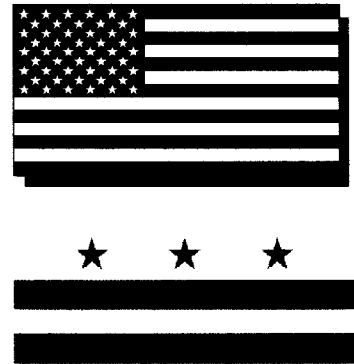


# Quarterly Report of the Independent Monitor for the Metropolitan Police Department

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Michael R. Bromwich  
Independent Monitor



Office of the Independent Monitor  
Fried, Frank, Harris, Shriver & Jacobson  
Suite 900  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
202.639.7472  
mpdmonitor@ffhsj.com  
<http://www.policemonitor.org>



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# **Independent Monitoring Team**

## **Independent Monitor**

Michael R. Bromwich  
Fried, Frank, Harris, Shriver & Jacobson

## **Fried Frank Monitoring Team**

Jonathan S. Aronie  
Kami N. Chavis  
Jacqueline D. Stephens

## **Police Practices Experts**

Chief Mitchell W. Brown  
Raleigh Police Department (retired)

Captain Ronald L. Davis  
Oakland Police Department

Chief Dennis E. Nowicki  
Charlotte-Mecklenburg Police Department (retired)

## **Statistical and Data Analysis Consultants**

Dr. Jessica Pollner  
PricewaterhouseCoopers LLP

Arthur P. Baines  
PricewaterhouseCoopers LLP

## **Monitoring Team Staff**

Elizabeth Avery  
Lucretia Denson  
Mary Ferguson  
Angela Robinson



# Executive Summary

## OVERVIEW

This report is the first quarterly report of the Office of the Independent Monitor (“OIM”). The OIM was established at the end of March 2002 to monitor compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they entered into with the Department of Justice (“DOJ”) on June 13, 2001. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

Because such a short period of time has elapsed since the issuance of the Special Report of the Independent Monitor for the Metropolitan Police Department (“Special Report”) on June 12, 2002, the OIM initially intended to accept information regarding MPD’s compliance with the MOA that was submitted to the OIM before the circulation of this report in draft form to MPD and DOJ on July 22, 2002. Following its review of the draft report, DOJ commented that the OIM’s quarterly report should be a snapshot of a defined quarterly period, which, in this case, should encompass MPD activities from April 1, 2002 through June 30, 2002. The benefit of establishing and adhering to such fixed time periods is to avoid a flurry of last minute activity on the part of MPD that will be included in the OIM’s reports even though it occurred after the end of the quarter. The OIM agrees with DOJ’s comment because establishing such fixed time periods adds clarity, coherence, and predictability to the entire process. MPD has not objected to DOJ’s comment. Thus, except where doing so would give a misimpression of the facts, this report encompasses only activities occurring prior to July 1, 2002. Likewise, our future reports will encompass only activities undertaken and information provided on or before the last day of the last month in the reporting quarter (*i.e.*, our next report will cover the period through September 30, 2002).

In addition to reporting on MPD’s activities across the full range of the MOA’s requirements, this report focuses particular attention on two primary areas: the results of our recently-completed review of two-thirds of the post-June 13, 2001 investigations by MPD’s original Force Investigative Team (“FIT I”) and the results of our preliminary assessment

of MPD's interim early warning tracking system, known as the Performance Assessment Management System ("PAMS"). Future quarterly reports will focus particular attention on other areas of MOA compliance.

Our work to date in these and other areas indicates that, even though MPD has shown some significant progress, it has not met the substantive requirements and timetables established by the MOA.\* To date, MPD has delivered ten draft policies to DOJ designed to meet the requirements of the MOA -- seven of which were returned to MPD for additional revisions, two of which have been approved, and one of which still is being reviewed by DOJ. Overall, as described in this report, MPD has made significant recent progress in meeting the specific requirements of the MOA, but it still has much work left to be done to satisfy the MOA's many requirements.

This report details MPD's current state of compliance in the following areas:

### **Use of Force Policy**

The MOA requires MPD to prepare and implement a new Use of Force Policy that meets specific requirements outlined in the MOA. The MOA required that this policy be developed by July 13, 2001. Prior to the issuance of our Special Report, MPD advised the OIM that it intended to submit a revised Use of Force Policy to DOJ before the end of June 2002. MPD submitted a revised policy to DOJ on June 10, 2002, to which DOJ provided comments on July 1, 2002. According to DOJ, the single item holding up approval of MPD's Use of Force Policy relates to an ongoing discussion between DOJ and MPD regarding proposed language for a related Use of Force Incident Report. DOJ expects to approve a final policy soon.

### **Use of Firearms Policy**

The MOA requires MPD to prepare and implement a new Use of Firearms Policy -- now called Handling of Service Weapons General Order -- that meets specific requirements outlined in the MOA. As with the Use of Force Policy, the MOA required that this policy be developed

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\* MPD has proposed a revised delivery schedule, DOJ has not yet approved MPD's proposal, and MPD and DOJ are engaged in ongoing discussions on this topic.

by July 13, 2001. Prior to the issuance of our Special Report, MPD informed the OIM that it intended to submit a revised policy to DOJ before the end of June 2002. MPD submitted a revised policy to DOJ on June 10, 2002. On July 1, 2002, DOJ returned the revised policy to MPD with comments. It appears that DOJ and MPD are very close to reaching an agreement on a final policy.

### **Other Use of Force Policies**

The MOA requires MPD to prepare a new Canine Teams General Order and a new Oleoresin Capsicum Spray Policy. Both policies should have been developed by July 13, 2001. As of the publication of this report, MPD has not met either requirement. In our Special Report, we noted that MPD had made significant progress in recent months toward meeting these requirements and expected to issue the policies shortly. As of June 30, 2002, however, no final policy had been approved by DOJ. According to DOJ, the single item holding up approval of the Oleoresin Capsicum Spray Policy relates to the ongoing discussion regarding proposed language for the related Use of Force Incident Report.

### **Use of Force Investigations**

MPD has made significant progress in the area of use of force investigations. As noted in our Special Report, the creation of the Force Investigation Team (“FIT”) to review serious uses of force is a reflection of this progress. Our monitoring activities reveal that the work of FIT is of high quality and reflects substantial improvement in the way MPD investigates such matters since DOJ’s investigation began in 1999. Despite this progress, and despite the significant accomplishments in this area, MPD has not yet demonstrated its compliance with various specific requirements of the MOA. For example, MPD has not yet completed the development of its Use of Force Investigations General Order or its Use of Force Review Board General Order.

### **Receipt, Investigation, and Review of Misconduct Allegations**

Our Special Report recognized room for improvement in the coordination and cooperation between MPD and OCCR. Subsequent to that report, the OIM facilitated a meeting with MPD, OCCR, and a representative from the Office of the Deputy Mayor for Public Safety to discuss the MOA requirements that must be fulfilled by the City and to agree upon a time line for the development of a Memorandum of Understanding between MPD and OCCR. While there still exists many tasks that the agencies must accomplish jointly, this meeting proved to

be a useful starting point for moving toward the achievement of these objectives. The OIM is encouraged by the recent level of cooperation between MPD and OCCR.

### **Discipline and Non-Disciplinary Actions**

By its own admission, MPD has made very little progress in this area. Subsequent to the issuance of our Special Report, MPD proposed revised deadlines relating to disciplinary and non-disciplinary actions. Modifications to any MOA deadlines must be approved by DOJ. DOJ has not yet approved MPD's proposed deadlines relating to disciplinary and non-disciplinary actions.

### **Personnel Performance Management System ("PPMS")**

Since MPD has not yet implemented a PPMS, we reviewed MPD's interim PAMS to determine the extent to which it meets the requirements set forth in the MOA. Our preliminary review of PAMS reveals a system that, while an improvement over past systems, falls far short of meeting the PPMS requirements of the MOA. PAMS does not capture the complete range of information required of PPMS and, without some significant upgrades, PAMS will not attain the level of functionality required by the MOA.

### **Training**

The OIM did not perform significant additional work in this area beyond what we described in our Special Report. We note with respect to MOA training, however, that, on June 17, 2002, MPD circulated a copy of the MOA along with a brief "Questions and Answers" brochure created by the OIM to every officer within MPD. Additionally, Chief of Police Charles H. Ramsey prepared a video describing and promoting the MOA that was shown at roll calls in each police district. This development reflects important and welcome (though belated) progress in this area.

### **Public Information**

In our Special Report, we noted our expectation that MPD would come into full compliance in this area prior to the issuance of this report. MPD has expanded the statistical data it makes public through its Web site. MPD now provides data regarding officers' use of ASP batons, canine deployments, and OC spray, in addition to data on firearms discharges. MPD, however, still is not in full compliance with paragraph 160 of the MOA. For example, data posted by MPD currently



do not include information about the number of use of force investigations that have been conducted, the outcomes of the investigations, the number of complaints that have been received regarding excessive force, or the disposition of those complaints -- all information required by paragraph 160 of the MOA.

### **Monitoring, Reporting, and Implementation**

On July 16, 2002, as noted above, the Compliance Monitoring Team issued its second quarterly report as required by paragraph 175 of the MOA. This report described several MOA compliance activities initiated by MPD. While this progress report was very useful, it lacked some of the details that are required by the MOA.

As reflected in the introduction to its quarterly status report, MPD has instituted some internal organizational changes. We find these changes to be positive steps toward ensuring MPD's continued focus on the requirements of the MOA.

### **Conclusion**

Despite significant recent compliance-related activities on the part of MPD, MPD is not yet in compliance with the many requirements of the MOA. We note, however, as we noted in our Special Report, that, if the level of energy that we have witnessed recently is maintained, MPD should be able to move promptly toward meeting the requirements of the MOA.



# Contents

Introduction.....	1
Compliance Assessment .....	5
I.    General Use of Force Policy Requirements (MOA ¶¶ 36-52) .....	5
A.    General Use of Force Policy (¶¶ 36-40).....	5
1.    Requirements .....	5
2.    Status.....	6
3.    Assessment and Analysis .....	6
B.    Use of Firearms Policy (MOA ¶¶ 41-43).....	6
1.    Requirements .....	6
2.    Status.....	7
3.    Assessment and Analysis .....	8
C.    Canine Policies and Procedures (¶¶ 44-46) .....	8
1.    Requirements .....	8
2.    Status.....	9
3.    Assessment and Analysis .....	9
D.    Oleoresin Capsicum Spray Policy (¶¶ 47-50).....	9
1.    Requirements .....	9
2.    Status.....	10
3.    Assessment and Analysis .....	10
E.    Implementation Schedule (¶¶ 51-52).....	10

II.	Incident Documentation, Investigation, and Review (MOA ¶¶ 53-84).....	11
A.	Use of Force Reporting Policy and Use of Force Incident Report (¶¶ 53-55).....	11
1.	Requirements.....	11
2.	Status .....	12
3.	Assessment and Analysis.....	13
B.	Investigating Use of Force and Misconduct Allegations (MOA ¶¶ 56-84) .....	13
1.	Use of Force Investigations (¶¶ 56-67).....	13
a.	Requirements .....	13
(1)	FIT Use of Force Investigations ....	13
(2)	Other Use of Force Investigations.....	14
(3)	Use of Force Review Board.....	15
b.	Status.....	16
(1)	FIT Use of Force Investigations ....	16
(2)	Other Use of Force Investigations.....	23
(3)	Use of Force Review Board.....	23
c.	Assessment and Analysis .....	23
(1)	FIT Use of Force Investigations ....	23
(2)	Other Use of Force Investigations.....	26
(3)	Use of Force Review Board.....	26

2.	Investigations of Misconduct Allegations (¶¶ 68-84).....	26
a.	Requirements.....	26
b.	Status .....	29
	(1) Development of Misconduct Investigation Plan .....	29
	(2) Funding.....	30
	(3) Training.....	30
	(4) Manual for Misconduct Investigations .....	31
c.	Assessment and Analysis.....	31
III.	Receipt, Investigation, and Review of Misconduct Allegations (MOA ¶¶ 85-104) .....	31
A.	Requirements.....	31
B.	Status .....	34
	1. Coordination and Cooperation Between MPD and OCCR (¶¶ 85-86).....	34
	2. Public Information and Outreach (¶¶ 87-91) ...	35
	3. Receipt of Complaints (¶¶ 92-95).....	36
	4. Training (¶ 96).....	36
	5. OCCR Complaint Investigation Manual (¶ 97).....	36
C.	Assessment and Analysis.....	36
IV.	Discipline and Non-Disciplinary Action (MOA ¶ 105).....	37
A.	Requirements.....	37
B.	Status .....	37

C.	Assessment and Analysis.....	38
V.	Personnel Performance Management System (MOA ¶¶ 106-118) .....	38
A.	Requirements .....	38
B.	Status .....	41
1.	Scope of PAMS (MOA ¶ 107).....	43
2.	Input Plan for Historical Data (MOA ¶ 108).....	45
3.	Database Search Capabilities (MOA ¶¶ 109-110).....	46
4.	Protocol for Using the Database (MOA ¶¶ 111-112).....	46
5.	Timeliness and Database Security (MOA ¶ 113).....	47
6.	Development and Implementation Schedule for PPMS (MOA ¶ 114).....	48
7.	OPR's Duties (MOA ¶ 117).....	49
C.	Analysis.....	50
VI.	Training (MOA ¶¶ 119-148).....	50
A.	Requirements .....	50
1.	Management Oversight.....	50
2.	Curriculum .....	51
3.	Instructors .....	53
4.	Firearms Training .....	53
5.	Canine Training .....	53
B.	Status .....	54
1.	Substantive Training.....	54

2.	MOA Training.....	55
C.	Assessment and Analysis.....	55
VII.	Specialized Mission Units (MOA ¶¶ 149-159).....	55
A.	Requirements.....	55
B.	Status .....	56
C.	Assessment and Analysis.....	57
VIII.	Public Information (MOA ¶ 160).....	57
A.	Requirements.....	57
B.	Status .....	57
C.	Assessment and Analysis.....	58
IX.	Monitoring, Reporting, and Implementation (MOA ¶¶ 161-193).....	58
A.	Requirements.....	58
B.	Status .....	59
C.	Assessment and Analysis.....	60
	Conclusion.....	61
	Appendix A - Acronyms	





# Introduction

This report is the first quarterly report of the Office of the Independent Monitor (“OIM”). The OIM was established at the end of March 2002 to monitor compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they entered into with the Department of Justice (“DOJ”) on June 13, 2001. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

Although this is the first quarterly report of the OIM, covering generally the period April through June 2002, this is the OIM’s second report.<sup>1</sup> The OIM’s June 12, 2002 “Special Report of the Independent Monitor for the Metropolitan Police Department” (“Special Report”) was issued to coincide with the one-year anniversary of the MOA and reported comprehensively on the City’s and MPD’s compliance efforts in the year following the signing of the MOA. This first quarterly report, being issued less than two months after the issuance of the Special Report, updates the OIM’s review of the City’s and MPD’s compliance efforts and reports on the areas in which we have undertaken detailed work since the issuance of the Special Report.

