

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

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# Executive Summary

## OVERVIEW

This report is the fifth quarterly report of the Office of the Independent Monitor (“OIM”). With this report, the OIM begins its second year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established at the end of March 2002 to monitor the City’s and MPD’s compliance with the MOA. 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.

This report summarizes the OIM’s monitoring activities undertaken from April 1, 2003 through June 30, 2003 and MPD’s and the City’s compliance activities undertaken during that same period, although, at times, we refer to activities outside that period if necessary to place events and developments in proper context.

This report focuses most specifically on MPD’s current state of compliance in the following areas:

### **Use of Force and Use of Force Incident Report Policies**

The number of uses of force involving an MPD officer increased during this quarter. MPD investigated 39 uses of force in April and 36 uses of force in May. When compared against the data for January (26), February (23), and March (15), this marks a significant increase. We will be reviewing the investigations of these uses of force to determine whether the rise in such incidents reflects anything other than seasonal trends that accompany rises in the incidence of violent crime in the City. It should be noted, however, that, since MPD only began reporting use of force data in a format describing total monthly uses of force and Use of Force Incident Reports (“UFIRs”) completed to the OIM in January 2003, it still is too early to draw conclusions regarding a trend.

### **Use of Force Investigations**

While MPD's new UFIR requirements went into effect in early October 2002, there still appears to be some confusion among MPD officers (and supervisors) about whether to complete a UFIR, when to complete a UFIR, how to complete a UFIR, and the consequences, if any, of completing a UFIR. The effect of this continued apparent confusion is that officers are not completing UFIRs in circumstances where MPD policy provides that they should.

Believing that at least part of the cause of the low UFIR completion rate was attributable to the allegedly confusing nature of the UFIR form itself, MPD revised the UFIR and submitted those proposed revisions to DOJ. MPD currently is reviewing DOJ's comments on its proposal.

In addition to noting problems with the number of UFIRs being completed, our review also revealed problems with the quality of the information entered on the UFIRs that are completed and the manner in which those UFIRs are organized by MPD. The UFIRs that we have reviewed point to deficiencies in the way that uses of force are being investigated, as well as problems with the manner in which uses of force are being documented. The investigation and documentation of uses of force are central to the MOA. Accordingly, we will continue to monitor the use of UFIRs by MPD officers in the coming months.

In the Fourth Quarterly Report, the OIM focused substantial attention on MPD's canine program. MPD took our observations seriously and set out to correct the deficiencies identified by the OIM. MPD's activities this quarter to improve its canine program included discussions with DOJ intended to alleviate confusion over the term "Handler-Controlled Alert Methodology," submission of a revised Canine Teams General Order for DOJ's review, and improvements to MPD's internal canine training program.

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

During this quarter, the OIM commenced a major review of 240 MPD misconduct investigations in order to assess the quality of those investigations. A sampling methodology was developed by the OIM, in consultation with MPD and DOJ, and the OIM began reviewing the 240 misconduct investigations using that methodology. The selected sample involves at least 30 investigations from every MPD district, which will enable us, upon completion of our review, to draw conclusions with a

high degree of statistical confidence on an MPD-wide basis, as well as conclusions on a district-by-district basis.

We have completed reviewing approximately 50% of the 240 misconduct investigation files, and we are providing follow-up requests for additional information regarding 26 investigation files which appear to be missing significant items that should be in the file but are not. We hope to be in a position to begin reporting the substantive results of this extensive review during the next quarter. Even at this stage, however, we have observed significant shortcomings with the way these investigation files are maintained. Many of the investigation files contain nothing more than the initial complaint; some files contain investigative materials from completely unrelated investigations; some files contain investigation reports that are designated as “preliminary” without any evidence of a final investigation report; and some files bear notations that the investigation has been transferred to another investigative unit without any further documentation of the outcome of the matter. While our investigation reviews are focusing primarily on the substance of the investigations conducted, the integrity of the investigation files is itself an extremely important issue. Our observations about the state of the investigation files causes us concern. We will continue to explore this issue as our review of misconduct investigation files moves forward.<sup>1</sup>

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

After a lengthy delay, on May 19, 2003, MPD submitted its draft Disciplinary Policy to DOJ. Once DOJ approves the new policy, we will begin monitoring MPD's implementation activities. We acknowledge MPD's effort in working with the Fraternal Order of Police to resolve differences regarding the disciplinary policy.

### **Personnel Performance Management System (“PPMS”)**

According to the MOA, a Request for Proposal related to the PPMS originally was scheduled to be issued by August 13, 2001, with a contractor having been selected by March 13, 2002 and a beta version

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<sup>1</sup> In response to the draft of this report, MPD acknowledged that OPR has historically accepted investigation files from other parts of the Department without requiring all relevant investigation reports and materials. MPD has advised the OIM that, effective immediately, elements of the MPD that conduct investigations will forward all relevant investigation reports and materials to OPR.

ready for testing by March 13, 2003. As of the end of this quarter, MPD still had not met the requirements set forth in the MOA and MPD and DOJ still had not negotiated a new timeline for MPD to do so. Thus, MPD remains out of compliance with respect to the PPMS provisions of the MOA.

