



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

REPORT OF THE INDEPENDENT MONITOR  
FOR THE QUARTER ENDING March 31, 2005  
Issued May 16, 2005

**APPENDIX C: Joint Request to Amend the Consent Decree Pursuant  
to Paragraph 180 of the Consent Decree**

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Remainder of this page intentionally left blank. The Joint Request to Amend the Consent Decree Pursuant to Paragraph 180 of the Consent Decree follows this page.

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18 and THE LOS ANGELES POLICE DEPARTMENT

19 UNITED STATES DISTRICT COURT  
20  
21 CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,  
23 Plaintiff,

24 v.

25 CITY OF LOS ANGELES, CALIFORNIA,  
26 BOARD OF POLICE COMMISSIONERS OF  
THE CITY OF LOS ANGELES, AND THE  
LOS ANGELES POLICE DEPARTMENT

27 Defendants.  
28

Case No. CV 00-11769 GAF (RCx)  
*REQUEST*  
JOINT MOTION TO AMEND THE  
CONSENT DECREE PURSUANT  
TO PARAGRAPH 180 OF THE  
CONSENT DECREE

The Honorable Gary A. Fees, United States  
District Judge

FILED  
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CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

1 **I. INTRODUCTION**

2 Pursuant to paragraph 180 of the Consent Decree, the City of Los Angeles ("City") and the  
3 United States Department of Justice ("DOJ") jointly submit this Motion to amend certain provisions  
4 of the Consent Decree. The agreed upon modifications are primarily intended to clarify various  
5 sections of the Consent Decree. These modifications have been the subject of numerous discussions  
6 between the City, DOJ, and the Independent Monitor since early 2004. Both the City and DOJ have  
7 now agreed to the modifications set forth in Sections II and III below. The matrix attached as  
8 Exhibit "A" was submitted to DOJ for approval of the modifications.

9 **II. SCOPE OF AMENDMENT**

10 This amendment is not intended to alter the scope, purpose or intent of the Consent Decree.  
11 The modifications will not alter any substantive provisions. The following provisions are amended  
12 to reflect the Recommended Consent Decree Modifications (Exhibit "A") that were approved by the  
13 City and DOJ:

- 14 a. Definitions (page 4)<sup>1</sup>
- 15 b. Paragraph 13 (page 4)
- 16 c. Paragraph 56 (pages 23-24)
- 17 d. Paragraph 57 (page 24)
- 18 e. Paragraph 67 (page 26)
- 19 f. Paragraph 69 (page 27)
- 20 g. Paragraph 89 (page 36)
- 21 h. Paragraph 106(h) (page 49)
- 22 i. Paragraph 108(a) (page 51)
- 23 j. Paragraph 121 (page 58)
- 24 k. Paragraph 131 (page 62)
- 25 l. Paragraph 136 (page 65)
- 26 m. Paragraph 157 (page 73)

27  
28 <sup>1</sup> References are to the Consent Decree page numbers.

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**III. SPECIFIC AMENDMENTS**

**Decree Section B, Definitions**

**Amendment:**

Add new definition as follows: "The LAPD organizational units and position titles specified in this Agreement shall be either as specified, or, upon LAPD reorganization from time to time, shall be their functionally equivalent successor organizational units or position titles, subject to the approval of DOJ, which approval shall not be unreasonably withheld."

**Comments:**

The Consent Decree needs to be made flexible to accommodate normal organizational changes that would be anticipated to occur over the term of the Agreement. The recommended change limits the need to make changes to the numerous Consent Decree paragraphs where specific LAPD entities are identified to reflect the current reorganization structure, as well as providing for future reorganizations.

**Decree Section B, Definitions**

**Amendment:**

Add new definition as follows: "The term 'OHB Unit' specified in various paragraphs of this Agreement shall mean the Professional Standards Bureau (PSB) as of May 1, 2004."

**Comments:**

In response to recently identified Categorical Use of Force (CUOF) investigation deficiencies, the LAPD has undertaken a comprehensive review of CUOF investigation policies and procedures. In response to that review, LAPD has determined that a reassignment of CUOF investigation responsibilities is appropriate. The OHB Unit (under the Detective Bureau in the LAPD reorganization) will be moved to the Professional Standards Bureau (PSB).

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1 Decree ¶13

2 Decree Language:

3 "13. The term "Categorical Uses of Force" means (i) all incidents involving  
4 the use of deadly force by an LAPD officer ("OIS"); (ii) all uses of an upper body  
5 control hold by an LAPD officer and can include the use of a modified carotid, full  
6 carotid or locked carotid; (iii) all uses of force by an LAPD officer resulting in an  
7 injury requiring hospitalization, commonly referred to as a law enforcement related  
8 injury or LERI incident; (iv) all head strikes with an impact weapon; (v) all other uses  
9 of force by an LAPD officer resulting in a death, commonly known as a law  
10 enforcement activity related death or LEARD incident; and (vi) all deaths while the  
11 arrestee or detainee is in the custodial care of the LAPD, commonly referred to as an  
12 in-custody death or ICD. In addition, under current LAPD policy, a canine bite is not  
13 a use of force. However, for purposes of this Agreement only, a Categorical Use of  
14 Force shall include all incidents where a member of the public is bitten by a canine  
15 assigned to the LAPD and where hospitalization is required."

