer-involved Shootings, Internal Affairs, Use of Force, Report Writing, and an Internal Orientation (e.g., Labor Agreement, Policies). If officers without relevant investigative experience are assigned to IA, a basic investigations course would be essential (meaning knowledge and skills are required for competent performance). Depending upon average tenure in an IA assignment, APD might contract or expand the list of approved courses to ensure a reasonable return on its investment in training. Finally, APD should formally vet all course offerings carefully to assure consistency and quality, to ensure training programs they attend provide information consistent with the CASA. During the next site visit the monitoring team will inquire if APD's has implemented a process for vetting training programs that are provided by outside vendors, to see how APD remediates training that IA investigators receive where materials may be inconsistent with the CASA. These are the types of processes that should be codified in IA policy, or in an overarching training policy that governs all APD training.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.52 Assessing Compliance with Paragraph 65: Referral of Force Investigations to MATF

Paragraph 65 stipulates:

"Where appropriate to ensure the fact and appearance of impartiality and with the authorization of the Chief, APD may refer a serious use of force or force indicating apparent criminal conduct by an officer to the Multi-Agency Task Force for investigation."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has since been returned to the City for substantial re-write.

Results

PAB SOP 2-05 is a critical component in the APD's system for use of force reporting and investigations. The monitoring team did not review this requirement during this reporting period, as no referrals to MATF were made this period.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.53 Assessing Compliance with Paragraph 66: MATF Assistance to IAB

Paragraph 66 stipulates:

"To ensure that criminal and administrative investigations remain separate, APD's Violent Crimes Section may support the Internal Affairs Bureau or the Multi-Agency Task Force in the investigation of any serious use of force, as defined by this Agreement, including critical firearm discharges, in-custody deaths, or police-initiated actions in which a death or serious physical injury occurs."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has since been returned to the City for substantial re-write.

Results

This requirement is included in SOP 2-05, which is awaiting monitor approval.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.54 Assessing Compliance with Paragraph 67: Notice to External Agencies of Criminal Conduct in Use of Force

Paragraph 67 stipulates:

"The Chief shall notify and consult with the District Attorney's Office, the Federal Bureau of Investigation, and/or the USAO, as appropriate, regarding any use of force indicating apparent criminal conduct by an officer or evidence of criminal conduct by an officer discovered during a misconduct investigation."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has since been returned to the City for substantial re-write.

Results

This requirement, which codifies APD existing practice, is included in SOP 2-05, which is awaiting monitor approval.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.55 Assessing Compliance with Paragraph 68: Consultation with External Agencies and Compelled Statements

"If the Internal Affairs Bureau determines that a case will proceed criminally, or where APD requests a criminal prosecution, the Internal Affairs Bureau will delay any compelled interview of the target officer(s) pending consultation with the District Attorney's Office or the USAO, consistent with Paragraph 186. No other part of the investigation shall be held in abeyance unless specifically authorized by the Chief in consultation with the agency conducting the criminal investigation."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has since been returned to the City for substantial re-write.

Results

This requirement, which codifies APD existing practice, is included in SOP 2-05, which is awaiting monitor approval.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.56 Assessing Compliance with Paragraph 69: IAB Responsibilities in Serious Uses of Force

Paragraph 69 stipulates:

"In conducting its investigations of serious uses of force, as defined in this Agreement, the Internal Affairs Bureau shall:

a) respond to the scene and consult with the on-scene supervisor to ensure that all personnel and subject(s) of use of force have been examined for injuries, that subject(s) have been interviewed for complaints of pain after advising the subject(s) of his or her rights, and that all officers and/or subject(s) have received medical attention, if applicable;

b) ensure that all evidence to establish material facts related to the use of force, including but not limited to audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;

c) ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses should be encouraged to provide and sign a written statement in their own words;

d) ensure, consistent with applicable law, that all officers witnessing a serious use of force by another officer provide a use of force narrative of the facts leading to the use of force;

e) ensure that all officers involved in a use of force incident remain separated until each has been interviewed and never conduct group interviews of these officers;

f) review all Use of Force Reports to ensure that these statements include the information required by this Agreement and APD policy;

g) ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;

h) conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask officers or other witnesses any questions that may suggest legal justifications for the officers' conduct;

i) record all interviews;

j) consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible;

k) make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force described by the officer and any injuries to personnel or subjects; and

l) train all Internal Affairs Bureau force investigators on the factors to consider when evaluating credibility, incorporating credibility instructions provided to jurors."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has since been returned to the City for substantial re-write.

Results

The monitoring team attended part of a 40-hour Use of Force training program during its third site visit in March 2016. The monitoring team also requested copies of any lesson plans for the investigative requirements set forth in Paragraph 69, but we were provided copies of two PowerPoint presentations, one on newly-approved SOP 2-52 and the other on Use of Force Reporting. We found several issues of concern with respect to the material provided in response to our data request for this reporting period. More importantly, it is critical that APD understand that PowerPoint slides are not lesson plans, and that all CASA-related training must be supported by complete lesson plans.

1. Slide #15 in the first presentation is titled Guidelines for Lethal Force. However, the only text on the slide is: This has not changed from the last SOP (underlining in the original). **Frankly, such an approach is unacceptable**. It assumes that every student in fact knows APD policy on the use of force generally, and on the use of deadly force more specifically. The purpose of the course is to provide training of the entire policy, and especially on guidelines for the use of deadly force.

2. The statement on Slide #15 is incorrect. APD policy has changed significantly pursuant to the CASA, and that change is what should be underlined. We are referring to the requirement that officers use only the minimum amount of force necessary, which sets a higher standard than the Graham test of objective reasonableness. Fortunately, the Use of Force instructor the monitoring team observed during its visit did an outstanding job of covering this topic.

3. We are concerned that higher-level reviews, assuming that they even occurred, failed to catch this issue because it is of crucial importance in use of force training, and directly affects compliance.

4. There appear to be different versions of these PowerPoints circulating. Hence, it is difficult to know which one is the official, approved version. Neither of the decks that we reviewed in March 2016 contained the version of slide #15 that we describe above. Hence, we may have been provided dated, no longer used decks. It would be helpful, as standard practice for any training material, to include a date and a source (the author or unit responsible).

Because we believe that these decks are dated, we did not complete a full review of the content. However, we did complete a full review of the two decks covering the same subject matter on March 24, 2016 and provided the academy Commanding Officer with comments on each. We have not yet received any feedback about any revisions that were made as a result of those comments.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.57 Assessing Compliance with Paragraph 70: Use of Force Data Reports

Paragraph 70 stipulates:

"The Internal Affairs Bureau shall complete an initial Use of Force Data Report through the chain of command to the Chief as soon as possible, but in no circumstances later than 24 hours after learning of the use of force."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has since been returned to the City for substantial re-write.

The monitoring team also reviewed course of business documentation relevant to Paragraph 70.

Results

APD provided the monitoring team with copies of all Critical Incident Review Team Initial Use of Force Data Reports (sub-titled "24 Hour Response Sheet") submitted to the Office of the Chief of Police. All 12 cases complied with the required submission deadline, which is a compliance level of 100%. The report consists of a cover sheet, a data report, and a narrative section. In 2 of the cases, the form used is not the standard APD Use of Force Data Sheet; in the other 12 cases the standard report form is used. We are not aware of any reason for using two distinct forms, as they capture similar information with the exception that the non-standard form includes information about the involved officer's Union Representative and Attorney.

These policies are critical components in the APD's system for use of force reporting and investigations. Revision of these critical components of the APD policy system should receive a top priority.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.58 Assessing Compliance with Paragraph 71: IAB Investigative Timelines

Paragraph 71 stipulates:

"The Internal Affairs Bureau shall complete administrative investigations within two months after learning of the use of force. Any request for an extension to this time limit must be approved by the commanding officer of the Internal Affairs Bureau through consultation with the Chief or by the Chief. At the conclusion of each use of force investigation, the Internal Affairs Bureau shall prepare an investigation report. The report shall include:

a) a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the Internal Affairs Bureau's independent review of the facts and circumstances of the incident;

b) documentation of all evidence that was gathered, including names, phone numbers, addresses of witnesses to the incident, and all underlying Use of Force Data Reports. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;

c) the names of all other APD officers or employees witnessing the use of force;

d) the Internal Affairs Bureau's narrative evaluating the use of force, based

on the evidence gathered, including a determination of whether the officer's actions complied with APD policy and state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options;

e) if a weapon was used by an officer, documentation that the officer's certification and training for the weapon were current at the time of the incident; and

f) the complete disciplinary history of the target officers involved in the use of force."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has been returned to the City for substantial re-write, and is still "pending."

Results

The monitoring team requested the total number of administrative cases investigated by IA during the time frame of December 1, 2015, and February 15, 2016. Four cases were provided in response to its request for data pertaining to Paragraph 71. The monitoring team reviewed the files and determined that they collectively ran to almost a 1,000 pages of material, including narrative reports, recorded statements, video, and photos. After considering other CIRT-related issues, including an unreported serious use of force case and not having up-to-date lesson plans for CIRT instruction, we decided to defer review of this Paragraph's requirements until our upcoming June visit. That will allow us time to review these four files thoroughly, in addition to reviewing two major officer-involved shooting cases that are pending, and then meet first-hand with IA staff for sufficient time to do a comprehensive review.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.59 Assessing Compliance with Paragraph 72: IAB Report Review

Paragraph 72 stipulates:

"Upon completion of the Internal Affairs Bureau investigation report, the Internal Affairs Bureau investigator shall forward the report through his or her chain of command to the commanding officer of the Internal Affairs Bureau. The Internal Affairs Bureau commanding officer shall review the report to ensure that it is complete and that, for administrative investigations, the findings are supported using the preponderance of the evidence standard. The Internal Affairs Bureau commanding officer shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings. "

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. The original policy submitted by APD was returned by the monitor for a complete re-write, and is still pending.

Results

The Internal Affairs Section (IAS) utilizes two forms to structure and document supervisory and command-level reviews: The *Internal Affairs Section Review Form* and *the Critical Incident Review Team Critical Incident Recommendations Form*. The monitoring team selected four cases of each type of review during this reporting period. Typically, for each case, there are two levels of review; the first form referred to above documents the supervisor's (or sergeant's) review, while the second form documents the commander's review. All of the reviews were conducted in a timely fashion and the only deficiency noted was minor (failure to check one of the boxes in the lower half of the form on several forms). Two issues of concern were documented (two officers failed to activate their lapel cameras; one officer failed to carry his baton) and referred to the officers' commands for follow-up. It is unclear to the monitoring team if a feedback mechanism exists to document that proper follow-up actually occurred. These feedback loops are critical to APD's success, and have been documented in previous monitor reports. Tracking officer behavior, proper follow up with performance deficiencies and ensuring compliance with SOP's requires diligence in supervisory oversight and documentation. It also requires that APD "connect the dots" to identify wider issues that may exist with the performance of

a specific officer or with the organization as a whole. With respect to the baton issue, we comment further on that subject in Paragraph 79.

APD advised that no investigations were returned for additional work during the reporting period. This includes reports in which any findings were not "…supported using the preponderance of evidence standard."

Neither form specifies specific topics that a reviewer is expected to cover, including the "preponderance of evidence standard", though the CIRT form has a series of check boxes for different types of recommendations. As with other forms that we have reviewed, the lack of structure often results in inconsistencies and important issues being overlooked. The performance aids (checklists) that IA created for officers and supervisors involved in supervisory use of force investigations are excellent examples of comprehensive, well-structured forms. It would behoove APD to conduct a careful review of its routine business forms and ensure congruence, clarity, inclusion of routinized processes to capture needed information, and to review them for "workability." This may seem to focus on minutiae, but the "forms" build the data system. What is omitted from the "forms" is invariably missing from the data systems.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.60 Compliance with Paragraph 73: IAB Findings Not Supported by Preponderance of the Evidence

Paragraph 73 stipulates:

"For administrative investigations, where the findings of the Internal Affairs Bureau investigation are not supported by a preponderance of the evidence, the Internal Affairs Bureau commanding officer shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation report. The commanding officer of the Internal Affairs Bureau shall take appropriate action to address any inadequately supported determination and any investigative deficiencies that led to it. The Internal Affairs Bureau commanding officer shall be responsible for the accuracy and completeness of investigation reports prepared by the Internal Affairs Bureau."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs practices and processes, and thus its supporting policies and procedures, are still under revision. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has

issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. APD SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy was returned by the monitor for substantial re-write and is still pending.

The monitoring team requested any course of business documentation that demonstrated that a use of force investigation was returned by a Commanding Officer for additional investigative work.

Results

The monitoring team was advised by APD that no investigations were returned for additional work during the reporting period. This includes reports in which any findings were not "…supported using the preponderance of evidence standard."

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.61 Assessing Compliance with Paragraph 74: IAB Quality Control

Paragraph 74 stipulates:

"Where a member of the Internal Affairs Bureau repeatedly conducts deficient force investigations, the member shall receive the appropriate corrective and/or disciplinary action, including training or removal from the Internal Affairs Bureau in accordance with performance evaluation procedures and consistent with any existing collective bargaining agreements, personnel rules, Labor Management Relations Ordinance, Merit System Ordinance, regulations, or administrative rules."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has been returned to the City for substantial re-write, and is still "pending."

Results

The monitoring team did not review compliance with the requirements in Paragraph 74 during this reporting period. Informally, however, we are not aware of any instances of deficient IA force investigations warranting corrective or disciplinary action that occurred in this period. It must be kept in mind that APD is in the midst of a major transition to a new regime for reporting and conducting use of force investigations. SOP 2-05 has yet to be approved and CASA-related training is either still in the development stage (24-hour Supervisory Use of Force Curriculum) or only commenced recently (40-hour Use of Force Curriculum). IA also has not yet formalized a plan to ensure consistency and quality of its internal training. More data over a longer period of time will be required to assess compliance with the requirements of this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.62 Assessing Compliance with Paragraph 75: IAB Quality Control

Paragraph 75 stipulates:

"When the commanding officer of the Internal Affairs Bureau determines that the force investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Force Review Board with copy to the Chief."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has been returned to the City for substantial re-write, and is still "pending."

Results

The monitoring team was informed that no cases were forwarded to the Force Review Board (FRB) during this reporting period.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.63 Assessing Compliance with Paragraph 76: Force Investigations by MATF or FBI

Paragraph 76 stipulates:

"At the discretion of the Chief, a force investigation may be assigned or re-assigned for investigation to the Multi-Agency Task Force or the Federal Bureau of Investigations, or may be returned to the Internal Affairs Bureau for further investigation or analysis. This assignment or re-assignment shall be confirmed in writing."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has been returned to the City for substantial re-write, and is still "pending."

The monitoring team requested the total number of force cases that were assigned or reassigned to the MATF, FBI or IA during the reporting period, and any/all documentation concerning the reason for the referral. As a result of that request the monitoring team was provided written documentation for the case. The monitoring team made a subsequent request for officer lapel videos, and were ultimately provided nine lapel videos through APD's video evidence management system.

Results

APD reports that there was only one use of force case forwarded to IA for investigation during the period of December 1, 2015, through February 15, 2016. This case was sent to CIRT, given case number I-3-16, and assigned to an investigator. That investigator returned the file to his supervisor after a preliminary review.

The case origination date was October 30, 2015, but the case was not forwarded to CIRT until November 16, 2015. The CIRT investigator did not begin his review until December 16, 2015. He documented his observations of the case to his supervisor on December 17, 2015, more than a month after an

Area Commander originally forwarded the case to CIRT. This lag in time is troubling to the monitoring team, especially considering the number of **obvious and serious** issues associated with the case. This may have occurred at CIRT for a number of reasons, the most obvious being the fact that the Area Commander failed to document some of the most relevant issues concerning the use of force.

The CIRT investigator documented his review of the case, and concluded that while making an arrest of a person suspected of stealing a car an officer struck the suspect in the head with a "knee strike," which rendered the suspect unconscious. The monitoring team noted during its review that there are numerous issues with the case, not just the officers' use of a knee strike to the head. The monitoring team identified at least one SOP that was violated beyond the officers' use of force, as well as issues with APD's investigative strategy toward the handling of stolen vehicles. Ultimately, an Area Commander forwarded the case to IAS for investigation. That case is being investigated by IAS, and was expected to be complete during the first week of May 2016. The monitoring team have not yet reviewed this case.

The monitoring team also has reviewed the original reports and lapel videos involving what appears to be an unreported use of force. **This case raises serious questions about proper force reporting and superficial chain of command reviews**. This case also represents an example of what the monitoring team has seen in other use of force investigations, a lack of rigorous and legitimate oversight and accountability. The monitoring team reviewed a memorandum from the involved officers' Commander, who ultimately referred the case to CIRT for follow-up. However, the level of detail documenting the actual use of force in the memorandum was deficient. Based upon conflicting accounts of what the videos show, there appears to be ambiguity among APD levels of review about what actually took place. The monitoring team believes that there are numerous significant issues that need to be investigated and resolved by IA.

Because it involves significant reporting, investigation, oversight and accountability failures, the monitoring team will continue to track progress on this case. The monitoring team will review the IA file and discuss the findings once it is completed. Based on preliminary information we expect that follow up to occur during the fourth site visit in early June 2016.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.64 Assessing Compliance with Paragraph 77: Discipline on Sustained Investigations

Paragraph 77 stipulates:

"Where, after an administrative force investigation, a use of force is found to violate policy, the Chief shall direct and ensure appropriate discipline and/or corrective action. Where a force investigation indicates apparent criminal conduct by an officer, the Chief shall ensure that the Internal Affairs Bureau or the Multi-Agency Task Force consults with the District Attorney's Office or the USAO, as appropriate. The Chief need not delay the imposition of discipline until the outcome of the criminal investigation. In use of force investigations, where the incident indicates policy, training, tactical, or equipment concerns, the Chief shall ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved."

Methodology

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are still under revision by the APD. Department Special Order 15-91 Use of Force Investigative Procedures was issued on October 20, 2015, and made mandatory operational compliance with CASA requirements for reporting and investigating uses of force, which encompasses Paragraphs 41-77. Additionally, the monitor has issued a schedule for reviewing all CASA-required APD policy drafts over the next several months. PAB SOP 2-05 Internal Affairs Division, dated December 17, 2015, has not yet received the monitor's approval, though it was placed on the monitor's master review schedule for April 2016. That policy has been returned to the City for substantial re-write, and is still "pending."

The monitoring team also requested course of business documentation that listed the total number of use of force cases that were submitted to the Chief of Police between December 1, 2015, and February 15, 2016, that were relevant to Paragraph 77.

Results

The monitoring team sees significant relevance between the requirements in Paragraph 77 and the case referred to in Paragraph 76. As noted earlier in this report, command and supervisory personnel being held accountable is as important to performance and cultural change as the actions taken against officers who violate policy.

The monitoring team reviewed a two-page summary of cases involving policy violations for the reporting period. The summary is undated and no source is documented. Hence, we are uncertain if it qualifies as a Course of Business Document (COBD). It reports that nine cases were referred to the Office of the Chief of police involving violations and lists the general type of violation (e.g., misconduct, procedure), along with the discipline imposed. The dispositions included two terminations, four suspensions, one resignation in lieu of

termination, and two letters of reprimand. There is no information in the summary, however, on which to base a determination that the discipline was appropriate, as required in Paragraph 77.

The monitoring team also reviewed two Interoffice Memoranda from field supervisors to CIRT documenting that corrective action had been taken on two relatively low-level policy violations referred to them. One involved an OBRD battery failure, while the other involved an officer not carrying his collapsible baton. We have several observations regarding the memos:

1. There is no mention in either memo of the officer's prior history to assess whether the current violation is part of a larger pattern. The Department should keep in mind that reliance upon undocumented, informal resolution of minor policy violations, which we view as suitable dispositions in many cases, runs the risk of broader patterns being missed. That is why periodic, random audits are essential to long-term compliance.

2. The monitoring team was concerned with the second violation because it can result in an officers not having an important tool on their persons in the event of a close-quarter struggle when the use of stand-off tools is not feasible, but deadly force is not warranted. We reviewed just such an incident in the last reporting period. The baton may also be useful in an emergency where residential windows have to be broken out (batons, however, don't usually work well against auto glass) for some reason, or as a defense against an unruly dog.

3. In the case involving the un-carried baton, the supervisor spends far too much time and effort in rationalizing the policy violation. He notes that the pertinent SOP "…only states that the collapsible baton holder is required to be worn, not necessarily that the collapsible baton be carried therein." This is both an illogical and pointless distinction, particularly if the officer invoked that explanation in their defense. The supervisor also states that he understood the officer's rationale for not carrying his the baton (i.e., infrequent use, weight, and comfort) and then ordered him to carry it. By that standard, should the officer also leave his firearm in his locker? As a supervisor, he fails completely to underscore (emphatically) that it is, above all else, a matter of personal safety to the officer, his peers, and possibly innocent third parties. He may need it only once, but that one time might involve a desperate struggle in which it is the only force option available. (Parenthetically, the monitoring team has noted a fairly "routine" practice of supervisory personnel writing reports *in obscuritis*, incorporating language that minimizes the impact of events or otherwise builds into the narrative exculpatory language excusing officer behavior that is outside policy. In the monitor's experience, this is almost always indicative of a supervisory system

that has been captured by the inevitable personal relationships that form between supervisors and the supervised. APD should consider working this topic into its supervisory training.

4. The baton issue seems an apt subject for CIRT's role in identifying "lessons learned" and feeding them back into the policy, training, and patrol functions.

5. The monitoring team reviewed APD's 2014 Use of Force Report and found that baton use had declined to zero. Further, that category has been dropped completely in the FRB's Fourth Quarter for 2015. We think this is unwise unless the baton truly has no utility, or other tools duplicate its function. However, we do not think that is the case. Consequently, we recommend that this subject be referred to the FRB or some other representative group for a thorough analysis to determine its utility in contemporary policing. Focus groups comprised of users (in this case officers and supervisors) are a common tool for gaining first-hand information about workplace issues. Another approach is to consult with subject matter experts about the trend and possible interpretations. Finally, frequency of use may not be a credible measure of the baton's value as a force option.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.65 Assessing Compliance with Paragraph 78: Force Review Board Responsibilities

Paragraph 78 stipulates that:

> **"APD shall develop and implement a Force Review Board to review all uses of force. The Force Review Board shall be comprised of at least the following members: Assistant Chief of the Professional Accountability Bureau, the Deputy Chief of the Field Services Bureau, the Deputy Chief of the Investigations Bureau, a Field Services Major, the Training Director, and the Legal Advisor. The Force Review Board shall conduct timely, comprehensive, and reliable reviews of all use of force investigations. The Force Review Board shall:**
>
> **a) review each use of force investigation completed by the Internal Affairs Bureau within 30 days of receiving the investigation report to ensure that it is complete and, for administrative investigations, that the findings are supported by a preponderance of the evidence;**
>
> **b) hear the case presentation from the lead investigator and discuss the case as necessary with the investigator to gain a full understanding of the facts of the incident. The officer(s) who used the force subject to investigation, or who are otherwise the subject(s) of the Internal Affairs**

Bureau investigation, shall not be present;

c) review a sample of supervisory force investigations that have been completed and approved by Commanders every 90 days to ensure that the investigations are complete and timely and that the findings are supported by a preponderance of the evidence;

d) order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the force investigation findings. For administrative investigations, where the findings are not supported by a preponderance of the evidence, the Force Review Board shall document the reasons for this determination, which shall be included as an addendum to the original force investigation, including the specific evidence or analysis supporting their conclusions;

e) determine whether the use of force violated APD policy. If the use of force violated APD policy, the Force Review Board shall refer it to the Chief for appropriate disciplinary and/or corrective action;

f) determine whether the incident raises policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate unit within APD to ensure the concerns are resolved;

g) document its findings and recommendations in a Force Review Board Report within 45 days of receiving the completed use of force investigation and within 15 days of the Force Review Board case presentation, or 15 days of the review of sample supervisory force investigation; and

h) review and analyze use of force data, on at least a quarterly basis, to determine significant trends and to identify and correct deficiencies revealed by this analysis."

Methodology

Because SOP 3-67 Force Review Board (FRB) has not yet been approved, APD is not in Primary Compliance on the requirements in Paragraph 78.[17] Notwithstanding that, the FRB remains fully engaged on all of the CASA tasks associated with its role in APD's use of force oversight and accountability system. As we noted previously, the role of the FRB is pivotal in the broader oversight process.

During this reporting period, the FRB has continued to:

1. Meet regularly to review and rule upon selected use of force investigations, including any cases referred by IAS;

[17] This policy was approved by the monitor on April 20, 2016, outside the dates for this reporting period.

2. Conduct quarterly reviews of a sample of Supervisory Use of Force investigations and issue a report on its findings and recommendations;

3. Identify policy, training, equipment, or tactical concerns and forward them to the appropriate APD unit for follow-up;

4. Maintain a high level of participation in Board reviews by key representatives;

5. Review and analyze use of force data on a quarterly basis to identify major trends, taking corrective action as deemed necessary;

6. Utilize a custom-designed Force Review Board Evaluation Form to capture member comments and assure that key issues are covered in each review (I.e., findings supported by the preponderance of evidence). Based upon shortcomings that we have found in chain-of-command reviews, we recommend that the FRB add another category----Quality of Chain of Command Reviews---to the evaluation form to focus attention on this oversight function. We consider this a critical issue.

Results

Like during IMR-2, the monitoring team requested use of force cases that were reviewed by the FRB during the fourth quarter of 2015, and were provided four cases by APD. The purpose was to determine the quality of the reviews being conducted by the FRB and build upon feedback that was provided to APD in IMR-2. To continue to evolve, it is important that APD consider not only this report, but also reflect on monitoring team comments in IMR-2.[18]
Each file review conducted by the monitoring team consisted of the Use of Force Data Form, videos, incident reports, FRB evaluation forms, and the PowerPoint presentation made to the FRB. The sample was compiled from a list of 47 use of force cases between the dates of October 1, 2015, and December 31, 2015. With the use of an on-line randomizer APD narrowed its total number to 8 cases, representing a 17% sampling of the overall number of cases. From that list of eight cases, four were chosen for review by the FRB, which constituted an 8.5% pull of cases from the overall number of use of force cases during the relevant period of time.

During the reporting period, the monitoring team noted that the FRB:

[18] The monitoring team continually inserts language into its reports designed to inform APD of areas and issues that require managerial follow-up or assessment. Such processes are indicative of a ***learning organization***. To be successful in this compliance project, APD will need to adapt the characteristics of a learning organization (See Peter Senge, the *Fifth Discipline*, which defines a learning organization as one which “acquires knowledge and innovates fast enough to thrive in a rapidly changing organization.”)

1. Returned no cases for additional investigative work;

2. Sent no cases to the Chief of Police for discipline or corrective action;

3. Completed its quarterly review of use of force data, a sample of Supervisory Use of Force Investigations, K-9 Bites, and SWAT After-action Reviews;

4. Received no case referrals from IAS or other Department sources.

5. Compiled and reported year-end use of force data for 2015, though the formal analysis to detect patterns and trends won't be completed until mid-May.

FRB 4th Quarter Sample of Supervisory Use of Force Investigations

Case #1: Domestic Call

Synopsis

Officers were dispatched to a call from a mother who wanted her intoxicated and agitated son removed from her home. Contrary to an agreement with her, he had resumed using drugs, drinking excessively, and acting out (she stated that she feared him). She also advised the officers that he had an outstanding felony warrant for parole violations. Initially, though highly agitated and enraged at times, he submitted to handcuffing after one of the officers threatened to use a Taser to control him. Besides being highly agitated, the man was 6'1" and weighed about 235 pounds. Both officers were clearly at a disadvantage in terms of the suspect's size and bulk.

When they attempted to remove the suspect from the house by controlling his handcuffs, the suspect resisted and both he and one officer fell out the door and to the ground in the front yard. The second officer immediately responded and seeing the suspect seemingly in the act of kicking his partner in the head, attempted to use his Taser in the drive-stun mode to stop the assault. Just as he made contact, the suspect rolled, causing separation between the Taser prongs and the suspect's body. This resulted in the Taser discharging and two prongs struck the suspect in the right-side abdominal area about two inches apart. The officer brought the suspect under control with the application of one cycle of five seconds duration.

Monitoring Team Observations:

1. The subject reportedly advised the Sergeant that he was schizophrenic, had resisted the officers, and had been smoking meth and drinking alcohol. However, there is no recording of that conversation in the case file.

2. The single cycle of five seconds is not mentioned in the investigator's report or in command-level reviews. There is also no analysis of discharging the Taser in close proximity to the suspect.
3. The Lieutenant stated that he will get clarification on current Taser training, but he never specifies what his concerns are or reports on any inquiries he made.
4. The Commander stated that he granted an extension because there were "…correction and clarification issues needing to be addressed", but he never explains what they were.
5. The CIRT review correctly categorizes the use of the Taser upon a handcuffed prisoner as a serious use of force, but notes that the CASA-based policy had not been approved at the time of the incident.[19]
6. The CIRT review provided an excellent summarization of safety concerns based upon the mother's statements, the suspect's obviously agitated state, and his size. The reviewer refers to these factors as a "disparity of force", which is taught in a 40-hour Use of Force Curriculum currently being delivered to APD officers.
7. Overall, the CIRT review is well done.
8. The Uniform Incident Reports completed by the two officers are well written and descriptive.
9. The Sergeant's Memo of Concern stated that allowing the mother to return created potential problems from a tactical standpoint. It is a legitimate question worthy of review. This is especially important because of APD's present staffing shortages that may result in more frequent instances of delayed or unavailable backup.
10. The Sergeant stated that the officers should have "cleared the air" and requested additional units, given the suspect's size and level of agitation. Again, both are legitimate questions to raise and critique. In this case, the officers might have moved too quickly, denying themselves adequate time to gain greater situational awareness. However, we also hasten to add that once they engaged the suspect, the officers handled a difficult situation in a controlled, effective matter, adapting as circumstances changed and issuing clear, firm commands.
11. In contrast to the Sergeant's observation about the officer's second Taser warning, the monitoring team believes that it was a reasonable warning, given the officer's success using it moments before.
12. Overall, the Sergeant's investigation meets applicable standards and she doesn't hesitate to critique the officer's performance in a fair, objective manner.
13. The monitoring team agrees that counseling and line-up training are reasonable follow-up actions, but there is no documentation in the file that they took place.

[19] This is also a violation of the October 2015 directive from the chief of police requiring officers to comply with CASA requirements, and illustrates why the monitoring team have repeatedly advised APD that such "directives" are not adequate policy.

14. The investigation and all of the reviews agree that the suspect presented a serious level of danger to the two officers and his mother. There is also unanimous agreement that the use of force was justifiable.

Board Member Evaluations/Monitor Comments:

All Board members completed the standard evaluation form after the presentation. We extracted the following comments:

1. APD needs to clarify procedures for using the Taser in the drive-stun mode with the "cartridge on".

2. The Taser use in this case is an example of using the minimum amount of force necessary. The monitoring team would add, "adaptive decision-making" in a tense, evolving situation to that remark.

3. A Special Order was sent out after the incident and Board review, but its content is not clearly explained in the case file. We have two questions: 1.) Were policy and training concerns resolved? and, 2.) Did the Special Order provide clarification and guidance on the Taser use in this case?

4. As noted in IMR-2, it is unclear to the monitoring team when and how FRB observations and recommendations are followed up. Closing the loop on critical feedback from the FRB is important to APD's success.[20]

Case #2: Female Walker on Highway

Synopsis

An officer responded to a call of a female on a local interstate highway and located her shortly after he arrived in the area. She immediately took evasive action on foot, but the officer pursued her and detained her. The female then lied about her date of birth and denied that she had an outstanding warrant. She ran again, the officer caught her, but was unable to handcuff her because of her resistance. He warned her that he would "take her to the ground" if she didn't stop. He repeated his commands, including a warning that he would use OC spray, but she continued to resist. He then sprayed her with a single burst in the face from a distance of 12 inches, which allowed him to handcuff her.

Monitoring Team Observations:

[20] For the record, the monitoring team views the FRB process, *in toto*, to be highly characteristic of the "learning elements" articulated in Senge's book on learning organizations. *Review-Assess-Adapt-Evaluate* is a powerful weapon against organizational entropy and supportive of development of a learning organization.

1. Upon searching her, he located a syringe loaded with suspected heroin (it tested positive) in her jacket pocket. She attempted to stand from a crouched position and the officer quickly used a leg sweep to prevent her escape and prevent her from destroying the syringe which had fallen to the ground.
2. Subsequently, it was learned that she claimed she was 12 weeks pregnant and she complained of pain in her shoulder and back.
3. The suspect alleged that the officer "put his hand down her pants;" the officer described what happened in the report to cause that impression. The Sergeant reviewed the video and concluded that there was no basis to the complaint. The monitoring team views this as a summary disposition of a citizen complaint, which APD should review further to ensure that such resolution complies with current policy and CASA requirements.
4. The officer, by actual count issued 54 "stop" commands and 28 "put your hands behind your back" commands before resorting to profanity. The officer's excessive, repeated, ineffective commands represents the sort of behavior that diminishes cognitive space for problem-solving and raises the level of agitation to a point where performance declines due to stress. It is an example of poor self-regulation.
5. Chain of command reviews should not simply recapitulate the officer's full narrative. Rigorous analysis is far more important.
6. We found nothing in the case file to verify the suspect's claim of pregnancy. There is no description of her appearance and no indication in the record that this was verified at Women's Hospital (though medical privacy laws may apply). In light of her injury claim, this is a significant risk management issue that the record is largely silent on.
7. Subsequent counseling on verbal skills and the prohibition on the use of obscenities are documented in a follow-up memo from the Sergeant.
8. The CIRT review is well done, though we do not agree with the argument for "de-classifying" this as a Serious Use of Force. The CASA expressly states that using "…any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject…" is a serious use of force. A leg sweep clearly falls into this category, irrespective of the probability of causing injury. This is a categorical use of force that allows no discretion in the classification decision. The case should be submitted to established oversight and review procedures.
9. There is a clear "lesson learned" in this case regarding excessive, repeated commands that are of little or no effect. Because of the adverse effects upon cognition and self-control, CIRT should consider follow-up training on this point.
10. We have a question about the use of force that occurred at the Woman's Hospital. It appears to have exceeded un-resisted handcuffing.
11. The photos taken of the scene, the officer, and the suspect were excellent.
12. Though there is mention of the officer employing CIT skills, none are described. Upon viewing the video, the single most apparent behavior

(which evidences a mindset and a skill) is patience, which some would regard as extreme and pointless, followed by a marked increase in voice volume, a more authoritative tone, and the use of several mild obscenities, which, frankly, appear to have an effect.

13. APD should reconsider CIRT's re-classification of the incident and revise the IA-PRO entry to a Serious Use of Force, based upon the CASA definition.
14. We found nothing in the case file regarding the discharge of OC spray into a person's face from a distance of 12 inches.

Board Member Evaluations/Monitor Comments:

1. The FRB reviewed this case in its January Quarterly Use of Force Review (for the 4th quarter of 2015). Under Policy, Issues of Concern it stated that the sergeant "was issued a verbal counseling for allowing the officer to use profanity". We find nothing in the record to support that conclusion or action. The following sentence, however, stated "…verbal counseling was not appropriate because policy was not violated." Under a following bullet point, it noted that the "[u]se of profanity was a verbal escalation." We are aware of nothing in APD policy or training that supports such a statement, and it is incompatible with contemporary professional standards. (We found the term "tactical profanity" as a justification in another review.) We recommend strongly that APD conduct a formal review of this issue and then put out definitive guidelines on it. The monitoring team will follow-up on this recommendation in IMR-4.

2. There is statement that an "[a]ssisting officer may have shortened contact time." We assume that this refers to the officer waiting for backup before contacting the suspect. The following notation stated that backup was requested but had not arrived. There is no discussion of possible exigencies that required contact without proper backup.

3. The assumption of the Sergeant and Board Member seemed to be that there is a problem because the officer issued so many commands to no avail. But, we are unsure about the correct interpretation of the officer's use of 54 and 28 relatively ineffective commands. The first impression of most reviewers is that doing so was excessive and ineffective and, therefore, a problem. However, the video suggested that it could be simply a matter of personal style and practiced patience. The officer remains composed and under control while he is issuing low-key commands, and even when he raised his voice at a later point and resorts to profanity, we would not characterize him as out of control. His radio transmissions are clear and composed throughout the incident.

4. The video makes clear that the female is extremely agitated, tries to flee several times, talks incessantly, and fails to comply with the majority of the officer's commands. We would classify her as a difficult case and her

resistance as active, but low-level. What is not clear is whether the issuance of repeated commands with little time intervening between them degraded the officer's ability to assess their effects and consider an alternative approach. In this regard, it is important to note that he continued his efforts to physically control her all the while. If so, the repeated commands interfered little with his execution of control techniques. He executed the leg sweep without hesitation when she attempted to destroy evidence and flee once again. She continued to talk and plead without letup.

5. The CASA expressly states that using "…any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject…" is a serious use of force. A leg sweep clearly falls into this category, irrespective of the probability of causing injury. This is a categorical use of force that allows no discretion in the classification decision.

Case #3: Possible Child Abuse

Synopsis

Detectives from APD's Crimes Against Children Unit assisted members of the state Children, Youth and Families Department (CYFD) with a welfare check of a 7 year-old child. The child revealed to a teacher that her father burned her with a cigarette, so a detective responded to the school. The detective learned that the girl had a 1 year-old brother, and was told by CYFD that the girl's parents both had outstanding warrants for their arrest. The detective confirmed the latter fact prior to responding to the girl's residence. The detective requested backup from another detective, who met with him at the home. During the investigation the detectives also learned that the mother of the children suffered from mental illness and could be physically violent.

The mother eventually confronted the detectives at the home. She became uncooperative as the detectives attempted to continue their investigation and determine the welfare of the 1 year-old child. Eventually, the detectives decided they were going to execute the outstanding warrant for the mother because of her demeanor. A struggle ensued, and the detectives had to use physical force to subdue and handcuff the mother.

1. The primary detective's investigative report was well done, and he was able to articulate his actions and observations in a clear, concise and professional manner.
2. In his report the detective articulated the fact that his lapel camera, which should have had storage space and a full battery, was not functioning properly. He reportedly switched to an audio recording and verbally documented the fact that his video was not working properly.
3. The primary detective's interactions with the suspect mother were captured through audio portion of the lapel camera.

4. The detectives remained calm throughout the event, and the suspect mother was agitated and irate at different times during the encounter.
5. No conclusions concerning the level or appropriateness of the force could be made from the audio portion alone. The monitoring team reviewed the evidence presented to the FRB, which consisted only of a version of the audio recording (from the primary detective) that appeared to be spliced together with different sections of the event.
6. There was no audio or video provided to the FRB from the second detective who arrived as backup. It is unknown why the FRB failed to mandate that the second detective's lapel camera be produced.
7. The detective was diligent in his verbal and written documentation of his defective lapel camera. Based on the totality of circumstances known to the officer when he responded to the scene, there is no indication why the primary detective did not call for a patrol officer as backup to ensure the event was captured on a lapel camera. There appeared to be ample time to make such a request. This type of event should be referred for a policy review to determine if when an officer knows there is a malfunction with their lapel camera, and time allows, that they be required to request backup officers with functioning cameras.
8. There are no comments by the FRB on the quality or content of the analysis by the investigating sergeant or command reviews. Characteristic with most cases reviewed by the monitoring team, in this case there is a paucity of documentation and analysis of the force used within the command level reviews.

Board Member Evaluations/Monitor Comments:

1. The FRB documented the fact there was a defective lapel camera, and the fact the city was working to change vendors so all officers were using the same equipment. However, the FRB failed to recognize the obvious policy implications of an officer who could have made other arrangements to have an officer with a fully operational lapel camera at the scene. This may not always be possible, but based on the fact pattern of this case it appeared to be feasible. This is the type of policy consideration and recommendation that should result from FRB meetings.

2. The FRB did not mandate the production and review of the second detective's lapel camera. It's unknown why the FRB would assess the case without a full record.

3. The FRB does not appear to conduct quality reviews of the supervisory force investigations, and instead appears focused only on the force itself. Despite several obvious omissions from the Use of Force Data Report, the FRB failed to identify those issues. For example: 1) There is no indication that the officers were separated when interviewed. 2) There is no indication the investigating supervisor conducted a canvass. 3) Though the supervisor

indicated his lapel camera also malfunctioned, there is no indication that the supervisor made other arrangements to obtain an operational camera. 4) The sergeant failed to document specific observations by the witnesses of the force beyond the fact they indicated the officers acted appropriately. 5) The sergeant made no efforts to interview the suspect (recipient of the force) because she had left the scene.

4. The failure of the FRB to comment on the quality of force investigations themselves is a significant issue. As noted in Paragraph 78.d. above, the FRB is required to "…**order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the force investigation findings."** That requirement does not appear to be happening at the current time on the FRB. APD may find that by the FRB returning investigations, where necessary and appropriate, and mandating additional investigation they will see an increase in the quality of investigations. However, as long as they fail to focus on that aspect of the case the quality of supervisory force investigations will continue to suffer.

5. The APD Internal Affairs Division have developed work aids (Check lists) for officers and supervisors to use when preparing their reports, which have been incorporated in academy training. It would be beneficial to the FRB to utilize those work aids themselves to ensure that when they review cases they can properly evaluate how officers and supervisors are structuring reports and capturing information.

Case #4 The Overtime Detail

Synopsis

While working an overtime detail at a Walmart, an APD officer was alerted by a loss prevention representative to a patron who had previously shoplifted at the store. The officer checked the name of the subject through NCIC and learned he had an outstanding felony warrant. The officer followed the subject out of the store and to a nearby Wendy's restaurant. APD officers approached the subject inside the Wendy's and asked him to go outside to talk. The subject reportedly became agitated and defensive. The officers attempted to take the subject into custody on the strength of the warrant but the subject physically resisted. The officers used an arm bar takedown to move the subject to the ground after he reportedly attempted to flee the store. The subject continued to resist and refused to provide his hands so he could be handcuffed. Several verbal orders were given, and eventually one officer used his Taser (applied to the subject's back) in drive-stun mode for one cycle (5 seconds). The subject was handcuffed and removed from the scene.

Monitoring Team Observations:

1. CASA Paragraph 28 states, “ECW’s shall not be used solely in drive-stun mode as a pain compliance technique. ECW’s may be used in drive-stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject, so that officers can consider another force option.” At the time of this event SOP 2-53 Electronic Control Weapon (ECW) was under revision.
2. Parenthetically, during its last site visit in March 2016, the monitoring team had the opportunity to sit in on a block of instruction concerning ECW use. The academy instructor made clear that the use of an ECW in the fashion used in this case would only serve to make a subject move around from the pain, not necessarily comply with an officer’s orders. This is significant for two reasons: 1) The ECW policy is now in effect and incorporates the specific language of the CASA; 2) The instructor’s comments were true with or without a standing policy and should have been considered by the supervisor, chain of command and FRB when evaluating this case.
3. While the supervisor who conducted the use of force investigation reported interviewing the officers, he did not document what they said or their justification for the force they used. The supervisor made no notation that he separated the officers.
4. The supervisor failed to document that he asked the witnesses to provide written statements. One of the officers who used force documented the fact that written statements existed, but it is unclear if they were obtained by the sergeant or an officer who was actually involved in the use of force. While the supervisor documented that the witnesses felt the force was appropriate and justified, it is unknown specifically (by his report) what the witnesses saw and how they are qualified to make such a conclusion.
5. The supervisor attempted to interview the suspect. The suspect reportedly said that he could not get his hand out from under him because officers were sitting on his back. That statement by the suspect was never reconciled against the lapel videos, or officer reports, by the supervisor during his investigation.
6. It is unknown if the supervisor attempted to determine if there was an interior or exterior surveillance camera that captured the use of force. He documented in his report that the restaurant was “…unable to provide officers with any video footage…”, but it is unknown if it’s because of a business policy, the footage doesn’t exist, or it was not accessible at that time.
7. A reoccurring theme with APD Use of Force Data Reports is the inability to distinguish what a supervisor is repeating from reports, what they view on lapel videos and what they are told by witnesses and officers.
8. The supervisor’s entire analysis was reportedly, “I believe this to be a reasonable and justifiable use of force.” This, in the opinion of the monitoring team, is insufficient to demonstrate what the supervisor considered when rendering his conclusions.

9. There is no indication in the report whether the supervisor reviewed the officer lapel videos before making his conclusions.
10. In a Memorandum prepared by the lieutenant who reviewed this case, he documented that he did "…not have an issue with his (the officer's) use of profanity" during the arrest, justifying it by saying the officer "…mirrored the offender's language." The fact that profanity was used by the officer was not addressed by the officer's supervisor during his investigation.
11. The quality of the command level review of this case was poor, and was perfunctory in nature.

Board Member Evaluations/Monitor Comments:

1. The FRB was only privy to a small segment (2:35 minutes) of one officer's lapel camera, which appears to be insufficient to properly evaluate the use of force. The monitoring team reviewed the video, which showed the subject complaining that he had done nothing wrong. It's unclear when during the event the subject was told he had a warrant (based on the video provided). This is relevant because within the force investigation file there is a Memorandum wherein a lieutenant documented that it wasn't until 7:48 minutes into the event that one of the officers advised the subject that there was an arrest warrant. The FRB appeared to question whether an officer had an obligation to tell a subject there is a warrant for their arrest, and documented their referral to the academy and the City Attorney. (Note – It appears a City legal representative actually sat on the FRB).

2. There is a third, unknown person who assisted the officers while they were struggling to handcuff the suspect. That person is not identified or addressed in the supervisory force investigation, or officer reports.

3. The FRB documented that a separate Use of Force Data Report was not completed for the second officer on the scene, and referred the question to the Area Commander. There is a notation, "Assumed that officers were operating under old policy." While documented in the record, it is entirely unclear to the monitoring team what the outcome of the inquiry was for the FRB. In IMR-2 the monitoring team noted that APD Special Order 15-91, dated October 20, 2015, specifically noted that APD will follow the provisions of the CASA with respect to force reporting and investigation. The monitoring team believed Special Order 15-91 originated from observations made by the FRB in another case. The monitoring team will follow up with the FRB to determine what, if anything, was done following their inquiry to the Area Commander. This is relevant for several reasons, including proper data collection for APD's Early Intervention System (EIS).