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<sup>1</sup> The Special Report of the Independent Monitor for the District of Columbia (“Special Report”), issued on June 12, 2002, described MPD’s compliance with the MOA since the execution of the MOA on June 13, 2001. Because such a short period of time has elapsed since the issuance of our Special Report, the OIM initially intended to accept information regarding MPD’s compliance with the MOA that was submitted to the OIM before the circulation of this report in draft form to MPD and DOJ on July 22, 2002. Following its review of the draft report, DOJ commented that the OIM’s quarterly report should be a snapshot of a defined quarterly period, which, in this case, should encompass MPD activities from April 1, 2002 through June 30, 2002. The benefit of establishing and adhering to such fixed time periods is to avoid a flurry of last minute activity on the part of MPD that will be included in the OIM’s reports even though it occurred after the end of the quarter. The OIM agrees with DOJ’s comment because establishing such fixed time periods adds clarity, coherence, and predictability to the entire process. MPD has not objected to DOJ’s comment. Thus, except where doing so would give a misimpression of the facts, this report encompasses only activities occurring prior to July 1, 2002. Likewise, our future reports will encompass only activities undertaken and information provided on or before the last day of the last month in the reporting quarter (*i.e.*, our next report will cover the period through September 30, 2002).

In the period since the release of our Special Report, we have reviewed a sizeable number of Force Investigation Team (“FIT”) use of force investigations, met with members of MPD’s Institute of Police Science (“IPS”) and Office of Professional Responsibility (“OPR”) on numerous occasions, undertaken a review of MPD’s Performance Assessment Management System (“PAMS”), and worked with MPD and the Office of Citizen Complaint Review (“OCCR”) to advance their resolution of how properly to allocate responsibility for citizen complaints. Additionally, we have met with various community groups, briefed the Fraternal Order of Police (“FOP”) leadership, and conducted monthly MOA Status Meetings in order to ensure that our monitoring activities are known and understood by the City, MPD, and DOJ.

Since the publication of our Special Report, there have been many changes within MPD relevant to the OIM’s work. Assistant Chief Terrance W. Gainer left MPD and accepted the position of Chief of the United States Capitol Police. Assistant Chief Michael J. Fitzgerald was promoted to Executive Assistant Chief, replacing Chief Gainer. Assistant Chief Kim Dine, former director of the OPR, accepted the position of Chief of Police in Frederick, Maryland and has been replaced by Assistant Chief (formerly Commander) Peter J. Newsham. Commander Jeffrey Moore has accepted the position of Commander of the Second District vacated by Assistant Chief Newsham.

In addition to these personnel changes, MPD has made internal structural changes in the areas relating to civil rights, police accountability, and compliance with the MOA. Chief of Police Charles H. Ramsey recently created a Civil Rights & Force Investigations Division within the OPR. This new division, led by Inspector Joshua Ederheimer, will house the Compliance Monitoring Team (“CMT”), the two Force Investigation Teams (“FIT I” and “FIT II”) responsible for conducting use of force investigations, the Office of Equal Employment and Diversity, and the Use of Force Review Board (“UFRB”).

This first quarterly report presents the status of MPD’s compliance with each substantive paragraph of the MOA. In those substantive areas where we conducted no in depth compliance testing since the publication of our Special Report, we have updated the status reports contained in that report as specifically as we could based on the best information available. We have done so primarily based on our continuing discussions with the CMT, with whose members we continue to meet on a regular basis and with whom we communicate on virtually a daily basis. In addition, we have found the quarterly reports, which MPD is

required to issue pursuant to paragraph 175 of the MOA, to be quite helpful in keeping us informed of the status of MPD's progress in meeting the requirements of the MOA. Aside from updates in status across the full range of the MOA's requirements, this report focuses particular attention on two primary areas: the results of our recently completed review of two-thirds of the post-June 13, 2001<sup>2</sup> investigations by MPD's original Force Investigation Team ("FIT I"), and the results of our preliminary audit of MPD's interim early warning tracking system, known as PAMS. Future quarterly reports will focus particular attention on other areas of MOA compliance.

Our work demonstrates that, even though MPD continues to show progress in terms of its compliance with the MOA, it still has not met the substantive requirements and timetables established by the MOA. Indeed, as noted in our Special Report and as reflected in this report, MPD has not completed actions that the MOA required to be completed as long ago as July 2001. As of July 1, 2002, MPD had delivered ten draft policies to DOJ, seven of which were returned to MPD for additional revisions, two of which were approved, and one of which still is being reviewed by DOJ.<sup>3</sup> MPD and DOJ continue to work together to remedy the seven draft policies not accepted by DOJ. It should be noted that MPD has proposed a series of revised deadlines with respect to these policies that it believes will be acceptable to DOJ.<sup>4</sup>

Finally, it is worth noting that, on June 17, 2002, MPD distributed copies of the MOA, and an accompanying Question and Answer brochure prepared by the OIM, to all MPD officers. The roll call distribution of this material was accompanied by the presentation of a videotaped message from Chief Ramsey promoting the importance of the MOA. We believe that these activities, while occurring more than one year after the signing of the MOA, reflect the reinvigorated commitment of MPD to MOA compliance.

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<sup>2</sup> June 13, 2001 is the effective date of the MOA.

<sup>3</sup> DOJ has approved MPD's Force Related Duty Status Determination Policy and its Carrying Weapons and Transporting Prisoners Aboard Aircraft Policy.

<sup>4</sup> The OIM takes no position regarding the acceptability of the proposed revised deadlines as it is purely a contractual matter between MPD, the City, and DOJ.



# Compliance Assessment

This section of the report is organized in a manner consistent with the structure of the MOA -- and consistent with the structure of our Special Report. Within this structure, we first summarize the *requirements* imposed by each section of the MOA; then we provide the current *status* of progress toward compliance with those requirements; and, finally, we offer our *analysis and assessment* of factors that have impeded or advanced MPD's progress toward compliance, along with additional information we believe relevant. Summarizing the requirements imposed by the MOA makes this chapter, like its predecessor in our Special Report, quite lengthy, but we feel the discussion is necessary in order to live up to the requirement that we monitor "each substantive provision" of the MOA.<sup>5</sup>

## **I. General Use of Force Policy Requirements (MOA ¶¶ 36-52)**

### **A. General Use of Force Policy (¶¶ 36-40)**

#### **1. Requirements**

MPD is required to complete the development of an overall Use of Force Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the Use of Force Policy must include provisions that:

- Define and describe the different types of force and the circumstances under which the use of each type of force is appropriate;
- Encourage officers to use advisements, warnings, and verbal persuasion when appropriate and in general seek the goal of de-escalation;
- Prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may develop such that the use of deadly force would be authorized;

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<sup>5</sup> MOA at ¶ 169.

- Establish that officers must, wherever feasible, identify themselves as police officers and issue a warning before discharging a firearm;
- Require that, immediately following the use of force, officers must examine persons who have been subjected to the use of force and obtain medical care for them, if necessary; and
- Provide specific advice to officers that the use of excessive force will subject them to MPD disciplinary action and potential civil liability and criminal prosecution.

## **2. Status**

According to MPD, the delay in the approval and implementation of MPD's Use of Force General Order has been due, most recently, to continuing negotiations between MPD and DOJ regarding whether an officer or a supervisor is responsible for completing a Use of Force Incident Report.<sup>6</sup> DOJ expects to approve the order once the Use of Force Incident Report language dispute has been resolved, which it expects to occur soon.

## **3. Assessment and Analysis**

We anticipate that the negotiations over the Use of Force Incident Report will be resolved and that the Use of Force General Order will be approved before the end of the next quarter. We then can begin monitoring the implementation of the order.

### **B. Use of Firearms Policy (MOA ¶¶ 41-43)**

#### **1. Requirements**

MPD is required to complete its development of a Use of Firearms Policy. The policy must comply with applicable law and be consistent with current standards in the law enforcement field. In particular, the Use of Firearms Policy must:

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<sup>6</sup> According to MPD, it may change the name of the Use of Force Incident Report to the Subject Resistance Form. DOJ has not yet approved the proposed name change.

- Prohibit officers from possessing or using unauthorized ammunition and require officers to obtain service ammunition through official MPD channels;
- Specify the number of rounds that officers are authorized to carry;
- Establish a single, uniform reporting system for all firearms discharges;
- Require that, when a weapon is reported to have malfunctioned during an officer's attempt to fire, it promptly be taken out of service and an MPD armorer evaluate the functioning of the weapon;
- Require that MPD document in writing the cause of a weapon's malfunction -- *i.e.*, whether an inherent malfunction, a malfunction due to poor maintenance, or a malfunction caused by the officer's use of the weapon; and
- Provide that the possession or use of unauthorized firearms or ammunition may subject officers to disciplinary action.

In addition to these specific requirements relating to the Use of Firearms Policy, the MOA requires the Mayor to submit to the Council for the District of Columbia<sup>7</sup> a request to permit MPD's Chief of Police to determine the policy for MPD officers to carry firearms when they are off duty while in the District of Columbia, including any appropriate restrictions applicable to situations in which an officer's performance may be impaired.

## **2. Status**

Due to concern that the title "Use of Firearms Policy" could create confusion in the minds of MPD officers, MPD changed the name of this policy to the "Handling of Service Weapons General Order." In our Special Report, we noted that DOJ provided MPD with comments on this order on May 28, 2002. MPD subsequently revised its order and resubmitted it to DOJ on June 10, 2002. On July 1, 2002, DOJ

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<sup>7</sup> The submission to the City Council takes the form of an amendment to Section 206.1 of Title 6A of the District of Columbia Municipal Regulations.

returned the draft order to MPD with additional comments. It appears that DOJ and MPD are close to reaching an agreement on this order. DOJ's most recent series of comments focused only on a single issue -- MPD's policy for investigating firearm discharges.

The amendment regarding the carrying of weapons by off-duty officers, described in the Requirements Section above, is pending before the City Council as part of Bill No. 14-610, Title VIII. In our Special Report, we noted that a hearing on the Bill is scheduled for September 19, 2002. We are aware of no change in this schedule.

### **3. Assessment and Analysis**

We anticipate that MPD's Use of Firearms Policy, recently renamed the Handling of Service Weapons General Order, will be approved before the conclusion of the next quarter. We then can begin monitoring its implementation.

#### **C. Canine Policies and Procedures (§§ 44-46)**

##### **1. Requirements**

The MOA requires MPD to develop a Canine Teams General Order that:

- Limits the high-risk deployment of canines -- off-leash deployments, use during searches, and other situations where there is a significant risk of a canine biting a suspect -- to cases where the suspect is either wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed;
- Requires supervisory approval for all canine deployments -- either a canine unit supervisor or a field supervisor;<sup>8</sup>
- Ensures that suspects are advised through a loud and clear announcement that a canine will be deployed, that the suspect should surrender, and that the suspect should remain still when approached by a canine; and

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<sup>8</sup> The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.



- Ensures that, in all circumstances where a canine is permitted to bite or apprehend a suspect,
  - The handler calls the canine off as soon as the canine can be safely released, and
  - MPD ensures that any individual bitten by a canine receives immediate and appropriate medical treatment.

## **2. Status**

In our Special Report, we noted that DOJ provided MPD with comments on the Canine Teams General Order on May 28, 2002. MPD subsequently revised that order and resubmitted it to DOJ on June 10, 2002. On July 1, 2002, DOJ returned the order to MPD with additional comments.