16 Comments:

17 The Consent Decree establishes significant requirements for the investigation of a CUOF,  
18 including the requirement that investigators respond to the scene 24 hours a day, that the OIG and  
19 Chief of Police are notified of the incident, and that a comprehensive, detailed investigation is  
20 completed. This is appropriate for Categorical Use of Force incidents such as an officer-involved-  
21 shooting, an in-custody death, or a use of force that results in hospitalization.

22 All officer-involved-shootings will still be thoroughly investigated. However, by amending  
23 the definition of a categorical use of force, non-tactical accidental discharges without injury and  
24 animal shooting incidents that do not warrant the same type of immediate response and level of  
25 investigation could be transitioned from Categorical Use of Force investigation team oversight. This  
26 change would: 1) increase the effectiveness of LAPD resources, including increased supervisor and  
27 officer field time; 2) focus Categorical Use of Force incident response and investigative resources on  
28 the incidents of greatest concern, resulting in quality and efficiency gains for the highest priority

1 investigations; 3) provide for thorough investigation of non-tactical accidental discharge without  
2 injury and animal shootings in a more timely manner; and 4) result in substantial ongoing cost  
3 savings to the City.

4 No negative consequences from this change are anticipated as non-tactical accidental  
5 discharge without injury and animal shooting administrative investigations would remain subject to  
6 Use of Force Review Board, OIG, and Police Commission review.

7 This amendment modifies the definition of a Categorical Use of Force by deleting the term  
8 "OIS" and adding "except for non-tactical accidental discharges and animal shootings" to section (i)  
9 of this paragraph.

10 **Amended Language:**

11 "13. The term "Categorical Uses of Force" means (i) all incidents involving  
12 the use of deadly force by an LAPD officer, except for non-tactical accidental  
13 discharges and animal shootings; (ii) all uses of an upper body control hold by an  
14 LAPD officer and can include the use of a modified carotid, full carotid or locked  
15 carotid; (iii) all uses of force by an LAPD officer resulting in an injury requiring  
16 hospitalization, commonly referred to as a law enforcement related injury or LERI  
17 incident; (iv) all head strikes with an impact weapon; (v) all other uses of force by an  
18 LAPD officer resulting in a death, commonly known as a law enforcement activity  
19 related death or LEARD incident; and (vi) all deaths while the arrestee or detainee is  
20 in the custodial care of the LAPD, commonly referred to as an in-custody death or  
21 ICD. In addition, under current LAPD policy, a canine bite is not a use of force.  
22 However, for purposes of this Agreement only, a Categorical Use of Force shall  
23 include all incidents where a member of the public is bitten by a canine assigned to  
24 the LAPD and where hospitalization is required."  
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1 Decree ¶56

2 Decree Language:

3           “56. The OHB Unit shall have the capability to “roll-out” to all Categorical  
4 Use of Force incidents 24 hours a day. The Department shall require immediate  
5 notification to the Chief of Police, the OHB Unit, the Commission and the Inspector  
6 General by the LAPD whenever there is a Categorical Use of Force. Upon receiving  
7 each such notification, an OHB Unit investigator shall promptly respond to the scene  
8 of each Categorical Use of Force and commence his or her investigation. The senior  
9 OHB Unit manager present shall have overall command of the crime scene and  
10 investigation at the scene where multiple units are present to investigate a Categorical  
11 Use of Force incident; provided, however, that this shall not prevent the Chief of  
12 Police, the Chief of Staff, the Department Commander or the Chief’s Duty Officer  
13 from assuming command from a junior OHB supervisor or manager when there is a  
14 specific need to do so.”

15 **Comments:**

16           The amended definition of Categorical Use of Force (Paragraph 13) excludes accidental  
17 discharges. This change establishes procedures by which the OIG and CIID<sup>2</sup> will be notified of such  
18 incidents. Further, it provides that CIID can investigate an accidental discharge incident if it so  
19 chooses. Accordingly, the following new paragraph is added: “The Department shall further require  
20 notification of the OHB Unit and Inspector General whenever there is a non-tactical accidental  
21 discharge. Upon receiving each non-tactical accidental discharge notification, the OHB Unit, at its  
22 option, may determine that it will respond and investigate the incident.”

23 **Amended Language:**

24           “56. The OHB Unit shall have the capability to “roll-out” to all Categorical  
25 Use of Force incidents 24 hours a day. The Department shall require immediate  
26

27 <sup>2</sup> Although CIID has been replaced with Force Investigation Division (FID), reference to CIID remains in this document  
28 because the initial discussions and exchange of proposed amendments predate FID. Moreover, organizational changes  
are addressed in the amendment to the definitions.

1 notification to the Chief of Police, the OHB Unit, the Commission and the Inspector  
2 General by the LAPD whenever there is a Categorical Use of Force. Upon receiving  
3 each such notification, an OHB Unit investigator shall promptly respond to the scene  
4 of each Categorical Use of Force and commence his or her investigation. The senior  
5 OHB Unit manager present shall have overall command of the crime scene and  
6 investigation at the scene where multiple units are present to investigate a Categorical  
7 Use of Force incident; provided, however, that this shall not prevent the Chief of  
8 Police, the Chief of Staff, the Department Commander or the Chief's Duty Officer  
9 from assuming command from a junior OHB supervisor or manager when there is a  
10 specific need to do so.

11 The Department shall further require notification of the OHB Unit and  
12 Inspector General whenever there is a non-tactical accidental discharge. Upon  
13 receiving each non-tactical accidental discharge notification, the OHB Unit, at its  
14 option, may determine that it will respond and investigate the incident.”