4. The FRB appeared to accept the use of profanity by the officer was an acceptable behavior.

5. The FRB documentation included questions the representatives had about particular aspects of the case, but it is unclear how and when those questions were addressed and how the FRB intends to track them.

6. Notwithstanding the FRB's recognizing the need for a Use of Force Data report for the second officer, it failed to comment at all on the quality of the force investigation or subsequent command reviews.

7. The rationalization of unprofessional behavior is something APD must begin to address. The monitoring team recognizes that situations occur where officers may reactively (and in the heat of a situation) use profanity, but that still must be curbed at every opportunity. Small justifications for the use of profanity may eventually escalate and seep into other situations where it is more obviously inappropriate. It is up to supervisors to address smaller issues with performance to ensure they do not escalate into larger problems. The monitoring team found instances where APD incorporated, and accepted, new terms like "tactical profanity, verbal escalation and mirroring the suspect's verbal behavior," in its reports as a justification for inappropriate language. In the opinion of the monitoring team, the acceptance of these three types of rationalizations point to a serious underlying problem of accountability.[21]

Monitoring Team's Summary of Significant Conclusions:

The monitoring team remains concerned with APD's overall capability to aggregate and analyze data to detect early patterns--- that is, "collect AND analyze the dots." It will be important for APD to develop the capability to identify performance deficiencies and potential misconduct by individual officers, or organizational units, through the efforts of the FRB. Likewise, the ability of the FRB to make recommendations, track those recommendations and ensure they have been enacted is a work in progress. APD must be cognizant of workplace influences that pressure officers at all levels to ignore, rationalize, or even conceal performance deficiencies and policy violations. To be effective, accountability must begin at the highest levels of the organization and cascade down to lower supervisory levels through critical and probing assessments of events. APD is at the early stages of establishing the methods and processes by which the FRB carries out its responsibilities. The monitoring team has seen

[21] Many of these and similar issues summon the specter of "outside training," training self-selected by individual officers without adequate screening and approval processes from APD. The monitoring team have frequently noticed repetitive use of phrases such as "tactical profanity," "distractive knee strike," discussion of a 30-foot "safe zone," etc. that (appear) not to be part of APD's standard use of force training, but, given their similarity and frequency, seem to have been generated somewhere other than APD-mandated training. This should give "notice" to APD that it needs to review its policy on outside training, assess it relative to authorized departmental training and implement systems to locate, and where the training is in contradistinction to the CASA and/or APD policy, ensure that it is remediated. Metropolitan DC PD has such a policy that may serve as a model.

positive progress, but more has to be done to ensure the FRB develops into a key component to effect meaningful change. Notwithstanding the critical role front line supervisors serve in the oversight and investigation of force used by APD officers, in the opinion of the monitoring team, the FRB is at the center of accountability along with the Internal Affairs Bureau.

The monitoring team has reviewed use of force cases with clear and obvious issues of concern that have been either missed or ignored at multiple levels of review. Of particular concern is the inadequacy of command level reviews and the failure to properly document their review of force investigations. Equally important is the failure of commanders to challenge the quality of force investigations at lower levels. Proper articulation is a standard that applies at every level, to every function, and to every person in an oversight capacity. The monitoring team believes that the FRB is continuing to evolve and is impressed with the continued attendance of relevant organizational leaders. However, the fact that there is no obvious indication that the FRB has commented on the quality of force investigations, and command level reviews, is a significant concern. This may be in part because the FRB is provided only a limited view of the case, since it does not review the entire inventory of lapel videos for a particular case. The monitoring team has found during its reviews that critical elements of a case are easily missed when all videos of a case are not reviewed.

The monitoring team has requested that APD schedule a FRB meeting during the next site visit. This will allow the monitoring team an opportunity to observe the quality of the board and determine if the members of the board engage each case they review with meaningful and probing questions.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.66 Assessing Compliance with Paragraph 79: Annual Use of Force Report

Paragraph 79 stipulates that:

"At least annually, APD shall publish a Use of Force Annual Report. At a minimum, the following information should be included in the Annual Use of Force Report:

a) number of calls for service;

b) number of officer-initiated actions;

c) number of aggregate uses of force;

d) number of arrests;

e) number of custodial arrests that involved use of force;

f) number of SWAT deployments by type of call out;

g) number of incidents involving officers shooting at or from moving vehicles;

h) number of individuals armed with weapons;

i) number of individuals unarmed;

j) number of individuals injured during arrest, including APD and other law enforcement personnel;

k) number of individuals requiring hospitalization, including APD and other law enforcement personnel;

l) demographic category; and

m) geographic data, including street, location, or Area Command."

Methodology

The monitoring team reviewed the FRB 2015 year-end data in its Fourth Quarterly Report (issued on January 26, 2016), and found that no in-depth analysis was completed. We were informed that the 2015 Annual Use of Force Report is nearing completion and that it will include such an analysis. We will review and comment on same when it is available.

Results

The monitoring team reviewed the FRB report and found that it contained the majority of the reporting categories enumerated in the CASA. However, since we haven't seen the Annual Report as yet, we are unable to compare the two documents to assess congruence. We previously advised APD that it should consider adding information on contacts with mentally ill persons, along with reporting on whether force was used in the resolution of those contacts. SWAT has already added such a category to its reporting protocol.

We expect that the final Annual Report will be available for review in the next reporting period. We note that the category of "baton" has been dropped altogether in the FRB report. Further, we determined that the category of "Baton Strikes" is included in the 2014 Annual Report, but the use of force data for 2014 was reported in a separate section within the Department's Annual Report in contrast to a stand-alone version. Previously, the monitoring team flagged this as a trend that APD needed to examine in depth (no strikes were reported for 2014, and use had dropped 100% since 2007). We believe that APD should continue to include it as a category and also conduct a formal review to evaluate the state of APD baton training and field use. It also appears, based upon very limited data, that some officers have ceased carrying batons because of the

infrequent use and discomfort. This should be a point of emphasis in monthly station-level inspections to assess compliance.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.67 Assessing Compliance with Paragraph 80: Tracking System for Officer Use of Force

Paragraph 80 stipulates that:

APD shall be responsible for maintaining a reliable and accurate tracking system on all officers' use of force; all force investigations carried out by supervisors, the Internal Affairs Bureau, or Multi-Agency Task Force; and all force reviews conducted by the Force Review Board. APD shall integrate the use of force tracking system with the Early Intervention System database and shall utilize the tracking system to collect and analyze use of force data to prepare the Use of Force Annual Report and other reports, as necessary.

Methodology

The monitoring team reported in IMR-2, "[t]he tracking system that is ultimately implemented must include capabilities to capture dispositions of use of force cases where an officer is commended, counseled, disciplined or trained. This manner of tracking will benefit APD in that it will demonstrate and ultimately showcase the organization's business processes surrounding use of force." This remains a central theme in the development and implementation of tracking mechanisms and protocols. We have yet to review final protocols for implementing the requirements in Paragraph 80, though we were advised at a March 8, 2016 meeting with both City and APD data management specialists that the new system would be completed shortly and then rolled out in a bounded field trial.

The monitoring team will return to this paragraph and its requirements during the next reporting period.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.68 Assessing Compliance with Paragraph 81: MATF Participation by APD

Paragraph 81 of the CASA stipulates:

"APD shall continue to participate in the Multi-Agency Task Force for as long as the Memorandum of Understanding continues to exist. APD agrees to confer with participating jurisdictions to ensure that inter-governmental agreements that govern the Multi-Agency Task Force are current and effective. APD shall ensure that the inter-governmental agreements are consistent with this CASA."

Methodology

The monitoring team determined that the original Memorandum of Understanding (MOU), dated October 8, 2014, remains in force. Several APD policies---SOP 2-31 Investigation of Officer-Involved Shootings (OIS), Serious Uses of Force, and In-Custody Deaths and SOP 2-05 Internal Affairs Division--- relate directly to procedures relevant to the MOA. These are currently undergoing review in accordance with the monitor's master schedule for policy reviews and, therefore, APD is not yet in Primary Compliance.

Results

The monitoring team will review the above policies during the next reporting period, consistent with the monitor's schedule for policy reviews.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.69 Assessing Compliance with Paragraph 82: Investigative Protocols for the MATF

Paragraph 82 stipulates that:

"APD agrees to consult with participating jurisdictions to establish investigative protocols for the Multi-Agency Task Force. The protocols shall clearly define the purpose of the Multi-Agency Task Force; describe the roles and responsibilities of participating agencies, including the role of the lead investigative agency; and provide for ongoing coordination among participating agencies and consultation with pertinent prosecuting authorities."

Methodology

The MOU contains provisions that are compliant with the requirements in Paragraph 82. Several APD policies---SOP 2-31 Investigation of Officer-Involved Shootings (OIS), Serious Uses of Force, and In-Custody Deaths and SOP 2-05 Internal Affairs Division--- relate directly to procedures relevant to the MOA. These are currently undergoing review in accordance with the monitor's master schedule for policy reviews and, therefore, APD is not yet in Primary Compliance.

Results

The monitoring team will review the above policies during the next reporting period, consistent with the monitor's schedule for policy reviews.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.70 Assessing Compliance with Paragraph 83: Coordination with MATF

Paragraph 83 stipulates:

"APD agrees to consult and coordinate with the Multi-Agency Task Force on the release of evidence, including video recordings of uses of force, and dissemination of information to preserve the integrity of active criminal investigations involving APD personnel."

The MOU contains a provision (Section 1. F. Bullet #7, p. 3) that states, "The Head of the Lead Agency will have the final decision on the release of any information." This guidance is non-specific, but we assume that it encompasses any type of investigative material, including video recordings. Because the release of video recordings is likely to be controversial, we recommend that APD discuss more detailed guidelines with the other MOU signatories.

Several APD policies---SOP 2-31 Investigation of Officer-Involved Shootings (OIS), Serious Uses of Force, and In-Custody Deaths and SOP 2-05 Internal Affairs Division--- relate directly to procedures relevant to the MOU. These are currently undergoing review in accordance with the monitor's master schedule for policy reviews and, therefore, APD is not yet in Primary Compliance.

Results

The monitoring team will review the above policies during the next reporting period, consistent with the monitor's schedule for policy reviews.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.71 Assessing Compliance with Paragraph 84: Briefing with MATF

Paragraph 84 of the CASA stipulates:

"APD agrees to participate in all briefings of incidents involving APD personnel that are investigated by the Multi-Agency Task Force."

Methodology

There were no MATF investigations involving APD officers closed during the reporting period, according to the Commander of the Investigation Response Team (IRT) in a Memorandum to Dr. Ginger dated February 18, 2016. APD also provided sign-in sheets from four 2015 Chief's Briefings in MATF cases that attest to the inclusion of key participants in major briefings (May 25, May 28, June 4, and July 31).

Several APD policies---SOP 2-31 Investigation of Officer-Involved Shootings (OIS), Serious Uses of Force, and In-Custody Deaths and SOP 2-05 Internal Affairs Division--- relate directly to procedures relevant to the MOA. These are currently undergoing review in accordance with the monitor's master schedule for policy reviews and, therefore, APD is not yet in Primary Compliance.

Results

The monitoring team will review the above policies during the next reporting period, consistent with the monitor's schedule for policy reviews.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.72 Assessing Compliance with Paragraph 85: Expiration of MOU re MATF

Paragraph 85 stipulates:

"If the Memorandum of Understanding governing the Multi-Agency Task Force expires or otherwise terminates, or APD withdraws from the Multi-Agency Task Force, APD shall perform all investigations that would have otherwise been conducted pursuant to the Memorandum of Understanding. This Agreement does not prevent APD from entering into other investigative Memoranda of Understanding with other law enforcement agencies to conduct criminal investigation of officer-involved shootings, serious uses of force, and in- custody deaths."

Methodology

The "continuity of investigations" requirement in this paragraph is contingent upon expiration of the current MOU, which remains in force. It also grants discretion to APD to enter into a similar MOU for the investigation of the types of cases within the scope of the present MOU.

Several APD policies---SOP 2-31 Investigation of Officer-Involved Shootings (OIS), Serious Uses of Force, and In-Custody Deaths and SOP 2-05 Internal

Affairs Division--- relate directly to procedures relevant to the MOU. These are currently undergoing review in accordance with the monitor's master schedule for policy reviews and, therefore, APD is not yet in Primary Compliance.

Results

The monitoring team will review the above policies during the next reporting period, consistent with the monitor's schedule for policy reviews.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.73 Assessing Compliance with Paragraph 86: Review of Use of Force Policies and Training

Paragraph 86 stipulates:

"APD will review all use of force policies and training to ensure they incorporate, and are consistent with, the Constitution and provisions of this Agreement. APD shall also provide all APD officers with 40 hours of use of force training within 12 months of the Operational Date, and 24 hours of use of force training on at least an annual basis thereafter, including, as necessary, training on developments in applicable law and APD policy."

Methodology

APD SOP 2-52 Use of Force, which was approved by the monitor on January 23, 2016 complies with both the Constitution and CASA provisions[22]. Several language changes were incorporated into the approved policy, including a Show of Force reporting procedure for the pointing of a firearm and Taser "painting" and an *in extremis* provision for firing at a vehicle in extraordinary circumstances. APD's policies on the use of Electronic Control Weapons and the reporting and investigation of use of force incidents have also been approved, putting APD in Primary Compliance and, thereby, affording a solid foundation upon which to develop and deliver meaningful, effective training.

Results

While use of force policies were being developed and were under review, APD trainers developed a 40-hour Curriculum on Use of Force to meet the requirements in Paragraphs 86 and 87, and commenced presentations in early

[22] We note in passing that the definition of "serious use of force" (definition qq) in the CASA) was inadvertently omitted in the approved version of SOP 2-52. This should be corrected in the next revision.

2016 with a projected completion date of June 2016. Attendance requirements and guidelines were specified in APD Special Order 15-103 2016 Mandatory Use of Force Training (December 11, 2015). Based upon a memo from the academy Major, APD had completed 4 sessions out of 17 scheduled (23.5%) with a census of 128 officers (14.85% of total strength) through February 2016. APD projected that the remaining training, consisting of 13 sessions and a total census of 706 officers, would be completed by June 2016. The attendance rate at that time was projected to be 96.75% (834 officers of all ranks), with various forms of uncontrollable attrition accounting for the 3.25% figure for non-attendees (28 officers at present). We provide more detailed comments on the 40-hour Use of Force Curriculum under Paragraph 87.

(Based upon the projected completion date of the 40-hour Curriculum, APD will be required to provide 24 hours of annual use of force training starting in July 2017.)

Unfortunately, the monitoring team had no course documentation to review prior to the start of the use of force classes. We believe that such work organization and sequencing was imprudent and risky, as shown by our March review and more recent assessments. We believe that most of the issues that have been identified would have been flagged as problematic during a prior review, making most of the now unavoidable supplemental training unnecessary. Once again it appears that an undue preoccupation with deadlines and "completing check boxes" trumped quality considerations. In the literature on organizational error this tendency is referred to as the "hurry-up syndrome", which has been documented repeatedly as a common precursor to mistakes, serious accidents, and substandard outcomes. APD continues to make this mistake despite regular feedback and technical assistance on the part of the monitoring team. We reiterate here that a four-year timeline for completion of such wide-range organizational development and change is risky, and can lead to the very phenomenon we have been observing to date: production of unacceptable policy, poor planning and documentation of training, and a harried and less-than effective management cadre.

During this site visit the monitoring team learned that concern exists within the academy that sufficient staffing levels may not currently exist to adequately meet the training needs of the CASA. Experience within the monitoring team has shown that a substantial commitment to the training function is required to be successful. Proper staffing and allocation of resources to the academy is essential to APD's success. During its exit interview, following the monitoring team's last site visit, the parties were cautioned that as more APD policies come into compliance, and receive monitor approval, the additional training burden will require proper management. The monitoring team, at this time, has drawn no conclusion what the proper staffing level for the academy should be. However, APD must monitor this situation closely, or moving forward they may encounter difficulty with CASA compliance related to training requirements. Again,

parenthetically, based on the monitor's experiences in Pittsburgh, New Jersey and Los Angeles, major new commitments to training staff and facilities, quality control staff, and supervisory ranks were critical before those agencies began to "see a difference" in the quality of compliance efforts.

Primary: **In Compliance**[23]
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.74 Assessing Compliance with Paragraph 87: Use of Force Training Based on Constitutional Principles

Paragraph 87 stipulates:

"APD's use of force training for all officers shall be based upon constitutional principles and APD policy and shall include the following topics:

a) search and seizure law, including the Fourth Amendment and related law;

b) APD's use of force policy, use of force reporting requirements, and the importance of properly documenting use of force incidents;

c) use of force decision-making, based upon constitutional principles and APD policy, including interactions with individuals who are intoxicated, or who have a mental, intellectual, or physical disability;

d) use of de-escalation strategies;

e) scenario-based training and interactive exercises that demonstrate use of force decision-making and de-escalation strategies;

f) deployment and use of all weapons or technologies, including firearms, ECWs, and on-body recording systems;

g) crowd control; and

h) Initiating and disengaging foot pursuits."

Methodology

APD SOP 2-52 Use of Force, which was approved by the monitor on January 23, 2016, complies with both the Constitution and CASA provisions. Several language changes were incorporated into the approved policy, including a Show of Force reporting procedure for the pointing of a firearm and Taser "painting" and an *in extremis* provision for firing at a vehicle in extraordinary

[23] The policy is written; however, APD personnel have not yet begun to adapt to the new requirements "in the field."

circumstances. APD's policies on the use of Electronic Control Weapons and the reporting and investigation of use of force incidents have also been approved, putting APD in Primary Compliance and, thereby, affording a solid foundation upon which to develop and deliver meaningful, effective training.

Results

Paragraph 87 lists specific courses of instruction that are required in APD's use of force training. Our preliminary review[24] determined that the curriculum included the required subjects, with the exception of adequate instruction in the following areas: 1) The interaction with intoxicated persons and persons with mental or physical disabilities; 2) The deployment and use of all weapons; 3) Use of on-body recording devices (OBRD); 4) Crowd control; and foot pursuits. The monitoring team is aware that these subjects may be addressed in other APD courses (such as CIT), but we have not yet documented equivalent APD training. We believe that the crowd control block needs to be supplemented because it is not based upon an approved policy. During our upcoming June site visit, we plan to meet with training staff and provide a comprehensive review and assessment of the 40-hour Curriculum. That meeting will specifically discuss any training gaps and APD's proposed remedy to close each.

Both the monitor and members of the monitoring team attended early but different sessions of the 40-hour Curriculum instruction.[25] Prior to that, monitoring team members had done in-depth reviews of course documentation[26] for each block of instruction. The results of that review were uneven, leading the monitoring team to conclude that APD course documentation in general needed substantial upgrading to ensure quality and consistency. In a meeting with the academy Commander (and other APD representatives) the monitoring team was advised that present staffing constraints precluded initiating a special project to correct course documentation deficiencies, but that APD planned to address the issue in upcoming months. Over the course of the last several months, the monitor has provided training staff with a series of memoranda and e-mails outlining key substantive and methodological issues, along with

[24] That review consisted of reviewing course documentation and observing actual instruction during our March 2016 visit. The training materials were not provided to the monitoring team to review for CASA compliance prior to beginning the delivery to APD officers.

[25] Due to other monitoring responsibilities the entire course was not observed while on site. The monitoring team noted that APD was videotaping each block of instruction, and therefore asked for copies of the lessons that were not attended. APD indicated that due to technical issues those blocks of instruction could not be provided.

[26] Typically the "training packets" consisted of a lesson plan of variable quality, copies of handouts, PowerPoint presentations, and supporting material, such as scenario descriptions, role player guidelines, evaluation checklists, and copies of the final examination. However, these items were not assembled in a discrete file.

suggestions for correcting deficiencies. This process of timely reviews and feedback, we believe, has provided the basis for significant enhancements.

The monitoring team provided verbatim (See below) an outline of specific, early feedback that we provided the academy Commander after a series of discussions during the week of March 7-11, 2016. Parenthetically, these points were highlighted in a three-part memorandum dated March 25, 2016, in the final section entitled, "Understandings".[27] We include them in IMR-3 so that the reviewer can sense the generally positive nature of the working relationship between the two staffs and also appreciate that the need for some level and type of supplemental training was identified early and communicated to APD staff. At this point, neither the monitoring team nor APD staff has analyzed the degree of correspondence fully to catalog the additional training that will be necessary to achieve full Secondary Compliance. In that respect, we are aware of several instructional methods used by APD that might provide suitable means of delivering any remedial supplemental use of force training.

The "Understandings" section of the memorandum provided to the academy Commander underscored the extent of cooperation between the two staffs, and, further, to highlight the extent of feedback on training content, format, and delivery that was provided to assist APD in achieving full Secondary Compliance with the requirements in Paragraphs 86 and 87. The discussions referred to took place during the week of March 7-11, 2016. The following points were documented and provided to the academy Commander.

Understandings

- APD agreed to re-title the 40-hour course (i.e., remove "DOJ-Imposed") to reflect greater APD ownership of the training.

- APD modified a scenario to conform more closely to Reality Based Training (RBT) principles. The revised scenario was a significant improvement and attested to staff's ability to develop suitable, authentic scenarios consistent with department objectives, RBT principles, and CASA requirements.

- The monitoring team provided feedback concerning a draft 24-hour Supervisors Course and discussed various approaches APD could take. It was obvious APD shared concern with the content of materials the monitoring team was provided, and indicated that APD's initial path had been to develop an internal program. APD decided to develop an in-house

[27] There were two preceding sections in the memorandum, which are not reproduced herein. The first section provided contact information on two experienced RBT instructors as possible expert resources. The second section described several publications that we felt might be useful as background material for APD's training. Two dealt with risk management issues, while the third focused upon officer safety issues.

alternative to the proposed 24-hour curriculum from an outside vendor. Doing so would enable APD to draw upon internal expertise, tailor the course more specifically to APD needs, and align the content closely with CASA requirements.

- APD agreed that the quality of the training documentation did not meet standard formatting conventions with respect to the structure and content lesson plans.

- The quality of delivery of material by a trainer is critical. While some of the instruction that the monitoring team observed was of a superior quality, APD was provided with feedback concerning an instructor who was tasked with the delivery of a block of instruction that focused on revisions to SOP 2-52 Use of Force. The tone of instruction was not appropriate at times, and the instructor seemed unprepared to answer specific questions from the audience. Also, tone matters when trying to send the proper message concerning APD's new standards relating to Use of Force. When this was brought to the academy Commander's attention it appeared she recognized the issue prior to it being brought up by the IMT, and indicated there was some initial disagreement as to who should deliver that specific block of instruction.

- The block of instruction concerning SOP 2-52 attempted to focus exclusively on changes to the policy. The monitoring team provided feedback that SOP 2-52 should be reviewed in its entirety to provide context, coherence, and clarity to APD's new force requirements and oversight systems. We discussed supplementing the block of instruction in order to receive credit for covering 2-52.

- The monitoring team expressed surprise that an APD executive level commander did not lead off the training. Again, messaging is critical to the success of the training and by having an APD executive lead off the training, if done properly, he or she could diffuse officer misunderstandings or anxieties, set clear-cut direction, and demonstrate APD ownership of the newly-adopted organizational standards. The monitoring team understood further that it was APD's intention to fill this gap in future presentations.

- APD would submit draft curricula and course documentation, including the 24-hour Supervisory Investigations Curriculum, to the monitoring team and Department of Justice prior to actual delivery. That would enable timely review and feedback to ensure that content and methodology align closely with CASA requirements and APD policies. Submissions of course materials should track in accordance with the agreed-upon channels.

The academy Commander was asked to notify the monitoring team if any of the "Understandings" were misstated or if something required clarification. The

monitoring team reiterated it was prepared to work closely with APD to ensure success in all phases of compliance. In doing so, APD was advised that multiple cycles of submissions and feedback might be necessary, followed by revisions and enhancements. Re-submissions---setting another cycle in motion---would be a vital sub-process in the larger change process. If that sub-process is shortchanged, quality will inevitably suffer.

In the opinion of the monitoring team, as things now stand, some form of supplemental training is unavoidable if APD is to achieve full Secondary Compliance with these paragraphs. It is needed either to clarify an issue or bridge a substantive gap, based upon the above points and those below. Nonetheless, the revised 40-hour Curriculum does meet many of the requirements set forth in both APD policy and the CASA.

Since our initial review, we have identified several additional gaps or points in need of clarification:

1. The use of lapel cameras and foot pursuits are not included in the 40-hour Use of Force Curriculum. APD has acknowledged that supplemental training will be necessary to cover those subjects.

2. The instruction on Crowd Control was based upon an old one-page policy. The revised policy, which aligns more closely with the CASA requirements, is under review but has not yet been approved. Hence, this instruction also will require some form of supplemental training to be in compliance.

3. Two cases are cited in the 2016 Maintenance of Effort (MOE) block that will require qualification because the legal rulings are not in harmony with APD policy. One is Plumhoff v. Rickard (2014), which is a U.S. Supreme Court case on shooting at vehicles that is less restrictive than APD policy, and the other is Scott v. Henrich (1997), a Supreme Court of Montana decision that affirms the principle that officers are not required to use “the least intrusive means” in responding to an exigent situation. Both rulings, without qualification, conflict with APD SOP 2-52 on shooting at vehicles and using the minimum amount of force necessary. It is also unclear to the monitoring team what the rationale was for the selection of cases in this block of instruction. Some cases are a decade old or older (which isn’t a problem if they remain controlling today) and some are out of circuit cases. Finally, there is a section on case law in the Use of Force instruction that focuses upon 10th Circuit case law. It is unclear how these two sets of instruction interrelate and if both are necessary. Our understanding is that the purpose of MOE case law instruction is to update officers on recent legal developments. It’s unclear if the instruction accomplishes that goal.

4. There was some confusion on what constituted “un-resisted handcuffing” in one class that the instructor failed to clear up. Because the understanding

may not be uniform across area commands, officers expressed concern that the standard would be applied inconsistently. The monitoring team did not find any comments on this issue in the sample of course evaluations that we reviewed, but training staff should conduct its own assessment to assure clarity and consistency.

We think it important to note that APD's lead use of force instructor did an exemplary job of presenting the most crucial material. He kept the class engaged, followed a logical, well-organized lesson plan, and displayed outstanding "platform skills". He also used a variety of questions to stimulate thought and discussion, though the large size of the class was a likely impediment to extensive in-depth discussions. The monitoring team, in a limited review of student evaluation forms, also found that students generally rated the "hands-on" blocks of instruction (reality-based training (RBT) scenarios and defensive tactics) very favorably, some commending the Department for moving in that direction. Lastly, we were impressed with the tone of most instructors, who stressed that the training was essential to improve both individual and organizational performance, including creating great officer safety margins and expanding the range of options for handling high-risk encounters.

An in-depth review of the 40-hour course is a major, complex undertaking, which the monitoring team is deferring until our June visit because of workload constraints. Notwithstanding that, team members and the monitor will continue to provide timely reviews and feedback to training staff, if requested, on any course documentation and any force-related training issues. We have also asked for video recordings of several courses that we missed because of other commitments, but APD recently advised of technical problems in supplying those items. We encourage APD to continue video recording all courses that can accommodate such activity without interfering with instruction.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.75 Assessing Compliance with Paragraph 88: Annual Supervisory In-Service Training

Paragraph 88 stipulates:

"Supervisors of all ranks, including those assigned to the Internal Affairs Bureau, as part of their initial and annual in-service supervisory training, shall receive additional training that includes:

a) conducting use of force investigations, including evaluating officer, subject, and witness credibility;

b) strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force;

c) incident management; and

d) supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force."

Methodology

Among the items that we reviewed recently[28] was the proposed 24-hour Supervisory Use of Force Investigations Curriculum proffered by an outside vendor. After reviewing the proposed curriculum, the monitoring team advised the Training Commander that there were serious gaps in the curriculum that would result in APD falling short of the both policy and CASA requirements. APD decided independently to cancel the outside course and custom-design their own by drawing upon internal subject matter experts. Though that course is still under development, we believe that APD's decision was sound from early reviews of the draft course documentation. The projected starting date is May 2016.

Results

The monitoring team has stated emphatically and repeatedly----and APD trainers are well aware of this ----that this curriculum is a key component of the strategy to improve the quality of both supervisory use of force investigations and chain of command reviews (that level of training will be another key component of the strategy). It is in a real sense essential to APD's success. It is also literally where the "rubber meets the road" since it is an early point in the chain of supervisory and command-level oversight and accountability. At present, our assessments of both levels of work reveal troublesome deficiencies, which portend continued failure if not corrected. Those deficiencies range from:

1. A lack of investigative skills;
2. Cursory reviews and reliance upon "boilerplate" and conclusory language in Command-level reviews;
3. Overlooking or glossing over significant issues;
4. Failure to challenge obvious performance deficiencies; and
5. Major failures in objectively comparing officer accounts with video recordings.

We are aware that cultural factors (e.g., norms that conflict with professional standards) often underlie these sorts of problems. Also, sometimes the

[28] This is outside the due dates for this reporting period, but is reported here to give the Court a clearer understanding of the progress being made. Compliance status for this reporting period is reported *for the reporting period.*

requirement to articulate fully and clearly in a report (in the broadest sense of the term) is not limited to rank-and-file officers. To the contrary, supervisors and Command-level officers are expected to articulate in full the basis for their conclusions and actions. A terse notation to the effect of "I agree" is seldom a sufficient comment, especially in use of force cases. Although we found numerous examples of this problem, we also found cases in which chain of Command reviewers dissected the case thoroughly and cited relevant facts to support their conclusions.

The monitoring team remains concerned that the proposed class size of 60 students for the 24-hour Supervisory Force Investigation Curriculum will undercut the desired levels of engagement and participation in courses that shouldn't rely solely upon "telling" (i.e., lecture). This concern has been communicated directly to the academy Commander. In any case, this sort of instruction requires substantial "hands-on" work that will activate higher levels of cognitive skills, such as analysis, synthesis, and evaluation. A key to the delivery of meaningful and effective training is the identification of organization-specific needs. The monitoring team believes that APD should incorporate internal databases into the training, including FRB Quarterly Reports, its Annual Use of Force Report, and comments provided in prior monitor reports. These databases provide direct feedback based upon regular quarterly evaluations of a sample of supervisory use of force investigations, ranging from common mistakes, important trends, and examples of exemplary practice. There is a wide array of meaningful information and data that is available to academy trainers that could help identify specific needs pertaining to supervisory force investigations. Though recommended to the academy Commander, it is unclear whether the academy staff has considered that information while developing their 24-hour Supervisory Force Investigation Curriculum.

Once again, we reiterate here that a four-year timeline for completion of such wide-range organizational development and change is risky, and can lead to the very phenomenon we have been observing to date: production of unacceptable policy, poor planning and documentation of training, and a harried and less-than effective management cadre.

Parenthetically, outside of the IMR-3 reporting period the monitoring team was provided a revised set of Curriculum for the 24-hour Supervisory Force Investigation course. While there appeared to be a substantial uptick in the overall quality, the monitoring team's review of one lesson plan revealed substantive issues. The monitoring team did not review the remaining training materials; however, the academy Commander was provided a memorandum with substantial feedback concerning the one lesson plan that was reviewed. To date, the monitoring team has not been provided a revised curriculum for that course, but expects to report extensively on the training during the next reporting cycle.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.76 Assessing Compliance with Paragraph 89: Annual Firearms Training

Paragraph 89 stipulates:

"Included in the use of force training set out above, APD shall deliver firearms training that comports with constitutional principles and APD policy to all officers within 12 months of the Operational Date and at least yearly thereafter. APD firearms training shall:

a) require officers to complete and satisfactorily pass firearms training and qualify for regulation and other service firearms, as necessary, on an annual basis;

b) require recruits, officers in probationary periods, and officers who return from unarmed status to complete and satisfactorily pass firearm training and qualify for regulation and other service firearms before such personnel are permitted to carry and use firearms;

c) incorporate professional low-light training, stress training (e.g., training in using a firearm after undergoing physical exertion), and proper use of force decision- making training, including continuous threat assessment techniques, in the annual in-service training program; and

d) ensure 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."

Methodology

In the last monitor's report, we noted the following APD accomplishments: 1) APD successfully completed its transition to department-owned firearms during 2015, in accordance with CASA requirements as set forth in APD policy. 2) APD completed and documented nearly 100% compliance with its firearms qualification policies and procedures in 2015. This included day and night shoots, qualifications with special weapons, including the patrol rifle, and remediation of qualification failures. We were particularly impressed with the well-documented procedures for both the patrol rifle qualification and remediation processes. Approximately a dozen officers were granted "qualification exemptions" because they were on some type of extended, approved leave. APD provided COB documentation on the exemptions granted in 2015; 3) APD SOP 2-22 Firearms and Ammunition was submitted for final review and approval, which should move APD into Primary Compliance on the requirements in Paragraph 89 when it is approved.

Results

The monitoring team questioned the adequacy of re-qualification procedures for officers returning from extended leaves in the last monitor's report, based chiefly on officer safety and risk management considerations. Although SOP 2-22 contains a provision on procedures for granting exemptions for officers on extended leave, it does not specify any return-to-duty procedures or the position or unit responsible for implementation and oversight. Such procedures may be included in other directives, but the monitoring team believe that they should also be set forth in SOP 2-22, if only by reference to those other policies.

APD provided printouts showing that two officers returned to duty from extended leaves during the reporting period and qualified successfully with all of the weapons that they were certified to use. It would be helpful if the printout included data showing the type of leave and its duration. Obviously, the duration is especially important because certain skills are more "perishable" than others. Thus, firearms qualification may not be the only type of return-to-work training that is required.

During its upcoming June visit, the monitoring team will focus significant time and effort on reviewing APD firearms training focusing specifically on inducing and managing stress (both physical exertion and cognitive processing), and the use of force decision-making, including the use of scenario-based and simulation methods. APD included a day of scenario-based training in its current 40-hour Use of Force Curriculum, which, based upon student evaluations, has been especially well received. We will also review the records from that instruction, particularly the evaluation work sheets and the report writing evaluations, in the next reporting period.

Although we concluded that remediation practices, both written and actual, were generally sound and done well, we found no records that cross-checked failures with remedial actions. In other words, for each qualification session, how many officers failed and how many officers received remedial training? The correspondence obviously should be one to one, or 100%. In order to identify failures we had to scroll through multi-page records and look for scores falling below the qualification standard. We found no separate record that listed all of the failures and documented remediation efforts in each case, including whether a successful qualification followed remediation. In fairness, we never specifically requested such a record from APD and the individual records that we reviewed were generally compliant with Paragraph 89, sub-section d). However, we will do so during the next reporting period, as we are concerned about three things:

1. What is the overall rate of compliance, that is, the percentage of cases in which qualification failures undergo remedial training and qualify?

2. In what percentage of cases is remediation completed within the specified time periods?

3. What percentage of officers are “chronic” non-qualifiers (this is a question of “typicality”), how does APD track and monitor these officers, and what special efforts are made to address the underlying causes of repeated failures?

Because firearms competency involves a set of high-risk critical tasks, it is without question a major liability and officer safety concern. Any lapses in assuring competency in technical, tactical, and decision-making skills can have serious downstream consequences.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.77 Assessing Compliance with Paragraph 90: Management of Specialized Units

Paragraph 90 stipulates:

“To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD shall operate and manage its specialized units in a manner that increases the likelihood of safely resolving critical incidents and high-risk situations, prioritizes saving lives in accordance with the totality of the circumstances, provides for effective command-level accountability, and ensures force is used in strict compliance with applicable law, best practices, and this Agreement. To achieve these outcomes, APD shall implement the requirements set out below.

Methodology

APD has implemented significant improvements, many initiated internally, in the operation of its specialized units to achieve compliance with the goals set forth in Paragraph 90. These are addressed in monitoring team comments under each paragraph.

It is important to note that Special Operations has invested considerable time and effort in continuously revising its internal policies to accord with CASA requirements. However, because of the large volume of CASA-required policies, these still are in a queue awaiting final review and approval. We have found far fewer deficiencies in these Bureau-level and Unit-level policies than in the development of Department-level policies. Despite this delay, Special Operations has successfully imported most CASA requirements into its draft policies, on-going training, and actual field operations. We believe that the

Division's accomplishments in 2015 attest strongly to the quality of the work that has been done and the initiative that the Division Commander has shown. Those accomplishments are also described fully in the following paragraphs.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.78 Assessing Compliance with Paragraph 91: Composition of Specialized Tactical Units

Paragraph 91 stipulates:

"APD's specialized tactical units shall be comprised of law enforcement officers who are selected, trained, and equipped to respond as a coordinated team to resolve critical incidents that exceed the capabilities of first responders or investigative units. The specialized tactical units shall consist of SWAT, Canine, and Bomb Squad/EOD."

Methodology

Special Operations has expanded its constituent units by adding the Crisis Negotiation Team (CNT) as an internal unit, although its members are distributed department-wide and handle CNT responses as collateral duties. CNT is overseen by a lieutenant, who is a training negotiator and assigned to the Tactical Section. The monitoring team previously commended this addition because it imbeds a negotiation capability within the team structure and reinforces APD's concept of operations for handling high-risk critical incidents. If there is a single word to capture what APD has achieved and what many tactical programs generally lack, it is balance----that is, a program that puts a premium on continuous updating, adaptive leadership, shared situational awareness, and careful assessment of the type of intervention that is warranted under APD's concept of operations. These functional capabilities ensure that a full range of options---from tactical to clinical (e.g., CNT) ---are deployed and employed based upon situational exigencies in conformance with APD policies.

As we noted above, Special Operations has developed a set of draft policies that address the requirements set forth in Paragraph 91, although they remain in the monitor's queue awaiting review and approval. Once that occurs, APD will be in Primary Compliance on all of the paragraphs in this section.

Because Special Operations conducts regular, extensive training at numerous levels (e.g., individual, unit, and team), there is a large volume of documentation that requires examination. Accordingly, the monitoring team has set aside a major block of time during its upcoming June visit to conduct a paragraph-by-

paragraph, comprehensive review of CASA requirements pertaining to Special Operations.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.79 Assessing Compliance with Paragraph 92: Training of Specialized Tactical Units

Paragraph 92 stipulates:

"APD shall ensure that specialized tactical units are sufficiently trained to complete the following basic operational functions: Command and Control; Containment; and Entry, Apprehension, and Rescue."

Methodology

The monitoring team has done a preliminary assessment of Special Operations training that confirmed that the operational functions included in Paragraph 92 are regularly covered and stressed. We will include these requirements in the monitor's next assessment of the Special Operations Division and its constituent units.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.80 Assessing Compliance with Paragraph 93: Tactical Unit Missions and Policies

Paragraph 93 stipulates:

"Each specialized tactical unit shall have clearly defined missions and duties. Each specialized tactical unit shall develop and implement policies and standard operating procedures that incorporate APD's agency-wide policies on use of force, force reporting, and force investigations."

Methodology

It is important to note that Special Operations has invested considerable time and effort in continuously revising its internal policies to accord with CASA requirements. However, because of the large volume of CASA-required policies, these still are in a queue awaiting final review and approval. We have

found far fewer deficiencies in these Bureau-level and Unit-level policies than in the development of Department-level policies. Despite this delay, Special Operations has successfully imported most CASA requirements into its draft policies, on-going training, and actual field operations.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.81 Assessing Compliance with Paragraph 94: Tactical Units Policy and Procedure

Paragraph 94 stipulates:

"APD policies and procedures on specialized tactical units shall include the following topics:

a) Team organization and function, including command relationships with the incident commander, Field Services Bureau, other specialized investigative units, Crisis Negotiation Team, Crisis Intervention Unit, crisis intervention certified responders, and any other joint or support elements to ensure clear lines of responsibility;
b) Coordinating and implementing tactical operations in emergency life-threatening situations, including situations where an officer's view may be obstructed;
c) Personnel selection and retention criteria and mandated physical and tactical competency of team members, team leaders, and unit commanders;
d) Training requirements with minimum time periods to develop and maintain critical skills to include new member initial training, monthly training, special assignment training, and annual training;
e) Equipment appropriation, maintenance, care, and inventory;
f) Activation and deployment protocols, including when to notify and request additional services;
g) Conducting threat assessments to determine the appropriate responses and necessary resources;
h) Command and control issues, including a clearly defined command structure; and
i) Documented after-action reviews and reports."

Methodology

It is important to note that Special Operations has invested considerable time and effort in continuously revising its internal policies to accord with CASA requirements. However, because of the large volume of CASA-required policies, these still are in a queue awaiting final review and approval. We have found far fewer deficiencies in these Bureau-level and Unit-level policies than in the development of Department-level policies. Despite this delay, Special

Operations has successfully imported most CASA requirements into its draft policies, on-going training, and actual field operations.

Special Operations has developed an excellent set of records to track and document important facets of its operations. They are comprehensive, well organized, and generally user-friendly. The monitoring team conducted a limited review of the material provided in response to our recent data request, but, due to workload considerations, we have deferred a more in-depth assessment to our June site visit. We also experienced a problem opening records that would provide access to training content. The monitoring team will work to resolve those before the June site visit.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.82 Assessing Compliance with Paragraph 95: Annual Review of Tactical Policies

Paragraph 95 stipulates:

"The policies and standard operating procedures of specialized tactical units shall be reviewed at least annually and revisions shall be based, at a minimum, on legal developments, training updates, operational evaluations examining actual practice from after-action reviews, and reviews by the Force Review Board or other advisory or oversight entities established by this Agreement."

Methodology

Special Operations has incorporated this requirement at all levels, though its draft policies have yet to be approved by the monitor. The monitoring team reviewed a copy of the Division Commander's January 22, 2016, transmittal letter to the Bureau Chief and the accompanying 2015 Annual Review. Underscoring the importance of "continuous assessment", the Commander noted that Divisional and Unit reviews are conducted, in some cases, on a weekly basis. This is a mindset that reflects a deep commitment to workforce development, service, and operational excellence. Although we have found other instances of this mindset in APD staff, it is certainly not pervasive. It, in short, is not yet at "critical mass" to support timely accomplishment of the reforms required in the CASA.

The 12-page report, which is organized in accordance with the topics listed in Paragraph 95, is outstanding and reflects deep thought, a high level of staff engagement, an appreciation of broader APD processes and the role of specialized units, and the critical need to provide factual underpinnings for any

conclusions or generalizations. Beyond these general comments, workload considerations precluded a full, in-depth review. We will review the report with Special Operations staff during our June visit. However, we did find one minor issue and have a question about one case reported on in the Legal Review. APD generally has a habit of not using page numbers in many of its documents.

Without page references, review and citation are less efficient, and this report lacked pagination. The more serious issue concerned reporting on the U.S. Supreme Court Case of Mullenix v. Luna, 136 S.Ct. 305 (2015), which promulgates a less restrictive standard than APD's regarding discharging a firearm at a vehicle. We found a similar situation with respect to the reporting on another U.S. Supreme Court case---Plumhoff v. Rickard----in the 40-hour Use of Force Curriculum. In both instances, the reviewer failed to distinguish between the rulings and APD's more restrictive policy, which limits use of a firearm to extreme situations. It is misleading to present such cases without providing unequivocally clear qualification that they apply to the Constitutional standard set forth in Garner and Graham, and not to APD's policy-based standard on shooting at vehicles. APD officers must accordingly operate in accordance with BOTH requirements to be compliant with the Federal standard and APD policy.[29]

This leads us to a broader concern, which is the consistency of legal updates developed and presented at different levels. We looked at case law instruction in two different courses in the 40-hour Use of Force Curriculum and the one in the Special Operations report. The content varies widely. We applaud the effort that went into each review, but we speculate about relevancy, consistency, and completeness. The standard approach to legal updates is two-fold: 1) Particularly compelling cases are identified and reviewed immediately because of their impact on operational or management practices; and 2) Significant cases are identified by an expert source (often the local District Attorney or a state-level law enforcement unit) and compiled into an annual legal update, which is communicated to line officers using a variety of media. Further, standard practice is to assign the updating responsibility to the department's training unit, which ensures central oversight, direction, and control. The monitoring team recommends that APD review its current procedures for providing annual legal updates to address these concerns.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

[29] There is actually a third element to APD's three-part standard. That is 10th Circuit case law on the totality of circumstances and the concept of "officer-created danger". We have yet to read or hear this three-part standard articulated well.

4.7.83 Assessing Compliance with Paragraph 96: Documentation of Tactical Activities

Paragraph 96 stipulates:

"In addition to Use of Force Reports, APD shall require specialized tactical units to document their activities in detail, including written operational plans and after-action reports created after call-outs and deployments to critical situations. After-action reports shall address any areas of concern related to policy, training, equipment, or tactics."

Methodology

Special Operations has incorporated the requirements in Paragraph 96 at all compliance levels, though its draft policies have yet to be approved by the monitor. Its constituent units routinely prepare operational plans, if feasible, and conduct after-action reviews (AARs) that include inputs from involved officers. We reviewed a sample of AARs in our last report and commented on whether they identified key issues and generated useful recommendations for improved operations. In most cases we found that they did, although the elaboration was often sketchy. The Division uses standard templates for both plans and AARs, which are organized in topical sections that cover important areas. This is consistent with professional standards for the management of tactical operations.

The monitoring team reviewed one Operational Plan and seven After-action Reviews for the reporting period. The Operational Plan (OP) was for a high-risk narcotics search warrant. The major risks identified in the OP were a fortified wrought iron front door, possession of an assault rifle, and the presence of a large, aggressive dog. The OP called for a "door pull" to eliminate the fortification, followed by verbal announcements to the occupants to exit peacefully. If that did not occur, officers were to "fall back" to consider other options. A dynamic entry was not even mentioned in the OP, which attests to AP's commitment to "play these situations long" (a British police term indicating a patient, restrained approach) absent exigent circumstances that compel tactical intervention. Experience has shown that making entry in these situations puts officers needlessly "in harm's way" with little significant benefit. The incident AAR reports that the search warrant was served in accordance with the OP without incident. We were not provided Ops for the other two warrant services.