According to DOJ, the Canine Teams General Order is “substantially complete.” The issues delaying final approval relate to the apparent absence of definitions for “handler-controlled methodology” and “canine official.” Additionally, the ongoing negotiations between DOJ and MPD regarding the Use of Force Incident Report are causing delays in completing the Canine Teams General Order.

## **3. Assessment and Analysis**

We anticipate that MPD’s Canine Teams General Order will be approved before the conclusion of the next quarter. We then can begin monitoring its implementation.

### **D. Oleoresin Capsicum Spray Policy (§§ 47-50)**

#### **1. Requirements**

The MOA requires MPD to develop an Oleoresin Capsicum (“OC”) Spray Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the OC Spray Policy must:

- Prohibit officers from using OC spray unless the officer has legal cause to detain the suspect, take the suspect into custody, or maintain the suspect in custody and unless the suspect is actively resisting the officer;

- Prohibit officers from using OC spray to disperse crowds or smaller groups of people, including its use to prevent property damage, unless the acts being committed endanger public safety and security;
- Prohibit the use of OC spray on children and the elderly, except in exceptional circumstances;
- Require that officers provide a verbal warning prior to the use of OC spray, unless such warning would endanger the officer or others, stating that its use is imminent unless the resistance ends; and, whenever feasible, permit a reasonable period for the warning to be heeded;
- Limit the use of OC spray to a person's head and torso; prohibit spraying from less than three feet away (except in exceptional circumstances); and limit the spray to two, one-second bursts; and
- Decontaminate persons sprayed with OC spray within twenty minutes after spraying, and transport them to a hospital for treatment if they complain of continuing adverse effects or state that they have a pre-existing medical condition that may be aggravated by the spray.

## **2. Status**

As noted previously in this report, the approval and implementation of MPD's Use of Force Incident Report Form (which is referenced in MPD's OC Spray Policy) has been delayed as a result of ongoing negotiations between MPD and DOJ regarding the protocols for completing the form. DOJ expects to approve the OC Spray Policy once this issue has been resolved.

## **3. Assessment and Analysis**

We anticipate MPD's Use of Force Incident Report and its OC Spray Policy to be approved before the end of the next quarter. We then can begin monitoring the implementation of the policy.

### **E. Implementation Schedule (§ 51-52)**

The implementation schedule set forth in the MOA required MPD to complete development of the policies and procedures relating to use of

force, use of firearms, canines, and OC spray by July 13, 2001. MPD has provided various drafts (and, in some cases, multiple drafts) of all of these policies to DOJ, which, in turn, has provided comments to MPD.

In our Special Report, we discussed the delays that resulted in MPD missing the due dates set forth in the MOA for these policies. It now appears MPD will be issuing the policies within the next quarter. While this is substantially later than the originally agreed-upon date, MPD has made notable progress in the last few months.

In future quarters, we anticipate being able to monitor MPD's implementation of and compliance with the use of force, use of firearms, canine, and OC spray policies.

## **II. Incident Documentation, Investigation, and Review (MOA ¶¶ 53-84)**

### **A. Use of Force Reporting Policy and Use of Force Incident Report (¶¶ 53-55)**

#### **1. Requirements**

The MOA requires MPD to develop a Use of Force Reporting Policy and a Use of Force Incident Report. The MOA mandates that the reporting policy require:

- Notification of an officer's supervisor immediately following any use of force or after the lodging of any allegation of excessive use of force;
- An officer to fill out a Use of Force Incident Report immediately after he or she draws a firearm and points it at another person or points the firearm in such a person's direction;
- An officer's supervisor to respond to the scene upon receiving notification that force has been used or that an allegation of excessive force has been received;

- Immediate notification to FIT in every instance involving deadly force,<sup>9</sup> the serious use of force,<sup>10</sup> or any use of force potentially reflecting criminal conduct by an officer;<sup>11</sup>
- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on Use of Force Incident Reports into MPD's Personnel Performance Management System ("PPMS").

## 2. Status

According to both DOJ and MPD, the parties are treating the Use of Force Reporting Policy as an element of the overall Use of Force Policy. We discussed MPD's progress with respect to the Use of Force Policy earlier in this report.

MPD submitted a revised version of its Use of Force Incident Report to DOJ on June 10, 2002. DOJ provided comments on the form on July 1, 2002. MPD and DOJ also met in June to discuss their respective concerns about whether the MPD officer or the MPD supervisor should be responsible for completing the form.

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<sup>9</sup> "Deadly force" is defined in paragraph 15 of the MOA as "any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object."

<sup>10</sup> "Serious use of force" is defined in paragraph 33 of the MOA as "lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine."

<sup>11</sup> "Use of force indicating potential criminal conduct by an officer" is defined in paragraph 35 of the MOA to include "strikes, blows, kicks or other similar uses of force against a handcuffed subject."

### **3. Assessment and Analysis**

The issue as to who should complete the Use of Force Incident Report -- the involved officer or the officer's supervisor -- has been the topic of many discussions. It appears MPD and DOJ are close to reaching agreement on this issue. Such an agreement is vital since many of the use of force policies required by the MOA relate to this form. It appears the parties will reach an agreement during the next quarter.

#### **B. Investigating Use of Force and Misconduct Allegations (MOA ¶¶ 56-84)**

##### **1. Use of Force Investigations (¶¶ 56-67)**

###### **a. Requirements**

###### **(1) FIT Use of Force Investigations**

The provisions of the MOA that address use of force investigations take as their point of departure the January 1999 creation of FIT as the entity within MPD charged with investigating all firearms discharges by MPD. The MOA creates a protocol for handling the investigation of use of force by MPD and the manner in which such investigations are to be coordinated. At the core of the protocol is the requirement to transfer responsibility for MPD criminal investigations involving officer use of force from MPD district violent crime units or other MPD district supervisors to FIT.<sup>12</sup>

MPD is required to notify and consult with the United States Attorney's Office ("USAO") -- and vice versa -- in each instance in which there is an incident involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are handled by FIT rather than by any other unit of MPD. Even while the criminal investigation is pending, the MOA requires FIT's investigation of the officer's use of force to proceed in all

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<sup>12</sup> Consistent with this approach, the MOA requires that, by October 13, 2001, MPD train and assign a sufficient number of personnel to FIT to fulfill the duties and responsibilities assigned to it under the MOA. MOA at ¶ 63.

such cases, although the compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.<sup>13</sup>

FIT is required to respond to the scene of every such incident described above and to conduct all such investigations, whether the investigation results in criminal charges, administrative sanctions, or both. No officers from any unit other than FIT are permitted to participate in the investigation. The MOA requires FIT's administrative (non-criminal) use of force investigations to be completed within ninety days of a decision by the USAO not to prosecute, unless special circumstances prevent its timely completion.<sup>14</sup>

The MOA contains various requirements governing FIT's investigative process and the preparation of an investigative report by FIT. For example, the report prepared by FIT must include:

- A description of the use of force incident and other uses of force identified during the investigation;
- A summary and analysis of all relevant evidence; and
- Proposed findings, which include:
  - A determination of whether the use of force under investigation was consistent with MPD policy and training;
  - A determination of whether proper tactics were used; and
  - A determination of whether alternatives requiring lesser uses of force were reasonably available.

## **(2) Other Use of Force Investigations**

All use of force investigations, other than those specifically assigned to FIT, may be investigated by chain of command supervisors in MPD districts. In the alternative, the Chief of Police or his designee may assign investigations to chain of command supervisors from another

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<sup>13</sup> This deferral of the interview of subject officers is designed to avoid the risk that such compelled interviews might taint the criminal investigation. See *Garrity v. State of New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

<sup>14</sup> In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

district. In the absence of special circumstances, these use of force investigations, like FIT's investigations, must be completed within ninety days and must contain all of the elements prescribed above for FIT investigative reports. Once such investigations are complete, the investigative report must be submitted to the Unit Commander, who will review it to ensure completeness and to ensure that its findings are supported by the evidence. The Unit Commander has the power to order additional investigation if necessary. Once the investigation is complete, the investigative file is forwarded to the UFRB.<sup>15</sup>

### **(3) Use of Force Review Board**

Subject to approval by DOJ, MPD is required by the MOA to develop and implement a policy to enhance the UFRB as the review body for use of force investigations. The policy developed by MPD must:

- Ensure that the UFRB conducts prompt reviews of all use of force investigations;
- Establish the membership of the UFRB;
- Establish timeliness rules for the review of investigations;
- Authorize the UFRB to recommend discipline for violations of MPD policies, recommend further training where appropriate, and authorize the UFRB to direct City supervisors to take non-disciplinary action to encourage officers to modify their behavior;
- Require the UFRB to assign to FIT or return to the original investigating unit any incomplete or improperly conducted use of force investigations; and
- Empower the UFRB to recommend to the Chief of Police investigative standards and protocols for all use of force investigations.

In addition to these requirements, the UFRB must conduct annual reviews of all use of force investigations to identify patterns and problems

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<sup>15</sup> In the event there is evidence of criminal misconduct, the Unit Commander must suspend the use of force investigation and notify FIT and the USAO.

in such investigations. The UFRB must issue a report summarizing the findings of its review in a report to the Chief of Police.

## **b. Status**

### **(1) FIT Use of Force Investigations**

The OIM has been provided access to virtually all of FIT's investigative files since FIT's inception in 1999. In June 2002, the OIM spent several days at FIT headquarters reviewing these reports. To date, we have reviewed 25 of the 37 FIT case files that address firearm discharges occurring on or after June 13, 2001, the date of the MOA.<sup>16</sup> In determining which files to review, we excluded those investigations where it had been less than ninety days since the USAO had decided not to prosecute,<sup>17</sup> the investigative files were not available,<sup>18</sup> or there was not sufficient time to review the case file.<sup>19</sup>

While at FIT headquarters, we also randomly selected several pre-FIT investigations and reviewed those case files. This supplementary review permitted us to compare the quality of MPD's investigations before and after the creation of FIT.

Based on our review, we believe that the creation of FIT has resulted in *significantly improved* use of force investigations by MPD. While some of the pre-FIT investigations we reviewed were quite competently conducted, the post-FIT investigations reflect significant progress in terms of quality and comprehensiveness. With minor exceptions, we found the FIT investigations to be conducted properly and the investigative reports to be prepared consistent with professional

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<sup>16</sup> For future quarterly reports, the OIM will review and discuss the investigations of other types of force.

<sup>17</sup> Paragraph 62 of the MOA requires FIT to complete its investigation within ninety days of the USAO's decision not to prosecute, unless special circumstances exist. There were four investigations that fell within this category. Because these investigations should be finalized by the next quarter, we felt it would be most productive to review the final, rather than the preliminary, investigation.

<sup>18</sup> There were three case files that were not in the FIT headquarters at the time of our review. We were told the FIT investigators were working on these files at home. In the assessment and analysis section, we have recommended that FIT consider maintaining the original copy of every case file in its file room.

<sup>19</sup> There were five files that fell within this category.



standards applicable to such investigations. We did, however, find certain elements of the FIT reports to be out of compliance with MOA requirements.

#### Exclusivity of Investigation (MOA ¶¶ 61, 64)

Since our review to date has focused only on FIT case files, we could make only a preliminary determination regarding whether FIT -- as opposed to an officer from the subject officer's own district -- exclusively investigated the deadly and serious uses of force as required by paragraph 64 of the MOA. Our preliminary review suggests that MPD is in compliance with this requirement. We note, however, that this issue was not always clear from the face of the documents because some witness statements do not identify the name or unit of the officer taking the statement.

#### Timeliness of Notification (MOA ¶¶ 53, 61)

Our review revealed two FIT investigations where FIT was not timely notified of the use of force by an MPD officer. In one investigation, Prince George's County police notified an MPD supervisor that an off-duty MPD officer discharged his firearm in its jurisdiction, but FIT was not notified about the firearm discharge until 24 hours later. In the other investigation, neither FIT nor the appropriate supervisors were timely notified of multiple uses of force -- including a firearm discharge, ASP batons, and OC spray -- that occurred when several MPD officers attempted to apprehend a fleeing suspect. This failure to report appears to be especially egregious as the preliminary investigation indicates between 30 and 50 MPD officers responded to the incident leading to the uses of force.<sup>20</sup>

#### Participation of Unit Supervisor (MOA ¶ 53)

The preliminary investigation reports prepared by FIT identify MPD officials who responded to the scene of the use of force. Thus, we were able to determine whether a supervisor from the officer's unit responded to the scene in every case, as required by paragraph 53 of the MOA. While the supervisor's presence strongly suggests that the supervisor was notified in some fashion of the use of force, the materials in the case

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<sup>20</sup> Because FIT cannot investigate incidents promptly when it is not immediately notified of the use of force, we view the failure to report as an MPD, rather than FIT, deficiency.

files did not always make clear when and how this notification occurred. Consequently, in many cases, we were unable to determine whether the notification was “immediate” as required by paragraph 53 of the MOA.<sup>21</sup> With respect to at least one investigation (described above), however, it is clear that the subject officers’ supervisors were not immediately notified of the multiple uses of force.

#### USAO Notification (MOA ¶¶ 54, 58)

It appears that FIT promptly notified the USAO, as required by the MOA, in a majority of the investigations that we reviewed. While some of the FIT preliminary investigation reports indicate the exact date on which the USAO was notified, more often than not we had to infer notification from the date of the FIT report or from the date of the documented consultation between MPD and the USAO. We identified at least four investigations where we could not determine whether the USAO had been notified about the use of force within one business day as required by paragraph 54 of the MOA.<sup>22</sup> Based on our discussions with FIT management, it appears that this is more a problem with documentation than with compliance.