15  
16 **Decree ¶57**

17 **Decree Language:**

18 “57. In addition to administrative investigations and where the facts so  
19 warrant, the LAPD shall also conduct a separate criminal investigation of Categorical  
20 Uses of Force. The criminal investigation shall not be conducted by the OHB Unit.”

21 **Comments:**

22 The reorganization of CIID to PSB currently contemplates integration of criminal and  
23 administrative investigations into PSB, however, such investigations will be conducted by different  
24 teams. To account for the LAPD organizational change while maintaining the purpose of this  
25 paragraph, an amendment to the last sentence deletes “OHB Unit” and adds “same investigators  
26 completing the administrative investigation” to the end of the sentence.



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1 **Amended Language:**

2 "57. In addition to administrative investigations and where the facts so  
3 warrant, the LAPD shall also conduct a separate criminal investigation of Categorical  
4 Uses of Force. The criminal investigation shall not be conducted by the same  
5 investigators completing the administrative investigation."  
6

7 **Decree ¶67**

8 **Decree Language:**

9 "67. The Commission shall continue its practice of reviewing all Categorical  
10 Uses of Force including all the reports prepared by the Chief of Police regarding such  
11 incidents and related investigation files. These reports shall be provided to the Police  
12 Commission at least 60 days before the running of any statute of limitations that would  
13 restrict the imposition of discipline related to such Categorical Use of Force. Provided,  
14 however, if the investigation file has not been completed by this time, the LAPD shall  
15 provide the Commission with a copy of the underlying file, including all evidence  
16 gathered, with a status report of the investigation that includes an explanation of why the  
17 investigation has not been completed, a description of the investigative steps still to be  
18 completed, and a schedule for the completion of the investigation. The Commission shall  
19 review whether any administrative investigation was unduly delayed due to a related  
20 criminal investigation, and, if so, shall assess the reasons therefor."

21 **Comments:**

22 See comments to Consent Decree paragraph 56 above. This amendment modifies the first  
23 sentence to read: "The Commission shall continue its practice of reviewing all Categorical Uses of  
24 Force and non-tactical accidental discharges, including ..."

25 **Amended Language:**

26 "67. The Commission shall continue its practice of reviewing all Categorical Uses  
27 of Force and non-tactical accidental discharges, including all the reports prepared by the  
28 Chief of Police regarding such incidents and related investigation files. These reports shall

1 be provided to the Police Commission at least 60 days before the running of any statute of  
2 limitations that would restrict the imposition of discipline related to such Categorical Use of  
3 Force. Provided, however, if the investigation file has not been completed by this time, the  
4 LAPD shall provide the Commission with a copy of the underlying file, including all  
5 evidence gathered, with a status report of the investigation that includes an explanation of  
6 why the investigation has not been completed, a description of the investigative steps still to  
7 be completed, and a schedule for the completion of the investigation. The Commission shall  
8 review whether any administrative investigation was unduly delayed due to a related criminal  
9 investigation, and, if so, shall assess the reasons therefor.”

10  
11 **Decree ¶69**

12 **Decree Language:**

13 “69. The Department shall continue to have the Use of Force Review Board  
14 review all Categorical Uses of Force. The LAPD shall continue to have Non-  
15 Categorical Uses of Force reviewed by chain-of-command managers at the Division  
16 and Bureau level. Non-Categorical Use of Force investigations shall be reviewed by  
17 Division management within 14 days of the incident, unless a member of the chain-  
18 of-command reviewing the investigation detects a deficiency in the investigation, in  
19 which case the review shall be completed within a period of time reasonably  
20 necessary to correct such deficiency in the investigation or reports.”

21 **Comments:**

22 See comments to Consent Decree Paragraph 56 above. This amendment adds “and non-  
23 tactical accidental discharges” to the end of the first sentence.

24 **Amended Language:**

25 “69. The Department shall continue to have the Use of Force Review Board  
26 review all Categorical Uses of Force and non-tactical accidental discharges. The  
27 LAPD shall continue to have Non-Categorical Uses of Force reviewed by chain-of-  
28 command managers at the Division and Bureau level. Non-Categorical Use of Force

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investigations shall be reviewed by Division management within 14 days of the incident, unless a member of the chain-of-command reviewing the investigation detects a deficiency in the investigation, in which case the review shall be completed within a period of time reasonably necessary to correct such deficiency in the investigation or reports."

**Decree ¶89**

**Decree Language:**

"89. The Inspector General shall review, analyze and report to the Commission on each Discipline Report, including the circumstances under which discipline was imposed and the severity of any discipline imposed. The Commission, no later than 45 days after receipt of the Discipline Report, following consultation with the Chief of Police, shall review the Discipline Report and document the Commission's assessment of the appropriateness of the actions of the Chief of Police described in the Discipline Report. With respect to Categorical Uses of Force, such assessment and documentation shall be made for each officer whose conduct was determined to be out of policy by the Commission. Such assessment and documentation shall be considered as part of the Chief's annual evaluation as provided in paragraph 144."

**Comments:**

Paragraph 89 provides only 45-days for review and action on the LAPD's Discipline Report. 45-days does not provide the Inspector General with adequate time to review the Discipline Report. Further, the Police Commission holds meetings on a weekly or bi-weekly basis and must post agendas 72-hours in advance of the meeting pursuant to the Brown Act. Therefore, the Police Commission may not be able to agendize the Inspector General's review for up to two weeks after the report's release. This amendment will increase the time allowed for review from 45-days to 75-days.