The monitoring team reviewed the remaining six AARs and noted the following (monitoring team comments or points of emphasis are underlined):

1. This involved another high-risk search warrant service (assault rifle, formidable fence) that went off, as they say, without a hitch. The actual service was preceded by a briefing involving all participants, followed by an abundance of caution to determine if the residence was occupied. Only after

multiple attempts to contact the residents, the incident commander authorized proceeding with the operation. In the AAR the sergeant provided a detailed account of his assessment and the basis for his decision-making. That is important to share with other likely incident commanders. The AAR did not include any specific comments on policy, equipment, tactical, or training issues.

2. Patrol officers responded to a call about "a male pointing a gun at a female" in the parking lot of an apartment building. Responding officers could not locate anybody and cleared the scene. They responded to another call about a firearm and somebody threatening to shoot another person in an apartment. Repeated efforts to contact the occupants failed and a patrol sergeant contacted the Tactical Section. As SWAT deployed, the occupants voluntarily exited and they were turned over to patrol officers. The apartment was then cleared; no other persons were located. Although no issues are mentioned in the ARR, this appears to be a marginal call-out. The most critical exigency warranting the tactical activation was the unresolved report of a firearm and the threat to shoot somebody in a specific apartment. It was only requested after repeated attempts to contact the occupants failed. It also would have been imprudent for patrol officers to force entry.

3. A Bureau of Alcohol, Tax, Firearms and Explosives (ATF) agent requested APD assistance in serving a search warrant of a location in which approximately 70 stolen firearms were present. Because the request met SWAT activation criteria, SWAT assisted in the search warrant service. After due caution and repeated call-outs the only occupant of the house came out voluntarily. The AAR noted that tactical activations, even for a search warrant service, should include CNT negotiators to function as intelligence officers. We hasten to support that recommendation because these operations can quickly turn into a barricaded subject situation.

4. This incident involved the service of arrest and search warrants on two suspects wanted for violent felonies. Area Impact detectives made the request, who had been unable to surveil the locations and arrest the suspects away from the premises (this option was brought up by the SWAT commander). Because of manpower limitations, APD asked for assistance from BCSO and NMSP. CNT detectives participated in the operation. Again, the watchwords were patience and restraint. The incident commander appeared to take several measures to avoid putting officers at unnecessary, serious risk. In his remarks, he referred to a "slow progression" into the house after a variety of means, including chemical agents, were deployed to force out any occupants. As it turned out the house was empty.

5. SWAT officers responded to a call for assistance at ABQ City Hall after a man with a holstered pistol was reported. Before full deployment, the man was identified and located elsewhere. In the aftermath, SWAT recommended that City Hall Security develop an emergency plan for locking down or evacuating City Hall in future incidents. The monitoring team consider this a prime example of "organizational learning," and both commend it and recommend that it be replicated elsewhere by the agency.

6. SWAT responded to support a K-9 search for a suspected burglar at a local restaurant. Officers conducted a slow and methodical search, assisted by pole cameras and mirrors to minimize risk, and the K-9 eventually located the suspect.

The monitoring team, based upon the preceding reviews, reached a number of general conclusions:

1. Tactical activations are based upon explicit risk criteria to minimize unnecessary activations;

2. Patrol officers, supervisors, and commanders, with appropriate training, should be capable of handling incidents below the threshold for a tactical activations. However, manpower shortages may be compromising that capability;

3. SWAT uses a wide range of tools and tactics to minimize risk and the need to use deadly force.

4. CNT has become an integral component of tactical activations;

5. Forced entries and the use of "dynamic entries" are restricted to extreme circumstances, which occur rarely; and

6. Incident commanders and supervisors are protective of their personnel and employ an array of tools and tactics to avoid putting them at unnecessary risk.

Finally, it appears that several of the call-outs appear marginal, though we hasten to add that these are judgment calls laden with ambiguity and unknown risk. Consequently, the adage, "Err on the side of caution" is a useful rule of thumb, provided that subsequent reviews address this question squarely. We will discuss this issue with Division staff during our June site visit.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.84 Assessing Compliance with Paragraph 97: Tactical Mission Briefings

Paragraph 97 stipulates:

"APD shall require specialized tactical units to conduct mission briefings before an operation, unless exigent circumstances require an immediate deployment. APD shall also ensure that specialized tactical team members designate personnel to develop and implement operational and tactical plans before and during tactical operations. All specialized tactical team members should have an understanding of operational planning."

Methodology

In its review of AARs for this reporting period, the monitoring team reviewed three cases in which mission briefings were feasible and critical. All three involved the service of high-risk search and arrest warrants. Several involved multiple agencies; hence, inter-agency coordination and the avoidance of "friendly-fire" incidents were leading issues. These were handled well by extensive briefings that were documented in AARs for each incident. Based upon our past and present case reviews, Tactical Section commanders, supervisors, and officers have a working knowledge of operational planning and are able to apply that understanding and skill to actual operations.

The monitoring team found no documentation that APD provided specific training in operational planning, though it is a major topic in most tactical training courses. Like any other skill set, there are identifiable tasks and proven methods for conducting effective briefings. Although Special Operations staff appears to be trained well in this functional area, we are concerned about the level of training provided to patrol officers, supervisors, and commanders in responding to and managing critical incidents. This is especially important because APD's two-tiered concept of operations for handling such incidents relies heavily upon Field Services Bureau personnel to respond to and manage the majority of incidents. The proper management of critical incidents is an important aspect of supervision, since organizations can sometimes suffer from officers "self-deploying" to events. We will follow up on this issue during our upcoming June visit.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.85 Assessing Compliance with Paragraph 98: Tactical Uniforms

Paragraph 98 stipulates:

"All specialized tactical units shall wear uniforms that clearly identify them as law enforcement officers."

Methodology

The monitoring team verified compliance with this requirement in its last report. Although Special Operations policies have not been approved as yet, APD will be in full compliance on this requirement when that happens. The monitoring team has not seen any deviations from APD uniform requirements. During our site visits, we also have had numerous informal opportunities to "inspect" compliance with this requirement and have seen nothing out of compliance with Paragraph 98.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.86 Assessing Compliance with Paragraph 99: Force Review Board Assessments

Paragraph 99 stipulates:

"All specialized tactical unit deployments shall be reviewed by the Force Review Board in order to analyze and critique specialized response protocols and identify any policy, training, equipment, or tactical concerns raised by the action. The Force Review Board shall identify areas of concern or particular successes and implement the appropriate response, including modifications to policy, training, equipment, or tactics."

Methodology

The monitoring team has deferred assessment of the requirements in this paragraph until its June site visit. We have blocked out significant time during that week to conduct an in-depth, comprehensive review of Force Review Board (FRB) operations and documentation. We have also reviewed important FRB functions in Paragraphs 78-80 in this report. The monitoring team has requested that, if feasible, the FRB meet during that visit to provide an opportunity to evaluate the operation of the FRB, specifically as it evaluates specialized tactical unit deployments. That request has been responded to by APD, and the monitoring team will observe the June meeting of the FRB.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.87 Assessing Compliance with Paragraph 100: Eligibility Requirements for Tactical Teams

Paragraph 100 stipulates:

"APD shall establish eligibility criteria for all team members, team leaders, and supervisors assigned to tactical units and conduct at least annual reviews of unit team members to ensure that they meet delineated criteria."

Methodology

The Special Operations Division, which oversees specialized tactical units, has established policies that set selection criteria for team membership and training requirements for all members. These are listed in a series of draft Bureau SOPs that cover SWAT (4-04), Bomb Squad (4-03), and K-9 (4-12). Those policies have not been approved as of the end of this reporting period.

The monitoring team also reviewed several official APD Department Personnel Circulars announcing openings in each of the specialized units. The circulars include a job description that describes the position and lists the selection criteria. CNT policies and procedures, including selection criteria, have been updated and incorporated into SOP 4-04, as we recommended in our last report. Additionally, the monitoring team previously recommended that APD review Bureau SOPs annually because they involve high-risk critical tasks. The Special Operations Division added a section in its 2015 Annual Review, dated January 22, 2016, to focus specifically on its Standard Operating Procedures and to assure that they are current and uniform. SOP 4-12 also requires that an annual review take place.

Bureau SOP 4-04 SWAT mandates that each specialized unit member undergo an Annual Retention Review to ensure that they meet Department standards for such an assignment. The review consists of an Employee Work Plan (comparable to a performance evaluation) review, a "file" review conducted by unit commanders, and a meeting with the Behavioral Sciences Division. This type of annual review is worthwhile and risk-smart, considering the demanding duties and responsibilities of Tactical Section members. Special Operations submitted copies of Employee Work Plans (EWP) for this reporting period, but we have deferred an in-depth review of those documents to our June site visit, in which the monitoring team plans to conduct a comprehensive review of Division administration and operations.

Results

This unit policy is in compliance with the requirements of Paragraph 100 and constitutes a best practice in the management of tactical units and personnel. Once APD incorporates the "unit policies" into its formal policies related to these functions it will be in compliance with this paragraph. The monitor has established a policy review schedule to assess and approve APD CASA-required policies expeditiously. Upon approval APD will be in Primary Compliance.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.88 Assessing Compliance with Paragraph 101: Tactical Team Training

Paragraph 101 stipulates:

"APD shall train specialized tactical units conducting barricaded gunman operations on competencies and procedures that include: threat assessment to determine the appropriate response and resources necessary, mission analysis, determination of criminal offense, determination of mental illness, requirements for search warrant prior to entry, communication procedures, and integration of the Crisis Negotiation Team, the Crisis Intervention Unit, and crisis intervention certified responders."

Methodology:

APD SOP 2-42 Hostage, Barricaded, Suicidal Subjects, and Tactical Threat Assessment are undergoing final revisions and should be approved by the monitor shortly. Tactical Section SOP's, in final draft form, are also awaiting monitor review and approval. The monitoring team's preliminary review of Tactical Section training found that all of the subjects specified in Paragraph 101 are covered in a variety of training contexts, including scenario-based training. We also found that CNT has been integrated into the Tactical Section and has become a vital operational component in Tactical Activations. During our June site visit, we will conduct an in-depth review of Special Operations Division administration and operations.

APD's Concept of Operations for high-risk tactical incidents consists of a two-level response. The first level of response relies upon Field Service Bureau (FSB) patrol officers, supported by Crisis Intervention Team specialists, to handle the majority of incidents. The second level is activated when the FSB response lacks the resources or capabilities----training, equipment, teamwork, and time----to handle a situation. Based upon a clear set of decision criteria to ensure that Tactical Activations are justified, FSB and Special Operations Division Commanders confer and decide if a call-out is necessary. In planned

operations, the Tactical Section Lieutenant completes a Risk Assessment Matrix to determine if a deployment is justified. This is an excellent approach to risk assessment and tactical decision-making.

The monitoring team has found that Tactical Section training is conducted regularly and in accord with national standards (NTOA) for high-risk tactical operations. We are impressed with the capabilities of APD tactical teams and their 2015 operational successes, which we describe in Paragraph 105. However, we are concerned that training for FSB officers, sergeants, lieutenants, and commanders is less adequate, given their responsibility for responding to and handling the majority of incidents. Recently, during the review of the proposed SOP 2-42, we noted that there was no requirement for a command-level officer to respond to such incidents, which is inconsistent with contemporary standards that require command presence and oversight. APD agreed to adopt such a requirement in the policy. We will assess the nature and extent of supervisory and command-level field presence in a future report.

We are aware also that APD's current staffing crisis is likely to affect both levels of response adversely. For instance, we are aware of several tactical activations in which APD had insufficient SWAT responders, resulting in the need to request SWAT mutual aid from the BCSO and the NMSP. Fortunately, the aid was provided quickly, based upon the excellent working relationships that exist between the agencies. It also appears that FSB officers may be unable to handle extended incidents due to staffing constraints. Because Albuquerque has a serious violent crime problem that regularly generates high-risk incidents, APD should monitor these impacts closely to ensure that its present tactical capabilities are not degraded. APD will be in primary compliance with this task once the relevant policies are approved.

Results

Primary:	**Not Yet Due**
Secondary:	**Not Yet Due**
Operational:	**Not Yet Due**

4.7.89 Assessing Compliance with Paragraph 102: K-9 Post Deployment Reviews

Paragraph 102 stipulates:

"APD shall continue to require the Canine Unit to complete thorough post-deployment reviews of all canine deployments."

Methodology:

Because there is some ambiguity regarding whether completion of an after-action review is mandatory subsequent to a deployment, we will clarify this issue

in our upcoming June site visit. At present APD tracks canine deployments and bites diligently, but does not require after-action reviews for deployments. Bite investigations are conducted jointly by K-9 sergeants and Critical Incident Review Team (CIRT) investigators. This hybrid solution for investigating K-9 bites, which are categorical serious uses of force, ensures that K-9-specific knowledge is factored into the investigation, while assuring a significant degree of objective, extramural oversight. APD will be in primary compliance with this task once the relevant policies are approved.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.90 Assessing Compliance with Paragraph 103: Tracking K-9 Deployments

Paragraph 103 stipulates:

"APD shall continue to track canine deployments and canine apprehensions, and to calculate and track canine bite ratios on a monthly basis to assess its Canine Unit and individual Canine teams."

Methodology

APD's Special Operations Division maintains detailed records on all of its activities, including K-9 deployments, bites, training, individual canines, and handlers. In our last report, we noted that K-9 bite ratios for 2015 never exceeded 4% for any month and 13% for any officer-canine pair (two pairs for a single month each) well below the CASA threshold of 20% for a six-month period.

In this reporting period, the monitoring team reviewed the K-9 Monthly statistical summary for January 2016, which reported a unit bite ratio of 3% and two pairs with a 6% ratio for the month. We will continue to monitor this activity throughout 2016. APD will be in primary compliance with this task once the relevant policies are approved.[30]

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

[30] Bite ratio calculations remain a point of contention among the Parties. Resolution is expected during the next reporting period.

4.7.91 Assessing Compliance with Paragraph 104: Tracking K-9 Bite Ratios

Paragraph 104 stipulates:

"APD shall include canine bite ratios as an element of the Early Intervention System and shall provide for the review, pursuant to the protocol for that system, of the performance of any handler whose bite ratio exceeds 20 percent during a six-month period, or the entire unit if the unit's bite ratio exceeds that threshold, and require interventions as appropriate. Canine data and analysis shall be included in APD Use of Force Annual Report."

Methodology:

The monitoring team reviewed an Interoffice Memorandum from the Tactical Section Lieutenant, dated February 23, 2016, notifying the Tactical Section's Administrative Assistant that: 1) No K-9 pair had a bite ratio exceeding 20% during the preceding six-month period, and, 2) The Unit's bite ratio did not exceed that threshold for the same period. Hence, no Early Intervention System (EIS) reviews were required.

APD's 2015 Annual Use of Force Report is still being compiled and will include K-9 data and analysis. APD will be in primary compliance with this task once the relevant policies are approved.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.92 Assessing Compliance with Paragraph 105: Analyzing Tactical Deployments

Paragraph 105 stipulates:

"APD agrees to track and analyze the number of specialized tactical unit deployments. The analysis shall include the reason for each tactical deployment and the result of each deployment, to include: (a) the location; (b) the number of arrests; (c) whether a forcible entry was required; (d) whether a weapon was discharged by a specialized tactical unit member; (e) whether a person or domestic animal was injured or killed; and (f) the type of tactical equipment deployed. This data analysis shall be entered into the Early Intervention System and included in APD's annual reports."

Methodology

The monitoring team reviewed the Division's Tactical Unit Deployment Tracking Sheet for 2015 and extracted the following summary information.

APD SWAT Activations and Outcomes -2015

Total Activations	45
Resolved without force	35
Resolved with less-lethal force	10
Police Service Dog	7
Bean-bag round	2
Electronic Control Weapon –Taser	1
Resolved with deadly force	0*
Chemical munitions	8**
CNT (negotiators) involved	35***
Possible mental illness, drug impairment	8

* It is important to clarify that zero is not the criterion; rather it is whether the use of deadly force was necessary and objectively reasonable after careful consideration of lesser options, if feasible, and sound tactical deployment.
** This could be defined as a less-lethal use of force, but suspects often surrender after it is deployed and they are relatively unaffected by it. We plan to discuss this category with SOD staff.
*** The type of involvement has varied widely, ranging from sounding call-outs, making phone calls, gathering intelligence, and conducting actual negotiations. Based upon past and present reviews of SWAT activations, it is clear to the monitoring team that CNT has become an integral component of APD's Tactical Teams and Concept of Operations.

We also noted that there were two "tactical withdrawals" that occurred after SWAT arrived on scene, better understood the situation---that is, in incident command parlance, "updated and revised their situational awareness"---and stood down because the incident fell below APD's deployment criteria.

The ultimate success of any reform process manifests itself in operational performance. APD's Special Operations Division---through a strong, relentless commitment to continuous improvement, openness to new ideas, and operational excellence--- has moved relatively quickly along and up a steep learning-performance curve. The performance statistics that we cite here provide convincing evidence of real success and the existence of robust oversight and accountability norms within the Division. Without a doubt, this is an internal APD success story from which other commands---at present lagging behind in accomplishing key reform objectives--- might benefit in terms of discovering guiding principles and useful "lessons learned". APD will be in primary compliance with this task once the relevant policies are approved.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.93 Assessing Compliance with Paragraph 106: Specialized Unit Policies

Paragraph 106 stipulates:

"Each specialized investigative unit shall have a clearly defined mission and duties. Each specialized investigative unit shall develop and implement policies and standard operating procedures that incorporate APD's agency-wide policies on use of force, force reporting, and force investigations."

Methodology

The monitoring team reviewed Administrative Procedure 3-01 Special Investigations Division (SID), dated July 17, 2015, which has been revised to meet the requirements set forth in Paragraph 106. The revised version is currently awaiting monitor review and approval. SID subordinate units are still in the process of compiling separate policy and procedures handbooks. During the last reporting period, the monitoring team reviewed the draft handbook for the Narcotics Section and found that it was thorough and well done, though it did not explain how training would be carried out.

We are aware that the Division Commander who was overseeing Divisional-level reforms recently retired and was replaced by a new Commander, who is now gaining familiarity with CASA requirements and the Division's progress to date. The monitoring team will work closely with the new Commander to make the transition both smooth and timely. APD will be in primary compliance with this task once the relevant policies are approved.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.94 Compliance with Paragraph 107: High Risk Situation Protocols

Paragraph 107 stipulates:

"APD shall prohibit specialized investigative units from providing tactical responses to critical situations where a specialized tactical unit is required.

APD shall establish protocols that require communication and coordination by specialized investigative units when encountering a situation that requires a specialized tactical response. The protocols shall include communicating high-risk situations and threats promptly, coordinating effectively with specialized tactical units, and providing support that increases the likelihood of safely resolving a critical incident."

Methodology

SID policy expressly prohibits its operational units from providing tactical responses where a special tactical unit is required. It also provides detailed guidelines for requesting a tactical activation when one may be justified. As the first step in the process, the requesting detective must complete a Risk Management Matrix that entails identifying major risks that might be encountered. Different risk factors are assigned different values based upon their severity and controllability, that is, there are proven tactics to manage each. If a major risk is uncontrollable, an alternative approach, such as arresting the subject away from the premises, will be considered. The risk values are then summed and compared to the threshold established for tactical activations. As we noted previously, this is an excellent approach to risk assessment and operational planning.

The monitoring team was advised that SID undertook only one warrant service in 2015 that involved a tactical activation. We reviewed the Risk Assessment Matrix that was completed in that case and found that it met all of the criteria for a tactical activation. The risks identified included a subject with repeated felony drug arrests, a known history of carrying a firearm, fortifications, verification of firearms on the premises, and the presence of "aggressive attack dogs". These summed to a risk value almost double the minimum for a tactical activation. Accordingly, after developing an Operational Plan, which we also reviewed and reported on in Paragraph 96, the plan was implemented without incident. Although the matrix clearly falls into the category of a "best practice", it requires further refinement to institutionalize its use as a matter of routine. First, an administrative section should be added at the top of the form to record the date, location, the preparer, and other such information. Second, policy and procedures for using the matrix should be developed and incorporated into SOPs governing SID and Tactical Section operations. APD will be in primary compliance with this task once the relevant policies are approved.

Results

Primary:	**Not Yet Due**
Secondary:	**Not Yet Due**
Operational:	**Not Yet Due**

4.7.95 Compliance with Paragraph 108: Inspection of Specialized Units

Paragraph 108 stipulates:

"Within three months of the Effective Date, APD shall conduct an inspection of specialized investigative units to determine whether weapons and equipment assigned or accessible to specialized investigative units are consistent with the units' mission and training. APD shall conduct re-inspections on at least an annual basis."

Methodology:

The monitoring team reviewed SID Inspection Forms for the Narcotics Section, Task Force, and Vice Section completed in January and February 2016. However, in response to a data request we did not receive any document that aggregated data from the individual forms and reported whether SID's specialized investigative units are in compliance with this paragraph's requirements. An Interoffice Memorandum was submitted in 2014 and 2015 to document compliance. The monitoring team was able to locate an interoffice memorandum dedicated to Paragraph 108, dated March 15, 2016. The memorandum stated, in part, "In January and February of 2016, the Special Investigations Division conducted annual inspections. All sworn personnel were involved. During the inspections, no issues of concern were located, and all personnel were rated at 'satisfactory'." While it may be assumed that this memorandum was completed in order to meet the requirements of Paragraph 108, to be clearer, the SID should adopt the specific language pertaining to this paragraph in future annual memorandums. In addition, internal "audit" reports should state in the affirmative, if it is true, that each component of the related CASA paragraph was assessed, and list the outcomes. Statements such as "no issues were located" are vague and indefinite, unless they are combined with a discussion of what was reviewed and how. We will discuss this concern and the benefits of specificity with SID during our June site visit.

Results

Primary:	**Not Yet Due**
Secondary:	**Not Yet Due**
Operational:	**Not Yet Due**

4.7.96 Assessing Compliance with Paragraph 109: Tracking Specialized Unit Responses

Paragraph 109 stipulates:

"APD agrees to track and analyze the number of specialized investigative unit responses. The analysis shall include the reason for each investigative response, the legal authority, type of warrant (if applicable), and the result of each investigative response, to include: (a) the location; (b) the number of arrests; (c) the type of evidence or property seized; (d) whether a forcible entry was required; (e) whether a weapon was discharged by a specialized investigative unit member; (f) whether the person attempted to flee from officers; and (g) whether a person or domestic animal was injured or killed.

This data analysis shall be entered into the Early Intervention System and included in APD's annual reports."

Methodology

Although the monitoring team requested COB documentation on specialized unit responses during the reporting period, we received no documentation or data on this requirement. Hence, we will follow up on the requirements in this paragraph during our June site visit. APD suggests that alternative data collection and sharing sites contain information responsive to this paragraph. At this point, these alternative data collection and sharing protocols have become so cumbersome as to prove ineffective to the monitoring team. We will work directly with APD and the City to develop protocols that ensure that available data responsive to compliance assessment are appropriately labeled, noticed, and stored to allow the monitoring team efficient access to needed information.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.97 Assessing Compliance with Paragraph 110:

Paragraph 110 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD agrees to minimize the necessity for the use of force against individuals in crisis due to mental illness or a diagnosed behavioral disorder and, where appropriate, assist in facilitating access to community-based treatment, supports, and services to improve outcomes for the individuals. APD agrees to develop, implement and support more integrated, specialized responses to individuals in mental health crisis through collaborative partnerships with community stakeholders, specialized training, and improved communication and coordination with mental health professionals. To achieve these outcomes, APD agrees to implement the requirements below."

Methodology

Members of the monitoring team requested all policies submitted by APD regarding performance of task 110 that were completed during the third reporting period dates of December 1, 2015 – March 31, 2016. Procedural Order 1-14, entitled "Behavioral Sciences Division," was not updated during this reporting period. The most recent version is marked "draft as of 2/12/16" and was accompanied by a memo stating that this policy has not been updated.

Procedural Order 2-13, entitled "Response to the Mentally Ill / Suspected Mentally Ill and People in Crisis," was not updated during this reporting period,

as it was returned to the City for a complete re-write. The most recent version is marked “draft as of 2/12/16” and was accompanied by a memo stating that this policy has not been updated. APD is currently at work updating SOP 2-13, according to emails regarding reviews by the MHRAC, DOJ and the monitor, as well as and subsequent revisions by APD. APD is currently working through its response strategy regarding which personnel will “take the lead” when responding to individuals in crisis. There has been some confusion related to the CASA language “crisis intervention certified responders,” but APD has recently come to some clarity on that issue with both DOJ and the monitoring team.

Procedural Order 2-42 “Hostage, Suicidal/Barricaded Subject, and Tactical Threat Assessment” was not updated during this reporting period. The most recent version is marked “draft as of 2/12/16” and was accompanied by a memo stating that this policy has not been updated. That version is “pending” as of the closing date for this monitoring period.

Procedural Order 3-06, “Criminal Investigations Division,” refers to the roles and responsibilities of members of the Crisis Intervention Unit and COAST. SOP 3-06 was submitted to the monitor for final review in May, after the close of the third reporting period. The monitoring team will continue to work with the APD to get workable, updated, meaningful and effective policies developed for this task and to generate meaningful training responsive to those policies.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.98 Assessing Compliance with Paragraph 111: Mental Health Response Advisory Committee

Paragraph 111 stipulates:

“Within six months of the Effective Date, APD and the City shall establish a Mental Health Response Advisory Committee (Advisory Committee) with subject matter expertise and experience that will assist in identifying and developing solutions and interventions that are designed to lead to improved outcomes for individuals perceived to be or actually suffering from mental illness or experiencing a mental health crisis. The Advisory Committee shall analyze and recommend appropriate changes to policies, procedures, and training methods regarding police contact with individuals with mental illness.”

Methodology

Effective September 24, 2015, Federal District Court Judge Brack extended, at the request of the Parties and with the monitor’s support, the deadline for this

task to December 2, 2015. APD and the Albuquerque mental health community have made significant progress toward compliance with these tasks. Such progress includes:

- MHRAC is meeting monthly and producing meeting minutes, which are posted on the CABQ website;
- MHRAC by-laws were formally voted on and adopted on June 16, 2015;
- New co-chairs were nominated and approved by vote of the MHRAC on June 16, 2015 and have been acting in that role since that date;
- Recent meetings of the MHRAC have focused upon substantive issues, such as policy and training (as reflected in agendas and minutes from meeting dates December 15, 2015, January 19, 2016, and February 16, 2016).
- The MHRAC has established sub-committees to take on the important aspects of their work, as outlined in the paragraphs below;
- The sub-committees include Training, Resources and Information Sharing, each of which has a chair or co-chairs as well as other members participating.

The monitoring team reviewed materials, including MHRAC meeting agendas, meeting minutes, subcommittee reports, and the MHRAC Initial Report (dated January 2016); reviewed email traffic between the APD CIU and the MHRAC; and spoke to MHRAC and APD CIU members during in-person meetings and telephone calls to determine that primary and secondary compliance have been achieved.

While significant progress has been made, based upon many emails that indicate confusion with the process for MHRAC to review and provide feedback to APD on both policies and training curricula, the independent monitoring team cannot confirm operational compliance at this time. We recommend that the City reach out to MHRAC and establish written policy for clear, consistent, and workable processes for consultation, provision of timely feedback to APD regarding mental health response issues. Currently, clear policy does not guide that process, leaving the MHRAC somewhat rudderless as it attempts to smoothly mesh its processes with those of the APD policy and training processes.

Results

Primary: **In Compliance**[31]
Secondary: **Not in Compliance**
Operational: **Not in Compliance**

4.7.99 Assessing Compliance with Paragraph 112:

Paragraph 112 stipulates:

"The Advisory Committee shall include representation from APD command staff, crisis intervention certified responders, Crisis Intervention Unit (CIU), Crisis Outreach and Support Team (COAST), and City-contracted mental health professionals. APD shall also seek representation from the Department of Family and Community Services, the University of New Mexico Psychiatric Department, community mental health professionals, advocacy groups for consumers of mental health services (such as the National Alliance on Mental Illness and Disability Rights New Mexico), mental health service providers, homeless service providers, interested community members designated by the Forensic Intervention Consortium, and other similar groups."

Methodology

The monitoring team reviewed attendance sign-in sheets and minutes for MHRAC meetings as an indication of committee composition. During this reporting period, all groups named in this paragraph (CIU, COAST, DFCS, UNM, NAMI, DRNM and FIC), have been represented and those participants are, and have been since the inception of the MHRAC, actively participating in MHRAC tasks and activities.

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.100 Assessing Compliance with Paragraph 113

Paragraph 113 stipulates:

"The Advisory Committee shall provide guidance to assist the City in developing and expanding the number of crisis intervention certified responders, CIU, and COAST. The Advisory Committee shall also be

[31] APD is currently consulting with MHRAC and receiving MHRAC feedback. At times the *process* is confusing or provides less than ample time for MHRAC to carefully assess proposed policies and processes prior to existing deadlines.

responsible for considering new and current response strategies for dealing with chronically homeless individuals or individuals perceived to be or actually suffering from a mental illness, identifying training needs, and providing guidance on effective responses to a behavioral crisis event."

Methodology

During this reporting period, the monitoring team spoke with the MHRAC co-chairs, members of the MHRAC subcommittees, and members of the APD Crisis Intervention Unit to discuss progress. We reviewed not only the MHRAC meeting agendas and minutes for this reporting period, but also the subcommittee proposals and documents, including those from the Information Sharing subcommittee, the Training subcommittee, and the Resources subcommittee. We also reviewed relevant APD policies that address response strategies, including SOP 2-13 and SOP 2-42. The documentation suggests that the MHRAC is actively considering guidance about the number of crisis intervention responders, CIU and COAST as well as new and current response strategies and moving toward providing actionable guidance on effective responses to behavioral crisis events. While communication and cooperation between the APD and the MHRAC is improving, there are still areas where communications could improve and MHRAC's guidance would be useful to the APD, such considering the implementation of a mobile crisis team – members of the MHRAC indicate that their advice and guidance has not been consistently sought throughout APD's planning and rollout of a mobile crisis team.

Results

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.101 Assessing Compliance with Paragraph 114:

Paragraph 114 stipulates:

"APD, with guidance from the Advisory Committee, shall develop protocols that govern the release and exchange of information about individuals with known mental illness to facilitate necessary and appropriate communication while protecting their confidentiality."

Methodology

During this reporting period, the monitoring team had several conversations with members of the Information Sharing subcommittee. The subcommittee on Information Sharing drafted an action plan (dated November 5, 2015), which the MHRAC considered and voted to adopt at their December 2015 meeting, but as of February 29, 2016, the action plan had not been fully implemented.

An important aspect of the subcommittee's proposal is a suggestion to convene all relevant stakeholders in the issue of appropriate and confidential information sharing, including: community members with lived experience; the Albuquerque City Attorney's Office; the APD / CIU; the University of New Mexico General Counsel's Office; the UNM Department of Psychiatry; the Albuquerque Fire Department; Presbyterian Hospital / Kaseman psychiatric services; 911 dispatch; Bernalillo County Sheriff's Department; Bernalillo County Fire Department; the Veterans Administration hospital; and the MHRAC Information Sharing subcommittee members. During this reporting period no convening of parties occurred. According to Information Sharing subcommittee members, many meetings have occurred with some of these stakeholders to discuss issues relevant to this paragraph, but a larger group convening has not yet happened in order to determine common goals and objectives. The monitor notes that responsibility for this process, according to the CASA, rests with the APD, "with guidance from the Advisory Committee."

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.102 Assessing Compliance with Paragraph 115

Paragraph 115 stipulates:

"Within nine months of the Effective Dates, APD shall provide the Advisory Committee with data collected by crisis intervention certified responders, CIU, and COAST pursuant to Paragraphs 129 and 137 of this Agreement for the sole purpose of facilitating program guidance. Also, within nine months of the Effective Date, the Advisory Committee shall review the behavioral health training curriculum; identify mental health resources that may be available to APD; network and build more relationships; and provide guidance on scenario-based training involving typical situations that occur when mental illness is a factor.

Methodology

The monitoring team has tracked APD's progress on this paragraph primarily through the requirements of paragraphs 129 and 137. During this reporting period, APD continued to refine its data tracking and reporting systems and had initial talks with data experts at the University of New Mexico toward that end.

The requirement of this paragraph carries a timeline of "within nine months of the effective date," and was due for completion by March 2, 2016. Based on evidence reviewed by the monitoring team, these data ***are*** being provided by APD to the members of MHRAC. The data provided are consistent with the requirements of the CASA, and are well documented and easily understood.

Operational compliance will be acquired when it is provided "as a normal course of business," which will require more than one instance of data provision.

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **Not Yet Due**

4.7.103 Assessing Compliance with Paragraph 116

Paragraph 116 stipulates:

"The Advisory Committee shall seek to enhance coordination with local behavioral health systems, with the goal of connecting chronically homeless individuals and individuals experiencing mental health crisis with available services."

Methodology

The monitoring team has reviewed the primary avenue the MHRAC and the APD are using to connect chronically homeless individuals and individuals in crisis with services (that avenue is a small tri-fold resource card on which organization names and telephone numbers appear). The monitoring team observes that the resource card was last updated November 2010, per an indication on the footer of the card ("Revised 11/10"). Conversations with members of the CIU and COAST indicate that the cards are being handed out regularly during interactions and follow-up interactions with chronically homeless individuals and individuals in crisis. Moreover, the MHRAC Resources subcommittee is currently at work on another strategy to enhance coordination, according to the MHRAC's Initial Report: an online database being coordinated by the state of New Mexico's Network of Care, which identifies behavioral health and social services available in Bernalillo County. As of the end of this reporting period, the monitoring team has no indication that the database is complete, accurate or being used by APD personnel. We will follow up on this task in more detail in IMR-4.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.104 Assessing Compliance with Paragraph 117

Paragraph 117 stipulates:

"Within 12 months of the Effective Date, and annually thereafter, the Advisory Committee will provide a public report to APD that will be made available on APD's website, which shall include recommendations for improvement, training priorities, changes in policies and procedures, and identifying available mental health resources."

Methodology

The monitoring team reviewed the first annual report produced by the MHRAC, entitled "Initial Report, January 2016" which is currently available on the City of Albuquerque's website (https://www.cabq.gov/mental-health-response-advisory-committee/mental-health-response-advisory-committee-resources-links-documents/mental-health-response-advisory-committee-documents). The report includes recommendations from each of the three subcommittees (Training, Resources, and Information Sharing) as well as the MHRAC's membership (names and email addresses) and the MHRAC's By-Laws (adopted June 16, 2015; amended August 8, 2015).

Results

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.105 Assessing Compliance with Paragraph 118 Behavioral Health Training

Paragraph 118 stipulates:

"APD has undertaken an aggressive program to provide behavioral health training to its officers. This Agreement is designed to support and leverage that commitment."

No evaluation methodology was developed for paragraph 118, as it is not a "requirement" for APD or City action, but simply states facts.

4.7.106 Assessing Compliance with Paragraph 119 Behavioral Health Training for all Cadets

Paragraph 119 stipulates:

"APD agrees to continue providing state-mandated, basic behavioral health training to all cadets in the academy. APD also agrees to provide 40 hours of basic crisis intervention training for field officers to all academy graduates upon their completion of the field training program. APD is also providing 40 hours of basic crisis intervention training for field officers to all current officers, which APD agrees to complete by the end of 2015."

Methodology

Members of the monitoring team continue to hold monthly teleconferences with members of the Crisis Intervention Unit responsible for this paragraph to discuss progress on this and other paragraphs. Members of the monitoring team have reviewed the basic behavioral health training curriculum delivered to all cadets in the academy. APD has continued to deliver this state-mandated training to all cadets. The monitoring team also reviewed the CIU Monthly Reports for this reporting period.

According to the Behavioral Sciences Division Syllabus (dated January 20, 2016), which provides 57 hours of training on behavioral and mental health to all APD Academy cadets, academy training continues to be delivered by Dr. Troy Rodgers, the contract psychologist whose business practices with the city have been called into question by an audit (dated October 27, 2015) and whose curriculum quality (developed and delivered primarily through his company Public Safety Psychology Group) has been questioned by the monitoring team (due mainly to the unreasonable difficulty the monitoring team had in obtaining documentation of the curriculum from Dr. Rodgers).

Moreover, an internal memo from Lt. St. Onge to Deputy Chief Garcia (dated February 23, 2016) references APD's plans for the 116th cadet class beginning in June 2016 to "be taught jointly between CIU and BSD." There still exists confusion on all sides about the distinctions (if any) between the APD's Behavioral Sciences Division and Dr. Rodgers' Public Safety Psychology Group. That APD intends to continue providing training to cadets from PSPG continues to be of concern to the monitoring team. We will follow up, as per usual practice, by requesting full course documentation, assessing that curriculum *viz a viz* national standards and practice, and by observing the training as it is delivered.

Since the transfer of responsibility for the 40-hour in-service CIT curriculum from Dr. Troy Rodgers (PSPG) to the internal APD Crisis Intervention Unit (CIU) in July of 2015, the CIU has updated the in-service 40-hour CIT curriculum to attempt to comply with this paragraph. They delivered the 40-hour CIT training to nearly all current officers and recent academy graduates; APD's CIU/COAST Monthly Report indicates that 98% of all field officers (459 officers) have been trained on the revised 40-hour CIT curriculum. It is important to note, however, that all recent training has occurred ***without*** revised and approved APD policies relevant to APD's responses to people with mental illness and people in crisis (primarily 2-13 and 2-42). It is also unclear what, if any, role the MHRAC played in the review or development of the 40-hour in-service CIT training curriculum. This paragraph stipulates that all officers will be trained "by the end of 2015," which has been updated to the new "effective date" by the agreement on new policy review dates entered into by the Parties. The monitoring team feel that it is critical that APD employ a careful methodology to ensure that all officers

receive updates, not only of the new policies that are pending, but also in how those policies should be integrated into CIT and CIU "in-field" processes.

Results

Primary: **Not Yet Due** [32]
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.107 Assessing Compliance with Paragraph 120

Paragraph 120 stipulates:

"The behavioral health and crisis intervention training provided to all officers will continue to address field assessment and identification, suicide intervention, crisis de-escalation, scenario-based exercises, and community mental health resources. APD training shall include interaction with individuals with a mental illness and coordination with advocacy groups that protect the rights of individuals with disabilities or those who are chronically homeless. Additionally, the behavioral health and crisis intervention training will provide clear guidance as to when an officer may detain an individual solely because of his or her crisis and refer them for further services when needed."

Methodology

Members of the monitoring team hold monthly teleconferences with members of the Crisis Intervention Unit responsible for facilitating the development of training addressing mental health issues to discuss progress. The monitoring team also reviews the CIU's Monthly Reports.

Since the transfer of responsibility for the 40-hour in-service CIT curriculum from Dr. Troy Rodgers (PSPG) to the internal APD Crisis Intervention Unit (CIU) in July of 2015, the CIU has updated the in-service 40-hour CIT curriculum. The updated training curriculum addresses field assessment, identification, suicide intervention, crisis de-escalation, community mental health participation and scenario-based exercises and role play exercises.

The monitoring team also reviewed some relevant modules of the academy curriculum for APD cadets, which address field assessment, identification, suicide intervention, crisis de-escalation and community mental health participation. It is important to note, however, that all recent training has occurred *without* revised and approved APD policies relevant to APD's responses to people with mental illness and people in crisis. The monitoring team would expect that, once these policies have been approved, training will

[32] Pending approval and dissemination of applicable policies.

be updated to reflect the requirements of the new policies. We will continue to monitor this process to ensure training related to this paragraph is topic-sensitive. Compliance with this and other paragraphs requiring "outreach" is at this time amorphous and difficult to "pin-down." We would anticipate a consolidation of process and output once the City fully implements its new "Office of Policy Analysis" protocols. The monitor will continue to assess this section, and should be able to provide more clarity in the fourth report.

Results

Primary: **Not Yet Due**[33]
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.108 Assessing Compliance with Paragraph 121

Paragraph 121 stipulates:

"APD shall ensure that new tele-communicators receive 20 hours of behavioral health training. This training shall include: telephonic suicide intervention; crisis management and de-escalation; interactions with individuals with mental illness; descriptive information that should be gathered when tele-communicators suspect that a call involves someone with mental illness; the roles and functions of COAST, crisis intervention certified responders, and CIU; the types of calls that should be directed to particular officers or teams; and recording information in the dispatch database about calls in which mental illness may be a factor."

Methodology

The monitoring team reviewed documentation provided by APD, including an internal memo. During this reporting period, confusion continued about the roles and responsibilities of BSD-developed training vs. PSPG-developed training vs. APD CIU-developed training. According to the APD internal memo, dated February 23, 2016, from Lt. St. Onge to Deputy Chief Garcia, entitled "Paragraph 121 (Tele-communicators). "Moving forward into 2016, future training for tele-communicators will be handled by CIU by Mental Health First Aid and/or an abbreviated CIT class and/or NM State approved and accredited HB93 to meet said requirements."

During this reporting period, APD continued to move away from mental health training that is developed and delivered by outside contractors (including PSPG) and toward mental health training developed in-house, by the Crisis Intervention Unit. The CIU indicated during conversations with the monitoring team that it was their understanding that all mental health-related training would eventually

[33] Pending approval and dissemination of applicable policies.

be moved in-house, including training for the tele-communicators. The most recent version of the tele-communicators training provided to the monitoring team by APD is dated 2014. It is important to note, however, that all recent training has occurred *without* revised and approved APD policies relevant to APD's responses to people with mental illness and people in crisis. The monitoring team would expect that, once these policies have been approved, training will be updated to reflect the requirements of the new policies.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.109 Assessing Compliance with Paragraph 122

Paragraph 122 stipulates:

APD shall provide two hours of in-service training to all existing officers and tele-communicators on behavioral health-related topics biannually.

Methodology

During this reporting period, confusion continued about the roles and responsibilities of BSD-developed training vs. PSPG-developed training vs. APD CIU-developed training. To date, these issues remain unclear to the monitoring team. The monitoring team has yet to see a curriculum for this in-service biannual training, in spite of requests to APD to provide it. No two-hour bi-annual training sessions for either officers or tele-communicators took place during this reporting period.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.110 Assessing Compliance with Paragraph 123 Crisis Intervention Certified Responders and Crisis Intervention Unit

Paragraph 123 stipulates:

"APD shall maintain a sufficient number of crisis intervention certified responders who are specially trained officers across the Department who retain their normal duties and responsibilities and also respond to calls involving those in mental health crisis. APD shall also maintain a Crisis Intervention Unit ("CIU") composed of specially trained detectives housed at the Family Advocacy Center whose primary responsibilities are to

respond to mental health crisis calls and maintain contact with mentally ill individuals who have posed a danger to themselves or others in the past or are likely to do so in the future. APD agrees to expand both the number of crisis intervention certified responders and CIU."

Methodology

During this monitoring period, there was considerable confusion on the part of APD as to what constitutes a "crisis intervention certified responder." Since APD agreed to train all officers on a 40-hour CIT curriculum (per paragraph 119), APD argued that *all* officers should meet the criteria for "certified responder." Discussions with the monitoring team and DOJ Civil Rights to resolve this issue were ongoing during this reporting period. As of the end of February 2016, whether APD had indeed "expanded the number of crisis intervention certified responders" as required by this paragraph was an open question. It is important to note, however, that all recent training has occurred *without* revised and approved APD policies relevant to APD's responses to people with mental illness and people in crisis. The monitoring team would expect that, once these policies have been approved, training will be updated to reflect the requirements of the new policies.

The confusion noted above is illustrative of the need to consider the monitor's long-standing articulated hierarchy of compliance, which requires policy-training-supervision-discipline (retraining or higher) and policy-training revision based on performance issues noted after implementation. Training prior to approved policy is problematic on several levels. We will continue to assess this paragraph as necessary to ensure adequate conformance.

APD does maintain a Crisis Intervention Unit staffed with detectives housed at the Family Advocacy Center, but their primary function as of this reporting period is not to respond to mental health crisis calls but rather to perform follow-up duties, maintaining contact with mentally ill individuals, attempting to effectively connect them with services. The CIU has also spent a bulk of its time developing and delivering the newly updated in-service, 40-hour CIT training curriculum. The CIU did increase staffing during this reporting period, as Detective David Baca (who had previously retired) returned to the unit.

The monitoring team carefully reviewed the "Albuquerque Police Department Comprehensive Staffing Assessment and Resources Study" conducted by Alexander Weiss Consulting, LLC (Final Draft Report, December 11, 2015). The study states, "We concur with the recommended staffing level of 12 full time detectives for CIU." The monitoring team will continue to assess performance on this topic in future monitor's reports.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.111 Assessing Compliance with Paragraph 124

Paragraph 124 stipulates:

The number of crisis intervention certified responders will be driven by the demand for crisis intervention services, with an initial goal of 40% of Field Services officers who volunteer to take on specialized crisis intervention duties in the field. Within one year of the Effective Date, APD shall reassess the number of crisis intervention certified responders, following the staffing assessment and resource study required by Paragraph 204 of this Agreement.

Methodology

The requirement of this paragraph carries a timeline of "within one year of the Effective date" or June 2, 2016.

During this reporting period, there was confusion about the distinction between "crisis intervention certified responders" and officers who are "CIT trained." In the opinion of the monitoring team, although nearly 100% of APD officers have participated in 40 hours of CIT training (the most recent officers being trained by curriculum designed by the APD CIU), APD has yet to reach its 40% initial goal of "field service officers who volunteer to take on specialized crisis intervention duties." As guidance, the monitor notes the "industry standard" for "certification" is earning a certificate from a professional (or trade) organization by passing an exam that is "accredited by a professional organization or association." As of this date, it appears that the crisis-intervention field has not established a certifying or accrediting organization that assesses general CIT response officer accreditation. [34]

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

[34] The Parties have agreed that "certified" means that the officers have volunteered for CIT assignment and received the required training.

4.7.112 Assessing Compliance with Paragraph 125

Paragraph 125 stipulates:

"During basic crisis intervention training for field officers provided to new and current officers, training facilitators shall recommend officers with apparent or demonstrated skills and abilities in crisis de-escalation and interacting with individuals with mental illness to serve as crisis intervention certified responders."