Because the USAO for the District of Columbia does not have jurisdiction over firearm discharges that occur outside the City, FIT does not consult with the USAO about such discharges. FIT also does not typically consult with the USAO about certain accidental discharges, such as range and training incidents.<sup>23</sup> Excluding those two types of cases, we found that FIT consulted with the USAO on all of the other investigations we reviewed.

#### Prompt Medical Attention (MOA ¶ 40)

Based on our review of the FIT case files, it appears that prompt medical attention consistently was obtained for injured individuals.

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<sup>21</sup> Paragraph 53 of the MOA provides that the Use of Force Reporting Policy requires that officers notify their supervisor immediately following any use of force.

<sup>22</sup> This count does not include investigations of certain accidental discharges since FIT is not always required to notify the USAO about those cases.

<sup>23</sup> The MOA excludes range and training incidents from the definition of “serious use of force.” These incidents typically are investigated by a different MPD unit, rather than by FIT.

### Authorized Ammunition (MOA ¶ 41)

We found no evidence of the use of unauthorized firearms or ammunition, although we did identify one investigation where an officer may have had more than the authorized number of rounds in his firearm. It was clear that FIT thoroughly investigated this issue, however, and determined that the Mobile Crime Lab made a mistake in its initial report. We believe this was the correct conclusion.

### Officer Impairment (MOA ¶ 42)

We found no indication that any of the officers investigated by FIT were impaired by drugs or alcohol during their use of force, but we also did not find any data suggesting that FIT typically focuses on this issue as part of its investigation.<sup>24</sup> While the FIT report template contemplates a thorough physical description of the subject officer -- including age, height, weight, clothing type, and MPD equipment -- the template lacks a specific section calling for a discussion of whether the officer appeared impaired. Moreover, while it is possible that FIT only records such information if it finds evidence of impairment, it seems that FIT investigators do not typically question witnesses on this topic. Consequently, we have no basis to determine whether MPD presently inquires on this topic during its investigation.

### Deferring Officer Interviews (MOA ¶ 60)

Paragraph 60 of the MOA requires FIT to defer interviewing officers who are the subject of a criminal investigation resulting from a use of force. The purpose of this requirement is to avoid tainting a criminal investigation with a “compelled” interview.<sup>25</sup> Our review of the FIT case

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<sup>24</sup> Paragraph 42 of the MOA requires the Mayor of the District of Columbia to request an amendment to the District of Columbia Municipal Regulations whereby the Chief of Police may issue a policy prohibiting MPD officers from carrying and/or using a firearm in situations where the officer’s performance may be impaired. While this paragraph does not specifically address use of force investigations, MPD is required to assess the propriety of all officer conduct during its use of force investigations (see MOA at ¶ 42), and an inquiry into whether the officer was impaired during the use of force is applicable to the OIM’s evaluation of the quality and completeness of the investigation (see MOA at ¶¶ 171-172).

<sup>25</sup> See *Garrity v. State of New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

files revealed no instance in which FIT compelled the interview of an officer who was the subject of a criminal investigation.

Investigative Techniques (MOA ¶ 81)

The MOA requires FIT investigators to follow certain specific investigative techniques during their investigations, including:

- interviewing complainants and witnesses at sites and times convenient for them, including at their residences or places of business;
- not conducting group interviews;
- notifying the supervisors of the involved officers of the investigation, as appropriate;
- interviewing all appropriate MPD officers, including supervisors;
- collecting, preserving, and analyzing all appropriate evidence, including canvassing the scene to locate witnesses and obtaining complainant medical records, where appropriate; and
- identifying and reporting in writing all inconsistencies in officer and witness interview statements gathered during the investigation.

Based on our review, it appears that FIT investigators generally adhere to these requirements, although the documentation maintained by FIT in this area is less complete than it should be. The FIT case files rarely contained documentation about witness canvasses, although we could often infer such canvasses from some of the statements FIT received. Similarly, while FIT obtained numerous officer statements regarding each use of force, we often had to infer whether all appropriate MPD officers had been interviewed since no complete record of all officers who responded to the incident leading to the use of force was included in the investigation file.<sup>26</sup> In one case, we identified an investigation where some inconsistencies in witness statements were not identified in the final report.

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<sup>26</sup> The FIT preliminary reports list the supervisors who respond to the scene following the use of force.

Additional analyses beyond a review of the FIT case files will need to be performed in order to assess fully some of the requirements set forth above.

Scope of Final Investigation Report (MOA ¶ 62)

Paragraph 62 of the MOA requires the following elements to be included in each final investigation report issued by FIT:

- Description of the use of force incident and any other uses of force identified during the investigation;
- A summary and analysis of all relevant information gathered during the investigation; and
- Proposed findings and analysis to support the findings including:
  - A determination of whether the use of force was consistent with policy and training;
  - A determination of whether proper tactics were employed; and
  - A determination of whether lesser force alternatives were reasonably available.

All of the FIT reports we reviewed contained an excellent description of the use of force incident and, if applicable, any other uses of force identified during the investigation. FIT's summaries and analyses of relevant information gathered during the investigation generally were complete and clearly presented. One of the only shortcomings we identified was that, in some instances, the FIT reports failed to maintain a neutral and objective tone. Additionally, in some instances, we noted that additional data could have been gathered that would have assisted FIT in its analyses.

One such instance involved an officer who discharged his firearm at a suspect. The case file was silent as to whether the officer provided a verbal warning prior to firing his weapon. Because a verbal warning,

when feasible, is required by the MOA,<sup>27</sup> the investigator should have addressed this issue in the summary and analysis section of the report.<sup>28</sup>

A second instance involved a case where we found that a gun shot residue test would have assisted FIT in assessing the credibility of conflicting witness statements. When we asked a FIT investigator why such a test was not sought, we were informed that FIT does not routinely request such tests.

The reports we reviewed varied in quality with respect to the proposed findings and analysis section. In some reports, the investigator engaged in an extensive analysis of whether the use of force was consistent with policy and training, whether proper tactics were employed, and/or whether lesser force alternatives were reasonably available.<sup>29</sup> In other reports, however, the investigator did not directly address these issues. While we often were able to infer the investigator's proposed findings based upon his or her analysis of other issues, we believe such proposed findings should be made explicit in all cases.

#### Timing (MOA ¶ 62)

The MOA requires FIT to complete its investigation within ninety days of the USAO's decision not to prosecute the officer involved in the use of force (the "declination") absent documented special circumstances. We identified only nine investigations conducted between June 13, 2001 and June 30, 2002 where more than ninety days had elapsed from the time the USAO declined to prosecute the subject officer. Two of these nine investigations reflected timeliness deficiencies. In one investigation, the declination was issued in January 2002, yet the FIT report still has not been finalized. We were told that this delay was due to a pending UFRB request for additional information. In the other investigation, the declination was issued in February 2002. We identified only an undated final report in the case file. We also were told that the final report had

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<sup>27</sup> MOA at ¶ 39.

<sup>28</sup> As of the date of our review, the report had not been approved by the Chief of OPR. It is possible the OPR Chief will request revisions to the report.

<sup>29</sup> An analysis of whether there were lesser force alternatives available is not relevant to investigations involving accidental discharges. As such, our review did not focus on whether this analysis was conducted during any investigations of accidental discharges.

not yet been approved by the OPR Chief. Neither of these case files contained documentation detailing the reason for the delay.

## **(2) Other Use of Force Investigations**

MPD has prepared a Use of Force Investigations General Order, which covers FIT investigations and non-FIT use of force investigations. In our Special Report, we noted that DOJ provided MPD with comments on the order on May 28, 2002. MPD revised the order and resubmitted it to DOJ on June 10, 2002. DOJ returned the order with additional comments on July 1, 2002. According to MPD, the ongoing negotiations regarding the Use of Force Incident Report must be resolved before the Use of Force Investigations General Order can be finalized.

## **(3) Use of Force Review Board**

MPD's UFRB currently operates under the authority of a draft MPD general order. MPD has been working to revise and update this draft general order in order to enhance the operations of the UFRB. To this end, as we discussed in our Special Report, MPD submitted a revised policy to DOJ on June 6, 2002. DOJ responded with comments on July 1, 2002.

It appears DOJ and MPD are close to reaching an agreement with respect to a mutually acceptable Use of Force Review Board Policy. DOJ's only substantive comment regarding MPD's most recent draft involved the scope of the UFRB's jurisdiction. DOJ suggests that the UFRB's jurisdiction be limited to uses of force to which FIT responds, rather than all uses of force by an MPD officer.<sup>30</sup>

We noted in our Special Report that MPD stated it was implementing a plan to meet the annual review and reporting requirements set forth in paragraph 67 of the MOA. This task still has not been completed.

### **c. Assessment and Analysis**

#### **(1) FIT Use of Force Investigations**

Our review suggests that the quality of the post-FIT investigations is significantly better than the quality of the pre-FIT investigations. The

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<sup>30</sup> This is to prevent the UFRB from being overwhelmed with investigations.

FIT investigations are broader and reflect an effort to conduct a more comprehensive search for witnesses than comparable cases before FIT was created. We believe that, on the basis of our discussions with MPD officials and our detailed review of pre-FIT and FIT use of force investigations, the FIT team has achieved a higher level of quality and consistency in its use of force investigation process than its predecessor.

While our review shows that FIT generally follows most of the MOA requirements relating to use of force investigations, its compliance with these requirements is not always well documented. In an effort to enhance the quality of FIT investigations even further, we recommend that FIT modify its current practices to ensure that the following information is reflected in all future FIT reports:

- Date of the report;
- Time when the officer's supervisor was notified about the use of force, who notified the supervisor, and whether and when the supervisor responded to the scene;
- Date the USAO was notified about the use of force and date the USAO was consulted about the case;
- Documentation of the FIT investigator's assessment of whether or not the officer was impaired and any evidence in support of the assessment;
- Description of the witness canvass and the investigator's findings as a result of the canvass;
- A list of all officers who responded to the initial event leading to the use of force and, for those officers not interviewed as part of the investigation, an explanation as to why the interview was unnecessary; and
- Topic headings and explicit findings addressing:
  - Whether the use of force was consistent with MPD policy and training;
  - Whether proper tactics were employed; and
  - Whether lesser force alternatives were reasonably available.



For additional ease of future review, we also recommend that FIT clearly identify the officer taking any witness statement, as well as the officer's unit and the names of all individuals present during the interview.

FIT also should ensure that it maintains a neutral tone in its reports. It is inappropriate for use of force investigation reports to be written as advocacy pieces. The appropriateness of the officers' conduct should be driven by the facts, not by inference and innuendo. In addition, FIT should review each report carefully to ensure either that the evidence gathered during the investigation -- such as the crime scene diagram -- supports the investigator's proposed findings or that any significant evidence that conflicts with those findings is adequately explained in the report. FIT also should consider whether additional crime scene techniques not currently employed by FIT may further enhance its investigative process.

We recommend that FIT consider adopting better procedures for maintaining its investigative files. We provided FIT with at least one day's notice of our intent to review certain case files. When we arrived at FIT headquarters, however, not all files were available. To maintain the integrity of the files, we recommend that FIT secure original documents in its file room. Active files maintained by investigators outside the file room should contain only duplicates of the original documents. This would ensure that the material is not lost and permit immediate access to any authorized individuals (such as the OIM) who may need the data in the future.

As discussed above, we identified two investigations where the officers' conduct was not properly reported to FIT. Such a failure to report hampers FIT's ability to conduct its investigation in a timely and appropriate way and, if the failure is anything other than isolated, can threaten the integrity of the FIT investigative process. We plan to conduct additional reviews to ensure that prompt reports are being made to FIT.

We believe that each of the foregoing suggestions will enhance the quality of what already is an impressive process. While we identified instances where we felt additional facts should have been developed during the investigation, these situations did not rise to the level where we felt the investigation should be reopened pursuant to paragraph 172

of the MOA.<sup>31</sup> We will report on this issue again in our next quarterly report.

## **(2) Other Use of Force Investigations**

We anticipate that the Use of Force Investigations General Order will be approved before the end of the next quarter. The OIM will monitor MPD's implementation of and compliance with this policy at that time.

## **(3) Use of Force Review Board**

We anticipate that the Use of Force Review Board General Order will be approved before the end of the next quarter. The OIM will monitor MPD's implementation of and compliance with the policy at that time.

MPD currently has no time line for the implementation of the annual review and reporting requirements set forth in paragraph 67 of the MOA. MPD is not in compliance with this requirement. The OIM will continue to review and report on this issue.