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**Amended Language:**

“89. The Inspector General shall review, analyze and report to the Commission on each Discipline Report, including the circumstances under which discipline was imposed and the severity of any discipline imposed. The Commission, no later than 75 days after receipt of the Discipline Report, following consultation with the Chief of Police, shall review the Discipline Report and document the Commission’s assessment of the appropriateness of the actions of the Chief of Police described in the Discipline Report. With respect to Categorical Uses of Force, such assessment and documentation shall be made for each officer whose conduct was determined to be out of policy by the Commission. Such assessment and documentation shall be considered as part of the Chief’s annual evaluation as provided in paragraph 144.”

**Decree ¶106(h)**

**Decree Language:**

“106(h). Each Bureau gang coordinator shall be responsible for monitoring and assessing the operation of all units in the Bureau that address gang activity. The Coordinator shall personally inspect and audit at least one Area unit each month, and shall submit copies of completed audits to the pertinent Bureau and Area, OHB Detective Support Division Command office, and the LAPD Audit Unit created in paragraph 124 below. The coordinator may use bureau staff to conduct such audits who themselves serve in a Bureau or Area gang-activity unit and are deployed in the field to monitor or reduce gang activity.”

**Comments:**

The term “audit” has come to mean a forensic audit of the type completed by Audit Division, including supporting documentation and related work. This provision was intended to be a monthly review, and not a full-fledged “audit”. The types of reviews contemplated were similar to secondary

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1 compliance reviews, not the types of "audits" currently defined by the Monitor and required to be  
2 completed by Audit Division.

3 This amendment will remove the words audit or audits and replace them with  
4 "evaluate", "inspection reports" and "inspections" as appropriate.

5  
6 **Decree ¶108(a)**

7 **Decree Language:**

8 "108(a). The use of informants by LAPD personnel is limited to those non-  
9 uniformed personnel assigned to investigative units, such as, Area Detectives,  
10 Narcotics Division, and Specialized Detective Divisions. Personnel in uniform  
11 assignments shall not maintain or use informants."

12 **Comments/Amendment:**

13 For effective crime fighting, the option for uniformed police officers to have confidential  
14 informants is desired. The procedures for uniformed and non-uniformed officers' use of  
15 confidential informant procedures would remain as detailed in paragraph 108 and only paragraph  
16 108(a) will be deleted.

17  
18 **Decree ¶121**

19 **Decree Language:**

20 "121. The LAPD shall provide all officers promoted to supervisory  
21 positions, up to and including the rank of Captain, with training to perform the duties  
22 and responsibilities of such positions. Such LAPD officers and supervisors shall be  
23 provided with such training before they assume their new supervisory positions,  
24 except for those officers promoted to the rank of Captain, who shall have at least  
25 commenced their Command Development training before they assume their new  
26 positions."

27  
28

1 **Comments:**

2           Detective I paygrade advancements to Detective II are not promotions, but rather  
3 paygrade advancements, which are not addressed in Paragraph 121. The City agrees that  
4 Detectives receiving a paygrade advancement should attend supervisory training. However,  
5 since Detective paygrade advancements are not promotions, a separate training process needs  
6 to be established for Detective paygrade advancements. Promotions and paygrade  
7 advancements are processed through significantly different procedures and therefore, training  
8 Detectives before they are selected for paygrade advancement, as in the case of persons on a  
9 promotion list, to comply with Paragraph 121 results in a significant waste of training  
10 resources. Currently, a document is executed that indicates that a paygrade advanced  
11 Detective II will not supervise until they have received training. This is difficult to maintain  
12 in the long-term, and officers receiving a paygrade advancement receive pay raises in  
13 accordance with their new responsibilities, which may or may not include supervision.  
14 Similar to Captains, training for Detective paygrade advancements should be allowed to  
15 occur at the next supervisory training class scheduled.

16           The amendment will modify the second sentence of paragraph 121 as follows:

17           “...except those officers promoted to the rank of Captain and Detective paygrade  
18 advancements, who shall.....or in the case of Detective paygrade advancements, attend the  
19 next scheduled supervisory training class, which shall be completed no later than four  
20 months after the effective date of the paygrade advancement.”

21 **Amended Language:**

22           “121. The LAPD shall provide all officers promoted to supervisory  
23 positions, up to and including the rank of Captain, with training to perform the duties  
24 and responsibilities of such positions. Such LAPD officers and supervisors shall be  
25 provided with such training before they assume their new supervisory positions,  
26 except for those officers promoted to the rank of Captain and Detective paygrade  
27 advancements, who shall have at least commenced their Command Development  
28 training before they assume their new positions or in the case of Detective paygrade

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advancements, attend the next scheduled supervisory training class, which shall be completed no later than four months after the effective date of the paygrade advancement.”

**Decree ¶131**

**Decree Language:**

“131. The LAPD shall conduct regular periodic audits of the work product of all LAPD units covered by paragraph 106. These audits shall be conducted by OHB Detective Support Division. Each such audit shall include:”

**Comments:**

The paragraph 131 audits were intended to assess the activities of SEU's. Entities other than DSD, or its successor, would bring an element of greater independence and therefore the Consent Decree should provide for such flexibility. Further, the LAPD should be able to maximize its resources by combining Department-wide and SEU-specific audits to the maximum extent practicable. Allowing Audit Division and the Civil Rights Integrity Division to perform SEU audits is consistent with the intent of the Consent Decree and provides LAPD with the flexibility to manage its auditing resources.