Because of the lengthy delays that have affected the PPMS project, MPD has been devoting high-level attention to the project. Indeed, MPD Chief Charles H. Ramsey has involved himself personally in his Department's PPMS activities in an effort to get the project back on track. Even so, the PPMS remains the single aspect of MPD's MOA-related activities that is most problematic and most in need of the sustained commitment of attention and resources.

### **Training**

We focused our training monitoring activities this quarter on canine training and were quite impressed with what we saw. Our police practices experts reviewed multiple canine training sessions at various stages of the canine training process. We found the canine training program to be well organized, appropriately structured, and well run.

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

As in the past, we remain very impressed by the professionalism, efficiency, and responsiveness of MPD's Compliance Monitoring Team. We continue to receive prompt and complete access to staff, facilities, and documents as necessary. Additionally, as in the past, we find MPD's quarterly progress reports to be well written, well organized, and generally informative.

### **Conclusion**

During this quarter, MPD engaged in a broad array of MOA-related compliance activities. It submitted four new or revised policies to DOJ, while concurrently continuing work on a host of other policies. MPD also dedicated significant resources this quarter to problems identified by the OIM in prior quarters relating to MPD's canine program and its delayed development of the PPMS mandated by the MOA.

Our observations confirm our general experience during MPD's first year under the MOA that MPD has been working in good faith to comply with the requirements of the MOA and has made significant progress toward MOA compliance. Areas still remain, however, that will

require MPD's continue vigilance. The PPMS, for example, despite MPD's renewed commitment to that project, still is far behind schedule.

We have spent the past quarter on a wide range of activities, including an extensive review of UFIRs, the first phase of a major review of misconduct investigations, and a review of various kinds of training. In addition, we developed a long-range monitoring plan and began to work toward defining the meaning of “substantial compliance” across the full scope of the MOA, a project that will take some time before it is completed. We have noted some significant problems with the manner in which UFIRs are being completed by officers involved in uses of force. During the course of our misconduct investigations review, we also have noted serious shortcomings with the way in which misconduct investigation files are maintained. Finally, we have serious concerns about the status of the PPMS project, which, despite the involvement of MPD top management, continues to proceed very slowly. These are all issues we will continue to monitor and issues to which the MPD must pay careful attention.



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Appendix A: Acronyms

# Introduction

This report is the fifth quarterly report of the Office of the Independent Monitor (“OIM”), which covers the second calendar quarter in 2003. With this report, the OIM begins its second year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established at the end of March 2002 to monitor the City’s and MPD’s compliance with the MOA. 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.

This report covers the period April 1, 2003 through June 30, 2003, during which MPD engaged in a broad array of MOA-related compliance activities. It submitted four new or revised policies to DOJ, including the Specialized Mission Units General Order, Community Outreach Program for Filing Citizen Complaints policy, Canine Teams General Order, and Disciplinary Policy. In addition, MPD continued to review and refine a number of other policies that previously had been returned to MPD by DOJ with comments and suggested changes.

MPD also dedicated significant resources this quarter to problems identified by the OIM and DOJ, as well as internally by MPD, and addressed previously by the OIM in earlier quarterly reports relating to the Personnel Performance Management System (“PPMS”) and the Department’s canine program. MPD met frequently with DOJ and the OIM, reassigned internal personnel, and generally focused on the requirements of the MOA in these two areas.

Because of the progress MPD has made during the first year, and because of the need to formulate standards for determining whether MPD and the City are in compliance with the MOA, we began the process of establishing benchmarks against which MPD’s compliance with the MOA can be measured. Paragraph 182 of the MOA provides that

[t]he Agreement shall terminate five years after the effective date of the Agreement if the parties

agree that MPD and the City have **substantially complied** with each of the provisions of this Agreement and maintained substantial compliance for at least two years. [Emphasis added.]

The MOA does not, however, define what constitutes "substantial compliance."

Against this background, MPD, DOJ, and the OIM held two meetings to try to reach agreement on a process for defining substantial compliance across the full range of the MOA's requirements. As a result of these meetings, the following approach was agreed upon:

- MPD, the City (including the Office of Citizen Complaint Review ("OCCR")), and DOJ will submit to the OIM specific suggestions for appropriate substantial compliance standards for as many MOA provisions as they deem appropriate.
- After reviewing the suggestions submitted, the OIM will propose substantial compliance standards for each material MOA provision, which will be circulated to the parties for their review and discussion.
- Where the parties do not agree with the proposed compliance standard, the parties will negotiate a mutually acceptable standard of their own.