## **2. Investigations of Misconduct Allegations (¶¶ 68-84)**

### **a. Requirements**

The MOA establishes a set of procedures for handling the following types of allegations of misconduct against MPD officers:

- Allegations for which an officer has been arrested or charged criminally;
- Allegations where an officer has been named as a party in a civil lawsuit
  - o relating to the officer's conduct while on duty or otherwise acting in an official capacity; or
  - o relating to the officer's conduct while off duty, and otherwise not acting in an official capacity, where allegations against

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<sup>31</sup> Paragraph 172 of the MOA gives the authority to the OIM, under limited circumstances, to reopen investigations determined to be incomplete. There are a few investigations the OIM will continue to monitor to ensure their sufficiency.

the officer involve physical violence, threats of physical violence, racial bias, dishonesty, or fraud;

- Allegations of unlawful discrimination;
- Allegations of unlawful searches and stops;
- Allegations of unlawful seizures;
- Allegations of retaliation or retribution against officers or other persons; and
- Allegations of all uses of physical violence -- including but not limited to strikes, blows, and kicks -- that is engaged in for a punitive purpose or that is perpetrated against a subject who is not offering resistance.<sup>32</sup>

With respect to allegations in the above categories that are criminal, MPD's OPR is required to conduct the investigation rather than chain of command supervisors in MPD's districts. In these categories of cases, MPD is required to notify the USAO within twenty-four hours of the receipt of such allegations, and MPD and the USAO are required, in the absence of extraordinary circumstances, to consult with each other following such notification.<sup>33</sup> In addition to criminal allegations, the MOA requires that MPD assign for investigation outside the chain of command allegations involving:

1. Incidents where charges made by an officer for disorderly conduct, resisting arrest, or assault on a police officer are found by a prosecutor or a judge to be without merit; and
2. Incidents where evidence has been suppressed because of a constitutional violation involving potential misconduct by an MPD officer or where a judicial officer either has made a

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<sup>32</sup> The same procedures apply whatever the source of the information to MPD -- whether by self-referral from the officer, reporting by other MPD personnel, or complaint from a source outside MPD.

<sup>33</sup> The MOA makes clear that a key reason for this consultation requirement is to avoid potential complications for a criminal investigation and potential prosecution posed by administratively-compelled interviews of officers. MOA at ¶ 71.

finding of misconduct against an officer or has requested MPD to conduct an investigation into such an allegation.

In addition to establishing protocols for the assignment of such investigations, the MOA establishes procedures that must be followed in the conduct of such investigations. These procedures for MPD internal investigations require that:

- Interviews of complainants, involved officers, and material witnesses be tape-recorded or videotaped whenever the investigation involves the serious use of force or a serious physical injury;
- Complainants and other witnesses be interviewed individually rather than in groups, and at locations and times convenient for them;
- All appropriate MPD officers and supervisors be interviewed;
- All necessary evidence be collected, analyzed, and preserved; and
- Inconsistencies in statements gathered from officers and other witnesses during the investigation be identified and reported.

Furthermore, the MOA sets forth a series of milestones and due dates for the implementation of this overhauled system for conducting misconduct investigations. These include the following:

- By August 13, 2001,<sup>34</sup> MPD must develop a plan (subject to approval by DOJ) under which OPR would become responsible for the *criminal misconduct* allegations described in the bulleted points listed at the beginning of this section, which would include provision for sufficient personnel and adequate procedures to implement this objective;

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<sup>34</sup> The MOA sets due dates in terms of number of days following the execution of the MOA (e.g., 30, 60, 90, 120 days after the execution of the MOA, etc.). For convenience and simplicity, throughout this report we have provided calendar dates for those due dates of all items and, because the MOA was signed on June 13, 2001, have made all due dates fall on the 13th day of various months.

- By August 13, 2001, MPD must develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint investigations* from chain of command supervisors to MPD's OPR;<sup>35</sup>
- In its fiscal year 2002 budget, the District of Columbia is required to provide the funds necessary to provide for the full implementation of these plans and sufficient resources for administrative complaint investigations to be completed within ninety days of the receipt of a complaint by MPD;<sup>36</sup>
- By September 13, 2001, MPD must develop a plan (subject to DOJ approval) to ensure that all MPD officers responsible for conducting investigations receive adequate training in a wide range of subjects;
- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- By October 13, 2001, MPD must develop a manual (subject to DOJ approval) for conducting all MPD misconduct investigations.

The foregoing plans must be implemented fully, with all necessary positions filled, by December 31, 2002.

## **b. Status**

### **(1) Development of Misconduct Investigation Plan**

Paragraph 68 of the MOA requires that, within sixty days of the execution of the MOA, MPD must draft a “plan . . . to allocate sufficient personnel” and establish “procedures to accomplish” its responsibilities

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<sup>35</sup> See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

<sup>36</sup> In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

relating to the investigation of misconduct allegations.<sup>37</sup> As of June 30, 2002, neither task had been accomplished.<sup>38</sup>

Previously, MPD advised the OIM that it intended to submit a personnel allocation plan to DOJ by June 30, 2002. MPD also advised us that it intended to incorporate the requirements of paragraph 68 into its Misconduct Investigations General Order, which was to be submitted to DOJ by June 30, 2002; its Office of Internal Affairs (“OIA”) Manual, which was to be submitted to DOJ by July 22, 2002; and its Misconduct Investigations Manual, which MPD intends to submit to DOJ by August 21, 2002. As of June 30, 2002, the Misconduct Investigations General Order had not been submitted to DOJ.

### **(2) Funding**

Paragraph 78 of the MOA requires the City to provide adequate fiscal year 2002 funds to implement the MOA requirements relating to the investigation of misconduct allegations. Based upon our initial review of the manner in which MPD has staffed the offices responsible for investigating misconduct allegations, it appears that the City has not yet met this requirement. As we noted in our Special Report, our preliminary review has revealed that, while certain areas seem to have been funded adequately (e.g., training and basic equipment), other areas (e.g., staffing) are inadequately funded. For example, it still appears to us that the OIA, FIT, and the Office of Directive Development all are understaffed.

### **(3) Training**

Paragraph 84 of the MOA requires MPD to develop a plan to train its investigators responsible for investigating misconduct allegations. This plan should have been completed within 90 days of the execution of the MOA, with the actual training occurring within 180 days after DOJ’s approval of that plan. As of June 30, 2002, MPD had not submitted its training plan to DOJ.

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<sup>37</sup> MOA at ¶ 68.

<sup>38</sup> In the draft of this report, we had indicated that MPD had submitted such a plan in August 2001. DOJ responded that a status report had been submitted at that time, but not a plan as required by the MOA.

#### **(4) Manual for Misconduct Investigations**

Paragraph 83 of the MOA requires MPD to prepare and transmit to DOJ a manual for the investigation of misconduct allegations. While MPD submitted an early draft of a manual to DOJ in connection with the submission of its 90-120 day report, MPD subsequently requested that DOJ not review the draft due to errors that it contained. DOJ agreed to return the draft to MPD on February 12, 2002, but informed MPD that a revised draft was due by June 30, 2002. According to MPD, this manual (and the accompanying misconduct policy) is nearing completion.

##### **c. Assessment and Analysis**

Over the past several years, MPD has revised and significantly improved its process for investigating misconduct allegations. As noted in our Special Report, however, we question whether the funding allocated to these entities is sufficient to ensure that MPD meets its MOA obligation to complete administrative misconduct investigations within ninety days and otherwise meet the requirements of the MOA to have a fully staffed OIA capability. Moreover, the failure of MPD to meet its own recently-revised deadlines, which were set after it had missed the MOA's deadlines in this area --some by close to a year -- continues to be a serious cause for concern.

### **III. Receipt, Investigation, and Review of Misconduct Allegations (MOA ¶¶ 85-104)**

#### **A. Requirements**

This section of the MOA addresses the procedures designed to help members of the public aggrieved by the actions of MPD officers lodge complaints concerning officer conduct. It relates to MPD's role in facilitating the filing of such complaints and also to MPD's responsibility to coordinate with OCCR to ensure that the respective roles and responsibilities of MPD and OCCR are clearly defined and that the agencies are working properly together.

More specifically, the MOA requires the following:

- By August 13, 2001, the development of a plan, in consultation with DOJ, that defines the roles and responsibilities of -- and the relationship between -- MPD and OCCR with regard to
  - o Receiving, recording, investigating, and tracking complaints;

- o Conducting community outreach and education regarding making complaints against officers;
- o Exchanging information between MPD and OCCR; and
- o Defining the responsibilities of the MPD official who serves on the Citizen Complaint Review Board (“CCRB”).
- The provision of adequate funding and resources for OCCR to carry out its responsibilities as defined both by the MOA and the law creating OCCR;<sup>39</sup>
- By September 13, 2001, the development of a plan to ensure that the investigative staff of OCCR is adequately trained, including training in a wide range of MPD policies and procedures;
- By September 13, 2001, the development of a manual, in consultation with DOJ, for conducting OCCR complaint investigations, which should include time lines and investigative templates;
- By September 13, 2001, the development and implementation of an effective program to inform citizens of their right to lodge complaints against MPD officers, which must include, among other things, the distribution of complaint forms, facts sheets, informational posters, and public service announcements, in English, Spanish, and any other languages appropriate for particular areas, which describe MPD and OCCR complaint processes;
- By October 13, 2001, the broad availability of complaint forms and informational materials at OCCR, MPD headquarters, and various other MPD locations; through the Internet; and to community groups and community centers; and
- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.<sup>40</sup>

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<sup>39</sup> District of Columbia Law 12-208.



The MOA also sets forth various methods designed to facilitate the filing of complaints against officers. These methods include:

- Requiring officers to provide their names and identification numbers to any person who requests them;
- By September 13, 2001, requiring that MPD provide the means for citizens to file complaints by all available methods, including in person, in writing, or by telephone, facsimile, or electronic mail;
- By October 13, 2001, requiring the establishment of a hotline, operated by OCCR, that will be appropriately publicized by the City and MPD and that will be audited to ensure its proper operation; and
- By September 13, 2001, ensuring that responsibility for receiving all complaints filed directly with MPD belongs to MPD's OPR, which must establish filing and tracking systems and coordinate with OCCR.

In addition, the MOA sets forth a series of requirements for evaluating and resolving allegations of misconduct against MPD officers. These include establishing that a preponderance of the evidence standard should be applied in such investigations; that all relevant evidence should be considered and weighed, including the credibility of

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**Footnote continued from previous page**

- <sup>40</sup> The program must include at least the following elements: one open meeting per quarter in each of the patrol service areas for the first year of the MOA and one meeting in each patrol service area semi-annually in subsequent years. The purpose of these meetings is to inform the public about the provisions of the MOA and the various methods of filing a complaint against an officer. At least one week before such meetings, the City shall publish notice of the meeting as follows: (i) in public areas, including libraries, schools, grocery stores, and community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD Web sites; and (iv) in the primary languages spoken by the communities located in such areas. In order to enhance interaction between officers and community members in daily policing activities, the open public meetings must include presentations and information on MPD and its operations.

various witnesses;<sup>41</sup> and that the cases be resolved in one of several prescribed ways. Based on the investigation, the possible dispositions are “unfounded,” “sustained,” “insufficient facts,” or “exonerated.”<sup>42</sup> Misconduct investigations require the preparation of a written report, which should include a description of the alleged misconduct, summary and analysis of all relevant evidence, and proposed findings and analysis. Except in cases of unusual complexity, such investigations must be completed within ninety days after the allegations have been received. Each investigation should be reviewed by Unit Commanders to determine the existence of any underlying problems and training needs, and the Unit Commanders shall implement any appropriate non-disciplinary actions.

## **B. Status**

### **1. Coordination and Cooperation Between MPD and OCCR (¶¶ 85-86)**

Our Special Report recognized room for improvement in the coordination and cooperation between MPD and OCCR. Subsequent to that report, on July 12, 2002, the OIM facilitated a meeting with MPD, OCCR, and a representative from the Office of the Deputy Mayor for Public Safety to discuss the MOA requirements that must be fulfilled by the City and to agree upon a time line for the development of a Memorandum of Understanding (“MOU”) between MPD and OCCR.<sup>43</sup> While there still exist many tasks that the agencies must accomplish jointly, this meeting proved to be a useful starting point for moving toward the achievement of these objectives.

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<sup>41</sup> The MOA makes clear that there should be no presumption that an officer’s statement is entitled to greater weight than the statement of a civilian. MOA at ¶ 99.

<sup>42</sup> Although the meanings of “sustained” and “insufficient facts” are self-evident, the other dispositions may not be. “Unfounded” refers to cases in which the investigation found no facts to support the allegation; “exonerated” refers to cases where the conduct alleged took place but did not violate MPD policies, procedures, or training.

<sup>43</sup> While the events described in this section occurred after the June 30, 2002 cutoff date for this report, we have included this discussion here in order adequately to reflect the improved cooperation we have noted between MPD and OCCR.

As we discussed in our Special Report, there has been some confusion among various City agencies regarding who within the City bears the responsibility for MOA requirements assigned to the City as opposed to MPD. The MOU being developed by MPD and OCCR is intended to help answer this question by defining each agency's respective responsibilities under the MOA. The MOU also is intended to satisfy the MOA's requirement for a plan to define the roles and responsibilities of MPD and OCCR with regard to complaints, community outreach, exchanging information, and the MPD CCRB representative.<sup>44</sup>

MPD previously sent a draft MOU to OCCR.<sup>45</sup> At the July 12, 2002 meeting, OCCR noted that it had prepared comments on the draft and agreed to provide those comments to MPD by July 24, 2002. This commitment will afford OCCR the time it needs to issue final regulations and re-review the draft MOU to assess whether additional modifications may be necessary in light of the final regulations.

MPD and OCCR have developed a working group to facilitate the completion of the MOU. This working group will provide suggestions on the draft MOU to both parties -- and to the OIM -- by August 15, 2002. MPD and OCCR then will meet on or before August 25, 2002 to work out any differences. MPD and OCCR have agreed to produce a final MOU by August 31, 2002.