This amendment will clarify the second sentence of paragraph 131 to provide for other appropriate LAPD entities to complete audits of Special Enforcement Units, or their successor units as follows. “OHB Detective Support Division” is replaced with “Audit Division or Civil Rights Integrity Division.”

**Amended Language:**

“131. The LAPD shall conduct regular periodic audits of the work product of all LAPD units covered by paragraph 106. These audits shall be conducted by Audit Division or Civil Rights Integrity Division. Each such audit shall include:”

1 Decree ¶136

2 Decree Language:

3 "136. The Inspector General shall continue to review all Categorical Use of  
4 Force investigations. The Inspector General also shall conduct a regular, periodic  
5 audit and review of a stratified random sample of: (i) all Non-Categorical Uses of  
6 Force; and (ii) Complaint Form 1.28 investigations. Both of these types of reviews  
7 shall assess the quality, completeness, and findings of the investigations and shall  
8 include determinations of whether the investigations were completed in a timely  
9 manner, summarized and transcribed statements accurately match the recorded  
10 statements, all available evidence was collected and analyzed, and the investigation  
11 was properly adjudicated. The Inspector General shall promptly report its finds from  
12 these reviews in writing to the Police Commission."

13 Comments:

14 The requirement for the OIG to perform separate audits was not intended to duplicate the  
15 efforts of the Audit Division, but rather to complement Audit Division audits. However, the  
16 language of the paragraph coupled with the definition of auditing procedures has resulted in a  
17 duplication of effort. The OIG reviews the mandated Audit Division complaint and the non-  
18 categorical use of force stratified random sample audits which address the same parameters listed in  
19 Paragraph 136. To have the OIG repeat the exact same audit therefore has limited benefits to LAPD  
20 and OIG oversight. Rather, the OIG should be afforded the flexibility to determine the manner  
21 (perhaps not a stratified random sample, but an audit focused on a specific complaint category, type  
22 of force, LAPD Division of concern, complaints resulting in non-disciplinary actions or suspensions,  
23 etc.) in which it thinks best to review complaints and non-categorical use of force investigations in  
24 light of the Audit Division audits, other issues of concern, or specific areas of oversight needs. This  
25 will serve to enhance the oversight role of the OIG and to maximize resources.

26 Consistent with the foregoing, the amendment to paragraph 136 will modify the language to  
27 read as follows: "...The Inspector General shall continue to review all Categorical use of Force  
28 investigations. The Inspector General also shall conduct a regular, periodic audit and review of a



1 stratified random sample of (i) ~~all~~ Non-Categorical Uses of Force; and (ii) complaint Form 1.28  
2 investigations. Both of these types of reviews shall assess areas of concern identified by the  
3 Inspector General, and shall assess at least one of the following issues related to the quality and/or  
4 outcome of the investigations: completeness, and findings of the investigation and shall include  
5 determinations of whether the investigations were completed in a timely manner, summarized and:  
6 whether the summarized and transcribed statements accurately match the recorded statements;  
7 whether all available evidence was properly collected and analyzed; and/or whether the investigation  
8 was properly adjudicated...”

9 **Amended Language:**

10 “136. The Inspector General shall continue to review all Categorical Use of  
11 Force investigations. The Inspector General also shall conduct a regular, periodic  
12 review of a random sample of: (i) Non-Categorical Uses of Force; and (ii) Complaint  
13 Form 1.28 investigations. Both of these types of reviews shall assess areas of  
14 concern identified by the Inspector General, and shall assess at least one of the  
15 following issues related to the quality and/or outcome of the investigations: whether  
16 the summarized and transcribed statements accurately match the recorded statements;  
17 whether all available evidence was properly collected and analyzed, and/or whether  
18 the investigation was properly adjudicated. The Inspector General shall promptly  
19 report its finds from these reviews in writing to the Police Commission.”

20  
21 **Decree ¶157**

22 **Decree Language:**

23 “157. The LAPD shall continue to utilize community advisory groups in  
24 each geographic Area and to meet quarterly with the community they serve. The  
25 Department shall establish a media advisory working group to facilitate information  
26 dissemination to the predominant ethnicities and cultures in Los Angeles.”  
27  
28

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1 **Comments:**

2 The media advisory group was appropriate during the first year of Decree implementation to  
3 assist in explaining the Consent Decree and generate interest in the then quarterly meetings in the 18  
4 geographic areas. The media group has served its purpose, as illustrated by the media's  
5 unwillingness to attend meetings. Efforts to work with the media to facilitate delivery of  
6 information to all Los Angeles communities are now bettered served by other LAPD public relations  
7 efforts. Therefore, the requirement for a media advisory group should sunset at this time.  
8 Accordingly, the amendment will add a sunset provision to the end of the last sentence.

9 **Amended Language:**

10 "157. The LAPD shall continue to utilize community advisory groups in  
11 each geographic Area and to meet quarterly with the community they serve. The  
12 Department shall establish a media advisory working group to facilitate information  
13 dissemination to the predominant ethnicities and cultures in Los Angeles through the  
14 third year of the Consent Decree."