Methodology

The monitoring team reviewed documents provided by APD discussed "recommending officers" during monthly telephone conference calls. The CIU, which is responsible for conducting the 40-hour training, has begun producing memos that note the officers who demonstrate skills in de-escalation and interacting with people with mental illness. According to a memo from Lt. St. Onge to Deputy Chief Garcia, dated January 12, 2016, the CIU "the following officers (attached spread sheet) demonstrated above average skills in de-escalation and interacting with individuals with mental illness." The spreadsheet attached to the memo notes 5 officers from the November 2, 2015 40-hour course; 5 officers from the November 16, 2015 course; 11 officers from the November 30, 2015 course; and 7 officers from the course that began on December 7, 2015. The memo goes on to note "The officers listed should be considered as a pool of candidates for the Crisis Intervention Unit as a detective or supervisor as well as the Mobile Crisis Team(s), when they come to fruition." This is exactly the type of assessment-adoption-implementation "model" that is supported by the monitor for planning and documenting compliance through "course-of-business" communication.

Compliance with this and other paragraphs requiring "outreach" is at this time amorphous and difficult to "pin-down." We would anticipate a consolidation of process and output once the City fully implements its new "Office of Policy Analysis" protocols. The monitor will continue to assess this section, and should be able to provide more clarity in the fourth report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.113 Assessing Compliance with Paragraph 126

Paragraph 126 stipulates:

"Within 18 months of the Effective Date, APD shall require crisis intervention certified responders and CIU to undergo at least eight hours of in-service crisis intervention training biannually."

Methodology

The "due date" for this paragraph is December 2, 2016. Monthly telephone communications with the APD's CIU during this reporting period indicate that APD is moving forward with utilizing the "Mental Health First Aid USA" curriculum to fulfill this requirement. Several CIU officers attended a Train-the-Trainer event for this 8-hour curriculum, developed by the Mental Health Association of Maryland, the Missouri Department of Mental Health and the National Council for Behavioral Health. A memo from Lt. St. Onge to Deputy Chief Garcia dated February 23, 2016 indicates that "Training dates for the 8hr refresher training is as follows and will be accomplished via Mental Health First Aid (sic): June 7, 9, 15, 21, 23, 29 - July 5, 7, 13, 19, 21, 27- August 2, 4, 10, 16, 18, 24, 30 - September 1, 7, 13 Make Up, 15 Make Up." All of these dates are outside the "reporting dates" for IMR-3.

Recent conversations that occurred *after* this reporting period indicate that the APD CIU may be reconsidering the use of "Mental Health First Aid USA" as a training mechanism to accomplish this CASA requirement, opting instead, perhaps, for an in-house developed 8-hour refresher curriculum. The monitoring team will provide updates on this issue as they emerge.

While an 8-hour training was not rolled out prior to the due date for this paragraph, it is worth noting that the APD CIU successfully trained all officers who had not had prior CIT training in 40-hours of APD CIU-developed training prior to December 31, 2015.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.114 Assessing Compliance with Paragraph 127

Paragraph 127 stipulates:

"Within 18 months of the Effective Date, APD will ensure that there is sufficient coverage of crisis intervention certified responders to maximize the availability of specialized responses to incidents and calls for service involving individuals in mental health crisis; and warrant service, tactical deployments, and welfare checks involving individuals with known mental illness."

Methodology

During this monitoring period, there was considerable confusion on the part of APD as to what constitutes a "crisis intervention certified responder." Since APD agreed to train all officers on a 40-hour CIT curriculum (per paragraph 119), APD argued that all officers should meet the criteria for "certified responder." Discussions with the monitoring team and DOJ Civil Rights were ongoing to resolve this issue were ongoing during this reporting period. As of the end of March 2016, whether APD had indeed "expanded the number of crisis intervention certified responders" as required by this paragraph was an open question. It is important to note, however, that all recent training has occurred without revised and approved APD policies relevant to APD's responses to people with mental illness and people in crisis.

The same interpretation of "crisis intervention certified responder" was echoed in the findings of the "Albuquerque Police Department Comprehensive Staffing Assessment and Resources Study" conducted by Alexander Weiss Consulting, LLC (Final Draft Report, December 11, 2015). The study states, "The department is in the process of providing crisis intervention training for all officers in the Field Services Bureau, and is expected to reach that goal in December 2015. We concur with the recommended staffing level of 12 full time detectives for CIU."

The monitoring team finds APD to be out of compliance with this CASA requirement as of its due date of this reporting period, because the distinction between *all* officers being trained on a 40-hour CIT curriculum and officers who are "crisis intervention certified responders" remains wholly unclear. As guidance, the monitor notes the "industry standard" for "certification" is earning a certificate from a professional (or trade) organization by passing an exam that is accredited by a professional organization or association."[35] Current industry standards in CIT training have not progressed to the point that certification of operatives is available. However, certification standards for trainers do exist. This will remain a point of pending resolution until new policies are offered and reviewed.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

[35] See note 30 on page 188.

4.7.115 Assessing Compliance with Paragraph 128

Paragraph 128 stipulates:

APD will ensure that crisis intervention certified responders or CIU will take the lead, once on scene and when appropriate, in interacting with individuals in crisis. If a supervisor has assumed responsibility for the scene, the supervisor will seek input of the crisis intervention certified responder or CIU on strategies for resolving the crisis when it is practical to do so.

Methodology

Procedural Order 2-13, entitled "Response to the Mentally Ill / Suspected Mentally Ill and People in Crisis," which governs who will take the lead on crisis calls, was not updated during this reporting period. The most recent version is marked "draft as of 2/12/16" and was accompanied by a memo stating that this policy has not been updated. APD is currently at work updating SOP 2-13, according to emails regarding reviews by the MHRAC, DOJ and the monitor, as well as and subsequent revisions by APD. APD is currently working through its response strategy regarding which personnel will "take the lead" when responding to individuals in crisis. There has been some confusion related to the CASA language "crisis intervention certified responders," but APD has recently come to some clarity on that issue with both DOJ and the monitoring team.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.116 Assessing Compliance with Paragraph 129

Paragraph 129 stipulates:

"APD shall collect data on the use of crisis intervention certified responders and CIU. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:
a) date, shift, and area command of the incident;
b) subject's age, race/ethnicity, and gender;
c) whether the subject was armed and the type of weapon;
d) whether the subject claims to be a U.S. military veteran;
e) name and badge number of crisis intervention certified responder or CIU
detective on the scene;
f) whether a supervisor responded to the scene;
g) techniques or equipment used;
h) any injuries to officers, subjects, or others;

i) disposition of the encounter (e.g., arrest, citation, referral); and
j) a brief narrative of the event (if not included in any other document).”

Methodology

Members of the monitoring team continued to communicate at least monthly via teleconference with APD CIU personnel working on compliance efforts for this paragraph to determine their status and ensure all items required are addressed. As of August 3, 2015 officers are required to complete the CIT Worksheet for Mental Health Contacts, per a memo from Chief Gorden Eden, Jr., which reads, in part, “Effective immediately, all officers should start using the CIT Worksheet for Mental Health Contacts, located at [link to APD internal website]. This contact sheet may be used in lieu of a police report unless there is an arrest, use of force, or subject(s) are placed in handcuffs.” The CIT Worksheet contains reporting fields for each and every data element required by this paragraph; members of the monitoring team will continue to assess the “techniques or equipment used” field to ensure some specificity in reporting (a sample report submitted to the monitoring team noted “none” in that field). In addition, the CIU Monthly Reports contain summaries some of the required data in aggregate.

During this reporting period, APD CIU personnel made considerable progress toward not only data collection, but also data interpretation by working closely with Professor Peter Winograd at the University of New Mexico. A PowerPoint slide presentation prepared by members of the CIU and Professor Winograd and presented at a February 17, 2016 Community Policing Council meeting details much of this data in aggregate and shows some trend tracking over time, including hot spot mapping produced with the assistance of the APD Crime Analysis Unit. The monitoring team will continue to observe and report on this evolving partnership with regard to data relevant to police interactions with people in crisis and people with mental illness. APD is commended for implementing these practices despite lack of formal policy guidance. Again we note that critical policies, e.g., 2-13 need to be written, accepted by the Parties and promulgated to initiate compliance with this task.

The City contends that the provisions of this paragraph are “non-SOP related,” and can be met through “City rules and regulations, City Ordinances, By-laws, etc.” The monitor disagrees, and suggests that such complex data reporting requirements need to be addressed by specific, well-planned and well-thought out policies and procedures. The monitor will continue to assess this section, and should be able to provide more clarity in the fourth report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.117 Assessing Compliance with Paragraph 130

Paragraph 130 stipulates:

"APD will utilize incident information from actual encounters to develop case studies and teaching scenarios for roll-call, behavioral health, and crisis intervention training; to recognize and highlight successful individual officer performance; to develop new response strategies for repeat calls for service; to identify training needs for in-service behavioral health or crisis intervention training; to make behavioral health or crisis intervention training curriculum changes; and to identify systemic issues that impede APD's ability to provide an appropriate response to an incident involving an individual experiencing a mental health crisis."

Methodology

To assess compliance with this paragraph, members of the monitoring team relied upon several sources of information: CIU Monthly Reports, monthly teleconferences with CIU members and data requested by the monitoring team. For this reporting period, with regard to curriculum scenarios, the monitoring team's request included: "Please provide documentation that scenarios were based on 'incident information from actual encounters' if such documentation exists." APD submitted no data in response to that request.

The APD CIU partnership with Professor Winograd at UNM is evidence of APD attempts to "identify systemic issues that impede APD's ability to provide an appropriate response"; the data analysis that is emerging points to trends by geographic region, call outcome (transport to local facilities, for example), and characteristics of people in crisis.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.118 Assessing Compliance with Paragraph 131

Paragraph 131 stipulates:

Working in collaboration with the Advisory Committee, the City shall develop and implement a protocol that addresses situations involving barricaded, suicidal subjects who are not posing an imminent risk of harm to anyone except themselves. The protocol will have the goal of protecting the safety of officers and suicidal subjects while providing suicidal subjects with access to mental health services.

Methodology

During this reporting period, the APD was *still* in the process of revising Procedural Order 2-42 "Hostage, Suicidal/Barricaded Subject, and Tactical Threat Assessment" but has not completed those updates, nor have they been through the proper approval process required by APD (PPRB) and the City. A memo from Jon Whitsitt, SOP Liaison, addressed to a member of the monitoring team and dated February 25, 2016 states: "SOP 2-42 was not revised or updated during the reporting period of December 1, 2015 to February 29, 2016." APD's collaboration with the Mental Health Response Advisory Committee has been fragmented and confusing; the working relationship among all relevant stakeholders is still evolving. In tracking email traffic between the APD and the MHRAC, the monitoring team observes that there is often confusion about versions of various policies as well as timing and requirements for submitting reviews and comments. The memo further states, "DOJ requested that this policy and 2-13 go back to MHRAC for further review and commentary."

As one might expect, there are also operational and tactical issues related to this paragraph. In a recent conference call between the parties and the monitor, a key issue regarding the appropriate level of authority exercised by on-scene Crisis Intervention Team (CIT) specialists was discussed at some length and resolved by the adoption of several major guidelines. One guideline continues to vest overall incident command authority with either the on-scene supervisor or command-level officer. That configuration of overall authority is consistent with contemporary standards for managing high-risk tactical incidents, particularly in cities the size of Albuquerque. The second guideline requires[36] incident commanders to consult regularly with on-scene specialists and consider their inputs in making critical decisions. In particular, the guideline stresses the need to factor specialist viewpoints into the decision-making process before requesting a tactical activation. APD SWAT has demonstrated the soundness of this approach in numerous situations in which CNT inputs have been vital in its own operational planning and decision-making.

APD SOP 2-42 Hostage, Suicidal Subjects, Barricaded Subjects, and Tactical Threat Assessment, dated March 27, 2016, was the subject of the above conference call and has yet to receive final monitor approval because of a recent misunderstanding over several provisions. This should be resolved shortly and move APD into Primary Compliance.

There remains a need to reconcile SOP 2-42 with SOP 2-13 Response to Persons Affected by Mental Illness of in Crisis, dated February 12, 2016 and Bureau-level SOP 4-04 Specialized Tactical Units, dated March 28, 2016. Both are draft policies awaiting monitor review and approval, but the needed

[36] This actually is cast as "shall".

reconciliation should be accomplished internally before they are transmitted to the monitor. Significant overlaps or linkages should be highlighted to assure uniformity.

It will be essential to provide Field Services Bureau (FSB) officers, supervisors, and command-level officers (many departments include communications dispatchers) training in the basics of incident response, initial operations, and incident command. This is particularly important in light of APD's two-level system[37] of response to high-risk incidents, which includes suicidal subjects and assumes that FSB officers will handle the majority of incidents. We recommend that APD include data on these deployments in its Annual Use of Force Report, as these incidents sometimes escalate to the point where the use of significant or deadly force is unavoidable. It is also important to place actual tactical activations involving mentally ill persons (8 in 2015) in the context of total Level One responses, which we understand are far more numerous.

The monitoring team examined the 8 cases mentioned above to determine the basis for the tactical activation (Level Two responses) in each. We found that:

- 3 incidents were domestic disturbances in which either a weapon or a subject with a violent history were involved;
- 2 were also domestic disturbances involving violent assaults (a stabbing and an assault with a fireplace poker);
- 1 involved a subject armed with a rifle on a rooftop firing shots;
- 1 involved a suspect with multiple felony warrants; and
- 1 involved a person who had a psychotic break and attempted to burn down a residence. The Tactical Section retrospectively classified this as a "borderline" call-out.

A data field for these types of cases has been added to the Tactical Section's SWAT Activation Data collection form to enable tracking and evaluation of call-outs involving mentally ill persons[38]. During our June site visit, the monitoring team, as part of a comprehensive Divisional assessment, will review Tactical Section training regarding these types of call-outs. We will also request data on Level One responses to provide a fuller picture of total responses, including a breakdown of Level One and Level Two responses. The City and the monitoring team disagree on the compliance levels for this paragraph. We will continue to work through these disagreements and resolve them for reporting in the fourth monitor's report.

[37] This is the monitoring team's two-level classification scheme that we adopted to distinguish the two levels of response.

[38] This may be difficult to determine in some cases. Hence, the need for close coordination with specialized units to make such determinations, if possible.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.119 Assessing Compliance with Paragraph 132 Crisis Prevention

Paragraph 132 stipulates:

APD shall continue to utilize COAST and CIU to follow up with chronically homeless individuals and individuals with a known mental illness who have a history of law enforcement encounters and to proactively work to connect these individuals with mental health service providers.

Methodology

Throughout this reporting period, the monitoring team held monthly teleconferences with the APD CIU and COAST personnel. Those conversations, along with CIU Monthly Reports indicate that APD continues to maintain regular contact with individuals known to them who are "of interest" in the area of crisis prevention. Further, APD continues conversations with UNM's Psychiatric Department and a variety of other community mental health services to discuss community working relationships and response strategies. Until such time as APD's policy regarding delivery of services to people with mental illness is completed (SOP 2-13), however, the APD is not in compliance. Again, the City and the monitor appear to disagree about compliance levels on this paragraph. Continued review of the City's contention will be resolved for inclusion in the fourth monitor's report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.120 Assessing Compliance with Paragraph 133

Paragraph 133 stipulates:

COAST and CIU shall provide crisis prevention services and disposition and treatment options to chronically homeless individuals and individuals with a known mental illness who are at risk of experiencing a mental health crisis and assist with follow-up calls or visits.

Methodology

During this reporting period, members of the monitoring team kept in touch monthly with the APD Crisis Intervention Unit to discuss proactive outreach to individuals with a known mental illness. The monitoring team also reviewed the CIU Monthly Reports and the MHRAC meeting minutes for this reporting period. APD continues to manage its caseload through CIU and COAST with consistent outreach to individuals with a known mental illness. The monitoring team has reviewed the primary avenue the MHRAC and the APD are using to connect chronically homeless individuals and individuals in crisis with services – that avenue is a small tri-fold resource card on which organization names and telephone numbers appear. The monitoring team observes that the resource card was last updated November 2010, per an indication on the footer of the card ("Revised 11/10"). Conversations with members of the CIU and COAST indicate that the cards are being handed out regularly during interactions and follow-up interactions with chronically homeless individuals and individuals in crisis.

Until such time as APD's policy regarding delivery of services to people with mental illness is completed (SOP 2-13), however, the APD is not in compliance.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.121 Assessing Compliance with Paragraph 134

Paragraph 134 stipulates:

APD shall continue to utilize protocols for when officers should make referrals to and coordinate with COAST and CIU to provide prevention services and disposition and treatment options.

Methodology

Regular communication via monthly teleconference with the APD personnel responsible for this paragraph in the CIU and COAST indicates that APD's CIU and COAST units continue to provide referrals to treatment options. A review of the CIU Monthly Reports and the MHRAC meeting minutes for this reporting period also indicate that APD continues to assist people with mental illness in connecting with available services and treatment options.

Until such time as APD's policy regarding delivery of services to people with mental illness is completed (SOP 2-13), however, the APD is not in compliance. Again, the City and the monitor appear to disagree about compliance levels on

this paragraph. Continued review of the City's contention will be resolved for inclusion in the fourth monitor's report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.122 Assessing Compliance with Paragraph 135

Paragraph 135 stipulates:

"APD shall maintain a sufficient number of trained and qualified mental health professionals in COAST and full-time detectives in CIU to satisfy its obligations under this Agreement. Within three months of completing the staffing assessment and resource study required by Paragraph 204 of this Agreement, APD shall develop a recruitment, selection, and training plan to assign, within 24 months of the study, 12 full-time detectives to the CIU, or the target number of detectives identified by the study, whichever is less."

Methodology

The monitoring team carefully reviewed the "Albuquerque Police Department Comprehensive Staffing Assessment and Resources Study" conducted by Alexander Weiss Consulting, LLC (Final Draft Report, December 11, 2015). The study states, "We concur with the recommended staffing level of 12 full time detectives for CIU."

Since the staffing study was completed and dated December 11, 2015, the due date for this paragraph ("within three months") was March 11, 2016. The monitoring team will re-assess progress on CIU detective and COAST staffing levels during the next reporting period for IMR-4. Again, the City and the monitor appear to disagree about compliance levels on this paragraph. Continued review of the City's contention will be resolved for inclusion in the fourth monitor's report.

Results

Primary: **Not in Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.123 Assessing Compliance with Paragraph 136

Paragraph 136 stipulates:

"COAST and CIU shall continue to look for opportunities to coordinate in developing initiatives to improve outreach, service delivery, crisis prevention, and referrals to community health resources."

Methodology

Members of the monitoring team, through conversations with CIU personnel and members of the MHRAC, observed that communication and coordination is taking place, focused on improving outreach, service delivery, crisis prevention and referrals. Members of the monitoring team also reviewed the CIU Monthly reports and the MHRAC meeting minutes during this reporting period.
Until such time as APD's policy regarding delivery of services to people with mental illness is completed (SOP 2-13), however, the APD is not in compliance.

Again, the City and the monitor appear to disagree about compliance levels on this paragraph. Continued review of the City's contention will be resolved for inclusion in the fourth monitor's report.

Results

Primary:	**Not Yet Due**
Secondary:	**Not Yet Due**
Operational:	**Not Yet Due**

4.7.124 Assessing Compliance with Paragraph 137

Paragraph 137 stipulates:

"APD shall collect and analyze data to demonstrate the impact of and inform modifications to crisis prevention services. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:
a) number of individuals in the COAST and CIU caseloads;
b) number of individuals receiving crisis prevention services;
c) date, shift, and area command of incidents or follow up encounters;
d) subject's age, race/ethnicity, and gender;
e) whether the subject claims to be a U.S. military veteran;
f) techniques or equipment used;
g) any injuries to officers, subjects, or others;
h) disposition of the encounter (e.g., arrest, citation, referral); and
i) a brief narrative of the event (if not included in any other document)."

Methodology

During this reporting period, APD CIU personnel made considerable progress toward not only data collection (see comments in paragraph 129), but also data interpretation by working closely with Professor Peter Winograd at the University of New Mexico. A PowerPoint slide presentation prepared by members of the CIU and Professor Winograd and presented at a February 17, 2016 Community Policing Council meeting details much of this data in aggregate and shows some trend tracking over time, including hot spot mapping produced with the assistance of the APD Crime Analysis Unit. The monitoring team will continue to observe and report on this evolving partnership with regard to data relevant to police interactions with people in crisis and people with mental illness. Until such time as APD's policy regarding delivery of services to people with mental illness is completed (SOP 2-13), however, the APD is not in compliance.

Again, the City and the monitor appear to disagree about compliance levels on this paragraph. Continued review of the City's contention will be resolved for inclusion in the fourth monitor's report.

Results

Primary:	**Not Yet Due**
Secondary:	**Not Yet Due**
Operational:	**Not Yet Due**

4.7.125 Assessing Compliance with Paragraph 139[39]

Paragraph 139 stipulates that:

"APD shall review, develop, and implement policies and procedures that fully implement the terms of this Agreement, comply with applicable law, and comport with best practices. APD policies and procedures shall use terms that are defined clearly, shall be written plainly, and shall be organized logically. "

Policy development, as readers of the monitor's previous reports know, has proven a difficult, even arduous task for APD. The monitoring team have spent 100s of hours working with the agency to get it to the point that it can draft policy that can be a good starting point for "comment and revision." Part of this difficulty is attributable to the fact that APD has been writing policy, basically "from scratch," as opposed to finding existing model policies written by other police agencies, or recommended by organizations such as the International Association of Chiefs of Police, Police Executive Research Forum, the Major Cities Chiefs' Association, or other industry leading organizations. The

[39] Paragraph 138 is judged to be prefatory to the following section on training, and as such established goals, but not quantifiable objectives. These are dealt with in paragraphs 139-148.

monitoring team found the City's commitment to penning its own original policies to be a major stumbling block to development of approvable policy. Notwithstanding this issue, the agency has presented to the Parties and the monitor policies that have required what can be best characterized as very substantial amounts of review-comment-revision and re-review to get to the point that, as of the end of this monitoring period (March 31, 2016) only six of 37 critical policies have been approved by the Parties and the monitoring team. These six policies include some of the more critical policies, e.g., Use of Force, Electronic Control Weapons, Supervisory Use of Force Investigations, On-Body Recording Devices, and Early Intervention Systems; however, equally critical policies remain to be resolved (for example, Investigations of Officer-Involved Use of Force, Internal Affairs, Responses to Mental Illness, and Training).

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.126 Assessing Compliance with Paragraph 140

Paragraph 140 stipulates:

"APD policies and procedures shall be indexed and maintained in an organized manner using a uniform numbering system for ease of reference. APD policies and procedures shall be accessible to all APD officers and civilian employees at all times in hard copy or electronic format."

The monitoring team have noted on several occasions that APD's numbering schema for policies is inconsistent, at times numbering two different policies with the same number. That issue appears to continue to persist, for example with at least one critical policy number, 2-52, which depending on which source one consults, appears to refer to two different and distinct operational processes. The APD should carefully review the policies on its web-site and ensure they are uniformly referenced and accurately titled. In the opinion of the monitoring team, this will require a clear, concise policy on the policy development and dissemination process. The APD contends that existing policy deals with this issue; however, given the monitoring team's recent experience with issues such as "double-numbered" policies, we are not convinced the old procedures (or perhaps the control mechanisms for those within the City and APD) are effective.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.127 Assessing Compliance with Paragraph 141

Paragraph 141 stipulates:

"Within three months of the Effective Date, APD shall provide officers from varying ranks and units with a meaningful opportunity to review and comment on new or existing policies and procedures."

Methodology

Based on normal daily course of business (COB) documents provided to the monitoring team, a series of presentations were made to all APD personnel consisting of a briefing of the requirements of the CASA and a depiction of the implementation plan established by APD to meet the require "briefing" process. There appears to be some question as to the coverage of one of the elements required by the CASA; however, given the number of elements in the CASA, even if that one element were omitted or not exactly what the CASA required, it constitutes much less than a 0.003 error.

The acceptable margin of error is .05, therefore .003 is well within the margin. The monitoring team will continue to monitor progress on ***all*** training elements of the decree.

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.128 Assessing Compliance with Paragraph 142

Paragraph 142 stipulates:

"Within three months of the Effective Date, APD shall ensure that the Policy and Procedures Review Board is functional and its members are notified of the Board's duties and responsibilities. The Policy and Procedures Review Board shall include a representative of the Technology Services Division in addition to members currently required under Administrative Order 3-65-2 (2014)."

Methodology

Members of the monitoring team have attended two separate sessions of the PPRB and observed the Board in its routine business. The current Board includes a member of the TSD and currently appears to carefully and fully assess and discuss policy recommendations. The Board, in its current iteration is in compliance with the organizational and membership requirements. It is,

however, still processing policy that must be substantially re-written prior to achieving compliance. Based on the monitoring team's observations, the board does an excellent job of crafting policy and procedures that meet current organizational practice, that carefully discuss "what if" provisions of policy, and that are the subject of careful thought and discussion. As might be expected, given the APD's demonstrated resistance to "reaching out" for best practices considerations on policy, the deliberations of the PPRB produce policy that must be substantially re-written upon review by the monitoring team and the Parties. This would seem to indicate a significant need for improved guidance and training for members of the board. To gain operational compliance, 95 percent of the policies submitted to the monitoring team would need to be approved without substantial re-write. The monitoring team is concerned that, absent additional training and access to model policies from other organizations, the PPRB will continue to "approve" policy that doesn't meet national standards and the assessment of the monitoring team. We are also concerned about the PPRB's tendency to drastically truncate articulated policy submissions. This has been a major contributing factor to many of the "returned policies" articulated upon review by the monitoring team.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.129 Assessing Compliance with Paragraph 143

Paragraph 143 stipulates:

Within nine months of the Effective Date, the Policy and Procedures Review Board shall review, develop, and revise policies and procedures that are necessary to implement this Agreement. The Policy and Procedures Review Board shall submit its formal recommendations to the Chief through the Planning and Policy Division.

Methodology

This requirement, as of March, 2016, was not being met. The PPRB policy was not approved by the monitor until after the close of the third reporting period (approval was achieved in May, 2016).

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.130 Assessing Compliance with Paragraph 144

Paragraph 144 stipulates:

"Unless otherwise noted, all new and revised policies and procedures that are necessary to implement this Agreement shall be approved and issued within one year of the Effective Date. APD shall continue to post approved policies, procedures, and administrative orders on the City website to ensure public accessibility. There shall be reasonable exceptions for policies, procedures, and administrative orders that are law enforcement sensitive, such as procedures on undercover officers or operations."

Methodology

Members of the monitoring team have subjected all policies proffered by the APD to a detailed assessment. Virtually none of the submitted policies have been approved by the Parties or the monitoring team "as written," requiring substantial, and in some cases extensive re-write to bring proffered policies up to expectations. The monitor will report fully on this paragraph in the next monitoring report, as the deadline for policy development will have expired.[40]

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.131 Assessing Compliance with Paragraph 145

Paragraph 145 stipulates:

"The Policy and Procedures Review Board shall review each policy or procedure six months after it is implemented and annually thereafter, to ensure that the policy or procedure provides effective direction to APD personnel and remains consistent with this Agreement, best practices, and current law. The Policy and Procedures Review Board shall review and revise policies and procedures as necessary upon notice of a significant policy deficiency during audits or reviews."

Methodology

The monitoring team did not approve the first of APD's proffered policies until January 23, 2016. The first review accruing under this paragraph, then, is not due until June 23, 2016. Therefore results of this paragraph will be reported in

[40] The Parties, consistent with paragraph 148, changed the overall due date for policy development to June 5, 2016, a date outside this monitoring period.

the monitor's fourth report, which will assess compliance efforts from April-July, 2016.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.132 Assessing Compliance with Paragraph 146

Paragraph 146 stipulates:

"APD shall apply policies uniformly and hold officers accountable for complying with APD policy and procedure. "

Methodology

The monitoring team is unable to monitor this paragraph at this time, as very few new policies have been issued and "trained" by APD at this point. Thus, there are very few data with which the monitor can evaluate APD's policy implementation efforts.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.133 Assessing Compliance with Paragraph 147

Paragraph 147 stipulates

"APD shall submit all policies, procedures, manuals, and other administrative orders or directives related to this Agreement to the Monitor and DOJ for review and comment before publication and implementation."

Methodology

After a few initial problems relating to submission of the required documents, the City and APD are now submitting required documents to DOJ and the monitoring team as stipulated by this paragraph. The Parties have agreed upon a reasonable process and timeline for policy review, and are proceeding, for the most part, with policy review based on that schedule. As noted above, the Parties and the monitor have agreed to a small no-penalty extension to the overall due date to allow for adequate time for writing and review of policies.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.134 Assessing Compliance with Paragraph 148

Paragraph 148 stipulates:

"APD shall have 15 days to resolve any objections to new or revised policies, procedures, manuals, or directives implementing the specified provisions. If, after this 15-day period has run, the DOJ maintains its objection, then the Monitor shall have an additional 15 days to resolve the objection. If either party disagrees with the Monitor's resolution of the objection, either party may ask the Court to resolve the matter. The Monitor shall determine whether in some instances an additional amount of time is necessary to ensure full and proper review of policies. Factors to consider in making this determination include: 1) complexity of the policy; 2) extent of disagreement regarding the policy; 3) number of policies provided simultaneously; and 4) extraordinary circumstances delaying review by DOJ or the Monitor. In determining whether these factors warrant additional time for review, the Monitor shall fully consider the importance of prompt implementation of policies and shall allow additional time for policy review only where it is clear that additional time is necessary to ensure a full and proper review. Any extension to the above timelines by the Monitor shall also toll APD's deadline for policy completion."

Methodology

The process agreed to by the Parties and the monitors conforms to this paragraph, and with few exceptions, agreed to the by the Parties and the monitor (cases in which a bit more time is required to produce clear product), the Parties and the monitor have agreed to brief extensions of time to clarify or resolve issues.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.13 Assessing Compliance with Paragraph 149

Paragraph 149 stipulates:

"Within two months of the Effective Date, APD shall ensure that all officers are briefed and presented the terms of the Agreement, together with the goals and implementation process of the Agreement."

Methodology

The monitoring team assessed attendance at briefings, held early in the compliance process, and within the two-month requirement, designed to familiarize all officers with the terms of the CASA and existing implementation plans.

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.136 Assessing Compliance with Paragraph 150

Paragraph 150 stipulates:

"Within three months of issuing a policy or procedure pursuant to this Agreement, APD agrees to ensure that all relevant APD personnel have received and read their responsibilities pursuant to the policy or procedure, including the requirement that each officer or employee report violations of policy; that supervisors of all ranks shall be held accountable for identifying and responding to policy or procedure violations by personnel under their command; and that personnel will be held accountable for policy and procedure violations. APD agrees to document that each relevant APD officer or other employee has received and read the policy. Training beyond roll-call or similar training will be necessary for many new policies to ensure officers understand and can perform their duties pursuant to the policy."

Methodology

Now that policies are coming "on-line," the monitoring team has begun the process of reviewing APD compliance with this section of the CASA. To date APD has begun the process of training on the critical elements of the newly-approved use of force policy. Other policies, such as On-Body Recording Devices, will be handled through the City's Public Safety University platform. The monitoring team will continue to monitor the APD's compliance to this paragraph as more policies come on-line over the coming months.

Results

This requirement is not due to be fully completed until June, 2016 (nine months to complete the policy work and three months to ensure training of content).

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.137 Assessing Compliance with Paragraph 151

Paragraph 151 stipulates:

Unless otherwise noted, the training required under this Agreement shall be delivered within 18 months of the Effective Date, and annually thereafter. Within six months of the Effective Date, APD shall set out a schedule for delivering all training required by this Agreement.

Methodology

The monitoring team reviewed the APD's "class schedule" for training development and found all training elements required by the CASA to be reflected in that document, which lists, for each training development cycle, the "task lead", the date of the last CASA paragraph update related to each training element, a narrative of the title and status of the training element, the time development started, elapsed time for development, and finish date.

Results

The monitoring team will conduct "real time" audits of these training events over the coming years to ensure that the training is not only completed to national standards but is complete on-time. The APD is currently in compliance with time parameters for setting out a schedule for training, as required by this paragraph. APD has developed its 18-month training calendar. The monitoring team will assess compliance levels with the posted schedules during the course of the following three years.

Schedule:
2016 Training
11 July – 10 November
2017 Training
10 July – 10 November
2018 Training
9 July – 9 November

Setting Out a Schedule

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

Delivery of Training

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.138 Assessing Compliance with Paragraph 152

Paragraph 152 stipulates:

"APD shall ensure that all new lateral hires are certified law enforcement officers and that they receive all training required by this Agreement prior to entry onto duty."

Methodology

During the third site visit, members of the monitoring team met with Training Academy personnel responsible for the Recruitment/Hiring policy development and implementation, and identified current development processes and expected due dates. APD has a specific and formalized process for the handling of lateral hires ensuring that the laterals are certified law enforcement officers and that all training required by this agreement is met. During the time frame for this monitoring period (December 1, 2015 thru March15, 2016) the APD did not have any lateral hires come through the process.

Results

The APD does not have any lateral hires in the academy class currently in session and as of the date of this report do not have any in the current application process. Policy mandating compliance with this paragraph is contained in SOP 2-03 Field Training and Evaluation Program and is currently under review by APD and has not been submitted for review and approval by the monitoring team.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.139 Assessing Compliance with Paragraph 153

Paragraph 153 stipulates:

"APD shall maintain complete and accurate records of all training provided to sworn APD officers during pre-service and in-service training programs, including curricula, course materials, lesson plans, classroom presentations, handouts, videos, slides, recordings, and attendance records. APD shall also maintain complete and accurate records of any audit, review, assessment, or evaluation of the sufficiency or effectiveness of its training programs. APD shall make these records available for inspection by the Monitor and DOJ."

Methodology

During the third monitoring site visit, members of the monitoring team met with Training Academy Personnel responsible for the maintenance of all APD sworn officers training records. The APD houses the training records electronically and in hard copy format. The electronic database is called Officer Training Information System (OTIS). All records are archived at the APD Academy. Members of the monitoring team verified accessibility of information required to be available for inspection as stipulated in this paragraph. During this visit the monitoring team requested to inspect certain records for the time frame (December 1, 2015 thru March 15, 2016). The following records were reviewed:

Field Service Bureau Special Orders, 2016 forty-hour Use of Force Training course, Use of Force Test, Use of Force Attendance Sheet, Use of Force Training Classroom and Defensive Tactics sign in sheets, Use of Force Course Evaluation Form, Use of Force Ground Control Performance Skills Test, APD DOJ Use of Force Evaluation Forms, APD DOJ Use of Force Meggitt Evaluation Forms, Certificate of Completion for Use of Force Class, APD 114th Cadet Class Curriculum and Final Class Test averages scores and the APD Academy Staff roster.

Results

Based on the monitor's observations there is full and unrestricted access to APD's documents as required by this paragraph. The monitoring team will conduct inspections of these materials in future site visits to ensure that implementation measurements can be attained to remain in compliance.

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **Not Yet Due**

4.7.140 Assessing Compliance with Paragraph 154

Paragraph 154 stipulates:

"APD shall ensure that changes in relevant case law and statutes are disseminated to APD personnel in a timely manner and incorporated, as appropriate, into annual and pre- service training."

Methodology

During the third monitors' site visit, members of the monitoring team met with Training Academy Personnel responsible for the dissemination of changes to relevant case law and statutes. The Advanced Training Sergeant at the academy is assigned to this paragraph. The time frame monitored for this report was December 1, 2015 thru March 31, 2016. During this period there were no

noted changes necessary in relevant case law and statutes effecting APD, therefore, there were no cases to review by the monitoring team.

The monitoring team will continue to monitor the implementation of this paragraph in future site visits.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.141 Assessing Compliance with Paragraph 155

Paragraph 155 stipulates:

"APD shall supervise and manage its field-training program to ensure that new officers develop the necessary technical and practical skills required to use force in accordance with APD policy and applicable law. The field-training program should reinforce, rather than circumvent, the agency's values, core principles, and expectations on use of force and engagement with the community. Field Training Officers should demonstrate the highest levels of competence, professionalism, impartiality, and ethics."

Methodology

Members of the monitoring team spoke with Training Academy Personnel responsible for the Field Training and Evaluation Program during the third monitoring site visit. The training academy produced the Field Training and Evaluation Program **Operational Manuel** (dated March 17, 2016) with the necessary changes required to meet the requirements of this paragraph. However SOP 2-03 Training Division was still in the revision process, pending approval from APD, particularly section 2-03-5 Field Training and Evaluation Program.

Results

Until this policy is approved the requirements of this paragraph cannot be met.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.142 Assessing Compliance with Paragraph 156

Paragraph 156 stipulates:

"APD shall revise the policies applicable to its field-training program to provide that academy graduates will receive 16 weeks of field training following the training academy and that recruits will not be released from the field-training program early."

Methodology

During the third monitoring site visit, members of the monitoring team met with Training Academy Personnel responsible for the Field Training and Evaluation Program. The policy for this paragraph is still in draft form and pending approval by APD so that it can be forwarded to the monitor through the chain for final approval.

Although the Final Policy for the FTO program has not been received and reviewed, a review of the draft policy was conducted with the Academy staff. Documentation to support that the trainees received 16 weeks of documented field training was reviewed and verified. The monitor reviewed Field Training Bureau Special Orders 15-23, 15-55, 15-60, 16-02, 16-10, and 16-14. These orders reflect the four phases (four weeks each) as well as any extensions for remedial training to fulfill the sixteen weeks of the field training following the academy. The > 95% threshold was met during the time frame for this report. The draft policy also showed that the provision for early release was removed ensuring that no recruit would be released from the program until a minimum of 16 weeks of training was received.

Results

Despite the fact that the +95% threshold was met, the final policy documentation for the FTO program has not been approved by the monitoring team; therefore, the APD cannot be in judged compliance.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.143 Assessing Compliance with Paragraph 157

Paragraph 157 stipulates:

"APD shall revise the qualifications for Field Training Officers to require four years of non-probationary experience as a sworn police officer and to ensure that Field Training Officers have a demonstrated commitment to constitutional policing, ethics, and professionalism."

Methodology

Members of the monitoring team met with the Training Academy Personnel responsible for the Field Training and Evaluation Program during the third

monitoring site visit. A review of documentation supplied by the APD supports the requirements of this paragraph that stipulates that FTO's must have four years of non-probationary experience as a sworn officer. Further review of documentation supports that the FTO's have a demonstrated commitment to constitutional policing, ethics and professionalism. During the time frame for this review (December 1, 2015 thru March, 2016) the APD supplied a complete list of FTO's. Twenty percent of the list was selected randomly and assessed for compliance with this paragraph. The > 95% threshold was met for this review.

Results

Although the compliance threshold for this paragraph has been met, the Final Policy for the FTO Program has not been approved, therefore the APD cannot be considered to be in compliance with this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.144 Assessing Compliance with Paragraph 158

Paragraph 158 stipulates:

"New Field Training Officers and Area Sergeant Coordinators shall receive at least 40 hours of initial supervisory-level training and annual in-service training in the following areas: management and supervision; constitutional, community-oriented policing; de-escalation techniques; and effective problem-solving techniques. Field Training Officers and Area Sergeant Coordinators shall be required to maintain, and demonstrate on a regular basis, their proficiency in managing recruits and subordinates, as well as practicing and teaching constitutional, community-oriented policing; de-escalation techniques; and effective problem solving. APD shall maintain records of all evaluations and training of Field Training Officers and Area Sergeant Coordinators."

Methodology

During the third monitor site visit, members of the monitoring team met with the Training Academy Personnel responsible for the Field Training and Evaluation Program. A review of **Draft Policy SOP 2-03** was conducted with the Training Academy personnel. In section 2-03-5 of the SOP the requirements for a 40 hours course for new Field Training Officers and Field Training Area Sergeants is articulated as well as the requirement for an annual eight hour in-service. The Field Training and Evaluation Program – Basic Course (40 hrs.) has been developed; however, the policy that underlies the training continues to be discussed and reviewed within APD, and has not been approved. APD has delivered this course on: December 14-18, 2015, January 14-19, 2016, February 1-5, 2016, March 28-April 1, 2016 and has a class scheduled May16-

20, 2016. The schedule for the annual in-service has been developed and training is scheduled for July through November 2016, 2017 and 2018 (Paragraph 151).

Results

Compliance cannot be attained because the policy SOP 2-03 is currently pending finalization and review by the monitoring team and the Parties.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.145 Assessing Compliance with Paragraph 159

Paragraph 159 stipulates:

"Recruits in the field-training program shall be trained in multiple Area Commands and shifts and with several Field Training Officers."

Methodology

Members of the monitoring team met with the Training Academy Personnel responsible for the Field Training and Evaluation Program during the third monitoring site visit. Documentation reviewed by the monitoring team supports the requirements of this paragraph. The requirements stipulate that the recruits in the Field Training Program shall be trained in multiple Area Commands and shifts and by several Field Training Officers. The documentation reviewed, Field Training Bureau Special Orders 15-23, 15-55, 15-60, 16-10 and 16-14 reflect that multiple Area Commands and Shifts are covered and that several Field Training Officers are assigned. This process is accomplished in four phases, each phase consisting of four weeks as well as additional time allowed for remedial training. The +95% threshold was met during the time frame for this report.

Results

Despite the fact that the +95% threshold was met during this visit, the Policy for the FTO program has not received final approval from the monitoring team, and therefore APD cannot be judged in compliance as the policies underlying this process have not yet been approved by the monitor and the Parties.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.146 Assessing Compliance with Paragraph 160

Paragraph 160 stipulates:

"APD shall provide a mechanism for recruits to provide confidential feedback regarding the quality of their field training, including the extent to which their field training was consistent with what they learned in the academy, and suggestions for changes to academy training based upon their experience in the field-training program. APD shall consider feedback and document its response, including the rationale behind any responsive action taken or decision to take no action."

Methodology

During the third monitor site visit, members of the monitoring team had several meetings with the Training Academy Personnel charged with the responsibility of responding to tasks included in this paragraph. The field training personnel utilizes "Survey Monkey" to monitor the confidential feedback from the recruits in the FTO program including the quality of their field training. Results from the survey were reviewed by the monitoring team for this monitoring period. There were 16 graduates from the class during this monitoring period (113th class), 14 of the members surveys were reviewed. The feedback meets the requirements of this paragraph and generally strongly supports the training received in the FTO program.

Results

The program has developed the mechanism to retrieve the feedback from the recruits in the FTO program but has not developed the mechanism to have a response from the academy to take action or not to take action on the information being garnished. Policy mandating compliance with this paragraph is contained in SOP 2-03-5 Field Training and Evaluation Program and is currently under review by APD and has not been received for approval by the monitoring team.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.147 Assessing Compliance with Paragraph 161

Paragraph 161 stipulates:

"The City shall provide APD with the necessary support and resources to designate a sufficient number of Field Training Officers to meet the requirements of this Agreement."

Methodology

During the third monitor site visit, members of the monitoring team met with the Training Academy Personnel responsible for the Field Training and Evaluation Program. With the increase in cadet classes and class sizes the monitor continued to express concern about the necessary support and resources to designate a sufficient number of Field Training Officers to meet the requirements of the CASA.

Results

Until the results of the staffing study are implemented, and/or APD allocates sufficient numbers of FTOs to ensure adequate training of new officers, APD does not meet the requirements of this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.148 Compliance with Paragraph 162: Accountability for Conduct

Paragraph 162 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD and the Civilian Police Oversight Agency shall ensure that all allegations of officer misconduct are received and are fully and fairly investigated; that all findings in administrative investigations are supported by a preponderance of the evidence; and that all officers who commit misconduct are held accountable pursuant to a fair and consistent disciplinary system."

Methodology

In assessing the overall Internal Affairs (IA) functions of the APD, members of the monitoring team had several meetings during the 3rd site visit, with personnel from the Internal Affairs Bureau (IAB) and the Civilian Police Oversight Agency (CPOA), and also attended a meeting of the Police Oversight Board (POB). The monitor also conducted visits to substations and reviewed procedures for informing the public of its right to lodge a complaint and procedures for taking complaints. The monitor reviewed rules, regulations and orders containing policies related to the internal affairs process as well as the CPOA Ordinance.

The monitor also reviewed stratified random samples of IA and CPOA investigations completed during the monitoring period, including the imposition of discipline. In this regard it should be noted that the monitor reviewed six IAB cases, and also eight cases that were administratively closed during the monitoring period. All of the administratively closed cases were CPOA cases. The monitor selected an additional ten CPOA cases for review. One of those

cases involved use of force issues and was presented to the POB during this site visit. That case will be reported on in the next Monitor's Report. The other nine cases were cases that were selected because of particular issues, such as constitutional issues, Chief non-concurrence with POB, and cases that were resolved by mediation. Thus in the paragraphs below that list a "review of a stratified random sampling of IAB and CPOA cases", it is understood that this is a review of six IAB cases, eight CPOA administratively closed cases, and nine CPOA cases, for a total review of 23 cases.

Results

This is the overarching paragraph pertaining to the IA function. As such, full compliance with this paragraph cannot be achieved until all paragraphs pertaining to the IAB and CPOA functions of APD are in compliance. The reader is directed to paragraphs 162-202, and 271-292, below for a paragraph-by-paragraph discussion of compliance at these two entities. Overall, however, the monitor is able to draw some critical impressions regarding IAB and CPOA functions for this reporting period.

The monitor continues to be impressed with the cooperation, professionalism and commitment of the IAB and CPOA/POB personnel. The monitor's review during this site visit showed improvements that are encouraging for the entire IA process. The CPOA has made great strides in reducing its backlog (investigations that are not yet completed and are outside the 90 day mark or outside 120 day mark with an approved extension). All backlogged cases, particularly those where delays prevent discipline from being imposed due to the time limitations of the Collective Bargaining Agreement (CBA), are detrimental to the IA/disciplinary process. Complainants who receive a notice of resolution to a complaint after an inordinate and sometimes inexplicable delay tend to lose confidence in the IA process. To its credit CPOA has realized and addressed this problem. At the start of this monitoring review period, the CPOA identified 160 backlogged cases. Of that backlog 29 cases were administratively closed and the POB reviewed an additional 129 cases during the monitoring period. These statistics generally appear to be corroborated by the findings posted on the CPOA website (meeting minutes) for the monitoring period. The monitor expects the CPOA backlog to be eliminated or nearly nonexistent during the next site visit's review.