We are encouraged by the cooperation we are seeing between MPD and OCCR.

## **2. Public Information and Outreach (¶¶ 87-91)**

In our Special Report, we noted that neither MPD nor the City had taken adequate steps to satisfy the MOA requirement to develop and implement an effective public outreach program aimed at apprising citizens of the substance of the MOA. Our continuing review in this area provides no reason to alter our initial assessment.

During the July 12, 2002 meeting, however, MPD and OCCR engaged in a productive discussion regarding ways to improve their respective public information and outreach efforts. OCCR offered to have

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<sup>44</sup> MOA at ¶ 85.

<sup>45</sup> Both MPD and OCCR acknowledge that this initial draft is incomplete and will need substantial work.

its recently-hired community outreach liaison meet with her peer within MPD in order to ensure that the agencies are promoting consistent messages. Some concerns were expressed at this meeting regarding how the costs of preparing public outreach materials will be allocated among the agencies and/or “the City,” as well as who will bear the ultimate responsibility for the overall public outreach plan because that plan, necessarily, will encompass the activities of more than one City agency. While these questions have yet to be resolved, we anticipate that additional meetings will be held among MPD, OCCR, and the Office of the Deputy Mayor for Public Safety in these areas.

### **3. Receipt of Complaints (§§ 92-95)**

We did not reassess the City’s, MPD’s, or OCCR’s compliance in this area for purposes of this report. We will focus on this issue in a future quarterly report.

### **4. Training (§ 96)**

As noted in our Special Report, OCCR’s investigators seem to be receiving adequate training. According to records recently provided by the Director of the IPS, eleven members of OCCR’s investigative staff underwent thirty-five hours of MPD training in May 2001 and five investigators underwent supplemental training in November and December 2001. We are unaware of any retraining currently scheduled by MPD and OCCR, but have no reason to doubt either agency’s commitment to continue working together to ensure compliance in this area into the future.

### **5. OCCR Complaint Investigation Manual (§ 97)**

On November 1, 2001, OCCR submitted to DOJ a draft copy of a complaint investigation manual in accordance with paragraph 97 of the MOA. Prior to the issuance of our Special Report, we were told that DOJ was going to provide OCCR with detailed comments on the manual. We have not received any additional information regarding the status of this manual.

## **C. Assessment and Analysis**

The OIM is encouraged by the recent level of cooperation between MPD and OCCR. We will monitor whether MPD and OCCR meet their goal of completing an MOU by August 31, 2002. Even if they do, this is simply a preliminary step toward full MOA compliance. MPD and OCCR

will need to continue working together to achieve the goals established in their MOU. We will continue to monitor closely the relationship between MPD and OCCR and continue to report on this issue in future reports.

#### **IV. Discipline and Non-Disciplinary Action (MOA ¶ 105)**

##### **A. Requirements**

The MOA requires that, by October 13, 2001, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.<sup>46</sup> Specifically, the policy must:

- Prescribe when non-disciplinary action is appropriate;
- Prescribe when district-level discipline or corrective action is appropriate;
- Establish a formal and centralized system for documenting and tracking discipline and corrective action; and
- Develop a procedure for providing written notice to complainants regarding the most significant aspects of the handling of their complaints, including but not limited to disposition.

##### **B. Status**

As stated in our Special Report, and as conceded by MPD, MPD has made very little progress toward compliance with paragraph 105 of the MOA. MPD attributed this lack of progress to the need to involve the FOP in the revision process. MPD has proposed to DOJ the following revised deadlines:

- By September 2002 - complete draft of the Discipline General Order
- By October 2002 - complete CMT and Chief of Police internal review of the Discipline General Order

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<sup>46</sup> MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

- By November 2002 - complete FOP's review of the Discipline General Order and make any final edits
- December 2002 - submit order to DOJ for approval

DOJ approval is required for any change to the MOA deadlines. DOJ has not yet approved MPD's proposed time line.<sup>47</sup>

### **C. Assessment and Analysis**

MPD currently is working with DOJ in an effort to negotiate an extension to the Discipline General Order time line set forth in the MOA. We will monitor this matter and will present any new information in a subsequent quarterly report.

## **V. Personnel Performance Management System (MOA ¶¶ 106-118)**

### **A. Requirements**

Under the MOA, MPD is committed to developing and implementing a computer database that will facilitate the management and supervision of MPD personnel. The computer database, referred to in the MOA as the Personnel Performance Management System, or PPMS, is intended to:

- Promote civil rights integrity and best professional police practices;
- Manage the risks of police misconduct;
- Evaluate and audit the performance of MPD officers, units, and groups;
- Promote accountability and proactive management; and
- Identify, manage, and control at-risk officers, conduct, and situations.

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<sup>47</sup> DOJ has requested that MPD submit its Discipline General Order by November 2002. DOJ and MPD have not reached a final agreement on this issue.

In addition to describing the objectives PPMS shall achieve, the MOA specifies the information that must be captured to ensure that PPMS achieves these objectives. This information includes the following:

- All uses of force that must be reported on MPD's Use of Force Incident Report forms or that are the subject of an MPD criminal or administrative investigation;
- All police canine deployments;
- All officer-involved shootings and firearms discharge, whether on or off duty, and all other lethal uses of force;
- All reviews of use of force, including all decisions on whether the use of force was within MPD policy;
- All vehicle pursuits and traffic collisions;
- All complaints regarding MPD officers, whether made to MPD or OCCR;
- Chronologies and results of investigations, adjudications, and discipline relating to any of these matters;
- All commendations received by MPD about an officer's performance;
- All criminal, civil, and administrative proceedings initiated on the basis of MPD operations and the actions of MPD personnel; and
- With respect to each MPD officer, that officer's:
  - Educational history,
  - Military service and discharge status,
  - Assignment and rank history,
  - Training history,
  - All management and supervisory actions taken pursuant to review of PPMS information, and

- All instances in which a prosecution declination or a motion to suppress was based upon concerns about the officer's credibility or on evidence of a Constitutional violation by the officer.

The MOA also requires MPD to develop, subject to DOJ approval, a "Data Input Plan" to facilitate the entry of historical data into PPMS, as well as detailed requirements for how the information -- historical and contemporary -- must be put into the system and the ways in which it must be retrievable. Furthermore, the MOA requires MPD to develop a detailed protocol for the use of the computerized management system.

The MOA sets forth the following schedule for developing and implementing PPMS:

- By August 13, 2001, and subject to the approval of DOJ, issue a Request for Proposal ("RFP") for PPMS;
- Within 210 days (approximately seven months, or by January 2002) of the issuance of the RFP, select the contractor to create PPMS;
- By September 13, 2001, develop and submit the protocol for using PPMS; and
- Within twelve months of selecting the contractor, the City and MPD are required to have a beta version of PPMS ready for testing.

While PPMS is under development, MPD is required to utilize existing information and databases to achieve the purposes established for PPMS. In addition, OPR is charged with the responsibility of operating PPMS, as well as for developing and overseeing MPD-wide risk assessments.

Related to, but separate from, the development of PPMS, MPD is required, by December 13, 2001, and subject to approval by DOJ, to enhance its new Performance Evaluation System. This enhancement must ensure that each sworn MPD employee's performance be evaluated, at a minimum, according to certain specified criteria. These criteria include civil rights integrity and community policing; adherence to law, including civil rights laws and laws designed to protect the rights of suspects; and the performance of supervisors in identifying at-risk behavior among their subordinates.



## **B. Status**

Despite taking certain actions directed toward procuring PPMS, MPD has not yet complied with the MOA requirements related to PPMS. At least part of this noncompliance is due to the City's failure to solicit database developers in a timely fashion. The City's Office of Contracting and Procurement ("OCP") issued an initial RFP on December 19, 2001 to companies registered to receive such solicitations from the City. MPD received proposals in response to its solicitation, but the prices for the systems offered in the proposals exceeded the City's available funds. MPD is now conducting a mid-level systems evaluation to identify less costly alternatives.

Against this background, it is important to recognize that although MPD has not developed or taken substantive steps to develop the PPMS required by the MOA, it has taken steps to develop an "interim solution," called the Performance Assessment Management System, or PAMS. The OIM has undertaken a review of PAMS in an effort to determine whether the system meets the substantive requirements set forth in the MOA for PPMS. In order to assess MPD's compliance with the MOA's requirements relating to the development and implementation of PPMS, we met with MPD personnel responsible for maintaining PAMS, participated in a demonstration of PAMS, and met with MPD personnel responsible for using the information that flows out of PAMS. The results of our review are summarized here, and then presented in greater detail below:

- PAMS does not capture the full breadth of information required by the MOA.
- MPD has not developed the processes and protocols for the review of PAMS information under all the circumstances required by the MOA.
- PAMS does not permit a complete analysis of data captured.
- The "potential users" of PAMS data are not sufficiently trained and, thus, are not taking advantage of the information contained in the PAMS database.

In short, while PAMS represents a significant improvement over the paper-based system upon which MPD historically has relied, and while it does meet several of the MOA's requirements, it does not fulfill all the MOA requirements relating to PPMS.

To understand the current status of MPD's efforts at developing PAMS, it is useful to review some relevant background. In November 1992, MPD initiated the development of an early warning tracking system ("EWTS") in order to identify and assist MPD officers who may be in need of additional oversight. The responsibility for implementing EWTS was originally assigned to MPD's Office of Professional Standards ("OPS") and Investigative Services Bureau ("ISB").<sup>48</sup> OPS and ISB collected information regarding officer conduct and monitored that information in an attempt to identify patterns of misbehavior that warranted further inquiry. Notably, EWTS was largely paper-based, not computer-based. The procedures established to facilitate this process required that, when an officer was the subject of three or more incidents during any 24-month period, the officer's official file would be evaluated. Over the years, the nature and quantity of information collected by EWTS have evolved and expanded.

In 1998, at the request of Chief Ramsey, MPD developed a complaint tracking system ("CS") to complement EWTS. CS, which still exists, was to be separate from EWTS and was to be managed by OIA. CS tracks the following four categories of information: uses of force, citizen complaints, civil actions against officers, and OCCR notifications regarding citizen complaints. Unlike EWTS, CS employs an electronic "relational database" (*i.e.*, a Microsoft Access database housed on a stand-alone computer) for tracking and analyzing these four categories of information.

In January 2002, MPD transferred responsibility over EWTS to OPR.<sup>49</sup> The transfer eliminated redundancy as OIA became responsible for managing both CS and EWTS databases. Recently, MPD integrated EWTS and CS databases into the more comprehensive monitoring system called PAMS. Currently, the data collected in PAMS are stored on a single, stand-alone computer so that access is limited to the one person physically at the computer. We have been told that OIA plans to "network the system" in the near future.

Our review of PAMS focused on whether the database collected the types of data required by the MOA for PPMS, the system's search capabilities, the timeliness of the data entry, and the security of the

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<sup>48</sup> The responsibility for EWTS changed several times until, as we discuss below, it was assigned to OPR in January 2002.

<sup>49</sup> OIA is part of OPR.

system. We also reviewed other PPMS-related MOA provisions including the requirement for a data input plan and protocols for using the system, the development and implementation schedule for PPMS, and OPR's duties with respect to the system. This preliminary review, however, did not test the quality or sufficiency of the data in PAMS. We intend to conduct such testing in the future.

### **1. Scope of PAMS (MOA ¶ 107)**

The MOA identifies several categories of data that must be contained in PPMS. PAMS fulfills some of these requirements. PAMS generally meets the MOA's requirements concerning the tracking of "incidents," but lacks the procedures, protocols, and structure to capture the details regarding these incidents and the personal history of the officers involved in the incidents. Specifically, PAMS is capable of collecting and tracking:

- All uses of force that must be reported on MPD's Use of Force Incident Report forms or that are otherwise the subject of an MPD criminal or administrative investigation;
- Other lethal uses of force;<sup>50</sup>
- All complaints regarding MPD officers, whether made to MPD or OCCR;
- All commendations received by MPD about an officer's performance; and
- All criminal, civil, and administrative proceedings initiated on the basis of MPD operations and the actions of MPD personnel.

PAMS provides only limited data for many other PPMS-related requirements:

- The MOA requires PPMS to contain information about officers involved in an incident,<sup>51</sup> such as the officer's name and badge

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<sup>50</sup> This requirement excludes canine deployments, officer involved shootings, and uses of force that are required to be reported on the Use of Force Incident Report or that are otherwise the subject of an MPD criminal or administrative investigation. These other types of potentially lethal force are addressed by different MOA requirements relating to PPMS. See MOA at ¶ 107.

number, work assignment, name of the officer's partner and field supervisor, and shift at the time of the incident.

- PAMS does not capture the officer's shift or the name of the officer's partner or field supervisor.
- The MOA requires PPMS to contain information about the involved member of the public, such as the individual's race, ethnicity, or national origin, for all incidents in the database.
  - PAMS does not capture the individual's national origin.
- The MOA requires PPMS to contain the assignment and rank history, training history, educational history, military service, and discharge status for each officer.
  - While PAMS captures select data regarding officer assignment and rank, these data are collected only for officers who have had an "incident" and reflect only the officer's assignment and rank at the time of the incident.
  - PAMS does not collect any data on training history, educational history, military service, or discharge status.
- The MOA requires PPMS to contain all instances in which a police canine is deployed.
  - While PAMS tracks bites and injuries by canines, it does not contain data on all deployments.
- The MOA requires PPMS to contain information on all on-duty and off-duty officer involved shootings.
  - PAMS is capable of tracking all on-duty and off-duty officer involved shootings, but the off-duty shootings only would be recorded if the officer or the jurisdiction where the shooting occurred reported the event to MPD.