15  
16 Dated: 4/18/05

CHRISTENSEN, MILLER, FINK, JACOBS,  
GLASER, WEIL & SHAPIRO, LLP

17  
18 By: *Patricia L. Glaser*  
19 PATRICIA L. GLASER  
20 Attorneys for defendants, CITY OF LOS ANGELES, THE  
21 BOARD OF POLICE COMMISSIONERS OF THE CITY OF  
22 LOS ANGELES, and THE LOS ANGELES POLICE  
23 DEPARTMENT

24 Dated: 4/8/05

UNITED STATES DEPARTMENT OF JUSTICE

25 By: *Shanetta Y. Cutlar*  
26 SHANETTA Y. CUTLAR  
27 Chief, Special Litigation Section  
28 Civil Rights Division  
Attorney for plaintiff, UNITED STATES OF AMERICA



CITY HALL  
LOS ANGELES, CALIFORNIA 90012-4886

December 15, 2004

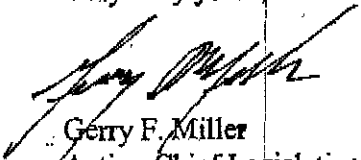
Shanetta Y. Cutlar  
Chief, Special Litigation Section  
U.S. Department of Justice  
Civil Rights Division  
601 D Street, NW, Room 5034  
Washington D.C. 20530


Dear Ms. Cutlar:

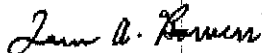
On May 5, 2004, the City of Los Angeles (City) submitted a letter to the United States Department of Justice (DOJ) regarding proposed changes to the Los Angeles Police Department (LAPD) Consent Decree. The City, DOJ, and the Independent Monitor have met several times since May 2004 to discuss the City's proposal. Reflective of those discussions, please find attached a matrix of clarified and revised proposed modifications to the LAPD Consent Decree, which replace the City's May 5, 2004, proposal, for DOJ review and consideration. Consistent with Consent Decree paragraph 180, the City would like to work with DOJ to file a stipulation with the Court to effectuate the Consent Decree changes outlined in the attached matrix.

DOJ's efforts to understand the City's concerns regarding certain Consent Decree provisions and to cooperatively work to develop appropriate resolutions are appreciated. The City looks forward to developing a joint filing with the Court regarding the attached LAPD Consent Decree changes, as appropriate.

Very truly yours,

  
Gerry F. Miller  
Acting Chief Legislative Analyst

  
Timothy B. McOsker  
Chief of Staff to the Mayor

  
Terree A. Bowers  
Chief Deputy City Attorney

Attachment

cc: Michael Cherkasy, Independent Monitor  
William J. Bratton, Chief of Police

## RECOMMENDED CONSENT DECREE AND MONITORING METHODOLOGY CLARIFICATIONS/MODIFICATIONS

Revised November 15, 2004

### CONSENT DECREE CHANGES

Decree Para. No.	Type of Change	Specific Recommended Language Change	Comments
Definition Section	Consent Decree Modification - LAPD Reorganization	Add new definition as follows: <u>The LAPD organizational units and position titles specified in this Agreement shall be either as specified, or, upon LAPD reorganization from time to time, shall be their functionally equivalent successor organizational units or position titles, subject to the approval of DOJ, which approval shall not be unreasonably withheld.</u>	The Consent Decree needs to be made flexible to accommodate normal organizational changes that would be anticipated to occur over the term of the Agreement. The recommended change limits the need to make changes to the numerous Consent Decree paragraphs where specific LAPD entities are identified to reflect the current reorganization structure, as well as providing for future reorganizations.
Definition Section	Consent Decree Modification - CND to PSB Reorganization	Add new definition as follows: <u>The term "OHB Unit" specified in various paragraphs of this Agreement shall mean the Professional Standards Bureau (PSB) unit as of May 1, 2004.</u>	In response to recently identified Categorical Use of Force (CUOF) investigation deficiencies, the LAPD has undertaken a comprehensive review of CUOF investigation policies and procedures. In response to that review, LAPD has determined that a reassignment of CUOF investigation responsibilities is appropriate. The OHB Unit (under the Detective Bureau in the LAPD reorganization) will be moved to the Professional Standards Bureau (PSB).
13	Consent Decree Modification - CND to PSB Reorganization	Add clarification regarding definition of OIS to the Categorical Use of Force definition as follows: <u>...(f) all incidents involving the use of deadly force by and LAPD officer ("OIS") except for non-tactical accidental discharges and animal shootings.</u>	<p>The Consent Decree establishes significant requirements for the investigation of CUOF, including the requirement that investigators roll to the scene 24/7, that the OIG, Chief of Police, etc., are notified real time of the incident, and that a comprehensive, detailed investigation is completed. Non-tactical accidental discharges without injury and animal shooting incidents do not warrant the same response and in-depth investigations that are conducted for Categorical Use of Force incidents such as an officer involved shooting, an in-custody death, or a use of force that results in hospitalization. Transition of non-tactical accidental discharge without injury and animal shooting administrative investigations from Categorical Use of Force investigations to Divisional Investigations; with Categorical Use of Force investigation team oversight as appropriate, would: 1) increase the effectiveness of LAPD resources, including increased supervisor and officer field time; 2) focus Categorical Use of Force incident response and investigative resources on the incidents of greatest concern, resulting in quality and efficiency gains for the highest priority investigations; 3) provide for thorough investigation of non-tactical accidental discharge without injury and animal shootings in a more timely manner; and 4) result in substantial ongoing cost savings to the City.</p> <p>Consistent with current practice, non-tactical accidental discharge without injury and animal shooting administrative investigations would remain subject to Use of Force Review Board, OIG, and Police Commission review.</p>