In regard to the CPOA, the monitor also attended and viewed a POB meeting during the third site visit. The monitor was impressed with the professionalism and performance of the Chair and members of the POB, as well as the Executive Director of the CPOA and the CPOA staff. In addition, the cooperation and interaction of IAB staff with the CPOA and POB was professional and focused. The meeting was efficiently run, allowed for public input, and a commitment to an effective and fair police oversight process was clearly demonstrated by the members of the CPOA/POB and IAB.

The monitor commented in the Second Monitor's Report on the fact that IAB does not make investigative findings. The IAB previously presented its investigations without investigative findings to the Supervisory Chain of the subject officer. Thus the expertise of IAB and its close working knowledge of the facts of the case did not necessarily factor into making investigative findings. This was of particular concern in cases requiring credibility determinations, because investigative findings were made by the subject officer's command, which has the potential of introducing one's personal knowledge and opinion of the subject officer into the findings equation. The monitor was pleased to learn during this site visit that this procedure has been promptly corrected and IAB now makes investigative findings in its investigative reports. The monitor believes this is a much needed improvement that will work to the benefit of all who are involved in the IA process. The monitor expects to be able view cases during the next site visit to determine if this new procedure has been implemented effectively.

There are some improvements, previously recommended by the monitor, that still need to be implemented. The monitor recommended in the Second Monitor's Report that each potential violation (potential violations are contained in the General Orders Manual, Procedure Orders Manual and the Administrative Orders Manual of the APD) be classified for purposes of the Chart of Sanctions/ Disciplinary Matrix Guidelines. The guidelines contain discipline ranges for each classification of offense, with the classifications ranging from 1 through 7. The problem is that the APD has not classified every potential violation. Where a violation is unclassified then a similar violation, that is classified, is to be used as a guide. This has the potential of introducing undue complexity and subjectivity into the recommendations for imposition of discipline, as well as making it difficult to review for fair and equitable discipline. The monitor has been informed that this is a work in progress, and would expect significant progress be made in classifying all potential violations before the next site visit. The monitor also commented in the Second Monitor's that the Chart of Sanctions/ Disciplinary Matrix Guidelines failed to set out defined mitigating or aggravating circumstances. The monitor again notes that the Chart of Sanctions/ Disciplinary Matrix Guidelines should be revised to include a non-exhaustive list of defined mitigating or aggravating circumstances appropriate for the disciplinary process.

The monitor also emphasizes the importance of continued articulation of reasons in every instance where final discipline imposed does not follow the disciplinary matrix guidelines range, where progressive discipline is not followed, or recommendations of investigative or reviewing authorities are not followed. Deviations are acceptable where appropriate; however, a careful consideration of mitigating and/or aggravating circumstances or other reasons should be evidenced by a succinct statement of reasons.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.149 Assessing Compliance with Paragraph 163: Duty to Report Misconduct

Paragraph 163 stipulates:

APD shall require that all officers and employees report misconduct by any APD officer or employee, including themselves, to a supervisor or directly to the Internal Affairs "Bureau for review and investigation. Where alleged misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to the Internal Affairs Bureau. Failure to report or document alleged misconduct or criminal behavior shall be grounds for discipline, up to and including termination of employment."

Methodology

The monitor specifically requested all cases completed during the monitoring period involving the failure to report or document alleged misconduct or criminal behavior by an APD officer or employee. In addition, the monitor conducted a review of stratified random samples of IAB and CPOA investigations completed during the monitoring period, and had several meetings during the site visit with IAB and CPOA personnel regarding the operations of their offices.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review (see also paragraph 164, Status, AO 3-43 Comment). It is expected that upon the revision and formal adoption of AO 3-43, the APD will be in primary compliance of this task.

The monitor is considering the "immediacy" of a supervisor's obligation to document and report misconduct as one of reasonableness under the totality of circumstances.

No investigations completed during this monitoring period involved the failure to report or document alleged misconduct or criminal behavior by an APD officer or employee. Also, a review of randomly selected IAB and CPOA investigations by the monitor team during this site revealed no instances of non-compliance with this paragraph.

A CPOA investigation during the previous review period astutely pointed out that there is a discrepancy between this paragraph and 3-43-3G5 which allows for discretion of the supervisor in handling a misconduct complaint. The monitor recommends that APD address this discrepancy in its rewrite of the IA manual.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.150 Assessing Compliance with Paragraph 164: Public Information on Civilian Complaints

Paragraph 164 stipulates:

"Within six months of the Effective Date, APD and the Civilian Police Oversight Agency shall develop and implement a program to ensure the Albuquerque community is aware of the procedures to make civilian complaints against APD personnel and the availability of effective mechanisms for making civilian complaints."

Methodology

The monitor visited two of the six substations (that were not previously visited in previous site visits) during this site visit as well as the IAB and CPOA offices. The monitor conducted interviews of IA and CPOA and substation personnel to determine if procedures are in place to inform the public of its right to lodge a complaint, the different methods and procedures for doing taking a civilian complaint, and also viewed APD and CPOA websites and relevant materials.

Results

All inspections conducted this site visit revealed that personnel at substations are knowledgeable of complaint procedures and the substations contain informative materials in English and Spanish relevant to the IA process. Displayed brochures were informative and user-friendly, and accurately depicted the complaint filing and resolution process. Further, websites were informative and generally user-friendly subject to comments in paragraphs 167 and 172.

The CPOA publication materials include posters, brochures, and complaint forms, all of which are acceptable to the monitor in terms of format and content. CPOA posters and brochures list TTY (Teletypewriter) and the internet as appropriate ways for the hearing impaired to interact with the Agency. Brochures and posters are available in English and Spanish.

The APD complaint forms and related informative materials were also acceptable to the monitor. Access attempts at websites, and inspections of facilities all indicated adequate compliance at greater than 95 percent of the access attempts.

The APD draft policy (Administrative Order) was returned to APD for a comprehensive rewrite and is pending approval. CPOA policies and procedures were submitted to the monitor team and at the time of preparation of this document have not yet been approved. It is expected that upon approval of the policy that encompasses this paragraph, the APD and CPOA will be in full compliance with this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.151 Assessing Compliance with Paragraph 165: Availability of Complaint Forms

Paragraph 165 stipulates:

"APD and the Civilian Police Oversight Agency shall make complaint forms and informational materials, including brochures and posters, available at appropriate government properties, including APD headquarters, Area stations, APD and City websites, City Hall, public libraries, community centers, and the office of the Civilian Police Oversight Agency. Individuals shall be able to submit civilian complaints through the APD and City websites and these websites shall include, in an identifiable and accessible form, complaint forms and information regarding how to file civilian complaints. Complaint forms, informational materials, and the APD and City websites shall specify that complaints may be submitted anonymously or on behalf of another person. Nothing in this Agreement prohibits APD from soliciting officer commendations or other feedback through the same process and methods as above."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to this paragraph's tasks at the IAB and CPOA offices. The monitor also conducted unscheduled visits/inspections at two of the six APD substations, visited City Hall and APD Headquarters, and reviewed the City/ APD and CPOA websites.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review (See also, Results, paragraph 164). It is expected that upon adequate revision and formal adoption of AO 3-43, the APD will be in primary compliance of this task. It is expected that upon adequate revision and formal adoption of AO 3-43, the APD will be in primary compliance of this task[41].

The monitor reviewed the brochures and public information available at the visited sites. They found the materials were readily available, informative and user-friendly. The monitoring team also found related City websites to be informative and relatively user-friendly, subject to improvements recommended in paragraph 167 and 172 below.

[41] 3-43 was approved by the monitor on May 5, 2016, after the closing date for this report.

APD and CPOA is > 95 percent compliant with web access attempts and station visits by the monitor. The team will continue “live visits” during the next site visit, and will focus on availability at non APD public sites such as City Hall, public libraries, and community centers. APD and CPOA will be in full compliance with this paragraph once the underlying policies are completed, reviewed and approved.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.152 Assessing Compliance with Paragraph 166: Public Information on Complaint Process

Paragraph 166 stipulates:

“APD shall post and maintain a permanent placard describing the civilian complaint process that includes relevant contact information, such as telephone numbers, email addresses, and Internet sites. The placard shall specify that complaints may be submitted anonymously or on behalf of another person. APD shall require all officers to carry complaint forms, containing basic complaint information, in their Department vehicles. Officers shall also provide the officer’s name, officer’s identification number, and, if applicable, badge number upon request. If an individual indicates that he or she would like to make a misconduct complaint or requests a complaint form for alleged misconduct, the officer shall immediately inform his or her supervisor who, if available, will respond to the scene to assist the individual in providing and accepting appropriate forms and/or other available mechanisms for filing a misconduct complaint.”

Methodology

Members of the monitoring team visited the IAB and CPOA offices as well as two of the six APD substations. They had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review (see also paragraph 164, Status). It is expected that upon adequate revision and formal adoption of AO 3-43, the APD will be in primary compliance of this task.

Informational placards were located in all (> 95 %) of the locations inspected. During the next site visit, the monitor will conduct inspections of Police Vehicles for complaint forms. Other City facilities, as outlined in Paragraph 165 will also be assessed at that time.

A review of randomly selected IAB and CPOA investigations by the monitor during this site visit did not reveal any investigation involving the failure to provide requested information to a prospective complainant or any instance where a supervisor was not informed when a complainant indicated the desire to make a complaint.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.153 Assessing Compliance with Paragraph 167: Duty to Accept Citizen Complaints

Paragraph 167 stipulates:

"APD agrees to accept all civilian complaints and shall revise any forms and instructions on the civilian complaint process that could be construed as discouraging civilians from submitting complaints."

Methodology

The monitoring team reviewed forms and instructions on the civilian complaint process, reviewed the information given to members of the public by way of substation visits and interviews, and reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review (See also, Results, paragraph 164). The monitor expects that upon revision and formal adoption of AO 3-43, the APD will be in primary compliance of this task. The revised complaint forms, currently in use, are acceptable to the monitor.

The revised complaints forms, information and instructions are compliant with the requirement that reporting forms do not discourage civilians from submitting complaints.

The APD website under "Misconduct Complaint/Steps for Filing a Misconduct Complaint" should be updated to provide for consistency with other information on the website. Under "Steps for Filing a Misconduct Complaint" it instructs that the written complaint forms must be obtained from an APD substation or IAB. This is inconsistent with other information on the website (How to: File a Police

Complaint or Commendation) that makes clear that complaints can be submitted online or the written form can be downloaded from the website and then mailed to CPOA, faxed, or hand-delivered to CPOA, IAB, or any APD substation.

On a positive note, we note that a warning that previously appeared on the website, regarding a city ordinance that states that "it is unlawful for any person to intentionally make or file with any law enforcement agency any false, misleading, or unfounded report or statement", which could be construed as discouraging civilians from submitting complaints, apparently has been removed.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.154 Assessing Compliance with Paragraph 168: Multi-Lingual Complaint Forms

Paragraph 168 stipulates:

"Complaint forms and related informational materials shall be made available and posted in English and Spanish."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to the task(s) included in this paragraph, reviewed documents related to the IA process, and reviewed complaint forms and IA and civilian complaint related materials during IAB, CPOA and substation visits.

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review (See also, Results, paragraph 164). Upon revision, approval by the monitoring team and formal adoption of AO 3-43, the APD will be in full compliance with this paragraph.

Brochures and complaint forms were reviewed by the monitor, as were the APD and CPOA Websites. All (>95%) informational material was posted in English and Spanish. During the next site visit, inspections will be conducted of other public venues such as City Hall, public libraries and community centers as well as spot inspections of police vehicles for complaint forms and informational materials.

The APD website, specifically the "Internal Affairs" and "Contact the Police" windows, both lead to a "Misconduct Complaint", which lists substations and government offices where complaint forms can be obtained with addresses and telephone numbers and also allows for submitting complaints online. The APD website Homepage has been updated and the monitor has observed that users

can now access instructions for filing a misconduct complaint and obtain the complaint form directly from the Homepage ("Most Requested/ Report Police Misconduct"). The monitor views this as another positive step taken by APD in making the complaint and commendation process more user-friendly to the public.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.155 Assessing Compliance with Paragraph 169: Training on Complaint Intake

Paragraph 169 stipulates:

"Within six months of the Operational Date, APD shall train all personnel in handling civilian complaint intake."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and reviewed APD training data.

Results

The monitor was provided a spreadsheet, generated by the APD's PowerDMS intra-agency training platform. The document provided by the system indicates that the APD trained its personnel regarding complaint intake, classification and tracking during the time period of for this report. Data indicate that the agency trained 94.8 percent of the sworn and civilian workforce, with the remainder, those not trained, being shown on various forms of temporary duty, injury leave, military leave, FMLA leave, etc. The 94.8 percent "rounds up" to a 95 % compliance rate; however, the monitoring team has expressed some concerns to APD about three issues which are currently being researched and responded to.

1. The first of these involves those full-time employees who were on leave and not tested in April and May of 2015. The monitor needs to know if any of those have returned to work, and how many of those have taken the intake training and have been tested; and
2. The second issue involves a lack of test data demonstrating employee mastery of the data produced and reviewed through Power DMS (test dates, data test questions, and test scores are currently not available to the monitoring team).

3. The third involves a probable data management error that showed some participants finishing the training process before they were shown to have started.

The monitor notes that items 1-3 were mentioned in the first monitoring report, and have not yet been corrected. The APD is cautioned to ensure that, whenever possible, issues addressed in one monitoring report are corrected prior to the next monitoring site visit.

In conversations with APD personnel in prefatory phases of the monitoring process, the monitoring team was informed verbally that testing outcomes, use data (how much time was spent per page of DMS product, etc.) would be available by participant. The monitor will review those data as they come available.

The City and the monitoring team are in disagreement regarding compliance with this paragraph, with the City noting that compliance data was reported through alternative data archival protocols, as well as through submission of data to the monitor in "December, 2016." We will work with the City to resolve these issues in the next reporting period.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.156 Assessing Compliance with Paragraph 170: Complaint Receipt Process

Paragraph 170 stipulates:

"APD shall accept complaints regardless of when they are filed. The City shall encourage civilians to promptly report police misconduct so that full investigations can be made expeditiously and the full range of disciplinary and corrective action be made available."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and reviewed a random selection of IA and CPOA investigations that were completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review. It is expected that upon the revision and formal adoption of AO 3-43, the APD will be in primary compliance of this task.

The monitor's review of investigations during this site visit did not show any complaints being rejected as "late," and in fact showed no time requirement/limitation being placed on the acceptance of complaints.

On the other hand, complaints that are made after a significant delay from the date of incident are often difficult to investigate, with witnesses and evidence sometimes difficult to locate, and many times complainants, subjects and witnesses having faded memories due to passage of time. These types of complaints tend to consume valuable investigative resources without a fair chance of reaching a resolution with a dispositive finding. They also may be a factor in leading to the CPOA backlog. The monitor suggests that the parties continue to assess this issue to determine whether some time limitation-related staffing changes may need to be embodied in a revision to the CASA or into policy.

A review of the APD website and online written Complaint Forms did not instruct or encourage regarding the filing complaints in a timely manner. The monitor highly recommends that the APD and CPOA make efforts to instruct as to the benefits of timely filing a misconduct complaint, encourage the timely filing of the complaint, while at the same time making clear that all complaints will be accepted regardless of "the age" of the complaint.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.157 Assessing Compliance with Paragraph 171: Prohibition of Refusal to Take Complaint

Paragraph 171 stipulates

"The refusal to accept a misconduct complaint, discouraging the filing of a misconduct complaint, or providing false or misleading information about filing a misconduct complaint shall be grounds for discipline."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA and civilian complaint/CPOA processes, and reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review. It is expected that upon the revision and formal adoption of AO 3-43, the APD will be in primary compliance of this task.

A review of randomly selected IAB and CPOA investigations by the monitoring team during this site visit did not reveal any investigation involving the discouraging of filing a complaint or the giving of false or misleading information about filing a misconduct complaint.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.158 Assessing Compliance with Paragraph 172: Acceptance of Anonymous Complaints

Paragraph 172 stipulates:

"APD and the Civilian Police Oversight Agency shall accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. Any Spanish-speaking individual with limited English proficiency who wishes to file a complaint about APD personnel shall be provided with a complaint form in Spanish to ensure that the individual is able to make a complaint. Such complaints will be investigated in accordance with this Agreement."

Methodology

The monitor reviewed the APD and CPOA websites, had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA and civilian complaint process, and reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review. The monitor expects that upon revision and formal adoption of AO 3-43, the APD and CPOA will be in primary compliance of this task.

The monitoring team reviewed investigations that were started in a variety of ways: email, telephone calls and on site complaints. The monitor has uncovered no refusal or reluctance to accept any complaint, including anonymous and third-party complaints.

The CPOA Complaint Form highlights that complaints may be submitted anonymously or on behalf of another person. The CPOA Complaint Form is also produced and available in Spanish, and the accompanying informational brochure highlights that complaints may be submitted anonymously or on behalf of another person The informational brochure also highlights that complaints

may be made in writing or verbally, in person or by mail, telephone, facsimile, or online/electronic mail, and allows for the downloading of the complaint form.

The APD website (Report Misconduct>Misconduct Complaint>Where to Obtain Complaint Forms>Report Misconduct by Albuquerque Police>Albuquerque Police Complaint or Commendation Form>How To: Report a Police Complaint or Commendation) in a somewhat cumbersome way does lead the user to information that complaints may be submitted online or by obtaining complaint forms at substations and government offices and lists the specific substations and offices with addresses and phone numbers. The monitor recommends that the website be updated to allow for easier recognition that complaints may be submitted online.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.159 Assessing Compliance with Paragraph 173: Inform Supervisors of Citizen Complaints

Paragraph 173 stipulates:

"All APD personnel who receive a misconduct complaint shall immediately inform a supervisor of the misconduct complaint so that the supervisor can ensure proper intake of the misconduct complaint. All misconduct complaints shall be submitted to the Internal Affairs Bureau by the end of the shift following the shift in which it was received."

Methodology

The monitor specifically requested any and all cases completed during the monitoring period involving APD personnel who received a misconduct complaint and failed to immediately inform a supervisor of the misconduct complaint. In addition the monitor conducted meetings with persons charged with the responsibility of responding to task(s) included in this paragraph, and reviewed a random selection of IAB and CPOA investigations completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review. The monitor expects that upon revision and formal adoption of AO 3-43, the APD will be in primary compliance with this task.

It was reported to the monitor that no cases completed during the monitoring period involved issues of compliance or non-compliance with this paragraph. In addition, a review of randomly selected IAB and CPOA investigations by the

monitor team during this site visit did not reveal any violations of the policy required by this paragraph.

The timeliness of submitting complaints to IAB can be discerned through a case by case analysis of the random sample; however at this time it is not a statistic that is separately tracked. The monitor has been informed that this statistic will be separately tracked upon the installation of a new application named Blue Team, a web based application that ties into IAPro. The monitor will assess in future site visits whether this statistic can, and will, be separately tracked.

The monitor previously commented in the Second Monitor's report that a CPOA investigation pointed out that there is a discrepancy between this paragraph and 3-43-3G5, which allows for discretion of the supervisor in handling a misconduct complaint. The monitoring team again recommends that the APD address this discrepancy in its drafting of policy.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.160 Assessing Compliance with Paragraph 174: Allegation by Judicial Officers

Paragraph 174 stipulates:

"APD and the Civilian Police Oversight Agency shall develop a system to ensure that allegations by a judicial officer of officer misconduct made during a civil or criminal proceeding are identified and assessed for further investigation. Any decision to decline investigation shall be documented."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and specifically requested to review any protocol or procedure developed to comply with this paragraph.

Results

There currently is no system, protocol and/or policy that would ensure that such allegations made during civil or criminal proceedings would be identified and assessed. The monitor recommends that this system, which is relatively straightforward and does not appear to be complicated, be devised and implemented before the next site visit. The City asserts that this issue was clarified by a letter from Chief Eden "to all chief judges" on March 16, 2016. The monitoring team can find no record of such a communication, and has not

reviewed it as of this date. We will continue to work with the City to ensure that this requirement is properly addressed in the fourth monitor's report.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.161 Assessing Compliance with Paragraph 175: Allegations Made by the Homeless or the Mentally Ill

Paragraph 175 stipulates:

"APD and the Civilian Police Oversight Agency shall track allegations regarding misconduct involving individuals who are known to be homeless or have a mental illness, even if the complainant does not specifically label the misconduct as such."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and specifically requested to review any protocol or procedure developed to comply with this paragraph. The monitor also reviewed a random selection of IA and CPOA investigations that were completed during this monitoring period and assessed the complaints to determine source and process.

Results

The monitoring team commented in the Second Monitor's Report and again recommends that the requirements of this paragraph be memorialized in IA and CPOA policy. Upon the development, approval and formal adoption of a policy that memorializes this paragraph, the APD will be in primary compliance with this task.

A review of completed investigations reveals that the individual investigations show whether a complainant is homeless or has mental illness. Although all allegations of misconduct are tracked, there currently is no special tracking of misconduct complaints involving an individual(s) who is homeless or has mental illness. The monitor has been informed that this statistic will be separately tracked upon the installation of a new application named Blue Team, a web based application that ties into IAPro. The monitor will assess in future site visits whether this statistic can, and will, be separately tracked. The City contends that these requirements have "been memorialized in the COPA ordinance and POB's policies and procedures. Again, the monitor has no record of receiving notice of same. We will continue to work with the City to resolve these issues in IMR-4.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.162 Assessing Compliance with Paragraph 176: Centralized Complaint Numbering System

Paragraph 176 stipulates that:

"Within six months of the Operational Date, the Internal Affairs Bureau, in coordination with the Civilian Police Oversight Agency, shall develop and implement a centralized numbering and tracking system for all misconduct complaints. Upon the receipt of a complaint, the Internal Affairs Bureau shall promptly assign a unique numerical identifier to the complaint, which shall be provided to the complainant at the time the numerical identifier is assigned when contact information is available for the complainant."

Methodology

Members of the monitoring team reviewed a sample of the complaints completed made by IAB and CPOA during the monitoring period to determine numbering protocols. The monitor has been provided "screen shots" of data entry in inquiry screens from the APD/CPOA data management systems that show "sequencing" numbers for complaints received at APD.

Results

A centralized numbering and tracking system has been implemented. Although centralized system is utilized, the CPOA will utilize an identifier starting with "CPC" and IAB will utilize an identifier starting with "I". Policies to support this data system, and that allow APD, CPOA and the monitoring team to assess the "shall be provided to the complainant" portion of this requirement are, as of this date, pending. We expect that upon development, approval and formal adoption of policy encompassing the task(s) of this paragraph, the APD will be full compliance of this paragraph.

The IAB manages the tracking system, and assigns the identifier to complaints investigated by IAB and CPOA. A review of randomly selected IAB and CPOA investigations by the monitoring team during this site revealed that in all cases (> 95%) where complainant contact information is available the identifier is given to complainants as well as letters to civilian complainants explaining the outcome of investigation and containing the unique numerical identifier.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.163 Assessing Compliance with Paragraph 177: IAB Complaint Data Management

Paragraph 177 stipulates:

The Internal Affairs Bureau's tracking system shall maintain accurate and reliable data regarding the number, nature, and status of all misconduct complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the investigation. This system shall be used to determine the status of complaints and to confirm that a complaint was received, as well as for periodic assessment of compliance with APD policies and procedures and this Agreement, including requirements on the timeliness of administrative investigations.

Methodology

The monitor reviewed a sample of the complaints made in the IAB and CPOA processes to determine tracking system protocols present or calculable, as well as documentation related to the IA process, and also had discussions with IAB and CPOA personnel during this site visit. Policy responsive to the requirements of this paragraph was completed by APD outside the dates for this reporting period. They will be reported on fully in IMR-4.

Results

Members of the monitoring team have seen no policies setting forth the requirements of this paragraph. We expect that, upon development, approval and formal adoption of a policy encompassing the task(s) of this paragraph, the APD will be in compliance with this paragraph.

The IAB tracking system has the ability to identify various pieces of relevant information and to produce data relevant to the IA function.

A review of a randomly selected sample of investigations shows that > 95 % of IA/CPOA cases reflect tracking system requirements. Further, the IAB tracking system has the ability to identify various pieces of relevant information and to produce data relevant to the IA function.

The monitoring team also viewed a MRIAD Sort Report containing a Case #, Incident Date, Entry Date and Case Status along with subject identifying information for all Internal Affairs investigations closed during the monitoring period. In addition, the monitoring team also viewed an IA-PRO report that contained the allegations and case disposition for all Internal Affairs investigations closed during the monitoring period, as well as a similar CPOA report from which the monitoring team selected a stratified random sampling of investigations to review.

The monitor will focus the next site visit on whether the system is being used for periodic assessment of compliance with APD policies and procedures and this Agreement.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.164 Assessing Compliance with Paragraph 178: Supervisors to Provide Complaint Information

Paragraph 178 stipulates:

"Where a supervisor receives a complaint alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide the information and evidence to the Internal Affairs Bureau. All information should be referred to the Internal Affairs Bureau by the end of the shift following the shift in which the misconduct complaint was received, absent exceptional circumstances."

Methodology

The monitor reviewed a random selection of IA and CPOA and their underlying complaints to determine receipt and processing methods, as well as conducted discussion with IA and CPOA personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review. It is expected that upon revision and formal adoption of AO 3-43, the APD will be in primary compliance of this task.

The timeliness of submitting complaints required by this paragraph is not a statistic that is separately tracked at the current time and can only be determined on a case-by-case review. The time requirement of this paragraph can be discerned by a review of individual cases. However it is not a statistic that is separately tracked. The monitor has been informed that this statistic may be separately tracked upon the installation of a new application named Blue Team, a web based application that ties into IAPro. The monitor recommends the time requirement for referrals contained in this paragraph become a separately tracked statistic.

A review of randomly selected investigations by the monitoring team did not reveal any violations of this paragraph. The monitor will continue to assess progress on this requirement in scheduled monitor's reports.

Primary: **Not Yet Due**

Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.165 Assessing Compliance with Paragraph 179: Referral of Complaints to CPOA

Paragraph 179 stipulates:

"Within three business days of the receipt of a misconduct complaint from a civilian, the Internal Affairs Bureau shall refer the complaint to the Civilian Police Oversight Agency."

Methodology

The monitor reviewed a list, entitled "Complaints Received", maintained at IAB. This list collects data regarding civilian complaints made to IAB. The monitor also reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period, and assessed their underlying complaints to ensure compliance to the three-day requirement, as well as conducted discussion with IA and CPOA personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review. The monitoring team expects that, upon revision and formal adoption of AO 3-43, the APD will be in full compliance of this task.

Although the IAB to CPOA referral time of a civilian complaint is not a statistic that is separately tracked, the timeliness of submitting complaints required by this paragraph can be easily determined by a review of the "Complaints Received" log/list maintained at IAB. This list is non-electronic (preprinted form with handwritten information) and contains the date a civilian complaint is initially logged in IAB and the date the complaint is transferred to CPOA. This list suffices to meet the requirements of this paragraph, however APD should assess the viability of modifying automated systems to "time" the three-day referral process, with automatic "error" reports when necessary. The monitor has been informed that this capability will exist upon the installation of a new application named Blue Team, a web based application that ties into IAPro. The monitor will assess in future site visits whether this capability exists.

A review of the "Complaints Received" revealed no instances of late referrals, in fact in most instances the transfer to CPOA occurred the same day the complaint was logged at IAB. A review of randomly selected IAB and CPOA investigations by the monitor during this site visit likewise did not reveal any violations of the policy required by this paragraph.

Primary: **Not Yet Due**

Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.166 Assessing Compliance with Paragraph 180: Handling of Internal Complaints by IAB

Paragraph 180 stipulates:

"Internal misconduct complaints submitted by APD personnel shall remain with the Internal Affairs Bureau for review and classification. The Internal Affairs Bureau shall determine whether the internal complaint will be assigned to a supervisor for investigation or retained by the Internal Affairs Bureau for investigation. In consultation with the Chief, the commanding officer of the Internal Affairs Bureau shall also determine whether a civilian or internal complaint will be investigated criminally by the Internal Affairs Bureau, the Multi- Agency Task Force, and/or referred to the appropriate federal law enforcement agency."

Methodology

The monitor reviewed a random selection of IAB investigations that were completed during this monitoring period and their underlying complaints to ensure proper routing and classification, as well as reviewed documents pertaining to the IA system and conduct meetings/discussion with IAB personnel.

Results

AO 2-05 sets forth the requirements of this paragraph including that the IAB commander, in consultation with the Chief, determines whether a civilian or internal complaint will be investigated criminally by the Internal Affairs Bureau, the Multi- Agency Task Force, and/or referred to the appropriate federal law enforcement agency. This policy is currently under review, and it is expected that upon revision and formal adoption of AO 2-05, the APD will be in primary compliance of this task.

A review of six randomly selected IAB investigations by the monitor during this site visit showed that IAB accepts, reviews, and classifies internal complaints. The review further showed that in all cases (> 95 %) IAB determines whether the matter is handled by IAB or assigned to the appropriate supervisor for investigation.

The review also showed one case of potential criminality where the Chief should have been consulted to determine whether the case should be investigated criminally or whether prosecutorial authorities should have been contacted to determine the appropriateness of opening a criminal case or providing a declination of prosecution.(See also Results, paragraph 188).

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.167 Assessing Compliance with Paragraph 181: IAB Classification Protocol

Paragraph 181 stipulates:

"APD shall continue to maintain an internal complaint classification protocol that is allegation-based rather than anticipated-outcome-based to guide the Internal Affairs Bureau in determining where an internal complaint should be assigned."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to determine whether complaints are routed by a protocol that is allegation based, and properly routed and classified, as well as reviewed documents pertaining to the IA system and conduct meetings/discussions with IAB personnel.

Results

The monitoring team has not yet viewed an approved written protocol requiring the internal affairs complaint classification protocol set forth in this paragraph by members of the APD. The monitoring team expects that upon development, approval and formal adoption of a policy encompassing the task(s) of this paragraph, the APD will be full compliance of this paragraph. APD contends that no policy is required to conform with the requirements of this paragraph. The monitoring team would disagree. We will continue to follow up on this paragraph in IMR-4. Further, it appears that APD relies on existing (pre-CASA) procedures addressing this process. We will follow up with APD in future monitoring processes.

Currently the decision to assign a case to the appropriate supervisor or to retain the case in the IAB is based on the nature of the allegations and the anticipated corresponding complexity of investigation. A review of randomly selected IA investigations by the monitoring team during this site visit revealed > 95 % of complaints were reasonably and properly routed and classified based on nature of allegations, with no instance of an abuse of discretion in determining which matters are assigned to the appropriate supervisor and which matters are handled by IAB. (See also, Results, paragraph 180).

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.168 Assessing Compliance with Paragraph 182: Prohibition from Self-Investigation

Paragraph 182 stipulates:

"An internal complaint investigation may not be conducted by any supervisor who used force during the incident; whose conduct led to the injury of a person; who authorized the conduct that led to the reported incident or complaint; or who witnessed or was involved in the incident leading to the allegation of misconduct."

Methodology

The monitor reviewed a random selection of IAB investigations that were completed during this monitoring period and their underlying complaints to ensure compliance with this paragraph, as well as reviewed documents pertaining to the IA system and conducted meetings/discussions with IAB personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review (See also paragraph 164, Results). It is expected that upon formal adoption of AO 3-43, the APD will be in primary compliance of this task.

A review of randomly selected IA investigations by the monitoring team during this site visit revealed that > 95 % of complaints were reasonably and properly routed and classified based on nature of allegations, with no violations of the policy required by this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.169 Compliance with Paragraph 183: Investigations Reach Reliable Conclusions

Paragraph 183 stipulates:

"APD and the Civilian Police Oversight Agency shall ensure that investigations of officer misconduct complaints shall be as thorough as necessary to reach reliable and complete findings. The misconduct complaint investigator shall interview each complainant in person, absent exceptional circumstances, and this interview shall be recorded in its entirety, absent specific, documented objection by the complainant. All officers in a position to observe an incident, or involved in any significant event before or after the original incident, shall provide a written statement

regarding their observations, even to state that they did not observe anything."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to ensure investigations were thorough enough to reach reliable and complete findings, that complainants were interviewed and the interview was recorded and transcribed, and that officer witnesses either gave a written statement or were interviewed in the IA process. The monitor also conducted meetings/discussions with IAB and CPOA personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review. It is expected that upon formal adoption of AO 3-43, the APD will be in primary compliance of this task.

A review of randomly selected IAB and CPOA investigations generally showed that investigations are thorough enough to reach reliable and complete findings. The monitor did find an investigative deficiency in one matter where the monitor feels handwriting exemplars should have been taken and utilized in an investigation where forgery was an issue and the ultimate dispositions were based on credibility determinations. Thus the monitor finds the thoroughness requirement to have been met less than 95% of investigations. (See also, Results, paragraph 190).

Where an investigative step is not taken, the Monitor has noticed adequate explanations in the investigative reports. For example, one such case appropriately noted why there was no video lapel review, why there had to be a telephonic interview of the complainant, and why one officer witness was not interviewed. These explanations are encouraged; where an obvious investigative step is not taken and no explanation is given the Monitor will cite that as error.

Greater than 95 % of all complaints investigated by IA and CPOA indicate a formal interview of each complainant, recorded and transcribed, unless the complainant lodged specific and formal objections to recording or otherwise was unavailable or uncooperative. A review of randomly selected IA and CPOA investigations by the monitor team during this site visit showed relevant officer witnesses either provided written statements or were interviewed in the IA process.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.170 Assessing Compliance with Paragraph 184: Investigations Documented in Writing

Paragraph 184 stipulates:

"APD and the Civilian Police Oversight Agency shall investigate all misconduct complaints and document the investigation, its findings, and its conclusions in writing. APD and the Civilian Police Oversight Agency shall develop and implement a policy that specifies those complaints other than misconduct that may be resolved informally or through mediation. Administrative closing or inactivation of a complaint investigation shall be used for the most minor policy violations that do not constitute a pattern of misconduct, duplicate allegations, or allegations that even if true would not constitute misconduct."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to ensure that all misconduct complaints were investigated and that ensuing investigations, findings, and conclusions were documented in writing investigations

The monitor specifically reviewed a random selection of IAB and CPOA investigations completed during this monitoring period, including eight investigations that were administratively closed, and their underlying complaints to ensure to ensure reasonable adherence to the criteria set forth in this paragraph. The monitor also requested a list of all cases resolved through mediation during monitoring period as well as any documentation of cases resolved informally.

The monitor also had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, and reviewed documents related to the IA process.

Results

Policy mandating that APD and the CPOA shall investigate all misconduct complaints and document the investigation, its findings, and its conclusions in writing are contained in AO 3-43, currently under review. It is expected that upon formal adoption of AO 3-43, the APD will be in primary compliance of this individual task.

A review of randomly selected IA and CPOA investigations by the monitoring team during this site visit showed that all (> 95 %) misconduct complaints were investigated and findings and conclusions, or dispositions (cases administratively closed or resolved by mediation), are documented in writing.

The monitor reviewed a total of eight cases that were administratively closed during the monitoring period. There was no abuse of discretion in administratively closing these cases.

The monitor specifically requested all cases settled by mediation during the monitoring period. Pursuant to that request the monitor reviewed two cases. In both of these cases the complainant had requested mediation on the complaint form and the cases indicated the complainant had been satisfied with the explanation given and that the case was successfully mediated. One case, appeared to be inappropriate for mediation since the allegations were of excessive force, search without a warrant, and failure to lock complainant's home while transporting complainant to a VA hospital. However, the complainant did indicate he was amenable to mediation and the investigation evidenced a letter to the complainant indicating the complainant had been satisfied with the explanation given. Guidelines for what type of cases are appropriate for mediation must be developed to implement the policy called for in this paragraph. (See further comments, this paragraph, below). The monitor would also note that in both mediation cases the explanation given to the complainant was not evident in the investigative packet. In order to monitor the appropriateness of the resolution a synopsis of the explanation that is accepted by the complainant should be contained in the investigative packet.

The monitor reviewed two cases that were resolved informally during the monitoring period. These were internal matters that are labeled ICRs. The determination is made at the Assistant Chief level whether an internal can be handled informally. If so the resolution is documented in memo form and assigned an ICR number. The monitor found both of these cases, resulting in verbal counseling and reprimand, to be appropriate for informal resolution.

Although the discretion utilized to determine which cases can be administratively closed, referred to mediation, or resolved informally has been appropriate, the monitor highly recommends that policies regarding these case selections be developed and reduced to writing. Until such policies are developed, approved and formally adopted, the APD and CPOA will not be able to obtain primary, and thus full, compliance with this paragraph. The monitor will revisit next site visit whether these policies have been developed and are being followed.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.171 Assessing Compliance with Paragraph 185: Required Cooperation with IAB/CPOA

Paragraph 185 stipulates:

"APD shall require personnel to cooperate with Internal Affairs Bureau and Civilian Police Oversight Agency investigations, including appearing for an interview when requested by an APD or Civilian Police Oversight Agency investigator and providing all requested documents and evidence under the person's custody and control. Supervisors shall be notified when a person under their supervision is summoned as part of a misconduct complaint or internal investigation and shall facilitate the person's appearance, absent extraordinary and documented circumstances."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period, and assessed their underlying complaints to ensure reasonable adherence to the requirement to cooperate, and also reviewed documents such as the Collective Bargaining Agreement (CBA) and policies under review by the monitoring team related to the IA process.

Results

The Collective Bargaining Agreement requires compliance with the policy of this paragraph. Policy mandating compliance with this paragraph of the CASA is also contained in AO 3-43, currently under review. It is expected that upon formal adoption of AO 3-43, the APD will be in primary compliance of this paragraph.

A review of randomly selected IAB and CPOA investigations by the monitoring team during this site did not reveal any instances of non-compliance with the tasks of this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.172 Assessing Compliance with Paragraph 186: Separate Administrative and Criminal Investigations

Paragraph 186 stipulates:

"APD and the City shall develop and implement protocols to ensure that criminal and administrative investigations of APD personnel are kept appropriately separate, to protect APD personnel's rights under the Fifth Amendment. When an APD employee affirmatively refuses to give a voluntary statement and APD has probable cause to believe the person has committed a crime, APD shall consult with the prosecuting agency (e.g., District Attorney's Office or USAO) and seek the approval of the Chief before taking a compelled statement."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to ensure appropriate separation of cases to administrative and criminal investigations, and to ensure appropriate consultation with prosecutorial agencies. Discussions regarding processes were also held with personnel of the IAB and CPOA.

Results

Policy mandating compliance with this paragraph is contained in AO 2-05, currently under review. It is expected that upon revision and formal adoption of AO 2-05, the APD will be in primary compliance of this task.

In response to the monitor's request for all investigations completed during the monitoring period that involved an APD employee affirmatively refusing to give a voluntary statement, it was reported that no such cases occurred. In addition a review by the monitor of randomly selected IAB and CPOA investigations completed during this monitoring period revealed no cases where an APD employee refused to give a voluntary statement.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.173 Assessing Compliance with Paragraph 187: Advisement of Officer Rights

Paragraph 187 stipulates:

"Advisements by the Internal Affairs Bureau or the Civilian Police Oversight Agency to APD personnel of their Fifth Amendment rights shall only be given where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to ensure that Fifth Amendment rights are only given where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee. Discussions regarding processes were also held with personnel of the IA and CPOA

Results

The monitor has seen no regulations or orders setting forth the requirements of this paragraph. The monitor recommends that any such policy address and provide guidance on potential confusion between the requirements of this paragraph ("reasonable likelihood of a criminal investigation or prosecution") and Collective Bargaining Agreement (CBA) 20.1.8, which requires Miranda Rights be given in accordance with "the Miranda Decision or applicable law."

A review of randomly selected IAB and CPOA investigations by the monitor during this site visit revealed no cases where the investigative record indicates an APD employee was advised of Fifth Amendment rights by IAB or CPOA. APD further contends that its policy 3-22 addresses this issue. As of the end of this monitoring period, the monitor has not received a copy of or reviewed that policy.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.174 Assessing Compliance with Paragraph 188: Notification of Criminal Misconduct

Paragraph 188 stipulates:

"If at any time during misconduct complaint intake or investigation the investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the Internal Affairs Bureau commanding officer. If the complaint is being investigated by the Civilian Police Oversight Agency, the investigator shall transfer the administrative investigation to the Internal Affairs Bureau. The Internal Affairs Bureau commanding officer shall immediately notify the Chief. The Chief shall consult with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation. Where an allegation is investigated criminally, the Internal Affairs Bureau shall continue with the administrative investigation of the allegation. Consistent with Paragraph 186, the Internal Affairs Bureau may delay or decline to conduct an interview of the subject personnel or other witnesses until completion of the criminal investigation unless, after consultation with the prosecuting agency and the Chief, the Internal Affairs Bureau deems such interviews appropriate."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and assessed their underlying complaints to ensure that investigations that may indicate criminal activity or conduct by the police employee result in prompt transfer to IA, prompt notification to the Chief of Police, and result in consultation between the Chief of

Police and the appropriate federal or state law enforcement agencies, and result in a parallel track administrative and criminal investigations. Discussions regarding processes were also held with personnel of the IAB and CPOA.

Results

Policy mandating compliance with this paragraph is contained in AO 2-05 and 3-43, currently under review. It is expected that upon revision and formal adoption of these Orders, the APD will be in primary compliance of this task.

A review of randomly selected IAB and CPOA investigations by the monitoring team during this monitoring period showed one case of potential criminality where the Chief should have been consulted to determine whether the case should be investigated criminally or whether prosecutorial authorities should have been contacted to determine the appropriateness of opening a criminal case or providing a declination of prosecution. The monitor does not find that this case was a definite criminal case; rather the monitor finds the case should have been discussed with the Chief to determine whether notification of prosecutorial authorities was appropriate. The monitor found no other cases where a concurrent criminal investigation was potentially implicated or warranted. (See also, Results, paragraph 180).

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.175 Assessing Compliance with Paragraph 189: Provision of Public Safety Statements

Paragraph 189 stipulates:

"Nothing in this Agreement or APD policy shall hamper APD personnel's obligation to provide a public safety statement regarding a work-related incident or activity, including Use of Force Reports and incident reports. APD shall make clear that all statements by personnel in incident reports, arrest reports, Use of Force Reports and similar documents, and statements made in interviews such as those conducted in conjunction with APD's routine use of force investigation process, are part of each employee's routine professional duties and are not compelled statements. Where an employee believes that providing a verbal or written statement will be self-incriminating, the employee shall affirmatively state this and shall not be compelled to provide a statement without prior consultation with the prosecuting agency (e.g., District Attorney's Office or USAO), and approval by the Chief."

Methodology

The monitor had several meetings and discussions during the site visit with IAB and CPOA personnel regarding investigative processes and reviewed documents related to the IA process.

A review of a random sample of IAB and CPOA investigations files was also conducted to ensure compliance with the requirements of this paragraph.

Results

The requirement of consultation with the appropriate prosecuting agency in the event an employee invokes the privilege against self-incrimination is contained in AO 2-05, currently under review. It is expected that upon revision and formal adoption of AO 2-05, the APD will be in primary compliance of this task.

A review by the monitor of randomly selected IAB and CPOA investigations completed during this monitoring period showed no cases where an APD employee invoked the Fifth Amendment or otherwise expressed a belief that a verbal or written statement would be self-incriminating.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.176 Assessing Compliance with Paragraph 190: Considering All Relevant Evidence

Paragraph 190 stipulates:

"In each investigation, APD and the Civilian Police Oversight Agency shall consider all relevant evidence, including circumstantial, direct, and physical evidence. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will APD or the Civilian Police Oversight Agency disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history. During their investigation, APD and the Civilian Police Oversight Agency shall take into any convictions for crimes of dishonesty of the complainant or any witness. APD and the Civilian Police Oversight Agency shall also take into account the record of any involved officers who have been determined to be deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation. APD and the Civilian Police Oversight Agency shall make efforts to resolve material inconsistencies between witness statements."

Methodology

Policy mandating compliance with this paragraph is contained in AO 2-05, currently under review. It is expected that upon revision and formal adoption of AO 2-05, the APD will be in primary compliance of this task.

A review by the monitoring team of randomly selected IAB and CPOA investigations completed during this monitoring period that were not administratively closed or resolved by mediation (13 full completed investigations), revealed that in all but one case all relevant evidence was considered, a compliance rate of .92 which is less than the required 95%. In that case the monitor found handwriting exemplars to be relevant where the matter being investigated was forgery and where ultimate dispositions were based on credibility determinations; thus the failure to obtain and compare handwriting samples did not comply with the requirement of considering all relevant evidence. (See also, Results, paragraph 183).

The review revealed one case in which there was a direct conflict between the statement of the complainant and the statement of the officer, regarding whether the officer refused to explain to the complainant why the area was a no parking zone. The investigation noted the reason a video lapel recording was not available. The investigation indicated that the officer's statement was accepted, but did not articulate why. Although there was no articulation, the reason for the credibility determination was apparent: the complainant was not available for an interview and the CPOA investigator had to proceed only on a written complaint, whereas the officer was available and a credibility assessment presumably occurred during the interview.

The review revealed no instances where a witness's statement was disregarded because the witness had some connection to the complainant or because of any criminal history. Further, the review showed no cases where an involved officer had been determined to have been deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation.

Although the findings in the reviewed cases are supported by a preponderance of the evidence, the monitoring team will focus in the future on the articulation of credibility determinations. Corroboration should be made clear and inconsistencies and other factors affecting credibility judgments must be addressed and weighed. Particularly where there is a direct conflict between statements of the officer and a complainant, the monitor would prefer that the credibility determination be articulated in the investigation even if reason(s) for the credibility determination is otherwise apparent to the monitor or any reviewer of the investigation. It should be clear to all those who review the investigation and make recommendations, as well as to the Chief before imposition of discipline, why one statement or aspect of a statement is believed or not believed.