While the OIM's initial position with respect to substantial compliance was that DOJ, MPD, and the City should negotiate their own standards, at the request of the parties, we have agreed to take on that obligation. We already have begun the process and look forward to working with the parties to develop standards that are comprehensible and practical and that properly reflect the letter and spirit of the MOA.

In addition to the task of formulating "substantial compliance" standards for each material provision of the MOA, the OIM also prepared and circulated to MPD and DOJ a detailed Monitoring Plan, setting forth the areas of MOA compliance that will be the focus of our monitoring activities from now through the first quarter of 2007, which will be the conclusion of five years of monitoring activities. While this Monitoring Plan is a work in progress and subject to revision, we believe that its creation will assist MPD better target its internal compliance activities

while fulfilling our commitment to ensure that our monitoring activities are as transparent as possible.

During this quarter, there were a number of administrative changes within MPD, DOJ, and the OIM. Within MPD, Captain Joshua Ederheimer, the leader of MPD's compliance efforts for the better part of the past year, left the Office of Professional Responsibility ("OPR") to become Deputy Director at the Maurice Turner Institute of Police Science ("IPS"), where he will be involved in the full range of MPD's training programs, including those training programs closely linked to the MOA. In his place, Captain Matt Klein was appointed Acting Director of the Civil Rights and Force Investigation Division. Based on our experience with Captain Klein to date, we have every expectation that he will continue the close and cooperative working relationship with the OIM that Captain Ederheimer was so instrumental in developing.

DOJ also witnessed significant personnel changes. Steven Rosenbaum, Chief of the Special Litigation Section of the Civil Rights Division, became Chief of DOJ's Housing and Civil Enforcement Section in the Civil Rights Division. Shanetta Cutlar, former Special Counsel in the Special Litigation Section, has become Chief of the Section; and Tammie Gregg was promoted to Deputy Section Chief. We have worked closely with both Ms. Cutlar and Ms. Gregg on this matter and look forward to continuing to work with them on this matter in the future.

Like MPD and DOJ, the OIM also underwent personnel changes this quarter. Deputy Monitor Jonathan S. Aronie recently left Fried, Frank, Harris, Shriver & Jacobson to pursue opportunities with another law firm. Mr. Aronie has been a central participant in the OIM since our work began and has continued to play a role up through and including this quarterly report. We very much appreciate his hard work, unflagging energy, and dedication to this matter over the past fifteen months.

Joining the monitoring team this quarter is Fried Frank attorney Tommy P. Beaudreau. Tommy is a 1994 graduate of Yale University and a 1997 graduate of the Georgetown University Law Center. Among Tommy's many other accomplishments, he served as a judicial law clerk for the Honorable Jerome B. Friedman, United States District Court, Eastern District of Virginia.

This report reflects the beginning of the second year of assessing MPD's and the City's compliance with the MOA. We concluded the first year of the OIM's operations at a substantially lower cost than permitted

under our contract with the City and MPD; we credit the ability to accomplish our work efficiently and economically in significant part to the full cooperation we have received from all the participants in this process. We have every reason to expect that this cooperation -- and the constructive attitude toward the MOA that produced it -- will continue during the current year and beyond.

# Compliance Assessment

This report is organized in a manner consistent with the structure of the MOA and our prior reports. We first summarize the requirements imposed by each section of the MOA; then we provide the current status of MPD’s progress toward compliance with those requirements. We incorporate our analysis and assessment of factors that have impeded or advanced MPD’s progress, along with additional information we believe relevant, into the “Status” section. We then provide our “Recommendations,” if any. Paragraph 166 of the MOA requires that the "Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement." The Recommendations sections of this report are designed to fulfill that responsibility. The recommendations do not and are not intended to impose additional obligations upon MPD or the City beyond those contained in the MOA.

Summarizing the requirements imposed by the MOA makes this report, like its predecessors, somewhat lengthy, but we feel the discussion is necessary in order to promote a full understanding of the requirements of the MOA and is consistent with the requirement that we monitor “each substantive provision” of the MOA.<sup>2</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;