Decree Para. No.	Type of Change	Specific Recommended Language Change	Comments
56	Consent Decree Modification	Add new paragraph as follows: <u>The Department shall further require notification of the OHB Unit and Inspector General whenever there is a non-factual accidental discharge. Upon receiving each non-factual accidental discharge notification, the OHB Unit, at its option, may determine that it will respond and investigate the incident.</u>	With the modification in the definition of Categorical Use of Force (Paragraph 13) to no longer include accidental discharges, this change establishes procedures by which the OIG and CIID will be notified of such incidents. Further, it provides that CIID can investigate an accidental discharge incident if it so chooses.
57	CIID to PSB Reorganization	Modify last sentence to read: <u>The criminal investigation shall not be conducted by the OHB Unit same investigators completing the administrative investigation.</u>	The reorganization of CIID to PSB currently contemplates integration of criminal and administrative investigation into PSB, however such investigations will be conducted by different teams.
67	Consent Decree Modification Related to Paragraph 56 Change	Modify first sentence to read: <u>The Commission shall continue its practice of reviewing all Categorical Uses of Force and non-factual accidental discharges, including.....</u>	See Paragraph 56.
69	Consent Decree Modification Related to Paragraph 56 Change	Modify first sentence to read: <u>The Department shall continue to have the Use of Force Review Board review all Categorical Uses of Force and non-factual accidental discharges.</u>	See Paragraph 56.
89	Consent Decree Modification	Change 45 days to 75 days.	Paragraph 89 provides only 45-days for review and action on the LAPD's Discipline Report. 45-days does not provide the Inspector General with adequate time to review the Discipline Report. Further, the Police Commission holds meetings on a bi-weekly basis and must post agenda's 72-hours in advance of the meeting pursuant to the Brown Act. Therefore, the Police Commission may not be able to adjudge the Inspector General's review for up to two weeks after the report's release.
106(h)	Consent Decree Modification of Monitoring Criteria Clarification	Clarify Consent Decree language as follows, or as an alternative clarify Monitoring criteria with regarding this specific issue: <u>...personally inspect and audit evaluate at least one area .....copies of completed audits-inspection reports.....The coordinator may use bureau staff to conduct such-audits inspections who themselves serve...</u>	The term audit has come to mean a forensic audit of the type completed by Audit Division, including supporting documentation, etc. This provision was meant to be a monthly review, not a full blown "audit." The types of reviews contemplated were similar to secondary compliance reviews, not audits as currently defined by the Monitor.
106(a)	Consent Decree Modification - LAPD Procedure Modification	Delete paragraph 106 (a).	For effective crime fighting, the option for uniformed police officers to have confidential informants is desired. The procedures for uniformed and non-uniformed officers use of confidential informant procedures would remain as detailed in paragraph 106. See also comments on paragraph 106(e) above.

Decree Para. No.	Type of Change	Specific Recommended Language Change	Comments
121	Consent Decree Clarification	Clarify end of paragraph 121 sentence as follows: <u>....., except those officers promoted to the rank of Captain and Detective paygrade advancements, who shall..... or in the case of Detective paygrade advancements attend the next scheduled supervisory training class, which shall be completed no later than four months after the effective date of the paygrade advancement.</u>	Detective I paygrade advancements to Detective II are not promotions, but rather paygrade advancements, which are not addressed in Paragraph 121. The City agrees that Detectives receiving a paygrade advancement should attend supervisory training. However, since Detective paygrade advancements are not promotions a separate training process needs to be established for Detective paygrade advancements. Promotions and paygrades advancement are processed through significantly different procedures and therefore, training Detectives before they are selected for paygrade advancement, as in the case of persons on a promotion list, to comply with Paragraph 121 results in a significant waste of training resources. Currently, a document is executed that indicates that a paygrade advanced DII will not supervise until they have received training. This is difficult to maintain in the long-term, and officers receiving a paygrade advancement receive pay raises in accordance with their new responsibilities, which may or may not include supervision. Similar to Captains, training for Detective paygrade advancements should be allowed to occur at the next supervisory training class scheduled.
131	Consent Decree Clarification	Clarify second sentence of paragraph 131 to provide for other appropriate LAPD entities to complete audits of Special Enforcement Units, or their successor units as follows: <u>These audits shall be conducted by the OHB Detective Support Division, Audit Division or Civil Rights Integrity Division.</u>	The paragraph 131 audits were intended to assess the activities of SEU's. Entities other than DSD, or its successor, would bring an element of greater independence and therefore the Consent Decree should provide for such flexibility. Further, the LAPD should be able to maximize its resources by combining Department-wide and SEU-specific audits to the maximum extent practicable. Allowing Audit Division and the Civil Rights Integrity Division to perform SEU audits is consistent with the intent of the Consent Decree and provides LAPD with the flexibility to manage its auditing resources.
136	Consent Decree Clarification	Clarify paragraph 136 to read as follows: <u>..... The Inspector General shall continue to review all Categorical Use of Force investigations. The Inspector General also shall conduct a regular, periodic audit and review of a stratified random sample of: (i) all Non-Categorical Use of Force; and (ii) Complaint Form 1.28 investigations. Both of these types of reviews shall assess areas of concern identified by the Inspector General, and shall assess at least one of the following issues related to the quality and/or outcome of the investigations: completeness, and findings of the investigation and shall include determinations of whether the investigations were completed in a timely manner, summarized and whether the summarized and transcribed statements accurately match the recorded statements; whether all available evidence was properly collected and analyzed; and/or whether the investigation was properly adjudicated. The Inspector General shall promptly report its findings from these reviews in writing to the Police Commission.</u>	The requirement for the OIG to perform separate audits was not intended to duplicate the efforts of the Audit Division, but rather to complement Audit Division audits. However, the language of the paragraph coupled with the definition of auditing procedures has resulted in a duplication of effort. The OIG reviews the mandated Audit Division complaint and non-categorical use of force stratified random sample audits which address the same parameters listed in Paragraph 136. To have the OIG repeat the exact same audit therefore has limited benefits to LAPD and OIG oversight. Rather the OIG should be afforded the flexibility to determine the manner (perhaps not a stratified random sample, but an audit focused on a specific complaint category, type of force, LAPD Division of concern, complaints resulting in non-disciplinary actions or suspensions, etc.) in which it thinks best to review complaints and non-categorical use of force investigations in light of the Audit Division audits, other issues of concern, or specific areas of oversight needs. This will serve to enhance the oversight role of the OIG and to maximize resources.
157	Consent Decree Modification	<del>Delete last sentence of the paragraph. Add sunset provision to end of the last sentence of the paragraph.</del> The Department shall establish a media advisory working group to facilitate information dissemination to the predominate ethnicities and cultures of Los Angeles through the third year of the Consent Decree.	The media advisory group was appropriate during the first year of Decree implementation to assist in explaining the Consent Decree and generate interest in the then quarterly meetings in the 18 geographic areas. The media group has served its purpose, as illustrated by the media's unwillingness to attend meetings. Efforts to work with the media to facilitate delivery of information to all Los Angeles communities are now better served by other LAPD public relations effort. Therefore, the requirement for a media advisory group should sunset at this time. The City has previously commented on this issue.