As stated in paragraph 162, the monitor views as a positive step the fact that IAB now makes investigative findings, and expects to observe implementation of the policy during the next site visit.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.177 Assessing Compliance with Paragraph 191: 90 Days to Complete Administrative Investigations

Paragraph 191 stipulates:

"All administrative investigations conducted by the Internal Affairs Bureau or the Civilian Police Oversight Agency shall be completed within 90 days of the initiation of the complaint investigation. The 90-day period shall not include time for review. An extension of the investigation of up to 30 days may be granted but only if the request for an extension is in writing and is approved by the Chief. Review and final approval of the investigation, and the determination and imposition of the appropriate discipline, shall be completed within 30 days of the completion of the investigation. To the extent permitted by state and city law, extensions may also be granted in extenuating circumstances, such as military deployments, hospitalizations of the officer, and extended absences."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to ensure compliance with the time requirements of this paragraph and to ensure the Chief's signed approval of written requests for 30 day extensions. Discussions regarding IA processes were also held with personnel of the IAB and CPOA.

Results

The Collective Bargaining Agreement, (CBA) requires compliance with the policy of this paragraph. Policy mandating compliance with this paragraph is contained in AO 2-05, currently under review. It is expected that upon revision and formal adoption of AO 2-05, the APD will be in primary compliance with this task.

A review of randomly selected IAB and CPOA investigations by the monitoring team during this site visit revealed only one case in which an extension was granted but the written approval by the Chief (his initialing of the request) was not apparent in the investigative packet.

Regarding timely completion of investigations, the review revealed that of the 23 IAB and CPOA matters that were reviewed, four were well beyond the 90 day period, and in one case there was more than a 30 day delay between completion of the investigation and forwarding to the Chief for review and final approval (however this matter did not involve a sustained finding therefore no discipline would have been imposed. Thus the total compliance rate with the timeliness requirements of this paragraph is .78 (< 95 %).

The monitor has commented (See Results, paragraph 162) about the ability of the POB to review investigations and make recommendations to the Chief within the time periods allowed for imposition of discipline, and the backlog of CPOA cases. In discussions with the Executive Director of the CPOA and the Chair of the POB it appears that the agency has reached a solution which will allow the POB to make timely recommendations to the Chief. In those instances where timely recommendations cannot be made, the Executive Director of the CPOA may make recommendations along with investigative findings, in lieu of the POB, to the subject-officer's supervisory chain and ultimately the Chief.

It also appears from these discussions, from statistics supplied and from posted findings on the CPOA website, that significant improvements have been made in this regard. The monitor will continue to monitor CPOA workflow for timeliness.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.178 Assessing Compliance with Paragraph 192: Case Dispositions

Paragraph 192 stipulates:

"APD or Civilian Police Oversight Agency investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:

a) **"Unfounded," where the investigation determines, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer;**
b) **"Sustained," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur;**
c) **"Not Sustained," where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred;**
d) **"Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training;**

e) "Sustained violation not based on original complaint," where the investigation determines, by a preponderance of the evidence, that misconduct did occur that was not alleged in the original complaint but that was discovered during the misconduct investigation; or

f) "Administratively closed," where the policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of the lack of information in the complaint."

Methodology

The monitor reviewed a random selection of IA and CPOA investigations that were completed during this monitoring period to ensure use of acceptable dispositions supported by the appropriate quantum of proof.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review. It is expected that upon formal adoption of AO 3-43, the APD will be in primary compliance of this task.

The monitor's review of randomly selected IAB and CPOA investigations completed during the monitoring period revealed that in all cases one of the required dispositions was used (>.95). Also the review did not reveal any dispositions the monitor found to be unsupported by the appropriate quantum of proof or criteria (in the case of administratively closed cases). This would constitute a >.95 compliance mark with a crucial task in the IA process.

It should be noted that in cases where the Chief does not concur in total with the findings of the CPOA/POB, the approval by the monitor of the Chief's non-concurrence letter does not per se mean that the investigative findings were not supported by the requisite quantum of evidence. (See also, paragraph 285, Results).

The monitor remains impressed generally with the analysis and commitment to a fair an effective IA process as evidenced by written comments in the Supervisory Reviews.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.179 Assessing Compliance with Paragraph 193: Reopening Administrative Investigations

Paragraph 193 stipulates:

"All administratively closed complaints may be re-opened if additional information becomes available. The deadlines contained in Paragraph 191 shall run from when the complaint is re-opened."

Methodology

The monitor reviewed a random selection IAB and CPOA investigations that were completed during this monitoring period to ensure appropriate review of administratively closed cases and those administratively closed cases that were later reopened. Discussions regarding IAB processes were also held with personnel of the IAB and CPOA.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review.

During meetings with IAB personnel the monitor specifically requested any and all administratively closed complaints that were re-opened during the monitoring period; it was reported that none were re-opened. A review of randomly selected IAB and CPOA investigations by the monitoring team during this site visit did not reveal any cases that were administratively closed and then reopened, thus the monitoring team was unable to monitor operational compliance with this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.180 Assessing Compliance with Paragraph 194: Training and Legal Standards

Paragraph 194 stipulates:

"In addition to determining whether APD personnel committed the alleged misconduct, administrative investigations shall assess and document whether the action was in compliance with training and legal standards and whether the incident suggests the need for a change in policy, procedure, or training. In reviewing completed administrative investigations, APD shall also assess and document whether: (a) the incident suggests that APD should revise strategies and tactics; and (b) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures. This information shall be shared with the relevant commander(s)."

Methodology

The monitor held meetings and discussions with IAB and CPOA personnel to discuss IA processes including the identification of policy and training issues arising out of internal affairs and misconduct complaint matters. The monitoring team also reviewed a random selection of IAB and CPOA investigations that

were completed during this monitoring period to ensure that closed cases document whether actions taken by the officer were in compliance with legal standards, officer training, or suggest a need for changes in policy, procedure, or training.

Results

Policy mandating compliance with this paragraph is contained in AO 3-43, currently under review. It is expected that upon formal adoption of AO 3-43, the APD will be in primary compliance of this task.

A review of the randomly selected IAB and CPOA investigations by the monitoring team during this site revealed one case where the monitoring team thought forensic laboratory sign-offs and supervisory issues should have been identified as a training or policy issues, and one case in which the standard form indicating either training or policy issues was not signed off on. This constitutes a compliance rate of .91(<.95) with the task of this paragraph.

In one case involving issues of termination of vehicle pursuits and who takes the lead in a pursuit, refresher training regarding the pursuit policy was commendably mandated.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.181 Assessing Compliance with Paragraph 195: Retaliation Prohibited

Paragraph 195 stipulates:

"The City shall continue to expressly prohibit all forms of retaliation, including discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and also reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period to ensure prohibition of discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct

Results

The Albuquerque Code of Ordinances prohibits retaliation for reporting improper governmental action. Policy mandating compliance with this paragraph is also contained in GO 1-04, currently under review. It is expected that upon formal adoption of GO 1-04, the APD will be in primary compliance of this task.

A review of randomly selected IA and CPOA investigations by the monitor during this site revealed one case that involved intimidation and/or retaliation against a CPOA investigator. The City's and APD's commitment to the obligations set forth in this paragraph were evident; this case was effectively and timely investigated, the correct findings were reached, and the discipline imposed was appropriate.

The monitor's review of materials including complaint forms and websites revealed no discouragement of making a complaint or report of misconduct. APD contends that existing (pre-CASA) policy or procedure addresses this issue. The monitor has not yet reviewed that policy, and will address this contention in IMR-4.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.182 Assessing Compliance with Paragraph 196: Review of Anti-Retaliation Statements

Paragraph 196 stipulates:

"Within six months of the Effective Date, and annually thereafter, the Internal Affairs Bureau and the Civilian Police Oversight Agency shall review APD's anti-retaliation policy and its implementation. This review shall consider the alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and supervisors' performance in addressing and preventing retaliation. Following such review, the City shall modify its policy and practice, as necessary, to protect individuals, including other APD personnel, from retaliation for reporting misconduct."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period to evaluate the handling of alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and supervisors' performance in addressing and preventing retaliation. Discussions regarding IA processes were also held with personnel of the IAB and CPOA.

Results

Policy mandating compliance with this paragraph is contained in AO 2-05, currently under review. The first review required by this paragraph has not yet been conducted; the APD and CPOA are still within the extended time period to conduct such a review.

During this monitoring visit the monitor specifically sought and requested investigations involving alleged incidents of retaliation that occurred or that were investigated during the reporting period, the discipline imposed for retaliation, and supervisors' performance in addressing and preventing retaliation. (See also, Results, paragraph 195). The monitor commented in paragraph 195 of one such case that was completed during the monitoring period; the case was effectively investigated and discipline was appropriate.

The monitor has not yet seen a review/assessment for modification by IAB and CPOA of APD's anti-retaliation policy and its implementation. The monitor would expect that this review and assessment take place before the end of the next monitoring period.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.183 Assessing Compliance with Paragraph 197: Retaliation Grounds for Discipline

Paragraph 197 stipulates:

Retaliation for reporting misconduct or for cooperating with an investigation of misconduct shall be grounds for discipline, up to and including termination of employment.

Methodology

The monitor conducted a review of IAB and CPOA investigative reports for allegations of retaliation and outcomes of investigations and discipline. The monitor also had several meetings during the site visit to discuss internal affairs processes with members of IA and CPOA and reviewed SOPs and General Orders.

Results

The Albuquerque Code of Ordinances prohibits retaliation for reporting improper governmental action. Policy mandating compliance with this paragraph is also contained in AO 1-04, currently under review. It is expected that upon formal adoption of AO 1-04, the APD will be in primary compliance of this task.

Regarding cases involving retaliation, the monitor has commented on the review of in paragraphs 195 and 196.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.184 Assessing Compliance with Paragraph 198: CPOA Staffing

Paragraph 198 stipulates:

"The City shall ensure that APD and the Civilian Police Oversight Agency have a sufficient number of well-trained staff assigned and available to complete and review thorough and timely misconduct investigations in accordance with the requirements of this Agreement. The City shall re-assess the staffing of the Internal Affairs Bureau after the completion of the staffing study to be conducted pursuant to Paragraph 204. The City further shall ensure sufficient resources and equipment to conduct thorough and timely investigations."

Methodology

The monitoring team met with IAB and CPOA on several occasions including visits to their respective offices and inspection of physical space. The monitoring team also reviewed staffing charts and assessed the timelines of investigations that were randomly selected.

Results

The monitoring team will be unable to assess compliance with this paragraph until the City completes its implementation of the staffing study.

Currently, the staffing of IAB appears to be sufficient as there is only one investigator vacancy. The CPOA staffing also appears to be sufficient as there are no current vacancies.

Despite the lack of significant vacancies, in the future the monitor will not only review the completion times on selected investigations, but will also broaden its search to look at overall processing time statistics. The monitor will look for whether IAB staffing impacts the necessity of outsourcing of investigations to Area Commands, thereby losing the expertise of IAB personnel and potentially impacting the consistency of investigations, and whether CPOA staffing and training of its personnel are sufficient to maintain performance and processing times.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.185 Assessing Compliance with Paragraph 199: IA Initial Training

Paragraph 199 stipulates:

"All APD personnel conducting misconduct investigations, whether assigned to the Internal Affairs Bureau, an Area Command, or elsewhere, shall receive at least 24 hours of initial training in conducting misconduct investigations within one year of the Operational Date, and shall receive at least eight hours of training each year. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations."

Methodology

The monitor had several meetings during the site visit with IAB Commander and his staff. Review of training records, including syllabi, video recordings of training (if any) exams (if any) related to specified training and attendance rosters is also to be conducted in order to complete the review and approval process of the training required in this paragraph.

Results

The monitoring team has seen no regulations or orders setting forth the requirements of this paragraph, although APD contends that SOPs 16-15 and 16-24 address IA training. These policies are not among the current list of 37 that have been painstakingly and comprehensively reviewed by the monitoring team. We will address 16-15 and 16-24 in IMR-4.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.186 Assessing Compliance with Paragraph 200: CPOA Training

Paragraph 200 stipulates:

"Investigators from the Civilian Police Oversight Agency shall receive at least 40 hours of initial training in conducting misconduct investigations within one year of the Effective Date, and shall receive at least eight hours of training each year. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations."

Methodology

The monitoring team has several meetings during the site visit with the CPOA Executive Directive, Counsel and CPOA staff. Review of training records, including syllabi, video recordings of training (if any) and exams (if any) related to specified training and attendance rosters was also conducted in order to complete the review and approval process of the training required in this paragraph.

Results

Although the CPOA Ordinance and the proposed CPOA Policies and Procedures (currently under review) both address training requirements for members of the POB (appointed members), they are silent on the training requirements of the non-appointed members of the CPOA. In addition the monitor has seen no regulations or orders setting forth the requirements of this paragraph.

The monitor has reviewed CPOA training records that show which initial training requirements were met for all CPOA investigators and the subsequent annual training almost completed. As the CPOA is still within the extended time period to conduct such training, the CPOA has until December, 2, 2016 to complete this training. While the City contends that pp 6-7 of the CPOA ***policy*** address this training requirement, that does not execute the required training.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.187 Assessing Compliance with Paragraph 201: Fact Based Discipline

Paragraph 201 stipulates:

"APD shall ensure that discipline for sustained allegations of misconduct is consistently applied, fair, and based on the nature of the allegation, and that mitigating and aggravating factors are set out and applied consistently."

Methodology

The monitoring team reviewed a random selection of IA and CPOA investigations that were completed during this monitoring period to ensure that discipline for sustained allegations of misconduct is consistently applied and that mitigating and aggravating factors are set out and applied consistently The monitoring team also met with the Chief and Deputy Chiefs as well as IA and CPOA personnel to discuss the IA and disciplinary process.

Results

Policy regarding the APD disciplinary system is set forth in General Order 1-09.

Statistics regarding discipline imposed during the monitoring period showed a wide range of discipline imposed.

A review of randomly selected IAB and CPOA investigations by the monitor during this site did not reveal any instances where the monitor determined the discipline imposed was unreasonable or an abuse of discretion.

The monitor commented in the Second Monitor's Report that the Chart of Sanctions/ Disciplinary Matrix Guidelines failed to set out defined mitigating or aggravating circumstances. The monitor again notes that the Chart of Sanctions/ Disciplinary Matrix Guidelines should be revised to include a non-exhaustive list of defined mitigating or aggravating circumstances appropriate for the disciplinary process. (See also, Results, paragraphs 162 and 202).

The monitor will continue to assess whether there are adequate statements of reasons in instances where progressive discipline is not followed and/or punishment imposed differs from the recommendations of Chain of Command recommendations.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.188 Assessing Compliance with Paragraph 202: Discipline Matrix

Paragraph 202 stipulates:

"APD shall establish a disciplinary matrix that:

a) establishes a presumptive range of discipline for each type of rule violation;
b) increases the presumptive discipline based on an officer's prior violations of the same or other rules;
c) sets out defined mitigating or aggravating factors;
d) requires that any departure from the presumptive range of discipline must be justified in writing;
e) provides that APD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and
f) provides that APD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed."

Methodology

The monitor reviewed disciplinary actions and rationale for same regarding the ranges of discipline within the Chart of Sanctions/Disciplinary Matrix. The monitor also reviewed the disciplinary matrix and related documents and discussed the IA and disciplinary processes with IAB and CPOA personnel**.**

Results

Policy regarding the APD disciplinary system is set forth in General Order 1-09, the revised version of which is currently under review. Once the revised general order is approved by the monitor it is expected the APD will be in primary compliance with this paragraph.

Seven (7) classes of violations are listed in a Chart of Sanctions/ Disciplinary Matrix and presumptive ranges of discipline are established for each class depending on whether it is a first offense, second offense or third/subsequent to third offense (frequency of occurrence). Although the policy mandates consideration of mitigating and aggravating circumstances, it fails to set out defined mitigating or aggravating circumstances. The monitor again highly recommends that the policy be revised to give an illustrative, non-exhaustive list of mitigating and aggravating appropriate for and within the context of APD discipline. This is the second time the monitor has commented in the Monitor's report on the development of a list of defined and appropriate mitigating and aggravating factors.

The policy requires any deviation from the use of the sanctions to be justified by listing the mitigating or aggravating circumstances. The policy fails to provide that APD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline. Further, the policy fails to provide that APD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed. The monitor again recommends this policy be rewritten to comply with the requirements of this paragraph.

The guidelines contain discipline ranges for each classification of offense, with the classifications ranging from 1 through 7. Unfortunately, APD has not classified every violation of an SOP or general order. Where a violation is unclassified a similar violation that is classified is to be used as a guide. This has the potential of introducing undue complexity and subjectivity into the recommendations for and imposition of discipline. For example, in one matter, although the discipline appeared to be reasonable under the totality of circumstances, a non-classified regulation was sustained and the comparable classified regulation that was to be used for purposes of establishing the disciplinary range was not discernable in the investigative/disciplinary packet.

The monitor in the Second Monitor's report recommended and again highly recommends that each potential violation be classified for purposes of the Chart of Sanctions/Disciplinary Matrix Guidelines and that this policy be rewritten to comply with all the requirements of this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.189 Assessing Compliance with Paragraph 203

Paragraph 203 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, the City shall ensure that APD has the staffing necessary to implement the terms of this Agreement. APD shall also deploy a sufficient number of first-line supervisors to respond to scenes of uses of force; investigate thoroughly each use of force to identify, correct, and prevent misconduct; and provide close and effective supervision necessary for officers to improve and develop professionally. APD shall revise and implement policies for supervision that set out clear requirements for supervision and comport with best practices."

Methodology

A staffing study responsive to this task has been completed by an outside consultant and submitted to the APD. Implementation of that study now falls to the APD, which is currently working on a detailed response to the study that will allow it to comply with this paragraph. Work on the study is being shared with the Parties to ensure agreement on the final product. No final product has yet been produced for review by the Parties or the monitoring team, thus we are unavailable review the study for this reporting period.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.190 Assessing Compliance with Paragraph 204

Paragraph 204 requires:

"In order to successfully implement the provisions of this Agreement, APD shall assess the appropriate number of sworn and civilian personnel to perform the different Department functions necessary to fulfill its mission. APD therefore shall conduct a comprehensive staffing assessment and resource study. The study shall be the predicate for determining

appropriate staffing and resource levels that are consistent with community-oriented policing principles and support the systematic use of partnerships and problem-solving techniques. The study shall also consider the distribution of officers to patrol functions as opposed to specialized units, as well as the distribution of officers with less than three years of experience across shifts and Area Commands. This staffing assessment and resource study shall be completed within one year of the Effective Date. Within six months of the completion of the staffing assessment and resource study, the Parties shall assess its results and jointly develop a staffing plan to ensure that APD can meet its obligations under this Agreement."

Methodology

A staffing study responsive to this task has been completed by an outside consultant and submitted to the APD. Implementation of that study now falls to the APD, which is currently working on a detailed response to the study that will allow it to comply with this paragraph[42]. Work on the study is being shared with the Parties to ensure agreement on the final product. No final product has yet been produced for review by the Parties or the monitoring team, thus we are unavailable review the study for this reporting period.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.191 Assessing Compliance with Paragraph 205

Paragraph 205 stipulates:

"First-line supervisors shall investigate officers' use of force as described in Section IV of this Agreement, ensure that officers are working actively to engage the community and increase public trust and safety, review each arrest report, and perform all other duties as assigned and as described in departmental policy."

Methodology

During the second monitor site visit, members of the monitoring team met with the commander of the Foothills Area Command who is assigned to this paragraph for the APD. The commander was appointed to this section just prior to the site visit. APD is revising SOP 3-18 to meet the requirements of this section and it is currently in the review process. The Use of Force Policy as described in Section IV of the CASA was approved during this reporting period.

[42] APD completed the staffing plan after the close the dates for this report.

As per the monitor's request, a 20% sample of the use of force reports generated during this period was provided. The Commander advised that there were eighty-seven reports generated during the time frame for this visit, therefore the monitor was provided with 17 reports. A thorough review of the reports yielded that the Sergeants effectively reviewed and reported any inappropriate or otherwise problematic occurrences and are working actively to improve public trust and safety. The reports further reflect the positive aspects of the transactions that took place during the monitoring period. The random samplings reveal that supervisors are documenting and reviewing reports. The new revisions to the Policy/Procedures for the Use of Force required in the CASA will have an impact on how supervisors review future reports.
The monitoring team will continue to monitor the implementation of this paragraph in future site visits.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.192 Assessing Compliance with Paragraph 206

Paragraph 206 stipulates:

"All field officers shall be assigned to a primary, clearly identified first-line supervisor and shall also report to any other first-line supervisor within the chain of command. First-line supervisors shall be responsible for closely and consistently supervising all officers under their primary command. Supervisors shall also be responsible for supervising all officers under their chain of command on any shift to which they are assigned to ensure accountability across the Department."

Methodology

Members of the monitoring team met with the lead assigned to this paragraph, Duties of Supervisors, during the third monitoring visit. SOP 3-18 (Duties of Supervisors) defines what a Supervisor/Superior Officer is and lists his or her general responsibilities. The SOP was under policy revision during this site visit. The monitor received the APD Organizational Chart that captures the bureau and divisional structure of the department. The APD bidding process defines and distinguishes the chain of command within each area command. In section 3-18-3 under definition of a supervisor it states "A supervisor is a departmental employee who manages, leads and directs the activities of personnel **assigned** to him or her. It can also mean any officer who has as his or her major responsibilities the general authority in the APD to direct and **supervise other subordinate sworn officers.**"

Results

Upon the reception of the final/approved draft of the Duties of Supervisors by the monitoring team, the APD will be in primary compliance.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.193 Assessing Compliance with Paragraph 207

Paragraph 207 stipulates:

"First-line supervisors shall ordinarily be assigned as a primary supervisor to no more than eight officers. Task complexity will also play a significant role in determining the span of control and whether an increase in the level of supervision is necessary."

Methodology

During the third monitor site visit, members of the monitoring team met with the task lead for this paragraph. The lead for the APD on this paragraph supplied members of the monitoring team with rosters for the all of the area commands for the APD so that a confirmation could be made in regards to compliance with the requirements of this paragraph. A review of rosters revealed fifty-four squads exist within the commands. For forty-one of the squads, the supervisory span is no more than eight (75.9%), however for thirteen of the squads the span exceeds the maximum of eight (24.0%). This does not meet the threshold of > 95 % as required by the CASA.

Results

APD awaits the next promotional process to allow for proper allocation of supervisors to meet the requirements of this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.194 Assessing Compliance with Paragraph 208

Paragraph 208 stipulates:

"APD Commanders and lieutenants shall be responsible for close and effective supervision of officers under their command. APD Commanders and lieutenants shall ensure that all officers under their direct command

comply with APD policy, federal, state and municipal law, and the requirements of this Agreement."

Methodology

During the third monitor site visit, members of the monitoring team met with the task lead responsible for the Duties of Supervisors. SOP 3-18 (Supervisory Leadership) and SOP 3-2 (Assistant/Deputy Chief of Police, Major and Commanders Responsibility) were reviewed by the monitoring team to identify current progress and expected due dates. As of this visit, the final draft was still in the APD chain of command and the training courses for supervisors under development. The monitoring team requested and received Commander's Monthly Reports and Use of Force Reports for the time frame for this report. A random review of the reports was conducted to detect the efficacy of the written records from commanders as well as Lieutenants responsible for close and effective supervision of officers under their command.

Results

Training for supervisors is still in the developmental phase pending final approval. Until, all **supervisors** receive training that is required under the CASA the requirements of this paragraph cannot be attained. SOP 3-18 has been submitted to the monitor and final approval is pending as of the writing of this report.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.195 Assessing Compliance with Paragraph 209

Paragraph 209 stipulates:

"Sergeant training is critical to effective first-line supervision. Every sergeant shall receive 40 hours of mandatory supervisory, management, leadership, and command accountability training before assuming supervisory responsibilities."

Methodology

During the third monitor site visit, members of the monitoring team met with the lead tasked with this paragraph. The lead is working on the new curriculum to meet the requirements of this paragraph but the course development is pending the final approval of several policies that the CASA required and in some cases for curriculum that is approved and waiting for all APD personnel to receive training. The final approval of these policies were pending during the site visit. These approvals will allow the APD to complete the requirements of the 40-hour block of training required for this paragraph and will enable APD to schedule training as required by the CASA.

Results

Until all affected policies of the CASA are approved supervisory training will not meet the requirements as stipulated in this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.196 Assessing Compliance with Paragraph 210

Paragraph 210 stipulates:

"APD's sergeant training program shall include the following topics:

a) techniques for effectively guiding and directing officers and promoting effective and ethical police practices;

b) de-escalating conflict;

c) evaluating written reports, including those that contain canned language;

d) investigating officer uses of force;

e) understanding supervisory tools such as the Early Intervention System and on-body recording systems;

f) responding to and investigating allegations of officer misconduct;

g) evaluating officer performance;

h) consistent disciplinary sanction and non-punitive corrective action;

i) monitoring use of force to ensure consistency with policies;

j) building community partnerships and guiding officers on this requirement;

k) legal updates."

Methodology

Members of the monitoring team met personnel charged with the responsibilities of responding to tasks included in this paragraph during the third site visit. The lead is working on the new curriculum but the course development is pending the final approval of several policies that are required in the CASA. There are cases where the curriculum has been approved but not all APD personnel have received the training. The final approval of these related policies were pending during the site visit. These approvals will allow the FTO Sergeant to complete

the requirements of the 40-hour block of training required for this paragraph and will enable the lead to schedule training as required by the CASA. The City contends, correctly, that the monitor has no right to pre-approve training; however, the monitoring team will continue to review supporting training material and to observe training delivery as part of the process of making assessments of the viability of training proffered by APD.

Results

Until all affected policies of the CASA are approved supervisory training will not meet the requirements as stipulated in this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.197 Assessing Compliance with Paragraph 211

Paragraph 211 stipulates:

"All sworn supervisors shall also receive a minimum of 32 hours of in-service management training, which may include updates and lessons learned related to the topics covered in the sergeant training and other areas covered by this Agreement."

Methodology

During the third monitor site visit, members of the monitoring team met with the lead trainer assigned this paragraph. This lead was appointed to this position just prior to the arrival of the monitoring team. The lead is working on the new curriculum, but the course development is on hold pending the final approval of several policies that the CASA requires that are an intricate part of the course being developed. The final approval of the policies were pending during the site visit. The approval of outstanding policies will allow the lead to complete the requirements of the 32-hour block of training required for this paragraph and will enable the scheduling of training as required by the CASA. An eight-hour supervisory training course was held in October of 2015, the remaining 24-hour block of training containing the CASA requirements will be scheduled upon the completion of the above mentioned policies. The monitor did not assess this October 2015 training, as it did not directly relate to CASA required elements.

Results

Until all related policies under the CASA are approved supervisory training will not meet the requirements as stipulated in this paragraph.

Primary: **Not Yet Due**

Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.198 Assessing Compliance with Paragraph 212

Paragraph 212 stipulates:

"Within nine months of the Effective Date, APD shall revise and update its Early Intervention System to enhance its effectiveness as a management tool that promotes supervisory awareness and proactive identification of both potentially problematic as well as commendable behavior among officers. APD supervisors shall be trained to proficiency in the interpretation of Early Intervention System data and the range of non-punitive corrective action to modify behavior and improve performance; manage risk and liability; and address underlying stressors to promote officer well-being."

Methodology

During the third site visit, members of the monitoring team met with the Internal Affairs personnel responsible for Early Intervention System development and implementation, and identified current systems development progress, reviewed draft policies and discussed expected due dates.

Results

APD continues the transition to a new EIS system. "IAPro," which is a critical component of the EIS, is still being tested. Additional software—"Blue Team" is still in development but was ready for its initial test at the Northeast Command. The EIS was approved by the monitoring team during the third site visit and has been approved by all parties. Supervisory training for EIS has been conducted via Public Service University (PSU) with documentation provided by APD for more than 97% of APD Supervisors. This documentation, however, is dated May 27th, 2015—prior to any launch of the new EIS system and prior to an approved policy. Further documentation of training will be required to satisfy the requirements of this paragraph.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.199 Assessing Compliance with Paragraph 213

Paragraph 213 stipulates:

"APD shall review and adjust, where appropriate, the threshold levels for each Early Identification System indicator to allow for peer-group comparisons between officers with similar assignments and duties."

Methodology

During the third site visit, members of the monitoring team met with the Internal Affairs personnel responsible for Early Intervention System development and implementation, and identified current systems development processes and expected due dates.

Results:

Based on a review of the new EIS system, IAPro, as planned, appears to the monitoring team to have the capabilities called for in this paragraph. The system is currently still undergoing testing with one major component "Blue Team" about to be tested at the Northeast Command. As development proceeds, the monitoring team will follow it closely and provide feedback as needed and/or as requested by the APD.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.200 Assessing Compliance Paragraph 214

Paragraph 214 stipulates:

"APD shall implement rolling thresholds so that an officer who has received an intervention of use of force should not be permitted to engage in additional uses of force before again triggering a review."

Methodology

During the third site visit, members of the monitoring team met with the Internal Affairs personnel responsible for Early Intervention System development and implementation, reviewed draft policies (since approved by all parties) and identified current systems development progress and expected due dates. As development proceeds, the monitoring team will continue to follow it closely and provide feedback as needed and/or as requested by the APD.

Results

APD currently has in effect plans for rolling thresholds when assessing officer use-of-force events, thus necessitating a review of every officer use of force. The agency is currently planning a transition to "Blue-Team" software that will allow uses of force to be reviewed and assessed in "real time." Testing of this software was scheduled in the Northeast Command shortly after this monitoring period. In-depth assessment and planning of review triggers and time limits are being planned, and should be facilitated by the new software when it

comes on line. The monitoring team continually assesses changes to planned system development and system capacities and abilities.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.201 Assessing Compliance Paragraph 215

Paragraph 215 stipulates:

"The Early Intervention System shall be a component of an integrated employee management system and shall include a computerized relational database, which shall be used to collect, maintain, integrate, and retrieve data department-wide and for each officer regarding, at a minimum:
a) uses of force;
b) injuries and deaths to persons in custody;
c) failures to record incidents with on-body recording systems that are required to be recorded under APD policy, whether or not corrective action was taken, and cited violations of the APD's on-body recording policy;
d) all civilian or administrative complaints and their dispositions;
e) all judicial proceedings where an officer is the subject of a protective or restraining order;
f) all vehicle pursuits and traffic collisions involving APD equipment;
g) all instances in which APD is informed by a prosecuting authority that a declination to prosecute any crime occurred, in whole or in part, because the officer failed to activate his or her on-body recording system;
h) all disciplinary action taken against employees;
i) all non-punitive corrective action required of employees;
j) all awards and commendations received by employees, including those received from civilians, as well as special acts performed by employees;
k) demographic category for each civilian involved in a use of force or search and seizure incident sufficient to assess bias;
l) all criminal proceedings initiated against an officer, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City and/or its officers or agents, allegedly resulting from APD operations or the actions of APD personnel; and
m) all offense reports in which an officer is a suspect or offender."

Methodology

During the third site visit, members of the monitoring team met with the Internal Affairs personnel responsible for Early Intervention System development and implementation, and identified current systems development progress, reviewed draft policies, discussed training and expected due dates. The system development process appears to be proceeding at a reasonable rate, given the complexity of the proposed system.

Results

APD continues in the transition to new EIS systems—"IAPro" and "Blue Team." Testing of the new system is currently ongoing with live testing to begin at the Northeast Command just after this monitoring period. The requirements of this paragraph carry a timeline of "within nine months of the operational date." Compliance is dependent upon an "operational" EIS.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.202 Assessing Compliance Paragraph 216

Paragraph 216 stipulates:

"APD shall develop and implement a protocol for using the updated Early Intervention System and information obtained from it. The protocol for using the Early Intervention System shall address data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation and audits, access to the system, and confidentiality of personally identifiable information. The protocol shall also require unit supervisors to periodically review Early Intervention System data for officers under their command."

Methodology

During the third site visit, members of the monitoring team met with the Internal Affairs personnel responsible for Early Intervention System development and implementation, specifically relating to timelines and system "roll-outs". Discussions included "Best Practices" and references to systems in other departments.

Results

The concept of an Early Intervention Systems is already a component and has been a component of Internal Affairs planning for some time. IAB personnel are aware of the benefits offered by the system, and are simply awaiting development of guidance via written policy, procedures, protocols and training so that the system can "go live." APD EIS policy has been approved by all parties, but no Protocols for system use as required by this paragraph have been developed. The monitoring team received Power Point Slides from Supervisor EIS training, but not a training curriculum. Documentation of Supervisor EIS Training was submitted, but dated prior to an approved policy or implementation of the EIS system. The City contends documentation was submitted to the monitor post-policy approval. The monitor will review available records and re-visit the status of this paragraph in IMR-4.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.203 Assessing Compliance Paragraph 217

Paragraph 217 stipulates:

"APD shall maintain all personally identifying information about an officer included in the Early Intervention System for at least five years following the officer's separation from the agency except where prohibited by law. Information necessary for aggregate statistical analysis will be maintained indefinitely in the Early Intervention System. On an ongoing basis, APD will enter information into the Early Intervention System in a timely, accurate, and complete manner and shall maintain the data in a secure and confidential manner."

Methodology

During the third site visit, members of the monitoring team met with the Internal Affairs personnel responsible for Early Intervention System development and implementation, and identified current systems development progress and expected due dates.

Results

EIS data are currently planned to be held "indefinitely" by APD IA which exceeds the CASA requirements. The updated IAPro system appears to comply with these requirements. The data entry requirements are on-going and all EIS data will be maintained securely in Internal Affairs. The City contends documentation was submitted to the monitor post-policy approval. The monitor will review available records and re-visit the status of this paragraph in IMR-4.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.204 Assessing Compliance Paragraph 218

Paragraph 218 stipulates:

"APD shall provide in-service training to all employees, including officers, supervisors, and commanders, regarding the updated Early Intervention System protocols within six months of the system improvements specified in Paragraphs 212-215 to ensure proper understanding and use of the system. APD supervisors shall be trained to use the Early Intervention System as designed and to help improve the performance of officers under

their command. Commanders and supervisors shall be trained in evaluating and making appropriate comparisons in order to identify any significant individual or group patterns of behavior."

Methodology

During the third site visit, members of the monitoring team met with the Internal Affairs personnel responsible for Early Intervention System development and implementation, identified current systems development progress, identified areas requiring clarification and expected due dates.

Results

EIS policies were approved in February, 2016. The training for approximately 150 supervisors is under development. The training for all employees remains to be developed. EIS Training Power Point slides were provided to the monitoring team, but no Training Curriculum for all employees or Supervisors was available. The City contends documentation was submitted to the monitor post-policy approval. The monitor will review available records and re-visit the status of this paragraph in IMR-4.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.205 Assessing Compliance Paragraph 219

Paragraph 219 stipulates:

"Following the initial implementation of the updated Early Intervention System, and as experience and the availability of new technology may warrant, the City may add, subtract, or modify thresholds, data tables and fields; modify the list of documents scanned or electronically attached; and add, subtract, or modify standardized reports and queries as appropriate. The Parties shall jointly review all proposals that limit the functions of the Early Intervention System that are required by this Agreement before such proposals are implemented to ensure they continue to comply with the intent of this Agreement."

Methodology

During the third site visit, members of the monitoring team continued to audit the progress of APD Internal Affairs personnel responsible for Early Intervention System development and implementation. Discussions continue regarding systems development processes, APD progress, training and expected due dates.

Results

This requirement is not yet due—it requires implementation/testing/use of and experience with the system before the monitoring team can assess efficacy of the planned system. As currently "planned," the system appears to meet the requirements of the CASA. The City contends documentation was submitted to the monitor post-policy approval. The monitor will review available records and re-visit the status of this paragraph in IMR-4.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.206 Assessing Compliance Paragraph 220

Paragraph 220 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD is committed to the consistent and effective use of on-body recording systems. Within six months of the Effective Date, APD agrees to revise and update its policies and procedures regarding on-body recording systems to require:
a) specific and clear guidance when on-body recording systems are used, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
b) officers to ensure that their on-body recording systems are working properly during police action;
c) officers to notify their supervisors when they learn that their on-body recording systems are not functioning;
d) officers are required to inform arrestees when they are recording, unless doing so would be unsafe, impractical, or impossible;
e) activation of on-body recording systems before all encounters with individuals who are the subject of a stop based on reasonable suspicion or probable cause, arrest, or vehicle search, as well as police action involving subjects known to have mental illness;
f) supervisors to review recordings of all officers listed in any misconduct complaints made directly to the supervisor or APD report regarding any incident involving injuries to an officer, uses of force, or foot pursuits;
g) supervisors to review recordings regularly and to incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers; and
h) APD to retain and preserve non-evidentiary recordings for at least 60 days and consistent with state disclosure laws, and evidentiary recordings for at least one year, or, if a case remains in investigation or litigation, until the case is resolved."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems and identified current policy and training development progress and expected due dates.

Results

The latest version of the APD policy regarding On-Body Recording Systems appears to meet all of the requirements of the CASA, and has been approved by all parties. Training was due to begin upon final approval of the policy by DOJ and the monitor.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.207 Assessing Compliance with Paragraph 221

Paragraph 221 stipulates:

"APD shall submit all new or revised on-body recording system policies and procedures to the Monitor and DOJ for review, comment, and approval prior to publication and implementation. Upon approval by the Monitor and DOJ, policies shall be implemented within two months."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems and identified current policy and training development processes, as well as current status/progress and expected due dates.

Results

The On-Body Recording System policy has been approved by all parties. No policy training curriculum has been submitted to the Monitoring team. All personnel currently issued an On-Body recording system have completed training on the ***use*** of the system. The timeline for compliance is within two months of policy approval.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.208 Assessing Compliance with Paragraph 222

Paragraph 222 stipulates:

"The Parties recognize that training regarding on-body recording systems is necessary and critical. APD shall develop and provide training regarding on-body recording systems for all patrol officers, supervisors, and command staff. APD will develop a training curriculum, with input from the Monitor and DOJ that relies on national guidelines, standards, and best practices."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems and identified current policy and training development processes, the current status/progress and expected due dates.

Results

The On-Body Recording System policy has been approved, but no training curriculum has been submitted to the monitor. All personnel currently issued an On-Body recording system have completed a "how to" training on the use of the system.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.209 Assessing Compliance with Paragraph 223

Paragraph 223 stipulates:

"APD agrees to develop and implement a schedule for testing on-body recording systems to confirm that they are in proper working order. Officers shall be responsible for ensuring that on-body recording systems assigned to them are functioning properly at the beginning and end of each shift according to the guidance of their system's manufacturer and shall report immediately any improperly functioning equipment to a supervisor."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems and identified current plans to comply with the requirements of this paragraph. APD was informed that the monitoring team will require documented functionality testing and documented failures reported in addition to the Sergeant's Monthly Reports for

documentation of equipment failures found during inspection and failures reported by officers.

Results

APD Sergeants currently conduct monthly inspections of each officer under their command. Inspections include all issued equipment, including On-Body Recording Systems. As the policy for On Body Recording Systems has just been approved--no audit was conducted during this period. APD does not yet have a standard protocol for the requirements of this paragraph, nor has training for the policy taken place. The timeline for implementation of these requirements are within two months of policy approval. All future site visits will include an audit of these monthly inspections.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.210 Assessing Compliance with Paragraph 224

Paragraph 224 stipulates:

"Supervisors shall be responsible for ensuring that officers under their command use on-body recording systems as required by APD policy. Supervisors shall report equipment problems and seek to have equipment repaired as needed. Supervisors shall refer for investigation any officer who intentionally fails to activate his or her on-body recording system before incidents required to be recorded by APD policy."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems and identified current policy and accountability development processes, progress in these areas and expected due dates. APD was informed of the future data to document the requirements of this paragraph, including the number of reports and repairs, referrals for investigation, and how supervisors are being held responsible. In addition, the numbers of failures to record—whether reported or "discovered" and the resulting coaching, retraining, discipline, etc.

Results

APD SOP 1-39 Use of On-Body Recording Devices has been approved by all parties. Supervisors will be required to test the equipment monthly, ensure personnel are using systems appropriately, review at least two recordings and incorporate any knowledge gained from this review into ongoing evaluation and supervision. Additionally, supervisors will report equipment problems and

immediately repair or replace equipment as needed. Supervisors shall refer assigned personnel for investigation who intentionally or repeatedly fail to activate his or her OBRD during incidents required to be recorded. The timeline for this requirement is within two months of policy approval. All future site visits will include an audit of these requirements.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.211 Assessing Compliance with Paragraph 225

Paragraph 225 stipulates:

"At least on a monthly basis, APD shall review on-body recording system videos to ensure that the equipment is operating properly and that officers are using the systems appropriately and in accordance with APD policy and to identify areas in which additional training or guidance is needed."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems and identified current policy and training development processes and expected due dates. Additional discussions included permissions to access recorded data by supervisors and the audit trails of any data accessed.

Results

The final draft of the On-Body Recording System Policies/Procedures was submitted to the monitor and DOJ and has been approved by all parties. These necessary requirements are covered in the policy. Supervisors are required to conduct monthly inspections and reviews. No documentation has been submitted for equipment/video reviews as the timeline requires implementation within two months of policy approval. All future site visits will include an audit of this requirement.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.212 Assessing Compliance with Paragraph 226

Paragraph 226 stipulates:

"APD policies shall comply with all existing laws and regulations, including those governing evidence collection and retention, public disclosure of information, and consent."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems and identified current policy development processes, progress in development and expected due dates.

Results

APD Policy 1-39 Use of On-Body Recording Devices has been approved by all Parties. The policy appears to comply with all existing laws and regulations, having been reviewed by the Parties and the monitor. The policy itself cites both US Supreme Court and NM Statutes relative to privacy and communications.

Primary:	**In Compliance**
Secondary:	**Not Yet Due**
Operational:	**Not Yet Due**

4.7.213 Assessing Compliance with Paragraph 227

Paragraph 227 stipulates:

"APD shall ensure that on-body recording system videos are properly categorized and accessible. On-body recording system videos shall be classified according to the kind of incident or event captured in the footage."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems to view the recording database, identify the storage, categorization and retrieval systems, progress of these requirements and expected due dates.

Results

During the review process of the draft policy, the monitor made additional requests for classifications to include date, time, officer involved and location. All categories are currently included in the system except for location. APD currently uses the Taser system "Evidence.com" for the video downloads/storage. Future plans include the automatic "geo tagging" of each video upon the activation of the recording device. As the timeline for compliance follows paragraph 221—"Upon the approval by the Monitor and

DOJ, policies shall be implemented within two months" the monitoring team made observations of the video logs with the required categories, but did not conduct an audit. Future site visits will include system/recording/category audits.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.214 Assessing Compliance with Paragraph 228

Paragraph 228 stipulates:

"Officers who wear on-body recording systems shall be required to articulate on camera or in writing their reasoning if they fail to record an activity that is required by APD policy to be recorded. Intentional or otherwise unjustified failure to activate an on-body recording system when required by APD policy shall subject the officer to discipline."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems to identify the process by which these requirements will be documented. The monitoring team will require data related to the number of failures to record, how it was documented and the results, i.e.—coaching, retraining, discipline, etc.

Results

APD now has an approved policy for On-Body Recording Systems. They now have two months to implement the policy. No training curriculum has been provided to the monitor nor any process for how they intent to capture the required data to document compliance with these requirements. Supervisors conduct monthly inspections, which include cameras, but the protocols and process for how that information will be collected, acted upon and shared does not yet exist.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.215 Assessing Compliance with Paragraph 229

Paragraph 229 stipulates:

"APD shall ensure that on-body recording systems are only used in conjunction with official law enforcement duties. On-body recording systems shall not be used to record encounters with known undercover officers or confidential informants; when officers are engaged in personal activities; when officers are having conversations with other Department personnel that involve case strategy or tactics; and in any location where individuals have a reasonable expectation of privacy (e.g., restroom or locker room)."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems to discuss prohibited uses of OBRD video. Additional discussions included future audits and how these requirements would be documented.

Results

While the On-Body Recording System policy is now approved, no training for APD personnel or supervisors has been conducted. As the timeline for compliance follows paragraph 221—"Upon approval by the Monitor and DOJ, policies shall be implemented within two months, future site visits will include a random audit of recordings to determine if any prohibited uses exist.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.216 Assessing Compliance with Paragraph 230

Paragraph 230 stipulates:

"APD shall ensure that all on-body recording system recordings are properly stored by the end of each officer's subsequent shift. All images and sounds recorded by on-body recording systems are the exclusive property of APD."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems to determine if officers are properly storing recordings at the end of their shift.

Results

The APD On-Body Recording Devices policy clearly states that all recordings captured by Department issued OBRDs are the exclusive property of APD. This policy has been approved by all parties, but training has not been conducted. While each person issued an On-Board Recording Device has been trained in

its use, and recordings are being stored at the end of each officer's shift, the monitoring team has noted at least one critical OBRD video that has "gone missing," and evidently was not accessible for follow-up assessment of the investigation in question. The monitor is deeply concerned about this "loss" of important evidence stored on an OBRD recording, which indicates non-compliance with established policy. The monitoring team reviewed logs of stored recordings, and future site visits will include audits to ensure compliance with this requirement. The timeline for compliance follows paragraph 221—"Upon approval by the Monitor and DOJ, policies shall be implemented within two months."

Primary: **Not In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.217 Assessing Compliance with Paragraph 231

Paragraph 231 stipulates:

"The Parties are committed to the effective use of on-body recording systems and to utilizing best practices. APD currently deploys several different platforms for on-body recording systems that have a range of technological capabilities and cost considerations. The City has engaged outside experts to conduct a study of its on-body recording system program. Given these issues, within one year of the Effective Date, APD shall consult with community stakeholders, officers, the police officer's union, and community residents to gather input on APD's on-body recording system policy and to revise the policy, as necessary, to ensure it complies with applicable law, this Agreement, and best practices."