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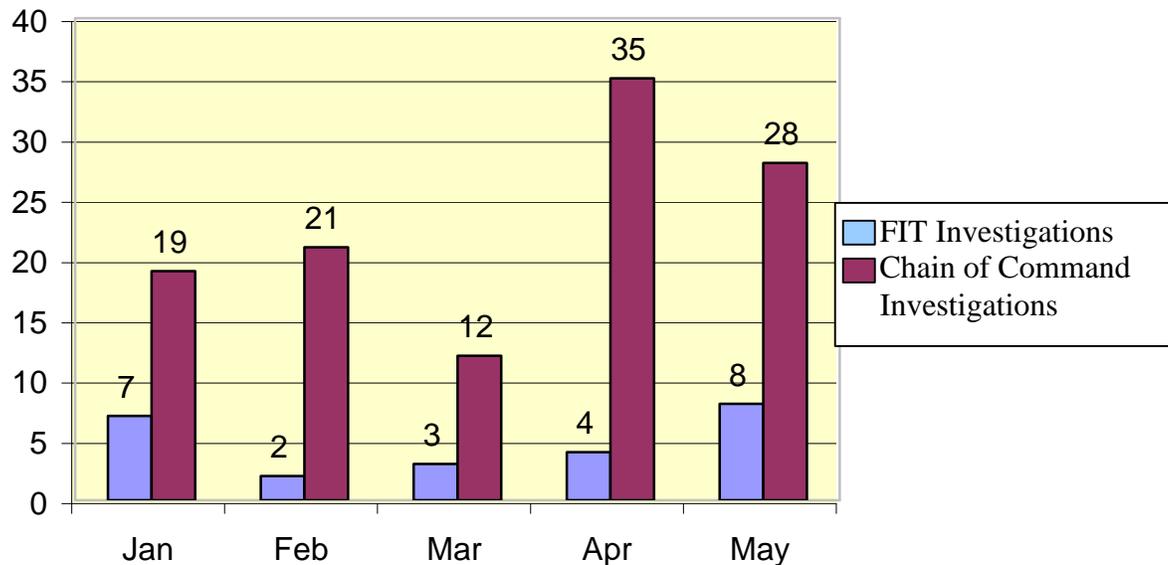
<sup>2</sup> MOA at ¶ 169.

- 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;
- 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 And Assessment**

The OIM reviews MPD's use of force statistics on a regular basis. While these statistics, alone, do not tell the whole story -- for example, to be put in context, they should be viewed in conjunction with crime data covering the same period -- they do provide some relevant information that bears on the effectiveness of MPD's use of force policies and training.

In this quarter, as shown below, the number of uses of force involving an MPD officer increased. MPD investigated 39 uses of force in April and 36 uses of force in May. (The June figures had not been reported at the time of this report.) When compared against the data for January, February, and March, this is a trend worth noting.



**Source: Force Investigation Team Monthly Use of Force Report to OIM<sup>3</sup>**

While the increase in such uses of force may well have understandable and satisfactory explanations, including higher levels of violent crime and seasonal variations in crime, we do not currently have sufficient information to dismiss or explain the increase in the number of uses of force. We will closely monitor the investigations of these recent uses of force by MPD officers to ensure that MPD's recently revised use of force policies are being implemented properly.

Finally, it also should be noted that, since MPD only began reporting use of force data in this fashion to the OIM in January 2003, it is still too early to draw conclusions regarding a trend or make year-to-year rather than month-to-month comparisons, which may have various explanations. Likewise, since use of force statistics on a national level are not readily available, it also is difficult to assess whether MPD's statistics are equivalent to those that might be expected in a police department of a similar size. The OIM plans to evaluate this issue in

<sup>3</sup> These data were obtained from FIT; therefore, their accuracy depends upon the quality of MPD's use of force reporting practices. A use of force about which FIT is unaware will not be reflected in the table shown above. We currently are engaged in assessing the accuracy of FIT's statistics. Data reflecting June 2003 use of force statistics were unavailable at the time the draft report for this quarter was circulated.

greater detail in a coming quarter. This evaluation, where possible, will take advantage of use of force data maintained by the International Association of Chiefs of Police and the DOJ Bureau of Justice statistics.

### **3. Recommendations**

To ensure that the statistics compiled by the Force Investigation Team (“FIT”) are viewed in proper context, we recommend that FIT incorporate arrest and crime rate data into its monthly use of force summary report.<sup>4</sup>

#### **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:

- 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;

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<sup>4</sup> As discussed above, paragraph 166 of the MOA requires that the “Monitor shall offer the citizen MPD technical assistance regarding compliance with this Agreement.” The Recommendations sections of OIM’s quarterly reports are designed to fulfill that responsibility. The recommendations do not impose additional obligations upon MPD or the City beyond those contained in the MOA.

- 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 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 And Assessment**

The OIM did not monitor firearms-related activities this quarter. As discussed in the OIM's Fourth Quarterly Report, however, on June 4, 2002, the District of Columbia City Council approved an amendment, entitled the "Off-Duty Service Pistol Authorization Amendment Act of 2002," that permits MPD's Chief of Police to designate his own policy as to when off-duty officers are required to carry their service pistols in the City. This measure was signed into law and became effective on October 1, 2002. To date, MPD has not completed a draft special order implementing this policy.

## **3. Recommendations**

The OIM did not monitor firearms related activities this quarter.