**MONITORING CRITERIA CHANGES**

All Consent Decree Changes		Monitoring criteria changes associated with all City-DOJ approved Consent Decree changes will be required. See above City proposed list.	
61	Clarification of Monitoring Methodology		The current monitoring criteria which requires officers to be transported separately by supervisors, physically separated in different rooms, and supervised by a supervisor until interviewed is depleting in-field supervision during such incidents. It is important to have supervisors supervising in-field activities, and there is limited need for a one-to-one individual involved/witness officer monitoring ratio. Therefore, a change in monitoring criteria to accommodate functional separation of officers, as opposed to physical separation of officers is recommended. Functional separation would require that officers be prohibited from speaking with one another about the incident, and that officers be monitored for compliance with such prohibition. However, officers could be monitor in a group, as opposed to individually.
95	Clarification of Monitoring Methodology		It is recommended that compliance with Paragraph 95 be defined based upon compliance with the provisions of Paragraph 87. The City has commented on this issue in response to Monitor Report findings on several occasions.
106(e)	Clarification of Monitoring Methodology		The LAPD needs to plan crime fighting activities and techniques for GED (formally SEU) units for each deployment period and needs the flexibility to manage GED resources and crime fighting techniques, with appropriate supervisory oversight, as necessary and appropriate. The Paragraph requires that exceptions for the provisions shall be made by appropriate managers for a specified, limited time. Generally the "limited" time should be for 30-days, as this is consistent with Deployment Period planning activities. However, nothing should preclude such activities from being exempted in consecutive 30-day periods, provided the appropriate review and documentation is approved by appropriate managers.
106(h)	Clarification of Monitoring Methodology		Clarification of monitoring criteria related to Paragraph 131(e) and associated Paragraph 106(h) and 131 Consent Decree changes.
131(e)	Clarification of Monitoring Criteria		The City is seeking clarification of the methodology for auditing supervisory oversight. The City advocates that compliance with management review requirements, as include in Paragraph 128 audits, illustrates compliance with supervisor oversight. No separate audit or review is required for this provision.
134	Clarification of Monitoring Criteria		The City has completed the skeletal failure audit and complied with the intent of Paragraph 133. The City is seeking final clarification of actions required to close compliance with this Paragraph.



MONITORING CRITERIA CHANGES cont.

all	Monitoring Criteria Clarification		Secondary compliance needs to be modified to indicate training is not a full blown training course and that "audit" means review (similar to PSB complaint biopiles to review compliance in process). Audits, like those completed by Audit Division, are not required for secondary compliance. Further, each individual provision does not require that specific training be included in LAPD training courses. Training takes many venues, including "on the job" training.
all	Monitoring Criteria Clarification	95% standard	The City has commented on the inapplicability of the 95% monitoring criteria to population sizes of 150 or less on several occasions. In addition, the methodology utilized to calculate compliance percentages in some instances is not reflective of the City's actual compliance level. The City has commented on this issue since it was first introduced in the draft monitoring methodology and seeks to modify the 95% criteria calculation methodology, as appropriate, to reflect the City's actual compliance level.

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**PROOF OF SERVICE**

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, Nineteenth Floor, Los Angeles, California 90067.

On, April 15, 2005, at the direction of a member of the Bar of this Court, I served the within:

**JOINT MOTION TO AMEND THE CONSENT DECREE PURSUANT TO  
PARAGRAPH 180 OF THE CONSENT DECREE**

on the interested parties to this action by delivering a copy thereof in a sealed envelope addressed to each of said interested parties at the following address(es):

**SEE ATTACHED LIST**

(BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.


(BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

(BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed this 15th day of April, 2005, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
\_\_\_\_\_  
VIKKI BARNETTE

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