Methodology

During the third site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems to identify processes, personnel and expected due dates for the community outreach as required above.

Results

The APD has contracted with the University of New Mexico to conduct a study with focus groups and community groups to meet the requirements of this paragraph. Timeline for compliance is "within one year of the Effective Date." Initial comments from the UNM study should be available during the next site visit.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.218 Assessing Compliance with Paragraph 232

Paragraph 232 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD shall develop a comprehensive recruitment and hiring program that successfully attracts and hires qualified individuals. APD shall develop a recruitment policy and program that provides clear guidance and objectives for recruiting police officers and that clearly allocates responsibilities for recruitment efforts."

Methodology

During the third site visit, members of the monitoring team met with Training Academy personnel responsible for the Recruitment and Hiring Plan development and implementation, and observed and participated in recruitment testing.

Results

APD has revised its hiring Policies/Procedures, and the "draft" version appears to meet the requirements of the CASA, although the monitoring team has not seen a final/approved version. APD continues to aggressively recruit via Facebook, Twitter, and "APD Online" as well as Craigslist. Traditional outreach via TV, Radio, Newspaper and Billboard ads have all failed to return any candidates, but efforts have continued and expanded. Upon approval of the Recruiting/Hiring policy—the requirements of Paragraph 232 will be met.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.219 Assessing Compliance with Paragraph 233

Paragraph 233 stipulates:

"APD shall develop a strategic recruitment plan that includes clear goals, objectives, and action steps for attracting qualified applicants from a broad cross section of the community. The recruitment plan shall establish and clearly identify the goals of APD's recruitment efforts and the duties of officers and staff implementing the plan."

Methodology

During the third site visit, members of the monitoring team met with Training Academy personnel responsible for the development and implementation of a strategic recruitment plan.

Results

The APD Training Academy has provided the monitoring team with the "2016 Strategic Recruitment Plan" and continues to aggressively promote APD via web based applications with expanded emphasis on minority group sites. Additionally, APD has developed a "blind" online application process wherein an applicant can remain completely anonymous until they arrive for testing—a laudable process. The 2016 Strategic Recruitment Plan meets the requirements of Paragraph 233.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.220 Assessing Compliance with Paragraph 234

Paragraph 234 stipulates:

"APD's recruitment plan shall include specific strategies for attracting a diverse group of applicants who possess strategic thinking and problem-solving skills, emotional maturity, interpersonal skills, and the ability to collaborate with a diverse cross-section of the community."

Methodology

During the third site visit, members of the monitoring team met with the APD Training Academy Recruiting and Selection Unit and observed and participated in initial testing of candidates.

Results

The University of New Mexico has been working with the APD to develop a comprehensive recruiting plan. The monitoring team has received a copy of the resulting "2016 Strategic Recruitment Plan." In addition to the initial APD test with related skills questions—the background questionnaires for both a Candidates former employers and Personal References—contain questions related to the required skills/abilities in this paragraph. Goals and objectives with related action plans will meet the requirements of Paragraph 234.

Primary: **In Compliance**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.221 Assessing Compliance with Paragraph 235

Paragraph 235 stipulates:

"APD's recruitment plan will also consult with community stakeholders to receive recommended strategies to attract a diverse pool of applicants. APD shall create and maintain sustained relationships with community stakeholders to enhance recruitment efforts."

Methodology

During the third site visit, members of the monitoring team met with APD Training Academy personnel responsible for the Strategic Recruitment Plan development and implementation, and identified current goals and objectives.

Results

APD partnered with the UNM to develop a comprehensive strategy to attract a diverse pool of applicants. The resulting "2016 Strategic Recruitment Plan" lists a review of past strategies and enumerates goals/objectives and plans for 2016. APD has expanded its web based advertising with more emphasis on minority group sites (National Black Officers website) in addition to the military and the university communities. APD is continuing regular contact with board members of the Southern Christian Leadership Council. Feedback received from a recruiting summit was a determining factor in the reduction of the college credit requirements.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.222 Assessing Compliance with Paragraph 236

Paragraph 236 stipulates:

"APD shall develop and implement an objective system for hiring and selecting recruits. The system shall establish minimum standards for recruiting and an objective process for selecting recruits that employs reliable and valid selection devices that comport with best practices and anti-discrimination laws."

Methodology

During the third site visit, members of the monitoring team met with all Training Academy personnel responsible for the hiring and selection plan development

and implementation, and identified current development processes and expected due dates.

Results

APD has developed a "blind" automated, on-line system that allows an applicant to remain completely anonymous until they arrive for testing. Recruiting and Hiring policies have been revised and are still currently in the review/approval process. The monitoring team has requested, but has not yet received, the policies/procedures supporting the automated on-line process. However—existing non-automated Recruiting and Hiring policies appear to meet the requirements of Paragraph 236.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.223 Assessing Compliance with Paragraph 237

Paragraph 237 stipulates:

"APD shall continue to require all candidates for sworn personnel positions, including new recruits and lateral hires, to undergo a psychological, medical, and polygraph examination to determine their fitness for employment. APD shall maintain a drug testing program that provides for reliable and valid pre-service testing for new officers and random testing for existing officers. The program shall continue to be designed to detect the use of banned or illegal substances, including steroids."

Methodology

During the third site visit, members of the monitoring team met with Training Academy personnel responsible for the testing of Candidates for APD, and observed and participated in a session of testing.

Results

While APD continues to revise its Policies/Procedures, and they continue to make their way through the approval process, the current policy meets the requirements of this paragraph of the settlement agreement. APD records showed no lateral hires during this monitoring period. Several lateral hires were passed over due to drug testing, and background investigations revealing bankruptcy and repossession, domestic violence, and resignations in lieu of termination. In the testing session observed, passing candidates were immediately scheduled for drug testing and polygraph examinations.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.224 Assessing Compliance with Paragraph 238

Paragraph 238 stipulates:

"APD shall ensure that thorough, objective, and timely background investigations of candidates for sworn positions are conducted in accordance with best practices and federal anti-discrimination laws. APD's suitability determination shall include assessing a candidate's credit history, criminal history, employment history, use of controlled substances, and ability to work with diverse communities."

Methodology

During the third site visit, members of the monitoring team met with Training Academy personnel responsible for the collection of the data required by this paragraph and reviewed a small random sample of personnel files.

Results

APD has revised its Policies/Procedures and, they meet the requirements of this paragraph. Academy staff have added specific questions regarding a candidate's ability to work with diverse communities to its "Personal Reference Questionnaire and Employers Questionnaire." A training memo was issued to all investigators regarding the change. These are the questionnaires currently in use by background investigators. While all personnel files checked during the third site visit contained the required data, the monitoring team has seen no internal audits of this requirement.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.225 Assessing Compliance with Paragraph 239

Paragraph 239 stipulates:

"APD shall complete thorough, objective, and timely pre-employment investigations of all lateral hires. APD's pre-employment investigations shall include reviewing a lateral hire's history of using lethal and less lethal force, determining whether the lateral hire has been named in a civil or criminal action; assessing the lateral hire's use of force training records and complaint history, and requiring that all lateral hires are provided training and orientation in APD's policies, procedures, and this Agreement."

Methodology

During the third site visit, members of the monitoring team met with Training Academy personnel responsible for the Recruitment/Hiring background investigations and reviewed those regarding lateral hires.

Results

APD had no lateral hires during this monitoring period. They received 28 applications and only one qualified, but had not yet been tested. The reasons for disqualification included applicants who failed to have the minimum law enforcement experience or for not being currently employed in law enforcement. Existing policy does not cover all the requirements of Paragraph 239 although Academy staff is currently complying with the requirements. Upon approval of the updated policy, APD will be in compliance.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.226 Assessing Compliance with Paragraph 240

Paragraph 240 stipulates:

"APD shall annually report its recruiting activities and outcomes, including the number of applicants, interviewees, and selectees, and the extent to which APD has been able to recruit applicants with needed skills and a discussion of any challenges to recruiting high-quality applicants."

Methodology

During the third site visit, members of the monitoring team met with Training Academy personnel responsible for the Annual Recruiting Report and were provided with a copy of the 2015 report.

Results

The APD 2015 Annual Recruiting Report contains all the information required by Paragraph 240.

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.227 Assessing Compliance with Paragraph 241

Paragraph 241 stipulates:

"APD shall develop and implement fair and consistent promotion practices that comport with best practices and federal anti-discrimination laws. APD shall utilize multiple methods of evaluation for promotions to the ranks of Sergeant and Lieutenant. APD shall provide clear guidance on promotional criteria and prioritize effective, constitutional, and community-oriented policing as criteria for all promotions. These criteria should account for experience, protection of civil rights, discipline history, and previous performance evaluations."

Methodology

During the third site visit the monitoring team met with APD parties responsible for the development of the promotion plan and discussed the process, legal findings and lawsuits, and deliverable dates.

Results

APD has been working with Albuquerque City Legal, and outside vendors (CWH) and obtained promotional policies from numerous other police agencies. APD is developing its own Promotional Plan to enable compliance with the requirements of this paragraph. The monitor was provided with another draft version of the proposed promotional plan. The team has reviewed this plan and returned with comments. The plan has not yet been approved or implemented. The monitoring team has not received a final/approved promotional plan.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.228 Assessing Compliance with Paragraph 242

Paragraph 242 stipulates:

"APD shall develop objective criteria to ensure that promotions are based on knowledge, skills, and abilities that are required to perform supervisory and management duties in core substantive areas."

Methodology

As of the third site visit, APD had secured promotional practices policies from Tucson, AZ PD and the Las Vegas Metro PD, and using those and the CASA as guides, has flowcharted the proposed promotional practice. The monitoring

team has provided APD with templates for acceptable needs assessment and training outline processes, which we would expect to be followed as this process continues.

Results

APD assessments of knowledge, skills and abilities (KSAs) have been provided to the monitoring team along with the latest version of the promotion plan. The monitoring team has reviewed the latest plan and returned with comments. This plan has not yet been approved or implemented. The monitoring team has not received a final/approved promotional plan.

Primary: **Not In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.229 Assessing Compliance with Paragraph 243

Paragraph 243 stipulates:

"Within six months of the Effective Date, APD shall develop and implement procedures that govern the removal of officers from consideration from promotion for pending or final disciplinary action related to misconduct that has resulted or may result in a suspension greater than 24 hours."

Methodology

During the third site visit, the monitoring team met with APD personnel responsible for the development and implementation of a new promotional plan. The latest version of the promotional plan was submitted to the monitor for review/comments and that process has been completed.

Results

APD has secured promotional practices policies from Tucson, AZ PD and the Las Vegas Metro PD, and using those and the CASA as guides, has flowcharted the proposed promotional practice. The monitoring team has provided APD with templates for acceptable needs assessment and training outline processes, which we would expect to be followed as this process continues. While the latest version has been reviewed and returned to APD, it has not been approved and implemented. The monitoring team has not received a final/approved plan.

Primary: **Not In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.230 Assessing Compliance with Paragraph 244

Paragraph 244 stipulates:

"APD shall develop and implement fair and consistent practices to accurately evaluate the performance of all APD officers in areas related to constitutional policing, integrity, community policing, and critical police functions on both an ongoing and annual basis. APD shall develop objective criteria to assess whether officers meet performance goals. The evaluation system shall provide for appropriate corrective action, if such action is necessary."

Methodology

During the third site visit, members of the monitoring team met with all personnel responsible for the Performance Evaluation development and implementation, and viewed a demonstration of the newly developed automated performance evaluation system. The monitoring team questioned if this new system will integrate with the EIS IAPro and Blue Team systems. At this time—integration had not been planned.

Results

APD demonstrated a new, automated performance evaluation system that—as demonstrated—will meet/exceed the requirements of the CASA. Policy is in the final stages of the approval process and then training and implementation of the system can occur. Moving forward, APD should plan for systems integration with a mindset of setting new standards in personnel management.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.232 Assessing Compliance with Paragraph 245

Paragraph 245 stipulates:

"As part of this system, APD shall maintain a formalized system documenting annual performance evaluations of each officer by the officer's direct supervisor. APD shall hold supervisors accountable for submitting timely, accurate, and complete performance evaluations of their subordinates."

Methodology

During the third site visit, members of the monitoring team met with all personnel responsible for the Performance Evaluation development and implementation,

and observed a demonstration of the newly developed, automated performance evaluation system.

Results

APD currently utilizes the City of Albuquerque policy for Performance Evaluations. This process however, has not been completed as of the drafting of this report. The specifics of the planned transition to an APD plan, separate and distinct from the City process, is not yet available. Given the amount of work entailed in assessing, developing, and articulating new performance evaluation systems, the monitoring team assesses this requirement's status (as reflected by current progress) as delayed, but demonstrates the desire to "get it right" rather than getting it done quickly.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.233 Assessing Compliance with Paragraph 246

Paragraph 246 stipulates:

"As part of the annual performance review process, supervisors shall meet with the employee whose performance is being evaluated to discuss the evaluation and develop work plans that address performance expectations, areas in which performance needs improvement, and areas of particular growth and achievement during the rating period."

Methodology

During the third site visit, members of the monitoring team met with all personnel responsible for the Performance Evaluation development and implementation, and viewed a demonstration of the new, automated performance evaluation system. The monitoring team questioned if this new system would integrate with the new EIS IAPro and Blue Team systems.

Results

APD currently utilizes the City of Albuquerque policy for Performance Evaluations. They are currently crafting their own Performance Evaluation Procedures; however, this process has not been completed as of the drafting of this report. The monitoring team has not received a final Performance Evaluation Plan, although it is in final review phase. The specifics of the planned transition to an APD plan, separate and distinct from the City process, has not been submitted. Given the amount of work entailed in assessing, developing, and articulating new performance evaluation systems, the monitoring team assesses this requirement's status (as reflected by current

progress) as delayed but with the mindset of “getting it right” rather than getting it done quickly. The monitoring team suggests that system integration be a consideration during the various developmental stages of CASA related system development.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.234 Assessing Compliance with Paragraph 247

Paragraph 247 stipulates:

“To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD agrees to provide officers and employees ready access to mental health and support resources. To achieve this outcome, APD agrees to implement the requirements below.”

Methodology

During the third site visit members of the monitoring team met with the lead for this paragraph, Dr. Troy Rodgers and APD staff. Members of the monitoring team have reviewed the APD SOP 1-14, “Behavioral Sciences Support And Service.” This SOP has been substantially revised as noted in the monitoring team’s second site visit in November, 2015. The changes noted for this report articulate a protocol for “APD to provide **ready access** for all needed psychological services including consultation and treatment to APD sworn and civilian staff and their families.”

Results

Based on the monitoring team’s review of work product, and information obtained during the third site visit in March 2016, APD is not yet in compliance with the requirements for this paragraph. The draft copy provided for the third visit did not include all the changes discussed during the second site visit in November 2015. At this point, members of the monitoring team were not able measure completely the progress of APD as it relates to this paragraph. However, members of the monitoring team have reviewed the APD’s submission of SOP 1-14 submitted April 2016 in response to this paragraph. While submitted after the closing date for the third monitor’s report, the changes made to SOP 1-14 comply with the requirements of the paragraph. The monitoring team expects to begin to measure the implementation of this policy in future visits.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.235 Assessing Compliance with Paragraph 248

Paragraph 248 stipulates:

"APD agrees to develop and offer a centralized and comprehensive range of mental health services that comports with best practices and current professional standards, including: readily accessible confidential counseling services with both direct and indirect referrals; critical incident debriefings and crisis counseling; peer support; stress management training; and mental health evaluations."

Methodology

During the third monitor visit, the members of the monitoring team met with the Lead for this paragraph Dr. T Rodgers and APD staff. The monitoring team did not receive an updated copy of the policy SOP 1-14 (Behavioral Sciences Support and Service) from Dr. Rodgers, as requested after the second visit. Dr. Rodgers advised that he was not under contract with APD during the time between the second and third visit. He delivered a draft paper copy of the policy to the monitoring team during this visit. The monitoring team member advised that it would be reviewed and asked for an electronic copy. Dr. Rodgers was asked to submit the policy through the chain for proper review. Responsibility for this paragraph has been assigned to a Lieutenant from APD to develop a peer support program. The lieutenant supplied the monitoring team with a draft copy of the new policy for the peer support program and advised that a copy was submitted through the chain for approval.

Results

SOP 1-14 Behavioral Sciences Support And Services has been approved as of April 2016, outside the dates for this reporting period. The Peer Support Program that is under development in reference to this paragraph is in the review process of the APD and is pending approval.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.236 Assessing Compliance with Paragraph 249

Paragraph 249 stipulates:

"APD shall provide training to management and supervisory personnel in officer support protocols to ensure support services are accessible to officers in a manner that minimizes stigma."

Methodology

During the third site visit members of the monitoring team met with the person charged with the responsibility of responding to this paragraph, Dr. T. Rodgers. SOP 1-14 Behavioral Sciences Support and Service was not made available with any revisions as requested during the second monitor visit, until this visit. Dr. Rodgers advised that a contractual issue with APD did not allow him to supply the documentation needed for this paragraph until this visit. He supplied the monitoring team with a draft copy of the revisions to the SOP and advised that a copy was submitted through the chain for approval. APD is still working to develop training for officer support protocols to management and supervisory personnel. Upon approval of this policy for this paragraph, the required training can be developed.

Results

The Policy mandating compliance with this paragraph is contained in SOP 1-14. This paragraph has been approved as of April 2016, which is outside the reporting period for this report. The training component remains be developed, and future dates for delivery can be set up to reach compliance with this paragraph once the policy is approved. The monitoring team will begin to measure implementation during future visits.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.237 Assessing Compliance with Paragraph 250

Paragraph 250 stipulates:

"APD shall ensure that any mental health counseling services provided APD employees remain confidential in accordance with federal law and generally accepted practices in the field of mental health care."

Methodology

During the third monitor visit, the members of the monitoring team met with the Lead for this paragraph Dr. T Rodgers. This paragraph required additional documentation to support the requirements of the CASA. APD added two supporting documents to this paragraph, a BSD Intake Session form with a Health Insurance Portability and Accountability Act (HIPPA) Statement of Understanding/ Privacy Statement and BSD Annual Check-in Form with notice of consent and confidentiality to fulfill the requirement of confidentiality in accordance with federal law and generally accepted practices in the field of mental health care.

Results

The policy mandating compliance with this paragraph is contained in SOP 1-14. This policy has been approved by the monitoring team as of April 2016, outside the dates for this monitoring period. The monitoring team will begin to measure implementation of this policy in future site visits.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.238 Assessing Compliance with Paragraph 251

Paragraph 251 stipulates:

"APD shall involve mental health professionals in developing and providing academy and in-service training on mental health stressors related to law enforcement and the mental health services available to officers and their families."

Methodology

During the third monitor visit, the members of the monitoring team met with the Lead for this paragraph Dr. T Rodgers. The changes discussed with Dr. Rodgers on the second visit were not delivered to the monitoring team before the third site visit because of contractual issues between Dr. Rodgers and APD. Substantial changes were made prior to the second visit however to satisfy the requirements of this paragraph the policy had to be revised containing the changes discussed during the second visit. Dr. Rodgers delivered a hard copy of a draft policy and submitted a copy through the chain for approval. Although material had previously been submitted for the training aspect of this paragraph, approved training cannot take place until the policy is approved.

Results

SOP 1-14 Behavioral Sciences Support and Service has been approved as of April 2016, a date outside the period covered by the current monitoring report's due dates. Training material can now be reviewed for approval and training dates made available to APD for the monitoring team. The monitoring team will review and measure implementation during future site visits.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.239 Assessing Compliance with Paragraph 252

Paragraph 252 stipulates:

"APD shall develop and implement policies that require and specify a mental health evaluation before allowing an officer back on full duty following a traumatic incident (e.g., officer-involved shooting, officer-involved accident involving fatality, or all other uses of force resulting in death) or as directed by the Chief."

Methodology

During the third monitor visit, the members of the monitoring team met with the Lead for this paragraph Dr. T Rodgers and APD staff. Changes to the policy for this paragraph were discussed during the second visit, specifically involving an officer involved shooting. The policy lacked specificity on how a mental health evaluation was conducted before allowing an officer back on full duty following a traumatic incident. Dr. Rodgers did not supply any update to the policy until this visit. A hard copy was delivered to the monitoring team then and he forwarded a copy through the chain for approval.

Results

On April 2016 SOP 1-14 Behavioral Sciences Support and Service was approved. This was outside the dates for the current monitoring period. The monitoring team will begin to measure implementation of this policy in future site visits.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.240 Assessing Compliance with Paragraph 253

Paragraph 253 stipulates:

"APD agrees to compile and distribute a list of internal and external available mental health services to all officers and employees. APD should periodically consult with community and other outside service providers to maintain a current and accurate list of available providers."

Methodology

During the third monitor visit, the members of the monitoring team met with the Lead for this paragraph Dr. T Rodgers and APD staff. The monitoring visited the various commands within the APD to observe if documentation consisting of internal and external mental health services availability was posted for APD personnel to have easy access to. All the locations visited during this site visit

contained the necessary information and was accessible to all employees of the APD. The BSD Law Enforcement Referral Options and Substance Abuse Programs in the Southwest Command compiles all outside agencies for services. The referrals are made available to all cadets, supervisors, and are available to all APD Personnel upon request.

Results

SOP 1-14 Behavioral Sciences Support and Services has been approved as of April 2016, outside the dates for this monitoring period. The monitoring team will conduct future site visits to measure the implementation of this paragraph to ensure that all documentation required under this policy is the most current information available. The City contends compliance on this paragraph based on policy or practice pre-existing the CASA. The monitoring team disagrees, but will re-assess this paragraph during the next reporting period. As this paragraph is currently not yet due, time remains to reassess the City's compliance assertion; however, the monitoring team is hesitant to declare compliance based on requirements of "City rules and regulations, City ordinances, by-laws, etc." as requested by the City. Such documents ***often*** require translation to promulgated police policy to be effective.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.240 Assessing Compliance with Paragraph 255[43]

Paragraph 255 stipulates:

"APD agrees to ensure its mission statement reflects its commitment to community oriented policing and agrees to integrate community and problem solving policing principles into its management, policies, procedures, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems."

Methodology

Members of the monitoring team reviewed APD's revised and posted mission statement and accompanying narrative that elaborates on principles articulated in the mission statement. Monitoring team member met with APD Communications and Outreach staff on March14, 2016 and April 15, 2016 for further updates.

[43] Paragraph 254 is not evaluated as it is subsumed in 255 and following.

Results

The revised APD mission statement was posted prior to the end of the second reporting period. The revised mission of the APD references "working in partnership with the community … to maintain order, reduce crime, and the fear of crime through education, prevention, and enforcement." In an accompanying narrative, APD elaborates on this partnership and states that it "seeks to expose the root causes of crime and disorder and to eradicate such conditions through aggressive enforcement of laws, ordinances and City policies through positive community elaboration." The accompanying "Vision Statement," adds the following: "The Albuquerque Police Department envisions a safe and secure community where the rights, history, and culture of each citizen are valued and respected. We will achieve this vision by proactively collaborating with the community to identify and solve public safety problems and improve the quality of life in Albuquerque." These revisions address the requirement of having a mission statement reflecting a commitment to community oriented policing. Integration of community and problem solving principles into APD's management systems, policies, procedures, recruitment, training, personnel evaluations, resource deployment systems, tactics, and accountability systems (all processes required to ***implement*** the policy), are currently ongoing and more directly addressed in other paragraphs of the CASA. There were no additional actions taken during the third reporting period on this policy.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.241 Assessing Compliance with Paragraph 256: APD Response to Staffing Plan

Paragraph 256 stipulates:

"As part of the Parties' staffing plan described in Paragraph 204, APD shall realign its staffing allocations and deployment, as indicated, and review its recruitment and hiring goals to ensure they support community and problem oriented policing."

Methodology

On-site interviews were conducted with APD communications and community outreach staff on August 20, 2015, and November 4, 5, 2015. Members of the monitoring team were present to observe the staffing analysis briefing of APD executive staff by the staffing study's author, Dr. Alexander Weiss. Further, monitoring team members made follow up telephone conference calls regarding staffing on December 17, 2015 and January 8, 2016. Monitoring team member met with APD staff on March 14, and April 15, 2016 for updates. Monitoring

Team members reviewed PACT plan and documentation concerning pilot projects.

Results

A staffing analysis was completed by an outside consultant in the first reporting period and released on December 14, 2015. The staffing analysis calls for community policing teams in each area command to focus on supporting community- and problem-oriented policing. APD developed a plan entitled Police and Community Together (PACT) which decentralizes some police functions and would add officers to area commands based on actual workloads. The PACT plan was completed during the third report period and internally briefed. Surveys concerning scheduling were initiated as well. APD is planning a pilot project in one area command. The Pact plan and staffing study was presented to the CPCs for review and community input.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.242 Assessing Compliance with Paragraph 257: Geographic Familiarity of Officers

Paragraph 257 stipulates:

"APD shall ensure that officers are familiar with the geographic areas they serve, including their issues, problems, and community leaders, engage in problem identification and solving activities with the community members around the community's priorities; and work proactively with other city departments to address quality of life issues."

Methodology

Monitoring team members conducted interviews with APD communications and outreach staff on, August 17, 2015 and November 5, 2015. They also reviewed APD issued Special Order 15-13, and attended at problem-oriented policing session on June 22, 2015. Monitoring staff reviewed agendas for Problem-Oriented Policing (POP) sessions during second reporting period. Monitoring staff also previously reviewed APD documentation on distribution of "new bid packets" to APD officers, and conducted telephone interviews with Communications and outreach staff on January 8, 2015. Monitoring team member met with Communications and Outreach staff on March 4, 2016 and April 15, 2016 for further updates including review of POP projects.

Results

APD issued Field Services Bureau Order 15-13 on May 6, 2015 to comply with paragraph 257 of the settlement agreement. The order requires the distribution and completion of a "New Bid" packet to assist sworn personnel in "identifying the geographical areas they serve, identifying community leaders, engage in problem solving practices, and work proactively with other city departments to address these quality of life issues." Sworn personnel are provided a signature page that they then sign, acknowledging receipt of the packet. The signature page will be retained for auditing purposes for a minimum of three years. APD has provided documentation including signed signature pages of officers who have been provided with the packets. Distribution of packets to APD personnel was completed during this reporting period.

There were POP initiatives continued during this reporting period, involving sworn personnel working with other city agencies and community members collaboratively addressed quality of life issues in Albuquerque's neighborhoods. APD is expanding officer participation in such projects. Documentation is being provided to the monitoring team for participating officers on their participation in POP projects.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.243 Compliance with Paragraph 258: Officer Outreach Training

Paragraph 258 stipulates:

"Within 12 months of the Effective Date, APD agrees to provide 16 hours of initial structured training on community and problem oriented policing methods and skills for all officers, including supervisors, commanders, and executives this training shall include:

a) Methods and strategies to improve public safety and crime prevention through community engagement;
b) Leadership, ethics, and interpersonal skills;
c) Community engagement , including how to establish formal partner ships, and actively engage community organizations, including youth, homeless, and mental health communities;
d) Problem-oriented policing tactics, including a review of the principles behind the problem solving framework developed under the "SARA Model", which promotes a collaborative, systematic process to address issues of the community. Safety, and the quality of life;
e) Conflict resolution and verbal de-escalation of conflict and;
f) Cultural awareness and sensitivity training.

These topics should be included in APD annual in-service training. "

Methodology

The monitoring team conducted a detailed review of initial and revised COP curriculum using contemporary community policing concepts and trainings as benchmarks for assessing compliance of the APD COP curriculum.

Results

APD developed curriculum to address the community policing training requirement in the CASA. A proposed training curriculum was delivered to the monitoring team for an initial review during the second reporting period. An initial review of proposed curriculum materials revealed that elements of the content requirements asked for in the CASA were not adequately addressed. Items omitted included: cultural awareness and sensitivity, and establishing maintaining effective community partnerships. Additionally, the monitoring team suggested that APD should use a broader selection of source documentation to develop training curriculum content (more current source material and sources that address building community trust and policing in communities of color or with special populations).

APD submitted a revised version during the third reporting period. The revised revision did address many of the concerns raised by the monitoring team; however, these revisions fell short in some important areas. Members of the monitoring team reviewed the revised version and generated comments based on knowledge and understanding of contemporary concepts and trainings in community policing. The resulting analysis revealed that, while APD addressed many of the concerns raised by the monitoring team in the first version, the revised version still, in some of its training modules, lacked currency and relevance. Source material more than 12 years old was too often used for training content (e.g. “Benefits and Consequences of Street Crackdowns” (2003); “Shifting and Sharing Responsibility” (2005); “Policing in America” (1999). Policing agencies across the nation are currently focusing training efforts around building community trust and promoting collaborative policing practices. Building trust between APD and community members also has special relevance to implementing most aspects of the CASA. The Monitoring team strongly feels that additional materials covering these concepts is critical to an effective COP training program. Other areas of concern were the lack of specifics in the cultural awareness and sensitivity training modules on relating to the major cultural groupings residing in Albuquerque; the need to update the definitions of community policing (current definitions derived from documents are outdated); and training guidance regarding new policy and procedural requirements stemming from the CASA that address officer interactions with community. The Monitoring team has identified updated source material to APD for their consideration in future revisions. These included two recent Department of Justice COPS Office publications entitled: “Building Relationships of Trust;” and “Community Policing Defined.” The Monitoring team does not view

these sources or others equally as current and relevant as “supplemental” but rather essential to meeting this CASA requirement.

As further guidance to help ensure that the proposed training attains minimal compliance thresholds, we suggest that APD incorporate the following specific information/materials into the APD COP training:

1) The COPS Office, recognizing a need to infuse police training with information about how to build trust, developed specific training materials for police departments across the nation to help meet this important policing objective. These materials which include actual training modules are available and can be found in the 2014 Department of Justice COPS Office publication entitled ”Building Relationships of Trust.” These materials provide concepts on building relationships of trust and its importance to gaining police legitimacy and crime reduction in a community, best practices for building relationships of trust for line officers, and outlining potential challenges in building trust and how to overcome them. (This addition could replace some current sections of APD’s “Crime Prevention through Community Engagement” module).

2) Update “Evolution of Policing” module with updated definitions and concepts of Community policing. Current documentation is outdated. The updated definitions can be located in a 2014 published revision of a Department of Justice COPS Office publication entitled “Community Policing Defined.”

3) The current APD module entitled “Cultural Awareness and Cultural Sensitivity” is too generic. It fails to address cultural awareness and sensitivities of specific cultural groupings residing in Albuquerque. A source for some updated and more related information can be found in a 2016 Department of Justice COPS Office publication entitled “How to Serve Diverse Communities” (Number 2).

4) In response to CASA paragraphs 257, 259, and 263, APD initiated policy and procedural changes regarding police officer outreach, community stakeholder contacts, attending community meetings, and tracking participation in community events. APD COP training should reflect and train to these changes. (Information responsive to this recommendation could be added to the” Crime Prevention through Community Engagement” module). ‘

The publications referenced can all be located and accessed through the Department of Justice COPS Office website.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.244 Assessing Compliance with Paragraph 259: Measuring Officer Outreach

Paragraph 259 stipulates:

"Within six months of the Effective Date, APD agrees to develop and implement mechanisms to measure officer outreach to a broad cross-section of community members, with an emphasis on mental health, to establish extensive problem solving partnerships, and develop and implement cooperative strategies that build mutual respect and trusting relationships with this broader cross section of stakeholders."

Methodology

On-site interviews were conducted with communications and outreach staff on August 20, 2015, and November 4, 5 2015. Reviews of meeting agendas and attendees lists for meetings with mental health and other advocacy groups were also assessed. The monitoring team also reviewed other collaborative meeting agendas and minutes, and reviewed APD memoranda relating to their progress in implementing paragraph 259. Monitoring team members met with APD public information and communications staff on March 13, 2016, and April 15, 2016 for further updates and to review additional documentation.

Results

The ABQ Collaborative on Police-Community Relations launched by the City's Office of Diversity and Human Rights (ODHR) identified 25 stakeholder groups and conducted facilitated discussions in order to provide opportunities for input on improving police-community partnerships. As a result of these meetings, APD is developing a proposed plan for ongoing outreach and partnerships with community stakeholders. The plan has been updated and finalized, and some of the recommended actions are being implemented. An outside team of community stakeholders is proposed by APD to track progress on implementation. Additionally, plans call for all actionable recommendations from the ODHR process to be forwarded to Community Policing Councils for further consideration. APD is also working to establish a community calendar that will capture community outreach events and data pertaining to attendance, topics discussed, recommendation made and stakeholders identified. Tracking data from the community calendars will also be cross-referenced with the area command tracking sheets and the Monthly Report Tracking Sheets used to track individual officer requirements for attendance and participation in community meetings. APD plans to also have officers add notes in the Monthly Report Tracking Sheets to reflect concerns raised and issues that were addressed during these meetings. These mechanisms to measure officer outreach to a

broad section of community members were being modified during the third reporting period based in part on feedback from the second monitoring report.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.245 Compliance with Paragraph 260: PIO Programs in Area Commands

Paragraph 260 stipulates:

"APD shall develop a Community Outreach and Public Information program in each area command."

Methodology

Members of the monitoring team conducted on-site interviews with community outreach and public information staff on August 20, 2015, and November 4-5 2015. Team members conducted telephone interviews with public information staff on December 10, 2015 and January 8, 2016, to assess the status of activities related to this paragraph. A monitoring team member met with Communications and Outreach staff on March 13, 2016 and April 15, 2016. Team members continue to monitor APD website and activities.

Results

During the third reporting period, APD has continued its work on enhancing websites for each of the six command areas. During this reporting period the command websites have launched a chat feature with which the Area Commander and/or Crime Prevention Specialist can directly answer questions and address concerns interactively. These sites previously and currently capture crime information, crime prevention materials, photographs of commanders and officers who work in that area command, schedules of upcoming events, other news items, how to report crimes, and how to file complaints or recommendations for officer commendations. APD has also established social media outreach that includes Facebook, Twitter, and netdoor.com. APD reports that the Twitter account now reports up to 30,000 followers during the third reporting period with about 80,000 impressions each month. The APD Facebook page has now reached nearly 23,000 followers during the third reporting period. Through Facebook, at the recommendation of the Monitoring Team, APD has opened the site's messaging feature and is directly communicating with individuals and addressing their community concerns.

APD has also established the "coffee with a cop" program in each command area as well. ADP is currently developing a process that will capture the number and nature of police issues identified by the community, and the

resolutions of those issues. The monitoring team considers inclusion of tangible community feedback an important aspect of community outreach, and encourages APD use of CPCs to help accomplish this objective.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.246 Compliance with Paragraph 261: Community Outreach in Area Commands

Paragraph 261 stipulates:

"The Community Outreach and Public Information program shall require at least one semi-annual meeting in each Area Command that is open to the public. During the meetings, APD officers from the Area command and the APD compliance coordinator or his or her designee shall inform the public about the requirements of this Agreement, update the public on APD's progress meeting these requirements, and address areas of community concern. At least one week before such meetings, APD shall widely publicize the meetings."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff on August 20, 2015 and November 4, 2015. Follow-up telephone interviews with communications and outreach staff were conducted on December 17, 2015 and January 8, 2016. Team member met with Communications and Outreach staff on March 14, 2016 and April 15, 2016.

Results

APD is in the process of scheduling these meetings during the month of May to coincide with the regularly scheduled CPC meetings. APD plans to use a range of media tools and outlets to publicize these meetings. APD indicates that meetings will include APD senior officials and the compliance monitors. These meetings will review CASA requirements; note progress made in attaining compliance, and addresses any related community concerns. No output reflecting other than planning activities in response to this requirement were available from APD for the third reporting period.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.247 Compliance with Paragraph 262: Community Outreach Meetings

Paragraph 262 stipulates:

"The Community Outreach and Public Information meeting shall, with appropriate safeguards to protect sensitive information, include summaries, of all audits and reports pursuant to this Agreement and any policy changes and other significant action taken as a result of this Agreement. The meetings shall include public information on an individual's right and responsibilities during a police encounter."

Methodology

On-site **i**nterviews with APD communications and community outreach staff were conducted on August 20, 2015 and November 4-5 2015. Follow up telephone interviews were conducted by members of the monitoring team on December 17, 2015 and January 8, 2016. Monitoring team members met with APD Communications and Outreach team on March 14, 2016 and April 15, 2016. The monitoring team also continues on-going reviews of APD website for meeting information and other activities representing outreach. The monitoring team also reviewed documentation regarding safeguarding sensitive information.

Results

During the third reporting period, APD developed written guidance on safeguards to protect sensitive information and finalizing information on an individual's right and responsibilities during a police encounter. In preparation for these meetings. APD also indicates that agenda for these meetings will also include directions on how the public can access public records and information on an individual's right and responsibilities during a police encounter. To date, APD still has not conducted any actual meetings in response to this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.248 Compliance with Paragraph 263: APD Attendance at Community Meetings

Paragraph 263 stipulates:

"For at least the first two years of this Agreement, every APD officer and supervisor assigned to an Area command shall attend at least two community meetings or other meetings with residential, business, religious, civic or other community-based groups per year in the geographic area to which the officer is assigned."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff on August 20, 2015, and November 4-5, 2015. The team also reviewed SOP 3-02-01, related to this requirement, and reviewed APD memoranda on implementation of paragraph 263 of the CASA. A team member met with Communications and Outreach staff on March 14, 2016 and April 15, 2016. Team members also reviewed postings of excel spread sheets documenting when officers are attending these meetings, where they are, and with what groups relating to implementation of this paragraph.

Results

APD previously drafted SOP 3-02-1 that establishes both the requirement and the tracking mechanisms needed to implement this requirement. The SOP requires all area commanders to ensure their sworn, uniformed personnel attend community meetings in uniform and document time and attendance of meeting, duration of meeting, and issues concerns and or any positive input provided by community members. This information is to be documented on the Officers' Monthly Report and tracked through excel spreadsheets kept by each area commander. In addition, this information will be cross-checked with data collected from reports resulting from use of community calendars. The compilation of this data apparently will also be maintained in other appropriate data bases and compiled as part of APDs annual report that will provide data on the number of contacts, content and quality of those contacts, stakeholders identified and collaborative opportunities achieved. APD will also include attendance details in future monthly reports. With the exception of publication of the SOP, all of these activities are "planned." No data from the field were available to the monitoring team as of the date of this report.

Primary: **In Compliance**
Secondary: **Not in Compliance**
Operational: **Not in Compliance**

4.7.249 Compliance with Paragraph 264: Crime Statistics Dissemination

Paragraph 264 stipulates:

"APD shall continue to maintain and publicly disseminate accurate and updated crime statistics on a monthly basis."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff August 20, 2015 and November 4-5 2015. A monitoring team member met with communications and outreach

staff on March 14, 2016 and April 15, 2016. The monitoring team also continues on-going review of the APD website**.** Members of the monitoring team also assessed supervisory review documentation.

Results

Monitoring team reviews indicate that APD continues to provide crime information on the City/APD website, and reportedly at monthly community meetings, through press releases, and in each area command. The information also maps locations of crimes in near time, and is, in the monitoring team's opinion, an excellent display of up-to-date information on the web. The monitoring team will continue to assess secondary and operational issues.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.250 Compliance with Paragraph 265: Posting Monitor's Reports

Paragraph 265 stipulates:

"APD audits and reports related to the implementation of this Agreement shall be posted on the City or APD website with reasonable exceptions for materials that are legally exempt or protected from disclosure."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff on August 20, 2015, and November 4-5, 2015. Follow up telephone interviews with APD staff were conducted on December 17, 2015 and January 8, 2016. Monitoring team members met with communications and outreach staff on March 14, 2016 and April 15, 2016. The monitoring team continues ongoing review of APD's website and review of guidelines for reasonable exceptions to posting audits and reports.

Results

APD posted the CASA on their website and the monitoring report from the first and second reporting period. The reports are posted as DOJ reports instead of CASA monitoring reports.[44] APD has developed guidelines for determining any

[44] The monitoring team has ***repeatedly*** reminded the APD and the City (both in person and through monitoring reports) that this practice fails to exhibit APD and City "ownership" of changes currently being implemented, and runs contrary to the spirit and intent of the CASA. The monitoring team (and thus its reports) are not employees of the DOJ, but are independent of the Parties, reporting directly to the Court.

reasonable exceptions to posting audits and reports relating to the CASA. The monitoring team will continue to assess secondary and operational issues. The City contends compliance with this paragraph based on their contention that "settlement related documents are posted on [the] APD website." In the monitor's opinion, this fails to meet the requirements of the paragraph to post "audits and reports." For example, an earlier report critical of contracting and funding practices for training in crisis intervention was not posted on the City's or APD's website, based on our review.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.251 Compliance with Paragraph 266: CPCs in Each Area Command

Paragraph 266 stipulates:

"The City shall establish Community Policing Councils in each of the six Area Commands with volunteers from the community to facilitate regular communication and cooperation between APD and community leaders at the local level. The Community Policing Councils shall meet, at a minimum, every six months."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff on August 20, 2015, and November 4-5 2015. Follow up telephone interviews with APD staff were conducted on December 17, 2015 and January 8, 2016. The monitoring team also reviewed communications and other artifacts related to this paragraph, and attended CPC meetings and interviewed participants in CPC meetings held by APD. Monitoring member met with APD communications and outreach team on March 14, 2016 and April 15, 2016. Team member met with CPC chairs and some voting members on April 16, 2016.

Results

Community policing Councils have been established in each of the six Area commands since November, 2014. During this and prior reporting periods each of the six Councils met once a month. APD reports that the establishment of the Councils was widely communicated and that volunteer members were solicited from throughout the community. Some community members dispute this and complained about the lack of broad notification of meeting times and locations in prior reporting periods. There were similar complaints voiced by community members during the third reporting period. Attendance and participation in CPCs have not met the goals of APD, by their own admission. During the third reporting period, attendance is uneven across the six command areas. Actual

documentation of attendance and background information on participants is not consistently available, although efforts are now underway to enhance collection of that information. The CPCs, during the third reporting period, improved in their regular communication and cooperation between APD and community leaders at the local level. APD staff also asked for technical assistance during the third reporting period to assist CPCs in outreach efforts, and to improve overall operations. The City contends compliance on this paragraph based on policy or practice pre-existing the CASA. The monitoring team disagrees, but will re-assess this paragraph during the next reporting period. As this paragraph is currently not yet due, time remains to reassess the City's compliance assertion; however, the monitoring team is hesitant to declare compliance based on requirements of "City rules and regulations, City ordinances, by-laws, etc." as requested by the City. Such documents ***often*** require translation to promulgated police policy to be effective.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.252 Compliance with Paragraph 267: Selection of Members of the CPCs

Paragraph 267 stipulates:

"In conjunction with community representatives, the City shall develop a mechanism to select the members of the Community Policing Councils, which shall include a representative cross section of community members and APD officers, including for example representatives of social services providers and diverse neighborhoods, leaders in faith, business, or academic communities, and youth. Members of the Community Policing Councils shall possess qualifications necessary to perform their duties, including successful completion of the Citizen Police Academy."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff on August 20, 2015 and November 4-5, 2015. The monitoring team staff also participated in a CPC meeting on November 4, 2015. · Follow up telephone interviews were conducted, and the monitoring team conducted a review of meeting agendas, and minutes from Council meetings where available the third reporting period. Monitoring team member met with APD outreach and communications staff on March 14, 2016 and April 15, 2016, and met with CPC Chairs and voting members on April 16, 2016. Monitoring team members also reviewed APD developed guidance on review of CPC recommendations.

Results

Applications for Council membership were posted on line. Only those persons with criminal histories were eliminated from consideration for membership. Initially ABQ city employees and representatives from select stakeholder groups interviewed prospective members. Currently, there is a lack of clarity about the membership appointment process. APD emphasized identifying and selecting members with people skills. Each member is required to do a ride along, and as stipulated in the CASA, and must complete the Police Citizen Academy (PCA). The 12-week requirement for PCA is posing a hardship for many members to complete and APD is considering a modified schedule to accommodate members.

APD acknowledges a need to gather more background information on members and prospective members to help ensure and promote a cross-sectional representation of voting members and participants. The CASA also requires that the selection mechanism be developed in conjunction with community members, and APD is working with the CPCs to consider modifications of the CPC voting membership requirements, including the number of voting members. APD is open to expanding membership and to conducting additional outreach to ensure a greater cross section of community representation. In fact, APD requested technical assistance during the third reporting period, in part to devise strategies to expand CPC voting membership and participation and make it more representative of the communities they serve (technical assistance delivery started in the next reporting period). For this reporting period, there remains no documentation that current members represent a cross section of community members from each CPC as required in the CASA. The City contends compliance with this paragraph "because the CPC are established." Such a contention ignores the specific composition requirements of this paragraph relating to membership in the CPC. The monitor considers this a serious deficiency in CPC membership at this time.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.253 Compliance with Paragraph 268: Resourcing the CPCs

Paragraph 268 stipulates:

"The City shall allocate sufficient resources to ensure that the Community Policing Councils possess the means, access, training, and mandate necessary to fulfill their mission and the requirements of this Agreement. APD shall work closely with the Community Policing Councils to develop a comprehensive community policing approach that collaboratively identifies and implements strategies to address crime and safety issues. In order to foster this collaboration, APD shall appropriate information and documents with the Community Policing Councils, provided adequate safeguards are taken not to disclose information that is legally exempt or protected from disclosure."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff August 20, 2015, and November 4-5, 2015. Team members also Participated in the CPC meeting on November 4, 2015. Follow up telephone interviews were conducted on December 17, 2015 and January 8, 11 2016. Team members also reviewed CPC minutes where available, for reporting period. They also reviewed APD posted information entitled, "Community Policing Council Recommendation Process." Team members met with APD communications and outreach staff on March 14, 2016 and April 15, 2016, and met with CPC chairs and voting members on April 16, 2016.