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<sup>51</sup> Incident refers to an event whereby MPD would assign a CS tracking number, such as a complaint about an officer's use of force or a chargeable motor vehicle accident.

- The MOA requires PPMS to contain data on all vehicle pursuits and traffic collisions.
  - MPD does not require officers to report all traffic collisions so it is not possible for PAMS to capture these data. PAMS is capable, however, of tracking all MPD vehicle pursuits.
- The MOA requires PPMS to contain all studies, reviews, or determinations regarding the criminal, administrative, tactical, strategic, or training implications of any use of force, including all preliminary and final decisions regarding whether the use of force was within MPD policy. The MOA also requires PPMS to contain the results of certain adjudications of criminal and administrative investigations and a chronology or other complete historical record of all tentative and final decisions or recommendations regarding discipline.
  - PAMS captures the timing of final decisions, but not the actual decision. Moreover, it does not capture preliminary decisions or training suggestions resulting from the officer's use of force.
- The MOA requires PPMS to contain all management and supervisory actions taken pursuant to a review of PPMS data. PPMS also must contain all instances in which MPD is informed by a prosecuting authority that a decision not to prosecute a crime was based -- in whole or in part -- on concerns about the credibility of an MPD officer or that a court declined to admit evidence because of a constitutional violation by an MPD officer.
  - PAMS does not collect any such data.

## **2. Input Plan for Historical Data (MOA ¶ 108)**

The MOA requires MPD to create a plan for inputting historical data into PPMS. MPD has not created this plan and PAMS contains only limited historical data. According to MPD, the entry of data about current incidents is given precedence over the entry of historical data. It appears that, at this time, MPD lacks the resources to input all available historical data into PAMS.

### 3. Database Search Capabilities (MOA ¶¶ 109-110)

PPMS is required to contain numerical and descriptive information about each incorporated item or incident and scanned or electronic attachments of copies of relevant documents. This is necessary to fulfill the requirement that PPMS have the capability to search and retrieve numerical counts, percentages, and other statistical analyses derived from information in the database. The MOA also requires that PPMS have the capability to search and retrieve data for specified time periods and based on various combinations of data fields. Our review found that the search capabilities for PAMS are greatly limited because the database does not contain electronic copies of most of the relevant documents. PAMS can be adequately queried regarding “when” events occur, such as the sending of a complaint to a supervisor, but the database cannot address substantive questions, such as how often an officer was required to attend training as a result of a complaint or whether the officer actually attended the training.<sup>52</sup>

The MOA also requires PPMS to contain linking and cross-referencing data. This is to assist with the database’s tracking and searching capabilities. For example, including the badge or other employee identification number on all incident reports would permit a user easily to link any data concerning an individual officer. Similarly, a common control number for incidents would permit a user to cross-reference any documents discussing the same incident. Our review found that PAMS uses a unique identifier to define an incident and a second unique identifier to define MPD members. This allows for appropriate linking and cross-referencing of the data.<sup>53</sup>

### 4. Protocol for Using the Database (MOA ¶¶ 111-112)

By September 13, 2001, MPD was supposed to have developed a protocol, subject to DOJ approval, for using PPMS. The protocol was to have contained several specific provisions for the use of the database, including:

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<sup>52</sup> We were told some of this data is collected in the database, but it is entered into text fields that do not allow a user to query across multiple complaints.

<sup>53</sup> We were told that MPD has considered changing the identifier its uses for MPD members. Any such change would need to be cross-referenced in PAMS to ensure that linking and cross-referencing capabilities are maintained.

- Quarterly reviews of the data by supervisors in order to detect any pattern or series of incidents that indicate an officer, a group of officers, or an MPD unit is engaging in at-risk behavior;
- Guidelines for the number and types of incidents requiring a PPMS review by supervisors and managers (in addition to the quarterly reviews), and the frequency of these reviews;
- Guidelines for any executive, managerial, or supervisory actions (including non-disciplinary actions) to be taken based on reviews of the information in PPMS;
- Requirement that all relevant information in PPMS be taken into account for pay grade advancement, promotion, transfer, and special assignment<sup>54</sup> and in connection with annual personnel performance evaluations;
- Requirement that managers' and supervisors' performance in implementing the provisions of the PPMS protocol be taken into account in their annual performance evaluations; and
- Procedures that allow each MPD officer to review all personally identifiable data in order to ensure the accuracy of the data.

To date, MPD has not developed the PPMS protocol. On April 15, 2002, MPD submitted a Special Order to DOJ regarding the use of PAMS. DOJ has not provided MPD with any comments on the order. We have been apprised by DOJ that, in its view, the order does not address the PPMS protocol requirements and that DOJ's comments likely will be extensive.

### **5. Timeliness and Database Security (MOA ¶ 113)**

Another PPMS requirement is that data be entered into the database in a timely, accurate, and complete manner; that the data be secure and confidential; and that the data be retained for certain specified periods. MPD states it enters PAMS-required data on a daily basis. We intend to test and report on this issue, as well as the accuracy and completeness of the data entry, in future quarterly reports.

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<sup>54</sup> According to the MOA, special assignment includes, but is not limited to, assignment as a training officer and assignment to any specialized unit or to OPR. MOA at ¶ 112.

PAMS currently is a secure and confidential database. The database is located on one stand-alone computer in OPR. As such, access to the database is limited. To effectuate many of the PPMS required tasks, however, PAMS eventually will need to be networked so it can be accessed by other MPD personnel. Any networking necessarily will reduce the security and confidentiality of the database. We will continue to review this issue.

Since PAMS has been operational for such a brief period of time, we could not test the length of time data are maintained in the system.

## **6. Development and Implementation Schedule for PPMS (MOA ¶ 114)**

The MOA contains a development and implementation schedule for PPMS. Due to the technological and budgeting difficulties inherent in implementing a new computer system, even prior to the cancellation of the original solicitation, it was clear MPD was not going to meet the schedule. MPD currently intends to:

- Enhance existing databases to ensure all necessary information is collected and maintained;
- Create a new system that meets all the requirements outlined in the MOA; and
- Create protocols to ensure the timely, automated transfer of information from the enhanced databases to the new system.

In order to effectuate this approach, MPD will need time to research available systems, select a contractor, and develop the database. In its July 2002 progress report, MPD proposed modified deadlines for the development and implementation of the database.<sup>55</sup> MPD's proposal is as follows:

- By August 2002, conduct a mid-level systems analysis to determine whether existing MPD databases can be enhanced and/or whether new systems need to be created in order to

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<sup>55</sup> While this proposal is reflected in a post-June 2002 document, we have incorporated it here in an effort to highlight an issue that we will be monitoring closely over the next two quarters.



comply with the MOA's PPMS requirements and create an outline of the requirements of a new PPMS database based on an existing system being used by the Phoenix, Arizona Police Department;

- By October 2002, identify the best procurement option to meet MPD's needs;
- By November 2002, select contractor for the Phoenix-based PPMS database;
- By November 2003, complete beta version of the Phoenix-based PPMS database; and
- By May 2004, complete development and implementation of a fully operational PPMS database.

DOJ approval is required for any change to the PPMS deadlines. DOJ has not yet commented on MPD's proposal.

### **7. OPR's Duties (MOA ¶ 117)**

Finally, the MOA assigns specific PPMS-related duties to OPR. The MOA requires that OPR continue to be responsible for:

- Developing, implementing, and coordinating MPD-wide risk assessments;
- Operating PPMS, including any data entry into the system;
- Providing assistance to managers and supervisors who are using PPMS; and
- Ensuring that appropriate standardized reports and queries are programmed to provide the information necessary to perform these tasks.

While PPMS is not yet operational, OPR has assumed responsibility for the operation of PAMS, including data entry. PAMS, however, is not networked, the data provided to officers outside OPR is limited, and "outside" officers have not been trained on how to use the data from PAMS. OPR has not yet fulfilled these PPMS requirements.

### C. Analysis

Our preliminary review of PAMS reveals a system that, while an improvement over past systems, falls far short of meeting the PPMS requirements of the MOA. PAMS does not capture the complete range of information required of PPMS and, without some significant upgrades, PAMS will not attain the level of functionality required by the MOA.

PAMS does not contain the appropriate search capabilities, access to the database is limited, and the information provided by the database is not being funneled to the appropriate officers. We recommend that MPD develop a means to share PAMS data with supervisors and managers and provide training on how to use such data. We also recommend that MPD continue its efforts to identify enhancements that can be made to PAMS in order to make the database capable of collecting and tracking additional PPMS-related data.

Finally, in light of the difficulties MPD already has encountered, the OIM is concerned that MPD's newly proposed PPMS development and implementation schedule may be overly optimistic.

## VI. Training (MOA ¶¶ 119-148)

### A. Requirements

The training provisions in the MOA specifically address management oversight, curriculum development, instructor training, firearms training, and canine training.

#### 1. Management Oversight

Regarding management oversight training, MPD is required, by July 13, 2001, to have centrally coordinated the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.<sup>56</sup> MPD's Director of Training is responsible for overseeing the full scope of MPD's training program as it relates to the terms of the MOA, including:

- Ensuring the quality of all use of force training across MPD;

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<sup>56</sup> To ensure compliance with applicable law, training materials are to be reviewed by MPD's General Counsel or some other appropriate legal advisor. MOA at ¶ 120.

- Developing and implementing appropriate use of force training curricula;
- Selecting and training MPD trainers;
- Developing and implementing all in-service training and roll call curricula;
- Developing tools to evaluate all training;
- By October 13, 2001, developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;<sup>57</sup> and
- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

In addition, by December 13, 2001, MPD's Curriculum Development Specialist ("CDS") was required to review, revise, and implement, subject to DOJ approval, all use of force-related training material to ensure that the materials were consistent (as to content and format), properly to incorporate applicable law and policy into such training materials, to incorporate specific training objectives and suggestions on how most effectively to present use of force training materials, and to determine whether training aids are being used appropriately. The CDS's responsibilities also extend to reviewing, at least on a quarterly basis, all force-related training for quality assurance and consistency. More generally, MPD is required to keep its updated training materials in a central, commonly accessible file and to maintain updated and complete training records as to every MPD officer.

## **2. Curriculum**

The MOA prescribes various features of MPD's training programs that address the content of MPD training. First, all force-related training must incorporate critical thinking and decision-making skills and must include training in cultural diversity and community policing. More specifically with respect to use of force training, MPD's use of force training must contain training on the following elements:

- MPD's use of force continuum;

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<sup>57</sup> The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

- MPD's use of force reporting requirements;
- The Fourth Amendment and other constitutional requirements applicable to police officers; and
- Examples of use of force and ethical dilemmas, with a preference for interactive exercises for resolving them.

Training on these topics should involve concrete use of force experiences and examples, and dialogue on these issues with trainees is to be encouraged.

Supervisory and leadership training must focus not only on these elements, but also on command accountability and responsibility, interpersonal skills, theories of motivation and leadership, and techniques designed to promote proper police practices and integrity. Priority in supervisory and leadership training must be accorded to MPD's new policies on use of force, use of canines, the UFRB, and the revised policies and practices relating to administrative misconduct investigations. By December 13, 2001, initial supervisory and leadership training on these issues was required, with re-training to take place on an annual basis.

The training provisions of the MOA specifically address two aspects of existing MPD training -- Role Play and Range 2000 training. By August 13, 2001, training materials relating to these aspects of MPD were to have been reviewed to ensure their consistency with law and MPD policy. In addition to other specific requirements, the MOA requires that a standardized curriculum, lesson plan, and instructional guidelines for these aspects of MPD training be developed. By December 13, 2001, MPD was required to videotape student officers during Role Play training exercises to better focus discussions during the critique portion of the course.

Finally, the MOA sets forth specific requirements regarding training with respect to aspects of the MOA itself. By October 13, 2001, MPD was required to distribute copies of the MOA to all officers and employees and explain its terms. Further, as MPD adopts new policies and procedures mandated by the MOA, it must incorporate them into in-service and new recruit training.

### **3. Instructors**

The MOA establishes various requirements relating to the training and competence of instructors. First, by August 13, 2001, MPD was to conduct an assessment to determine the sufficiency, competence, and standards for evaluating training personnel and, on the basis of that assessment, to develop a plan for addressing training instructor needs to DOJ for its approval.

Second, by September 13, 2001, and subject to DOJ's approval, MPD was to develop and implement eligibility and selection criteria for all training positions, including Academy, Field Training, and formal training. These criteria are equally applicable to existing personnel in training positions and to candidates for training positions. MPD also was required to develop an instructor certification program relating to the competency of its instructors. Further, by December 13, 2001, MPD was required to create and implement a formal instructor training course and to provide regular retraining on subjects including adult learning skills, leadership, and teaching and evaluation, among others. Consistent with the focus of the MOA, the MOA specifically requires MPD to ensure adequate management supervision of use of force training instructors to ensure the training they provide is consistent with MPD policy, law, and proper police practices.