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

#### **1. Requirements**

The MOA requires MPD to develop a Canine Teams Policy 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>5</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
- 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 And Assessment**

Our Fourth Quarterly Report focused special attention on MPD's Canine Unit and its compliance with the terms of the MOA and the terms of MPD's Canine Teams General Order designed to implement the MOA. Based upon our thorough review of MPD's canine program, we concluded as follows:

In short, while we find that the small number of canine bites occurring in 2002 reflects marked and commendable improvement in the operation of MPD's Canine Unit, we also find that MPD's canine program has some issues -- both definitional and operational -- that need to be addressed. We note in this regard that a central issue is the confusion regarding the meaning of the term "Handler-Controlled Alert Methodology" -- the methodology identified in the MOA in which all MPD canine handlers should be trained.<sup>6</sup>

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<sup>5</sup> The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.

<sup>6</sup> OIM Fourth Quarterly Report at 14.

MPD took our findings very seriously and immediately set out to explore, assess, and correct the deficiencies in its canine program.

Throughout this quarter, MPD engaged in a number of activities designed to enhance its canine program. First, it had a number of discussions with the DOJ to discuss ways to alleviate confusion regarding the term "Handler-Controlled Alert Methodology." Such meetings took place on April 30, 2003 and May 6, 2003 and were supplemented by other less formal meetings, telephone calls, and e-mails regarding the canine issues raised by the OIM in its report.

Second, on June 4, 2003, MPD submitted a revised Canine Teams General Order to DOJ. MPD currently is awaiting DOJ's comments on the revised order.

Third, MPD has made several improvements to its internal canine training program implemented subsequent to our prior report. These improvements involved greater focus on (i) the meaning of Handler-Controlled Alert Methodology, (ii) the use of verbal warnings, and (iii) the transition from an "on-lead track" to an "open seek"<sup>7</sup> during a canine deployment.

We monitored MPD's canine training sessions this quarter, including the final performance tests given to the newest class of canines and officers. While our detailed findings are discussed later in this report, we found that the quality of training being provided to the MPD canines and their handlers was quite good.

### **3. Recommendations**

We recommend that MPD continue working closely with DOJ to alleviate the several areas of confusion identified in our prior report.

#### **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

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<sup>7</sup> The term "open seek" refers to a specific tactical use of canine, as such uses are defined in the Canine Teams General Order.

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 And Assessment**

The OIM did not monitor OC-related activities this quarter.

## **3. Recommendations**

The OIM did not monitor OC-related activities this quarter.

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

MPD's implementation efforts relating to its use of force policies generally appear to be on track.

## **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 UFIR immediately after he or she uses force, including the drawing and pointing of a firearm at another person or 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>8</sup> the serious use of force,<sup>9</sup> or any use of force potentially reflecting criminal conduct by an officer;<sup>10</sup>

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<sup>8</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>9</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

- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on UFIRs into MPD's PPMS.

The precise language of the UFIR was the subject of substantial discussion and negotiation between MPD and DOJ subsequent to the execution of the MOA. As a result of this dialogue, the parties agreed upon the following language for inclusion in relevant force-related General Orders:

In all uses of force requiring a Use of Force Incident Report, the member shall immediately notify his/her supervisor of the use of force, intentional or unintentional, exercised by the member, any accusation of excessive force made against the member, or immediately following the drawing of and pointing a firearm at or in the direction of another person, and shall promptly complete the Use of Force Incident Report.<sup>11</sup>

The parties also agreed upon certain language regarding the process of compelling an officer to complete a UFIR following a declination by the United States Attorney's Office ("USAO") and/or issuance of an authorized Reverse-Garrity warning.<sup>12</sup> A "Reverse-Garrity" warning is a

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**Footnote continued from previous page**

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>10</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."

<sup>11</sup> Memorandum of Agreement Progress Report, dated January 7, 2003, at 9.

<sup>12</sup> MPD initially proposed a statement that placed the declination language immediately following the notification and reporting language. DOJ strongly objected to MPD's placement of the declination language because, while substantially accurate, that placement might well discourage officers from promptly filling out UFIRs. In response, MPD agreed to relocate the declination language to a separate "Supervisor Responsibilities" section of the applicable orders. However, the declination language was not also moved on the MPD Circular introducing the UFIR.

statement given to an officer, typically following a declination to prosecute issued by the USAO, requiring the officer to answer questions relating to his or her official duties but precluding the use of statements made by the officer against him in any criminal prosecution.

## 2. Status And Assessment

### a. Use of Force Incident Report

While MPD's new UFIR requirements went into effect in early October 2002, there still appears to be some confusion among MPD officers (and supervisors) about whether to complete a UFIR, when to complete a UFIR, how to complete a UFIR, and the consequences, if any, of completing a UFIR. The effect of this continued apparent confusion is that officers are not completing UFIRs in circumstances where MPD policy provides that they should. The chart below suggests the scope of the problem:

	Total uses of force investigated by FIT	Total uses of force investigated by chain of command	Subtotal uses of force as reported by FIT	Total number of UFIRs completed as reported by FIT	Percentage of uses of force resulting in completion of UFIR
October 2002 - December 15, 2002	12	57	69	14	20.29%
January 1, 2003 - January 31, 2003	7	19	26	6	23.08%
February 1, 2003 - February 28, 2003	2	21	23	7	30.43%
March 1, 2003 - March 31, 2003	3	12	15	13	86.67%
April 1, 2003 - April 30, 2003	4	35	39	11	28.21%
May 1, 2003 - May 30, 2003 <sup>13</sup>	8	28	36	25	69.44%

Believing that part of the explanation for the low UFIR completion rate was attributable to the allegedly confusing nature of the UFIR itself, MPD has revised and simplified the UFIR and submitted those proposed revisions to DOJ. On March 19, 2003, DOJ provided written responses to MPD's proposal. In its July 10, 2003 Progress Report, MPD noted that it "is currently assessing the comments and making adjustments to the

<sup>13</sup> The relevant figures for June 1, 2003 through June 30, 2003 were not available at the time the draft version of this report was circulated.

draft revised form."<sup>14</sup> As of the close of this reporting period, MPD had not submitted a revised form to DOJ.

In addition to noting the low percentages of UFIRs being completed, our review also revealed deficiencies with the quality of the UFIRs that are completed and the manner in which those UFIRs are organized by MPD. Specifically, our review revealed that MPD's UFIR reporting system is not functioning as intended. Officers appear to be uncertain as to what information must be included in their reports. Additionally, the UFIRs that we reviewed suggest that supervisors are not always responding to the scene of a use of force and, even when they do, they often do not conduct a sufficient investigation. For example, a use of force investigation always should involve examining the subject of a use of force, including any injuries. An investigation also should involve the identification of any officer or citizen witnesses. Where appropriate, the supervisor also should arrange for the subject to be photographed to document the extent or lack of injuries. The UFIRs we reviewed seldom documented these types of investigative steps by responding supervisors. Thus, we are left to conclude either that the steps are either not being taken or are not being documented in the UFIR, or both.

Moreover, the manner in which the UFIR files are maintained appears inadequate. When this issue was brought to the attention of MPD, however, we were told that the Department is in the process of developing an improved filing system. Thus, we will conduct additional reviews of the UFIRs and MPD's UFIR filing system.

#### **b. AUSA Notification Log**

Previously, MPD described several improvements to the manner in which FIT manages and reports its investigations. One such improvement was the creation of an "AUSA [Assistant United States Attorney] Notification Log."<sup>15</sup> As we have on several past occasions, we reviewed the AUSA Notification Log again this quarter and found it to be accessible and current. Specifically, we compared 14 FIT cases to the log and determined that all but three had been recorded, and that two of those three were matters pending before the Prince George's County Police Department and not MPD.

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<sup>14</sup> Memorandum of Agreement Progress Report, dated July 10, 2003 ("MPD July 2003 Progress Report"), at 8.

<sup>15</sup> Memorandum of Agreement Progress Report, dated October 4, 2002, at 11.

### **3. Recommendations**

The data set forth above suggest that, despite MPD's revised training program and the completion of its supplementary sergeants and above training program, officers continue to fail to document their uses of force in the manner prescribed by the MOA. We recommend that MPD take advantage of the expert technical assistance available from the DOJ and the OIM to remedy this shortcoming in MOA compliance.

#### **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>16</sup>

MPD is required to notify and consult with the 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 such cases, although the

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<sup>16</sup> Consistent with this approach, the MOA requires that 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.

compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.<sup>17</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 their timely completion.<sup>18</sup>

The MOA contains various requirements governing FIT's investigation process and the preparation of an investigation 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>17</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>18</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 investigation reports. Once such investigations are complete, the investigation 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 investigation file is forwarded to the Use of Force Review Board ("UFRB").<sup>19</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;<sup>20</sup>
- 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;

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<sup>19</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.

<sup>20</sup> Recognizing that the UFRB might be overwhelmed by reviewing all use of force investigations, DOJ and MPD agreed to modify the MOA to require the UFRB to conduct timely reviews only of use of force investigations investigated by FIT I or FIT II. Additionally, according to DOJ, it agreed to allow non-FIT force reviews, with some exceptions, to be conducted by chain of command officers (and conclude at the Assistant Chief level) so long as FIT continues to review all non-FIT use of force incidents in an effort to identify incidents that should be referred to the UFRB.

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

## **b. Status And Assessment**

### **(1) FIT Manual**

MPD submitted its FIT manual to DOJ on February 5, 2002. Following comments from DOJ, MPD submitted a revised FIT manual on November 1, 2002. Following additional comments from DOJ on March 26, 2003, MPD submitted a newly revised draft manual on April 21, 2003. As of the close of this quarter, DOJ had not commented on the most recent draft.