Results

The City has allocated meeting space, and provides a contracted facilitator to support three of the six CPCs. The contracted facilitator ensures that each meeting is conducted in an orderly fashion and that meeting objectives are attained. The City also provides some administrative support including copies of agendas, attendance sheets, etc. The City has also created websites for CPCs. The CPCs have not developed to a point where they demonstrate evidence of formulating recommendations for comprehensive community policing approaches that collaboratively identify and implement strategies to address crime and safety issues. To address this need, APD requested technical assistance for CPCs during this reporting period (technical assistance started in the next reporting period). APD has developed a more formalized process that primarily focuses on the internal review of the recommendations. The process requires a written response by the chairperson of the CPC submitting the recommendation to APD. Both the recommendation and the APD response are then posted on the APD CPC website. At this point, however, this guidance fails to assist the CPCs in developing their own internal processes in considering and arriving at recommendations and or resolutions to articulated issues within a given CPC's area. The APD requested technical assistance that will also help CPCs develop these internal processes. During the third reporting period, CPC facilitation support was limited to only three of the six CPCs. This is problematic and represents a retreat by the city of CPC support.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.254 Compliance with Paragraph 269: APD-CPC Relationships

Paragraph 269 stipulates:

"APD shall seek the Community Policing Councils assistance, counsel, recommendations, or participation in areas including:

a) Reviewing and assessing the propriety and effectiveness of law enforcement priorities and related community policing strategies, materials, and training;
b) Reviewing and assessing concerns or recommendations about specific APD policing tactics and initiatives;
c) Providing information to the community and conveying feedback from the community;
d) Advising the chief on recruiting a diversified work force
e) Advising the Chief on ways to collect and publicly disseminate data and information including information about APDs compliance with this Agreement, in a transparent and public –friendly format to the greatest extent allowable by law."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff on August 20, 2015 and November 4-5 2015. Team members also reviewed CPC minutes during the second reporting period, where they were available. The monitoring team reviewed proposed recommendations from each CPC during the second reporting period. Telephone interviews with APD Communications staff and outreach staff were conducted on January 8-11, 2015. A monitoring team member met with APD communications and outreach staff on March 14, 2016 and April 15, 2016. A monitoring team member also met with CPC chairs and voting members on April 15, 2016, and reviewed CPC websites for propose recommendations during reporting period.

Results

During the second reporting period CPCs began to generate some recommendations for consideration by APD. These recommendations included the following:

1) Development of a system to coordinate mental health resources to include hospitals, charities, and other mental health resources, and to include knowledgeable and experienced APD representatives from the very beginning and through-out the planning process.
2) Appropriate continuing advertising of alarm system registration requirements should be directed to allow more new owners installing their own systems to understand and comply with the ordinance.
3) That APD appoint an agency or individual to monitor active news stories that involve officers in a positive manner. Once identified the officer would be contacted for their approval and input to prepare the timely news release.

4) That the Albuquerque City Council, the Mayor's office and APD petition the state legislature to exempt the City from the upcoming changes to PERA regulations regarding undermanned public safety departments.

For the third reporting period, there were additional recommendations made by CPCs, and many under consideration. While the Monitoring team is aware of these recommendations, APD has not posted most of them, and has not provided any further documentation. Nor is there tangible evidence indicating that APD has taken action on these recommendations.

The Monitoring team is unaware of any specific recommendations by the CPCs regarding law enforcement priorities and related community policing strategies, specific APD policing tactics, or how to recruit a more diversified work force as called for in the CASA. The nature of recommendations thus far may reflect a need for CPCs to have greater exposure to APD practices and best practices from other jurisdictions. APD requested technical assistance on these points, and will also assess the need for training of CPC leadership on their mission and role, and identify ways to assist in efforts to recruit more diverse membership and participation.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.255 Compliance with Paragraph 270: CPC Annual Reports

Paragraph 270 stipulates:

"The Community Policing Councils shall memorialize their recommendations in annual public report that shall be posted on the City website. The report shall include appropriate safeguards not to disclose information that is legally exempt or protected from disclosure."

Methodology

The monitoring team conducted interviews with APD communications and outreach staff on August 20, 2015. Monitoring team member met with communications and outreach staff on March 14, 2016 and April 15, 2016.

Results

Personnel interviewed were cognizant of the established timeline, and appear committed to meeting the deadlines as established. Auditable work has yet to be produced.

Primary: **Not Yet Due**

Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.256 Compliance with Paragraph 271: CPOA Implementation

Paragraph 271 stipulates:

"The City shall implement a civilian police oversight agency ("the agency") that provides meaningful, independent review of all citizen complaints, serious uses of force, and officer-involved shootings by APD. The agency shall also review and recommend changes to APD policy and monitor long-term trends in APD's use of force."

Methodology

The monitor reviewed CPOA's posted mission statement and website, had several meetings with CPOA personnel during the site visit, visited the CPOA office, and reviewed CPOA literature, training records and documents related to the civilian complaint and CPOA process. The monitor also had meetings with the POB Chair and attended a POB meeting, as well as reviewed a random selection of CPOA investigations that were completed during this monitoring period.

Results

Albuquerque has implemented the CPOA by Ordinance 9-4-1-14. The monitor has received the CPOA policies and procedures and has reviewed, and approved them, but that occurred outside this reporting period.

The monitor notes that the CPOA mission statement highlighted on its website provides:

The Mission of the Civilian Police Oversight Agency and purpose of new revisions to Police Oversight pursuant to City Law Sections 9-4-1-1 through 9-4-1-14 are to:

(A) Foster and perpetuate policing policies and practices that effectively maintain social order and which at the same time foster mutual trust and cooperation between police and civilians;

(B) Ensure that the civilian police oversight body functions as independently as possible from the executive and legislative branches of government of the City of Albuquerque;

(C) Provide civilians and police officers a fair and impartial system for the investigations and determinations on civilian police complaints;

(D) Gather and analyze data on trends and potential issues

(E) Provide policy guidance to the City Council, the Mayor and the Chief of Police

A review by the monitor of randomly selected CPOA investigations completed during this monitoring period site revealed independent review of citizen complaints. In addition, based on the mission statement cited above, meetings with CPOA personnel and visits to the CPOA office, as well as attendance at a POB meeting, the monitor finds CPOA to be committed to meaningful, independent review of citizen complaints.

The monitor has pointed out in paragraph 162 the problem with backlogged cases and untimely CPOA investigations. The monitor has observed improvement in this area. Until an effective system is in place for CPOA to complete its investigations within 90 days (or 120 days with an approved extension) and for the POB to approve the Executive Director's recommendations to the Chief in time for the imposition of discipline, CPOA will not be able to achieve the "meaningful review" standard required in this paragraph.

The monitor notes as another positive step that the CPOA is in the process of hiring an analyst to monitor long-term trends in APD's use of force and to review and recommends changes to APD policy. The monitor will focus in future site visits on CPOA's efforts to assess long term trends and need for policy changes. The City contends compliance on this paragraph based on policy or practice pre-existing the CASA. The monitoring team disagrees, but will re-assess this paragraph during the next reporting period. As this paragraph is currently not yet due, time remains to reassess the City's compliance assertion; however, the monitoring team is hesitant to declare compliance based on requirements of "City rules and regulations, City ordinances, by-laws, etc." as requested by the City. Such documents ***often*** require translation to promulgated police policy to be effective.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.257 Assessing Compliance with Paragraph 272: Independence and Accountability of CPOA

Paragraph 272 stipulates:

"The City shall ensure that the agency remains accountable to, but independent from, the Mayor, the City Attorney's Office, the City Council, and APD. None of these entities shall have the authority to alter the agency's findings, operations, or processes, except by amendment to the agency's enabling ordinance."

Methodology

The monitor had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and literature and documents related to the civilian complaint and CPOA process, and attended a POB meeting.

Results

A review of the applicable Ordinance and observations by the monitor demonstrates that the CPOA remains accountable to, but independent from, the Mayor, the City Attorney's Office, the City Council, and APD. (See also, Results, paragraph 271).

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.258 Assessing Compliance with Paragraph 273: Requirements for Service of CPOA Members

Paragraph 273 stipulates:

"The City shall ensure that the individuals appointed to serve on the agency are drawn from a broad cross-section of Albuquerque and have a demonstrated commitment to impartial, transparent, and objective adjudication of civilian complaints and effective and constitutional policing in Albuquerque."

Methodology

The monitor reviewed the CVs and backgrounds of the appointed members of the CPOA (POB members) and the CPOA Ordinance, had several meetings during the site visit with members of the CPOA, and had a meeting with the POB Chair and attended a POB meeting in which the monitor met members of the POB.

Results

The Ordinance sets forth the requirements of this paragraph for members of the Police Oversight Board.

The monitor was able to review the CVs and background of members of the POB, as well as observe them in a POB meeting. The monitor finds their background and commitment to be in compliance with this paragraph

Primary: **In Compliance**

Secondary: **In Compliance**
Operational: **In Compliance**

4.7.259 Assessing Compliance with Paragraph 274: CPOA Pre-Service Training

Paragraph 274 stipulates:

"Within six months of their appointment, the City shall provide 24 hours of training to each individual appointed to serve on the agency that covers, at a minimum, the following topics:

a) **This Agreement and the United States' Findings Letter of April 10, 2014;**
b) **The City ordinance under which the agency is created;**
c) **State and local laws regarding public meetings and the conduct of public officials;**
d) **Civil rights, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable uses of force;**
e) **All APD policies related to use of force, including policies related to APD's internal review of force incidents; and**
f) **Training provided to APD officers on use of force."**

Methodology

The monitor reviewed training records of the appointed members of the CPOA (POB members) and the CPOA Ordinance, had several meetings during the site visit with members of the CPOA and visited the CPOA office, met with the POB Chair and attended a POB meeting in which the monitor met all members of the POB. The monitor also reviewed relative to a previous site visit PowerPoint presentations, proposed by legal counsel to the CPOA, of civil rights and Fourth Amendment training and the CASA.

Results

The Ordinance sets forth the initial training requirements (within the first six months of the members' appointment) required by this paragraph, although it does not specify that these training requirements must equal 24 hours.

The monitor review of CPOA training records shows that the appointed members of the CPOA (POB members) are in compliance with the training requirements of this paragraph.

The monitor finds the proposed Civil Rights, Fourth Amendment and CASA training is professional and appropriately addresses the subject matter required by the CASA.

Primary: **In Compliance**

Secondary: **In Compliance**
Operational**: In Compliance**

4.7.260 Assessing Compliance with Paragraph 275: CPOA Annual Training

Paragraph 275 stipulates:

"The City shall provide eight hours of training annually to those appointed to serve on the agency on any changes in law, policy, or training in the above areas, as well as developments in the implementation of this Agreement."

Methodology

The monitor reviewed training records of the appointed members of the CPOA (POB members), had several meetings during the site visit with members of the CPOA and visited the CPOA office, met with the POB Chair and attended a POB meeting in which the monitor met all members of the POB. The monitor also reviewed relative to a previous site visit PowerPoint presentations, proposed by legal counsel to the CPOA, of civil rights and Fourth Amendment training and the CASA. (See also, Methodology, paragraph 274).

Results

The CPOA is still within time to complete the annual training requirement for members of the POB. The City contends compliance on this paragraph based on policy or practice pre-existing the CASA. The monitoring team disagrees, but will re-assess this paragraph during the next reporting period. As this paragraph is currently not yet due, time remains to reassess the City's compliance assertion; however, the monitoring team is hesitant to declare compliance based on requirements of "City rules and regulations, City ordinances, by-laws, etc." as requested by the City. Such documents ***often*** require translation to promulgated police policy to be effective.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.261 Assessing Compliance with Paragraph 276: CPOA Ride-alongs

Paragraph 276 stipulates:

"The City shall require those appointed to the agency to perform at least two ride-alongs with APD officers every six months."

Methodology

The monitor had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and literature and documents related to the civilian complaint and CPOA process, and reviewed CPOA training records.

Results

The Ordinance forming and empowering the CPOA sets forth the requirements of this paragraph for members of the POB. The monitor reviewed training records demonstrating operational compliance with this paragraph during this site visit.

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.262 Assessing Compliance with Paragraph 277: CPOA Authority and Resources to Make Recommendations

Paragraph 277 stipulates:

"The City shall provide the agency sufficient resources and support to assess and make recommendations regarding APD's civilian complaints, serious uses of force, and officer- involved shootings; and to review and make recommendations about changes to APD policy and long-term trends in APD's use of force."

Methodology

The monitor had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and literature and documents related to the civilian complaint and CPOA process, and reviewed training records and staffing of the CPOA.

Results

The Ordinance empowering the CPOA requires that the agency employ "such staff as necessary to carry out its functions . . . subject to budget sufficiency ..." The Ordinance further authorizes and directs CPOA compliance with the tasks of this paragraph. The monitor has not reviewed any other policies, rules and/or procedures of the CPOA that set forth the requirements of this paragraph at that time.

The monitor visited the CPOA offices and assessed the sufficiency of office space, equipment, and other facilities. The office was appropriately housed in a facility separate from the City of Albuquerque/Bernalillo Government Center, the APD and APD substations. The office appeared to contain adequate space for conducting business.

The monitor reviewed a Table of Organization for the Agency. The monitor observed that that Community Outreach position has been filled and all CPOA positions were filled as of the time of the site visit.

The monitor notes as another positive step that the CPOA is in the process of hiring an analyst to monitor long-term trends in APD's use of force and to review and recommends changes to APD policy. The monitor will focus in future site visits on CPOA's efforts to assess long term trends and need for policy changes.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.263 Assessing Compliance with Paragraph 278: CPOA Budget and Authority

Paragraph 278 stipulates:

"The City shall provide the agency a dedicated budget and grant the agency the authority to administer its budget in compliance with state and local laws. The agency shall have the authority to hire staff and retain independent legal counsel as necessary."

Methodology

Members of the monitoring team had several meetings during the site visit with members of the CPOA, visited the CPOA office, and reviewed the CPOA Ordinance, table of organization and training records.

Results

The Ordinance empowering the CPOA sets forth the requirements of this paragraph. Funding is required to be, at a minimum, ½% of APD's annual operation budget. Independent legal counsel has been hired for the CPOA, and observations of the CPOA and interviews of the CPOA Director and staff demonstrates full compliance with this paragraph. (See also, Results, paragraphs 271 and 272).

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.264 Assessing Compliance with Paragraph 279: Full-Time CPOA Investigative Staff

Paragraph 279 stipulates:

"The agency shall retain a full-time, qualified investigative staff to conduct thorough, independent investigations of APD's civilian complaints and review of serious uses of force and officer-involved shootings. The investigative staff shall be selected by and placed under the supervision of the Executive Director. The Executive Director will be selected by and work under the supervision of the agency. The City shall provide the agency with adequate funding to ensure that the agency's investigative staff is sufficient to investigate civilian complaints and review serious uses of force and officer-involved shootings in a timely manner."

Methodology

The monitoring team had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and documents related to the civilian complaint and CPOA process, and reviewed CPOA table of organization. The monitoring team also reviewed a random sample of CPOA investigations completed during the monitoring period and attended a POB meeting.

Results

The Ordinance establishing the CPOA sets forth the requirements of this paragraph. Funding is required to be, at a minimum, ½% of APD's annual operation budget. Observation of the CPOA, interviews of the CPOA Director and staff, and review of completed CPOA investigations indicate primary compliance with this paragraph.

Based on observation of the CPOA and interviews of the CPOA Director and staff, and the reduction in backlogged investigations, this budget appears to be adequate as of this site visit. Despite what now appears to be sufficient resources, the monitor is concerned about the CPOA backlog and the time it takes for investigations to be completed. Investigations and recommendations must be completed and made on a timely basis before operational compliance can be achieved for this paragraph. The monitor has observed and commented on the improvement in backlog reduction this monitoring period. (See also, Results, Paragraph 162).

The monitor will focus next site visit on the continued reduction of the backlog, the timeliness of investigations, and the ability of having POB approving the recommendations of the Executive Director and forwarding to the Chief in accordance with the time requirements of imposing discipline.

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.265 Assessing Compliance with Paragraph 280: Receipt and Review of Complaints by CPOA

Paragraph 280 stipulates:

"The Executive Director will receive all APD civilian complaints, reports of serious uses of force, and reports of officer-involved shootings. The Executive Director will review these materials and assign them for investigation or review to those on the investigative staff. The Executive Director will oversee, monitor, and review all such investigations or reviews and make findings for each. All findings will be forwarded to the agency through reports that will be made available to the public on the agency's website."

Methodology

The monitor reviewed the CPOA Ordinance and website, had several meetings during the site visit with members of the CPOA and visited the CPOA office, attended a POB meeting and reviewed a random sample of CPOA investigations completed during the monitoring period.

Results

The existing CPOA Ordinance sets forth the requirements as stipulated in this paragraph. The monitor finds the Executive Director to be fully compliant with the tasks of this paragraph. CPOA findings are made available to the public through the CPOA website/POB meeting agenda and are in proper redacted form to protect the privacy of complainants as well as subjects and witnesses.

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.266 Assessing Compliance with Paragraph 281: Prompt and Expeditious Investigation of Complaints

Paragraph 281 stipulates:

"Investigation of all civilian complaints shall begin as soon as possible after assignment to an investigator and shall proceed as expeditiously as possible."

Methodology

Members of the monitoring team had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and documents related to the civilian complaint and CPOA process, and reviewed a random selection of CPOA investigations that were completed during this monitoring period. The monitor also reviewed statistics supplied by the CPOA regarding the reduction of the CPOA backlog.

Results

The Ordinance sets forth the requirements of this paragraph in an acceptable manner.

A review by the monitor of randomly selected CPOA investigations completed during this monitoring period reveals investigations are assigned to an investigator within a reasonable time of receipt of the complaint.

On the other hand the investigations have generally not proceeded as expeditiously as possible, or as required for the imposition of discipline under the CBA. (See also, Results, paragraphs 162 and 191).The monitor has commented on the backlog of CPOA investigations and the current reduction of backlogged cases and improvement in the timeliness of completing investigations and having the recommendations of the Executive Director - approved by the POB – to the Chief in time for the imposition of discipline. (See also, Results, paragraphs 279, 285).

Primary: **In Compliance**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.267 Assessing Compliance with Paragraph 282: CPOA Access to Files

Paragraph 282 stipulates:

"The City shall ensure that the agency, including its investigative staff and the Executive Director, have access to all APD documents, reports, and other materials that are reasonably necessary for the agency to perform thorough, independent investigations of civilian complaints and reviews of serious uses of force and officer-involved shootings. At a minimum, the City shall provide the agency, its investigative staff, and the Executive Director access to:

a) all civilian complaints, including those submitted anonymously or by a third party;
b) the identities of officers involved in incidents under review;
c) the complete disciplinary history of the officers involved in incidents under review;
d) if requested, documents, reports, and other materials for incidents related to those under review, such as incidents involving the same officer(s);
e) all APD policies and training; and

f) if requested, documents, reports, and other materials for incidents that may evince an overall trend in APD's use of force, internal accountability, policies, or training."

Methodology

The monitoring team reviewed the CPOA Ordinance, had several meetings during the site visit with members of the IAB and CPOA, visited the CPOA office, attended a POB meeting, and reviewed a random sample of CPOA investigations completed during the monitoring period.

Results

The Ordinance provides that the CPOA Director "shall have access to any Police Department information or documents that are relevant to a civilian's complaint, or to an issue which is ongoing at the CPOA." This language is broad enough to encompass subparagraphs a through f of this paragraph.

Based on observation and interviews it continues to appear that the IAB and CPOA work cooperatively. There were no complaints lodged with the monitor concerning the CPOA not having access to needed information, and completed investigations certainly indicate the CPOA has had appropriate access.

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.268 Assessing Compliance with Paragraph 283: Access to Premises by CPOA

Paragraph 283 stipulates:

"The City shall provide reasonable access to APD premises, files, documents, reports, and other materials for inspection by those appointed to the agency, its investigative staff, and the Executive Director upon reasonable notice. The City shall grant the agency the authority to subpoena such documents and witnesses as may be necessary to carry out the agency functions identified in this Agreement."

Methodology

The monitoring team had several meetings during the site visit with members of the IAB and CPOA, reviewed CPOA literature and documents related to the civilian complaint and CPOA process, and reviewed the CPOA website and ordinance as well as a random selection of CPOA investigations that were completed during this monitoring period.

Results

Although the Ordinance provides that the CPOA Director shall have access to any Police Department information or documents that are relevant to a civilian's complaint or to an issue that is ongoing at the CPOA, it is silent on subpoena power or the authority to compel the presence of witnesses. The CPOA's authority to subpoena documents and witnesses is contained in the CPOA Policies and Procedures, currently under review. It is expected that upon approval of the Policies and Procedures by the monitor, the CPOA will be in primary compliance of this paragraph. It appears that the CPOA has reasonable access required by this paragraph. (See also, Results, paragraph 282). It is expected that upon approval of the CPOA policies and procedures the City will obtain full compliance with this paragraph.

.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.269 Assessing Compliance with Paragraph 284: Ensuring Confidentiality of Investigative Files

Paragraph 284 stipulates:

"The City, APD, and the agency shall develop protocols to ensure the confidentiality of internal investigation files and to ensure that materials protected from disclosure remain within the custody and control of APD at all times."

Methodology

The monitor had several meetings during the site visit with members of the IAB and CPOA, reviewed the CPOA Ordinance and draft policies regarding the CASA, and reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period.

Results

The Ordinance requires the POB to review confidential and Garrity material only in closed sessions and to maintain confidentiality of such materials. Policy mandating compliance with this paragraph is also contained in AO 2-05, currently under review. It is expected that upon revision and formal adoption of AO 2-05, the City, APD and CPOA will be in primary compliance of this task.

A review of IAB and a partial review of CPOA investigations randomly selected by the monitor during this site visit did not reveal any instances of non-compliance with the confidentiality requirements.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.270 Assessing Compliance with Paragraph 285: Authority to Recommend Discipline

Paragraph 285 stipulates:

"The Executive Director, with approval of the agency, shall have the authority to recommend disciplinary action against officers involved in the incidents it reviews. The Chief shall retain discretion over whether to impose discipline and the level of discipline to be imposed. If the Chief decides to impose discipline other than what the agency recommends, the Chief must provide a written report to the agency articulating the reasons its recommendations were not followed."

Methodology

The monitor reviewed the CPOA Ordinance, website with posted finings and Chief's non-concurrence letters, had several meetings during the site visit with members of the CPOA and visited the CPOA office, had meetings with the Chief and his senior staff, and conducted a random selection of CPOA investigations that were completed during this monitoring period.

Results

The Ordinance sets forth the policy and authority for the CPOA, POB and Chief to act in compliance with this paragraph.

Also the Executive Director's authority to make recommendations is contained in the CPOA Policies and Procedures, currently under review. It is expected that upon approval of the Policies and Procedures by the monitor, the CPOA will be in primary compliance of this paragraph.

The Executive Director's recommendations are required to have the approval of the agency (POB). Based on observations and interactions with the CPOA, the monitor notes that a system is now in place that allows for the Executive Director to obtain POB approval of the Executive Director's recommendations within the time guidelines required by the Collective Bargaining Agreement (CBA) for the imposition of discipline, and further allows for the Executive Director to make recommendations directly to the Chief in those instances where the matter cannot be presented at a monthly POB meeting and still meet the time requirements of the CBA.

A review by the monitor of the CPOA website and a random selection of CPOA investigations completed during the monitoring period revealed two instances where the Chief non-concurred with the findings of the Executive Director and

did not follow the disciplinary recommendation of the POB. In both instances the Chief provided within 30 days, a written report to the CPOA articulating his reasons for not following the recommendations. It should be noted that in cases where the Chief does not concur in total with the findings of the CPOA/POB, the approval by the monitor of the Chief's non-concurrence letter does not per se mean that the investigative findings were not supported by the requisite quantum of evidence. The monitor realizes that the Chief shall be the final arbiter of discipline within the APD, and reasonable minds can disagree on findings as they relate to the same evidence. Where however the monitor feels there has been an abuse of discretion in cases where there is a Chief's non-concurrence, either by the CPOA or the Chief, the monitor will cite finding as not supported by the requisite quantum of evidence (See also, Results, paragraph 192).

The City contends compliance on this paragraph based on policy or practice pre-existing the CASA. The monitoring team disagrees, but will re-assess this paragraph during the next reporting period. As this paragraph is currently not yet due, time remains to reassess the City's compliance assertion; however, the monitoring team is hesitant to declare compliance based on requirements of "City rules and regulations, City ordinances, by-laws, etc." as requested by the City. Such documents ***often*** require translation to promulgated police policy to be effective.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.271 Assessing Compliance with Paragraph 286: Documenting Executive Director's Findings

Paragraph 286 stipulates:

"Findings of the Executive Director shall be documented by APD's Internal Affairs Bureau for tracking and analysis."

Methodology

The monitor had several meetings with IAB and CPOA personnel during this site visit and observed IAB's tracking method and records.

Results

The requirements of this paragraph are contained in AO 2-05, "Internal Affairs Division, which is currently under review. Revisions of AO 2-05 and formal adoption of it will be necessary for primary compliance with this paragraph.

Based upon observation and interview of IAB and CPOA personnel it is clear that IAB captures the findings of the CPOA for tracking and analysis purposes.

The City contends compliance on this paragraph based on policy or practice pre-existing the CASA. The monitoring team disagrees, but will re-assess this paragraph during the next reporting period. As this paragraph is currently not yet due, time remains to reassess the City's compliance assertion; however, the monitoring team is hesitant to declare compliance based on requirements of "City rules and regulations, City ordinances, by-laws, etc." as requested by the City. Such documents ***often*** require translation to promulgated police policy to be effective.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.272 Assessing Compliance with Paragraph 287: Opportunity to Appeal Findings

Paragraph 287 stipulates:

"The City shall permit complainants a meaningful opportunity to appeal the Executive Director's findings to the agency."

Methodology

The monitor reviewed the Ordinance and had several meetings during the site visit with members of the CPOA and visited the CPOA office, and reviewed a random selection of CPOA investigations that were completed during this monitoring period.

Results

The Ordinance contains the policy required by this paragraph, and permits a complainant to request reconsideration in the form of a hearing when dissatisfied with the findings and/or recommendations of the POB (findings of Executive Director to and approved by the POB). The Ordinance also permits an appeal by the complainant to the Chief Administrative Officer of the final disciplinary decision of the Chief of Police. No instances of complaint appeals were reported to the monitor during this monitoring period, thus we were unable to monitor this paragraph. A review by the monitor of randomly selected CPOA investigations by the monitoring team did not show any instances of requests for reconsideration or appeals.

The City appears to be in full compliance with this paragraph; however, the monitor will have to assess appeals in order to determine whether "a meaningful opportunity for appeal" exists.

Primary: **In Compliance**
Secondary: **In Compliance**

Operational: **Unable to Monitor**

4.7.273 Assessing Compliance with Paragraph 288: CPOA Recommendations Regarding APD Policies

Paragraph 288 stipulates:

"The agency shall make recommendations to the Chief regarding APD policy and training. APD shall submit all changes to policy related to this Agreement (i.e., use of force, specialized units, crisis intervention, civilian complaints, supervision, discipline, and community engagement) to the agency for review, and the agency shall report any concerns it may have to the Chief regarding policy changes."

Methodology

Members of the monitoring team had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed CPOA literature and documents related to the civilian complaint and CPOA process, and reviewed the CPOA website and public reports contained thereon, as well as a random sample of CPOA investigations that were completed during this monitoring period.

Results

The Ordinance provides CPOA with the authority to carry out the tasks of this paragraph. CPOA's authority is also contained in the CPOA Policies and Procedures. We expect that, upon approval of the Policies and Procedures by the monitor, the CPOA will be in primary compliance of this paragraph.

A review of recent completed CPOA cases found none that resulted in recommendations to the Chief of Police regarding changes to APD policy and training. No recommendations regarding APD policy and training, or concerns regarding policy changes, made by CPOA to the Chief were reported to or obtained by the monitor for this monitoring period. Regarding the submission by APD to CPOA of all changes to policy related to the CASA, the CPOA has one seat on the APD SOP Review Committee and two seats on the APD Policies and Procedures Review Board. In time, the monitor will be able to assess whether the CPOA participation in these processes suffices to meet the requirements of this paragraph.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.274 Assessing Compliance with Paragraph 289: Explanation for not Following CPOA Recommendations

"For any of the agency's policy recommendations that the Chief decides not to follow, or any concerns that the agency has regarding changes to policy that Chief finds unfounded, the Chief shall provide a written report to the agency explaining any reasons why such policy recommendations will not be followed or why the agency's concerns are unfounded."

Methodology

The monitor reviewed the Ordinance, CPOA website and POB meeting minutes and agenda, had several meetings during the site visit with members of the CPOA and visited the CPOA office, and had meetings with the Chief during this site visit, and random selection of CPOA investigations that were completed during this monitoring period.

Results

The Ordinance provides CPOA with the authority to carry out the tasks of this paragraph. CPOA's authority is also contained in the CPOA Policies and Procedures, currently under review. It is expected that upon approval of the Policies and Procedures by the monitor, the CPOA will be in primary compliance of this paragraph.

The monitor was unable to monitor operational compliance with this paragraph during this monitoring period. A review of a sample of CPOA cases did not find any case that resulted in recommendations to the Chief regarding changes to APD policy and training, nor were there any instances reported to or uncovered by the monitor relative to CPOA making such recommendations to the Chief or the Chief failing to address CPOA concerns expressed about changes to policy.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.275 Assessing Compliance with Paragraph 290: Regular Public Meetings

Paragraph 290 stipulates:

"The agency shall conduct regular public meetings in compliance with state and local law. The City shall make agendas of these meetings available in advance on websites of the City, the City Council, the agency, and APD."

Methodology

The monitor attended a POB meeting, and has reviewed the APD and CPOA websites regarding the meetings schedule and agenda, and had several meetings during the site visit with members of the CPOA.

Results

The Ordinance requires the POB to conduct regularly scheduled public meetings in compliance with the New Mexico Open Meetings Act, and further requires each meeting to have a prepared agenda distributed in advance to the Mayor, City Council, Police Chief, and City Attorney and that complies with the New Mexico Open Meetings Act. However the Ordinance does not require the agendas to be made available to the public via the websites of the City, City Council, CPOA or APD.

A review of the CPOA website indicates that the time, date and place of meetings are publicized as well as the meeting agenda. The CPOA Annual Report lists when POB meetings and sub-committee meetings were held.

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**

4.7.276 Assessing Compliance with Paragraph 291: Community Outreach for the CPOA

Paragraph 291 stipulates:

"The City shall require the agency and the Executive Director to implement a program of community outreach aimed at soliciting public input from broad segments of the community in terms of geography, race, ethnicity, and socio-economic status."

Methodology

The monitor had several meetings during the site visit with members of the CPOA, visited the CPOA office, and reviewed CPOA Table of Organization, staffing and administrative records.

Results

The Ordinance empowering the CPOA requires the agency to develop and implement a Community Outreach program, and requires the Executive Director of the CPOA to play an active role in the community and in community outreach efforts of the Agency. The newly created Community Outreach position within the CPOA Table of Organization was filled during this monitoring period. In

addition the monitoring team observed a POB meeting that involved input from community members but otherwise was unable to observe any CPOA Community outreach events during the site visit.

Although the CPOA 2014 Annual Report lists numerous CPOA Executive Director community outreach efforts in 2014 aimed at explaining the police oversight process to the public, the 2015 Annual Report was pending City Council review and was not yet published at the close of this monitoring period. The monitor expects the 2015 annual report will address the establishment of its current and future community outreach program, and will update the public on the completed 2015 Community Outreach efforts.

Upon integration of the newly hired Community Outreach specialist into the CPOA, the monitor would expect CPOA's demonstration of community outreach efforts to continue and increase into the next monitoring period.

Primary: **In Compliance**
Secondary: **Unable to Monitor**
Operational: **Unable to Monitor**

4.7.277 Assessing Compliance with Paragraph 292: Semi Annual Reports to Council

Paragraph 292 stipulates:

> **"The City shall require the agency to submit semi-annual reports to the City Council on its activities, including:**
>
> **a) number and type of complaints received and considered, including any dispositions by the Executive Director, the agency, and the Chief;**
> **b) demographic category of complainants;**
> **c) number and type of serious force incidents received and considered, including any dispositions by the Executive Director, the agency, and the Chief;**
> **d) number of officer-involved shootings received and considered, including any dispositions by the Executive Director, the agency, and the Chief;**
> **e) policy changes submitted by APD, including any dispositions by the Executive Director, the agency, and the Chief;**
> **f) policy changes recommended by the agency, including any dispositions by the Chief;**
> **g) public outreach efforts undertaken by the agency and/or Executive Director; and**
> **h) trends or issues with APD's use of force, policies, or training."**

Methodology

The monitor reviewed the APD and CPOA websites and reports contained therein, had several meetings during the site visit with members of the CPOA

and visited the CPOA office, and reviewed CPOA literature and documents related to the civilian complaint and CPOA process.

Results

The Ordinance establishing the CPOA requires semi-annual reports to City Council with the information set forth in this paragraph.

The monitoring team review of the CPOA website revealed a semi-annual and an annual report for 2014 as well as an Officer Involved Shooting Report for 2010-2014. Both the semi-annual and annual reports contain a separate section entitled Officer Involved Shootings. The reports list the findings of the Executive Director and POB of the CPOA, but do not list the dispositions of the Chief.

The 2015 Annual Report was not published at the close of this monitoring period. (See also Results, paragraph 291).

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.279 Assessing Compliance with Paragraph 320: Notice to Monitor of Officer Involved Shootings

Paragraph 320 stipulates:

"To facilitate its work, the Monitor may conduct on-site visits and assessments without prior notice to the City. The Monitor shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement-related trainings, meetings, and reviews such as critical incident review and disciplinary hearings. APD shall notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, in-custody death, or arrest of any officer."

Methodology

The City has been in compliance with this paragraph since the inception of the CASA; however the monitor noted on several occasions in informal conversations with the City that there was no formal policy requiring notice to the monitor of officer-involved shootings in APD's general-order policies. The notifications have come from the City Attorney's office since the initial stages of the compliance project. The monitor had noted verbally, in conversation with City of Albuquerque staff that there was no official policy requiring notice to the monitor, and though the assistant city attorney in charge of notification had never failed to notify the monitor, without a policy requiring same, the monitor could

foresee potential problems if that individual were to take annual leave, etc., and an OIS should occur.

Results

Despite these notices, no policy was developed, and, true to form, during this reporting period, a shooting occurred that could have been interpreted as an OIS, and no notice was forwarded to the monitor. True to form, this shooting proved to be somewhat problematic in terms of classification and response, and occurred during "annual leave" time for the assistant City Attorney who normally notifies the monitor of such events.

We again note the need for an official policy requiring notice to the monitor of apparent OIS incidents. Relying on "custom and practice" for such critical events is not acceptable.

Primary:	**Not In Compliance**
Secondary:	**Not In Compliance**
Operational:	**Not In Compliance**

5.0 SUMMARY

The City's performance on tasks due as of the date of this report is meaningful. The APD and the City are in compliance for all of the five tasks formally due as of the operational dates for the third monitor's report, IMR-3, dated (December, 2015 through March, 2016). Compliance areas, to date, are all in tasks that reasonably are prefatory, as follows:

Primary Compliance: 82 of 278, or 29 percent;
Secondary Compliance: 16 of 278, or six percent; and
Operational Compliance: 13 of 278, or five percent.

Thus, the City's and APD's compliance ratio for the third reporting period is 100 percent of tasks currently due (the two- three- and six-month requirements). Remaining requirements are "not yet due" until the next reporting period.

Overall, current status indicates compliance was achieved in **82 of 278 primary tasks**. This constitutes a Primary compliance rate of **29.4 percent**. Current status indicates Secondary compliance was achieved with **16 of 278 secondary tasks**, constituting a secondary compliance rate of **5.7 percent**. Operational compliance was achieved in **13 of 278 operational tasks** constituting an operational compliance rate of **4.6 percent**. At the end of the third reporting period, the CASA has been "in-effect" since November of 2014. Based on a delay in getting the monitoring team "contracted," and securing reliable funding for the monitoring team, the full team has been engaged with APD since June, 2015. Thus, in effect, the APD has been under monitor's review and assessment for twelve months. There are currently 278 requirements to be implemented by the APD. After twelve months, the agency is in operational compliance on just over four percent of all tasks eventually due. This monitoring project is set to expire in October of 2018. In order to meet the planned four-year timeline for the compliance project, APD must be in operational compliance with 95 percent of the tasks due by November, 2016, a mere four months from the submission date of this report. Given the developing exigencies involved in this project at this time, the monitor has revised the reporting format for his periodic reports, deciding to report more than just "past events," and adding recommendations for changes in planning, development and process activities for future implementation by APD and the City.

As the CASA process builds momentum in the coming months, the APD needs to carefully consider its priorities, and develop effective mechanisms to change existing behavior on the street and in its supervisory processes.

The monitoring team sees the critical pressure points at this time continuing to be:

1) **CONTINUING DEVELOPMENT OF EFFECTIVE POLICY REFLECTIVE OF THE UNITED STATES CONSTITUTION AND BEST PRACTICES IN THE FIELD.**

While policy development has improved this reporting period, it still lags behind expectations--Policy, as we have noted since the inception of this process is the critical piece, as all later developments in training, supervision, discipline, and self-assessment depend on effective policy. The monitor has approved policy that represents "acceptable" not "model" requirements for implementation, supervision, and managerial oversight.

2) CREATION OF STRONG TRAINING DEVELOPMENT AND DELIVERY OF PROCESSES BASED ON APPROVED POLICY.

Training is the critical "next step" in APD's organizational development and planned change processes. The monitoring team have already expressed concern with the training modalities deployed by APD (both in this report and in earlier reports). Policies have been inadequately "translated" into training, with the original "first efforts" at training (Use of Force training for all officers) receiving marginal approval by the monitoring team, and with training for supervisors regarding implementation of "supervisory use of force investigation" that training appears to the monitoring team, upon initial review, to be of marginal quality, and possibly requiring revised training. Based on the monitor's preliminary assessment of training academy policies and staffing levels, the academy appears not have an adequate number of staff to support the added workload APD has committed itself to under the CASA. It appears to the monitoring team, based on our review of the first two training requirement deliveries, that the need for additional staff accrues to managerial, supervisory and "content" levels of the training process. We strongly believe the academy would benefit from outside consultants, familiar with current practice in training modalities. Currently we note a serious deficiency in either understanding those "accepted practices" or in the academy's ability to plan, organize, develop and implement those practices in current training content. This may be due to the apparent understaffing at the academy.

3) BUILDING EFFECTIVE SUPERVISORY SKILLS AND ABILITIES AMONG SERGEANTS AND LIEUTENANTS.

Development of effective and reliable systems of progressive DISCIPLINE, designed to identify critical points of deviation from articulated policy and to remedy behavior that is not consistent with policy, is, as of this time, not consistently present in APD's supervisory and management cadre. The monitoring team observed repeated instances of "supervisory review" process that appeared to not be based on the very same video evidence that the monitoring team used to note problematic behavior. (In some cases, the supervisory review reports are so vague, we question whether video evidence was reviewed at all in their assessments). In multiple instances, even problematic use of force events that are specifically

brought to APD's attention by the monitoring team are not remediated when they are assessed again by the monitoring team in subsequent site visits. Again, this may be attributable to the "newness" of the required monitoring processes; however, when the monitoring team finds video evidence that varies markedly from officers' written reports, and calls this to APD's attention, we find the issues are often not corrected when we follow-up on the next site visit. Serious change needs to be structured, mandated, trained and evaluated.

4) **THE APD WILL EVENTUALLY NEED TO BUILD A STRONG SELF-ASSESSMENT AND SELF-REPORTING ETHOS AMONG COMMAND AND MANAGEMENT STAFF.**

One fact remains certain: the monitoring team will eventually finish its job and leave. Before that can happen, APD will need to develop, train, implement and oversee a strong self-assessment and self-reporting ethos among command and management staff. Instances of inadequate supervision, such as that the monitoring team noted this reporting period, will need to be noticed, assessed, remedied, and monitored by APD command and management staff before the monitoring team can sign off on compliance and leave its duties in the hands of APD management.

5) **FINALLY, THE APD WILL NEED TO EXHIBIT A STRONG, HONEST, AND COMMITTED COMMUNITY OUTREACH STRATEGY, DESIGNED TO SHED LIGHT ON INTERNAL OPERATIONAL PROCESSES, CONSULT WITH THE CONSUMERS OF APD'S TACTICS, PROCESSES, AND STRATEGIES, AND EVENTUALLY SHARE SOME DEGREE OF DECISION-MAKING WITH THE COMMUNITIES APD SERVES.**

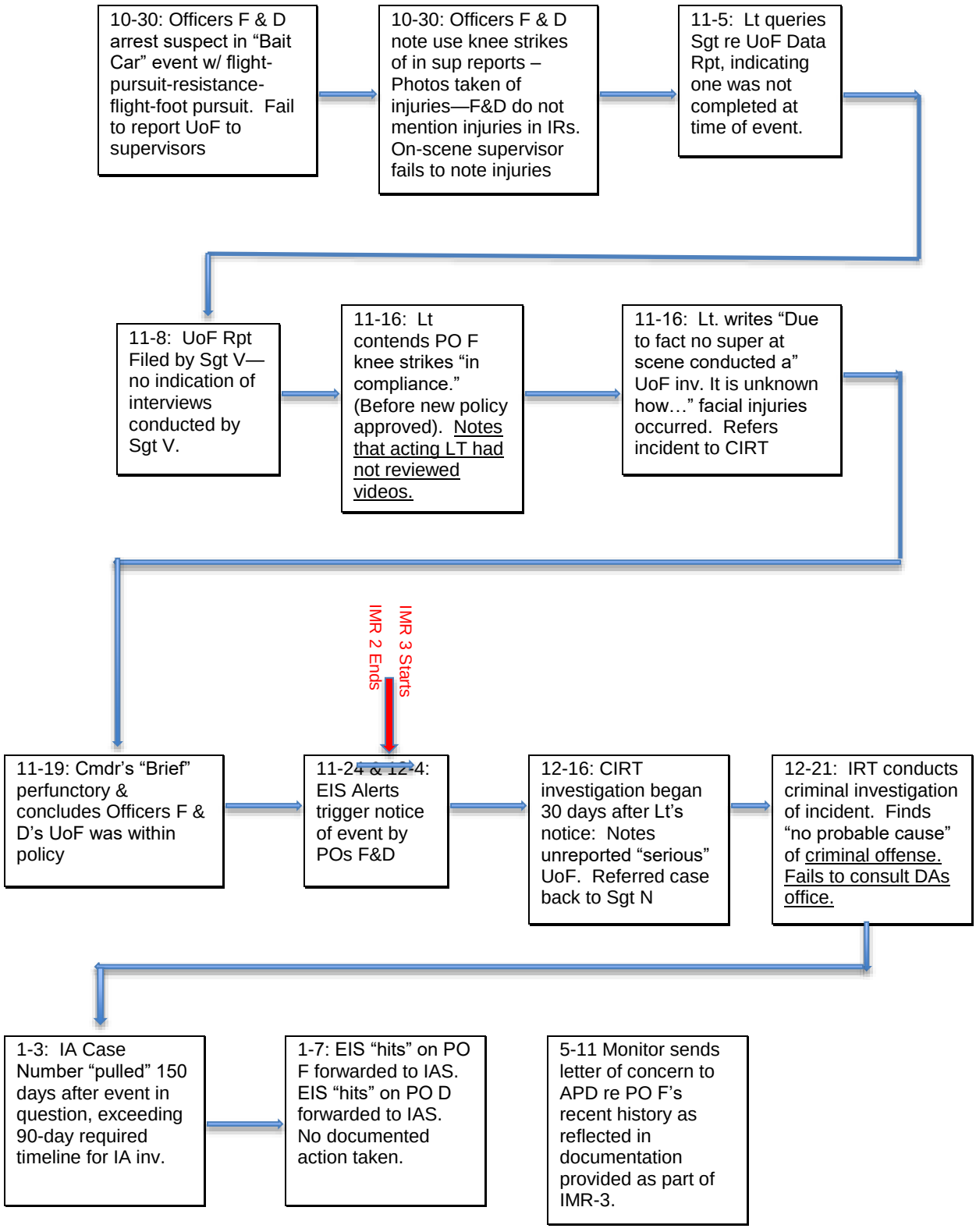
During this site visit, members of the monitoring team began to hear "rumblings" of discontent from many of their contacts at the POB, CPOA, MHRAC and other representatives of "the community." Community engagement cannot be just "paper based," but must consist of meaningful outreach to identify issues, and tangible steps to address those issues, followed up by evaluation, assessment, and, if necessary, revision and "re-sets." Again this requires, in the monitor's experience, strong, meaningful community outreach and a willingness to receive, process, assess and consider the information gained in that process to the point that departmental systems can be modified to address the concerns articulated. The City has "up-funded" technical support for its community outreach processes, and that technical assistance is being provided. It is incumbent on APD to show that it has received, assessed and decided whether or not to act on that input. If those decisions are in the negative, it indicates a need to work further with the community to ensure that APD and the communities it serves understand each other to the point that implementable recommendations are being made by the various

communities served by APD, so that APD can take concrete and measureable steps to address those concerns.

These are basically the same items for the "to do" list as were identified during the last monitor's report. The monitoring team has simply provided a bit more guidance on how to go about meeting the requirements of the CASA. Further adding to the already significant pressures on APD is the fact that the City has agreed to take the steps necessary to incubate and nurture effective organizational development and planned change strategies at the APD in an accelerated time frame.

The APD continues to have significant hills to climb regarding developing clear, concise, understandable policy guidance, assessing needs for training and overseeing one of the most complex organizational development and planned change process ever undertaken by American managers.

In the coming months, the monitor will continue to work with APD's leadership, supervisors, and line officers to ensure they understand the requirements of the planned-change project that confronts them, and are successful in meeting their commitments to the residents of the City of Albuquerque. Despite the apparently "long" timeline for this project, **time is running short to meet the compliance levels required to keep to the City's planned schedule**.

APPENDIX ONE
Timeline for Critical Use of Force Investigations and Follow-up
Discussed in Paragraph 2.1.1

Timeline for Events Discussed in Paragraph 2.1.1
Officers "F" and "D" October, 2015-May, 2016