### **4. Firearms Training**

The MOA requires mandatory semi-annual firearms training re-qualification, including the successful completion of all courses, including Range 2000 and Role Play. MPD must revoke the police powers of all officers who do not properly re-qualify. By September 13, 2002, MPD was required to create and implement, subject to DOJ approval, a checklist containing prescribed elements that must be completed for each student officer by a firearms instructor. In addition, firearms training materials must be reviewed and integrated into an overall training curriculum. Finally, MPD must, at least every three months, consult with Glock, the manufacturer of MPD officer service weapons, to obtain the most current information on cleaning, maintenance, and other factors that may affect the proper use of the weapon.

### **5. Canine Training**

The MOA requires MPD to develop and implement a comprehensive canine training curriculum, which includes the identification of the

mission, goals, and objectives of the Canine Unit. By December 13, 2001, MPD was required to have all its canines certified in “handler controlled alert methodology” and to ensure that the canines are re-certified on an annual basis and receive refresher training. MPD must monitor and oversee its canine handlers to ensure they are capable of implementing the canine policies that have been adopted by MPD.

## **B. Status**

### **1. Substantive Training**

As noted in our Special Report, MPD has made progress toward meeting the MOA requirements relating to training. From July 2001 through December 2001, the IPS worked closely with the then-coordinator of MPD’s MOA compliance working group and prepared several documents aimed at facilitating MPD’s compliance with the MOA. The IPS continues to review and revise its training program -- and implement new programs -- to meet the requirements of the MOA relating to training.

According to MPD, the IPS has developed a plan to meet the MOA requirements concerning investigator and supervisor training. The IPS apparently also has developed a plan to use its forty-hour in-service training program for all captains and lower ranking officers to meet the requirements of paragraph 84 of the MOA. According to MPD, the draft training plan has been presented to MPD’s Executive In-Service Training Committee for approval.

As discussed elsewhere in this report, paragraph 96 of the MOA requires the development of a plan to train OCCR investigators. According to records recently provided by the Director of the IPS, eleven members of OCCR’s investigative staff underwent thirty-five hours of MPD training in May 2001 and five investigators underwent supplemental training in November and December 2001. We are unaware of any retraining currently scheduled by MPD and OCCR, but have no reason to doubt either agency’s commitment to continue working together to ensure compliance in this area into the future.

Despite the foregoing (and many other) achievements, MPD is not in compliance with the training requirements of the MOA. Much of the reason for this noncompliance is due to an admitted failure to document many of the changes that have taken place at the IPS over the past three years. Another reason stems from the internal coordination problems

that plagued MPD's initial compliance efforts during the early months of the MOA.

## **2. MOA Training**

The MOA requires enhanced education not only in the area of police practices, but also in the area of the MOA itself. Our Special Report noted that MPD had not met the requirements of paragraph 133 of the MOA, which requires MPD to "provide copies and explain the terms of [the MOA] to all MPD officers and employees" "within 120 days" of the execution of the MOA. Additionally, we noted a widespread misunderstanding regarding the terms of the MOA and, in some cases, a complete lack of familiarity.

On June 17, 2002, MPD circulated a copy of the MOA along with a brief "Questions and Answers" brochure created by the OIM to every officer within MPD. Additionally, Chief Ramsey prepared a video describing and promoting the MOA that was shown at roll calls in each police district. This development reflects important and welcome (though belated) progress in this area. In the near future we will explore whether these efforts have addressed some of the misunderstandings and lack of familiarity with the terms of the MOA reflected in some of our initial contacts with MPD personnel.

### **C. Assessment and Analysis**

We noted in our Special Report that the IPS managers have been diligent in striving to meet the training requirements of the MOA. We also recommended that the IPS and the CMT work more closely together in an effort to produce to DOJ and the OIM the documentation required by the MOA as soon as possible. We will address a number of training issues in the next quarter.

## **VII. Specialized Mission Units (MOA ¶¶ 149-159)**

### **A. Requirements**

The MOA recognizes that, from time to time, MPD may use both temporary and permanent specialized mission units to achieve various legitimate law enforcement objectives. As to such specialized mission units, the MOA establishes the following requirements:

- Pre-screening procedures must be employed to ensure that only officers suited to participate in such units are permitted to participate. Participating officers must
  - o be current on firearms certification and training, and
  - o have a satisfactory record relating to the use of force, be adequately trained, be generally fit for service in a patrol unit, and match the needs of the specialized unit.
- MPD must disqualify from participation in such units (i) officers against whom there have been filed numerous credible complaints for excessive use of force and (ii) officers who are otherwise known to have used questionable force frequently in the past;
- Advance notice of which officers will be participating in such units must be provided to unit supervisors to permit enhanced supervision or tailoring of activities;
- MPD must establish adequate supervision and clear lines of supervision and accountability for such units and must ensure that supervisory officers who volunteer for such units maintain their other supervisory responsibilities;
- Adequate specialized training (including training in relevant legal issues) must be provided to officers serving in such units; and
- All specialized mission unit participants must be closely and continually monitored. Such monitoring must encompass a review of any complaints filed against officers participating in special mission unit activities.

Further, the MOA requires that, by October 13, 2001, MPD develop a plan, subject to approval of DOJ, to limit the total number of hours that may be worked by a participating officer during any twenty-four-hour period and during any seven-day period. These limitations are designed to prevent officer fatigue.

## **B. Status**

The OIM has not yet undertaken a review of MPD's compliance with the MOA's requirements regarding specialized mission units. MPD



has indicated to OIM that work related to the specialized mission units is in “active development.” One of the threshold issues, which the CMT currently is reviewing and analyzing, is defining the units that qualify as “Specialized Mission Units.”

### **C. Assessment and Analysis**

The OIM will initiate a review of these developments in an upcoming quarterly report.

## **VIII. Public Information (MOA ¶ 160)**

### **A. Requirements**

The MOA requires MPD to prepare quarterly reports, to be issued publicly, that include statistics relating to the use of force by MPD officers. The aggregate statistics must be broken down:

- By geographic areas of the City;
- By race-ethnicity of the subject of the use of force;
- By weapon used; and
- By enforcement action taken in conjunction with the use of force.

In addition, these public reports must include information about use of force investigations that have been conducted and information regarding the disposition of excessive use of force allegations.

### **B. Status**

In our Special Report, we noted our expectation that MPD would come into full compliance in this area prior to the issuance of this report. While MPD has improved by expanding the statistical data it makes public, it still is not in full compliance with paragraph 160 of the MOA.

In June 2002, MPD began posting quarterly year-to-date statistics regarding firearm discharges, ASP batons, OC spray, and canine deployments on its Web site. It intends to update these statistics every quarter. While this is a welcome step toward full MOA compliance, room for further improvement still exists. For example, the data posted currently do not include information about the number of use of force investigations that have been conducted, the outcomes of the

investigations, the number of complaints that have been received regarding excessive force, or the disposition of those complaints -- all information required by paragraph 160 of the MOA.

### **C. Assessment and Analysis**

MPD's use of its Web site to facilitate the publication of its use of force statistics seems to be an effective and efficient means of moving MPD closer to compliance with the requirements of the MOA. We note, however, that MPD should ensure that it makes such statistics available through other channels as well so that they are available to citizens without computer access.

With respect to MPD's Web site, it is worth noting that its design does not make it easy to navigate to MPD's statistics. MPD has advised us that it is working with the City officials responsible for operating the MPD Web site to address these deficiencies.

## **IX. Monitoring, Reporting, and Implementation (MOA ¶¶ 161-193)**

### **A. Requirements**

The MOA requires MPD to designate an MPD Compliance Coordinator whose responsibility is to serve as the liaison among MPD, the Independent Monitor, and DOJ. The Compliance Coordinator's responsibilities include:

- Coordinating MPD compliance and implementation activities relating to the MOA;
- Facilitating the provision of data, documents and access to other MPD personnel for both the Independent Monitor and DOJ;
- Ensuring the proper maintenance of relevant documents and records relating to the MOA; and
- Working with the leadership of MPD to delegate compliance tasks to appropriate MPD personnel.

In addition to fulfilling these functions, the City and MPD are required to file with DOJ and the Independent Monitor a status report describing all steps taken during the reporting period designed to comply with each provision of the MOA.

## **B. Status**

On July 16, 2002, the CMT issued its second quarterly report as required by paragraph 175 of the MOA.<sup>58</sup> This report described several MOA compliance activities initiated by MPD. The July 2002 progress report discussed internal and external outreach efforts and training activities that have been undertaken by MPD. The report also described the progress on ten policies required by the MOA, two of which have been approved by DOJ.

Since the publication of our Special Report, there have been many changes within MPD relevant to the OIM's work. Assistant Chief Terrance W. Gainer left MPD and accepted the position of Chief of the United States Capitol Police. Assistant Chief Michael J. Fitzgerald was promoted to Executive Assistant Chief, replacing Chief Gainer. Assistant Chief Kim Dine, former director of the OPR, accepted the position of Chief of Police in Frederick, Maryland and has been replaced by Assistant Chief (formerly Commander) Peter J. Newsham. Commander Jeffrey Moore has accepted the position of Commander of the Second District vacated by Assistant Chief Newsham.

In addition to these personnel changes, MPD has made internal structural changes in the areas relating to civil rights, police accountability, and compliance with the MOA. Chief Ramsey recently created a Civil Rights & Force Investigations Division within the OPR. This new division, led by Inspector Joshua Ederheimer, will house the CMT, the two Force Investigation Teams (FIT I and FIT II) responsible for conducting use of force investigations, the Office of Equal Employment and Diversity, and the UFRB.

These changes do not affect the management of the CMT, which continues to be the responsibility of Inspector Joshua Ederheimer. We think continuity in this position is extremely important and are pleased that Inspector Ederheimer continues to serve in this position. In our Special Report, we noted our concern about two vacancies on the CMT. MPD has apprised us that it has filled one of those positions.

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<sup>58</sup> Recognizing that a discussion of the MPD's July 16, 2002 progress report would be quite stale if delayed until our next quarterly report, we discuss the report here despite its post-June publication.

### C. Assessment and Analysis

MPD continues to make progress in its efforts to comply with the MOA. We still believe that MPD's challenge will be to hold the CMT together, ensure continuity, and ensure an adequate level of staffing. By filling one of the vacancies on the CMT, MPD has made some improvement in this area. We also find MPD's creation of the Civil Rights & Force Investigations Division to be a positive step toward ensuring MPD's continued focus on the requirements of the MOA. There is still much work MPD needs to accomplish, however.

MPD's July 2002 progress report was very useful, but it still lacks some of the details that are required by the MOA.<sup>59</sup> We continue to look forward to this document being the principal quarterly reflection of MPD's progress toward achieving all the requirements of the MOA.

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<sup>59</sup> Paragraph 175 of the MOA states: "Between 90 and 120 days following the effective date of this Agreement [June 13, 2001], and every three months thereafter until this agreement is terminated, MPD and the City shall file with DOJ and the Monitor a status report delineating all steps taken during the reporting period to comply with each provision of this agreement." (Emphasis added.)

## Conclusion

In the conclusion to our Special Report, issued on June 12, 2002, we noted our belief that leadership within MPD was committed to fulfilling the objectives of the MOA. Our ongoing monitoring activities have not changed our view in this regard. We continue to be pleased with the efforts we are seeing within MPD, and especially within the CMT. We are hopeful that these efforts will continue into the future.

Our monitoring activities, however, also have demonstrated that, despite MPD's progress in some areas, it still has not made significant, measurable progress in meeting the substantive requirements and timetables established by the MOA. As of July 1, 2002, MPD had delivered ten draft policies to DOJ, seven of which were returned to MPD for additional revisions, two of which were approved, and one of which still is being reviewed by DOJ. Moreover, the failure of MPD to meet several of its own recently-revised deadlines, which were set after it had missed the MOA's deadlines in this area -- some by close to a year -- continues to be a serious cause for concern. Finally, it is clear to us that success in meeting the requirements established by the MOA will require not only the continued efforts of the CMT, but also the full engagement of the top leadership and the rank and file of MPD.




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Michael R. Bromwich  
Independent Monitor  
Fried, Frank, Harris, Shriver & Jacobson

August 1, 2002

### **Principal Contributors**

Jonathan S. Aronie  
Arthur Baines  
Mitchell W. Brown  
Kami N. Chavis  
Ronald L. Davis  
Mary Ferguson  
Dennis E. Nowicki  
Jacqueline D. Stephens



# Appendix A

## Acronyms

CCRB	Citizen Complaint Review Board
CDS	Curriculum Development Specialist
CMT	Compliance Monitoring Team
CS	complaint tracking system
DOJ	Department of Justice
EWTS	early warning tracking system
FIT	Force Investigation Team
FOP	Fraternal Order of Police
IPS	Institute of Police Science
ISB	Investigative Services Bureau
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding
MPD	Metropolitan Police Department
OC	Oleoresin Capsicum
OCCR	Office of Citizen Complaint Review
OCP	Office of Contracting and Procurement
OIA	Office of Internal Affairs
OIM	Office of the Independent Monitor
OPR	Office of Professional Responsibility
OPS	Office of Professional Standards
PAMS	Performance Assessment Management System
PPMS	Personnel Performance Management System
RFP	Request for Proposal
UFRB	Use of Force Review Board
USAO	United States Attorney's Office