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

During this quarter, we conducted a review of all preliminary reports prepared by FIT I from January 1, 2003 to the end of May 2003. As we have noted in the past, the quality of the FIT reports is generally higher than the internal investigation reports prepared by chain of command investigators. Our recent review found that the quality is being maintained and, in some respects, has improved. For example, our review found that FIT investigators now routinely document whether the officers involved in the use of force were impaired, whether a canvas for witnesses was conducted, the name of the AUSA notified, and the date and time the notification was made. In past reports, we have pointed out as deficiencies the failure to include these categories of documentation in FIT investigation reports. We now report that MPD's FIT investigators are routinely documenting compliance with these MOA requirements.

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

See discussion of misconduct investigations below.

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

The OIM had expected to review a sample of MPD's UFRB cases this quarter. Due to a shifting of priorities and resources in order to facilitate our review of misconduct investigations, we postponed our UFRB review to a future quarter.

##### **c. Recommendations**

We offer no specific recommendations on this topic at this time.

#### **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
  - relating to the officer's conduct while on duty or otherwise acting in an official capacity; or
  - relating to the officer's conduct while off duty, and otherwise not acting in an official capacity, where allegations against 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>21</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>22</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 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;

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<sup>21</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>22</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.

- 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 for the implementation of this overhauled system for conducting misconduct investigations. These include the following:

- 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;
- 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>23</sup>
- 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>24</sup>
- 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;

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<sup>23</sup> See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

<sup>24</sup> In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- 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 the various deadlines set forth in Joint Modification No. 1 to the June 13, 2001 Memorandum of Agreement (“MOA Modification”).<sup>25</sup>

## **b. Status And Assessment**

### **(1) Investigation Reviews**

The OIM, MPD, and DOJ began reviewing 240 misconduct investigations (including non-FIT use of force investigations) identified by PricewaterhouseCoopers (“PwC”) using a sampling methodology developed jointly during the last quarter by the OIM, MPD, and DOJ. The selected sample involves at least 30 investigations from every MPD district, which will enable us, upon completion of our review, to draw conclusions with a high degree of statistical confidence on an MPD-wide basis, as well as useful conclusions on a district-by-district basis.

To facilitate our review of these (and future) misconduct investigations, the OIM, working closely with PwC, has developed an electronic database that allows our police practice experts to streamline their investigation file reviews and allows the OIM to compile data regarding those reviews efficiently. As of the publication of this report, we have completed approximately 50% of the 240 misconduct investigations. While we are not in a position at this time to report on the results of our substantive review of these misconduct investigations, we can report that the process is proceeding very smoothly, thanks, in great part, to the cooperation of MPD.

Once our review is complete -- which we expect will occur either next quarter or the following quarter -- we will be in a position to report on the quality of MPD's misconduct investigations generally and their compliance with the requirements of the MOA specifically. The results of

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<sup>25</sup> Appendix B to OIM's Second Quarterly Report.

this review then will be used as a baseline to assess MPD's progress over the course of the coming months and years. We intend to perform regular reviews of additional samples encompassing future misconduct investigations throughout the life of the MOA.

Even at this stage, however, we have observed significant shortcomings with the way these investigation files are maintained. The details of these observations are as follows:

- Many of the investigation files contain nothing more than the initial complaint -- they contain no other investigative materials and no reports of any kind. We are making follow-up requests for additional information in connection with these cases;
- Some files contain investigative materials from completely unrelated investigations involving different allegations;
- Some files contain investigation reports that are designated as "preliminary" without any evidence of a final investigation report, where the date of the preliminary investigation suggests that a final investigation should have been concluded; and
- Some files bear notations that the investigation has been transferred to another investigative unit without any further documentation regarding the matter. No further information is contained in the files, including the report prepared by the other unit or any other evidence of the outcome of the investigation.

While our investigation reviews are focusing primarily on the substance of the investigations conducted, the integrity of the investigation files is itself an extremely important issue. Our observations about the state of the investigation files causes us concern. We will continue to explore this issue as our review of misconduct investigation files moves forward.<sup>26</sup>

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<sup>26</sup> In our Fourth Quarterly Report, we discussed specific problems with several misconduct investigations and indicated we would be reporting further on those cases in the future. OIM Fourth Quarterly Report at 42-44. We will reserve our additional discussion of those cases until we provide a summary of our substantive review of the sample of 240 misconduct investigations.

## **(2) Serious Misconduct Investigations General Order**

MPD submitted its Serious Misconduct Investigations General Order to DOJ on July 23, 2002. DOJ replied with detailed comments on September 13, 2002, to which MPD responded on November 22, 2002. On January 31, 2003, DOJ responded with a small number of additional comments, commending MPD “for its efforts to revise this MPD [General Order] consistent with the MOA and other applicable standards.”<sup>27</sup> MPD submitted a revised draft to DOJ on March 7, 2003. As of the close of the current reporting period, DOJ had not yet approved MPD’s revised General Order.

## **(3) Administrative Investigations Manual**

On October 25, 2002, MPD submitted a draft “Misconduct Investigations Standard Operating Procedure Manual” to DOJ pursuant to paragraph 83 of the MOA. DOJ responded with substantial comments on March 26, 2003. In its April 7, 2003 Progress Report, MPD commented that it intended to submit a revised manual to DOJ before the end of June 2003. As of the close of this reporting quarter, MPD had not yet submitted the revised manual.

## **(4) Chain of Command Misconduct Investigations General Order**

Pursuant to paragraph 83 of the MOA, MPD submitted its draft Chain of Command Misconduct Investigations General Order to DOJ on November 1, 2002. While this draft was submitted after the expiration of the October 25, 2002 deadline applicable to paragraph 83 of the MOA, DOJ responded with a number of substantive comments on January 31, 2003. In its response, DOJ noted that it “will be able to approve [the General Order], assuming the changes we identified are addressed, in the next draft.”<sup>28</sup> As of the close of this reporting period, MPD has not yet submitted a revised draft to DOJ.

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<sup>27</sup> Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

<sup>28</sup> Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

## **(5) Corporation Counsel Notification to OPR of Civil Claims**

Paragraph 75 of the MOA requires that "[t]he Corporation Counsel's Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD." According to the Office of Corporation Counsel ("OCC"), which is represented by Mr. Jack Grimaldi at the OIM's monthly MOA status meetings, the OCC and MPD have met to draft a policy to facilitate such notification. Currently, no policy exists.

The implementation of the policy apparently has been delayed due to some confusion regarding the meaning of the term "claim" as it is used in the MOA. According to the OCC, District of Columbia law requires that anyone filing a claim for unliquidated damages against the City, including lawsuits alleging police misconduct, provide the City with six months' notice before filing the claim. Thus, the question being discussed by the OCC and MPD is whether the MOA's notification requirement is triggered by the notice of the claim or the claim itself. According to the OCC, however, it has the ability to notify MPD at the time of notice or at the time of the actual claim. Thus, we do not fully understand the nature of the delay in drafting a policy that meets the requirements of the MOA and that is acceptable to both the OCC and MPD. We will continue to monitor this issue during the next quarter.

### **c. Recommendations**

We recommend that the OCC and MPD resolve any outstanding issues regarding the creation and implementation of an mutually acceptable notification policy as soon as possible.

## **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:

- 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
  - Receiving, recording, investigating, and tracking complaints;
  - Conducting community outreach and education regarding making complaints against officers;
  - Exchanging information between MPD and OCCR; and
  - Defining the responsibilities of the MPD official who serves on the Citizen Complaint Review Board.
- 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>29</sup>
- 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;
- The development of a manual, in consultation with DOJ, for conducting OCCR complaint investigations, which should include timelines and investigative templates;
- 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;
- 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

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<sup>29</sup> District of Columbia Law 12-208.

- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.<sup>30</sup>

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;
- 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;
- 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
- 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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<sup>30</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>31</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>32</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 And Assessment**

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

As reported by all parties at the OIM’s monthly MOA meetings, and as reconfirmed in MPD’s July 7, 2003 Progress Report, MPD and OCCR have worked closely together this quarter to resolve certain MOA-related conflicts regarding the Memorandum of Understanding (“MOU”) previously negotiated by the two parties. According to MPD and OCCR, this interaction has been productive. MPD and OCCR have indicated that they have resolved several issues to date. In April 2003, MPD advised the OIM that it would issue a revised MOU by June 30, 2003. MPD and OCCR did not meet this deadline.

MPD’s and OCCR’s failure to produce a mutually acceptable revised MOU does not appear to be due to a lack of effort. The parties met on numerous occasions (e.g., April 1, 2003, April 23, 2003, May 16, 2003, and June 24, 2003) and have indicated that their meetings were very productive.

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<sup>31</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>32</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.

In addition, despite the failure to meet the June 30, 2003 deadline, MPD and OCCR have taken steps to facilitate the continued cooperation between the two agencies. For example, MPD reports that it has been working with its Court Liaison Division to automate the notification of officers regarding required OCCR appearances. According to MPD, "this process will greatly streamline the current notification process and will also increase accountability."<sup>33</sup>

In the meantime, we have continued monitoring MPD's and OCCR's compliance with the terms of the MOU as currently drafted. This quarter, we reviewed a number of additional OCCR investigation files and met on several occasions with the executive director, deputy director, and chief investigator of OCCR. Our review and interviews revealed the following:

**a. Complaints Filed with MPD on MPD Forms Involving OCCR Subject Matter**

OPR continues to fail to notify OCCR of formal complaints (made on MPD complaint forms, called PD-99s) that involve issues that could have been filed (at the complainants' election) with OCCR. While this problem apparently is being discussed by the parties, as of the close of this quarter, the OIM had no information indicating that the parties had developed a solution.

**b. Complaints Filed with OCCR that Exceed OCCR's Jurisdiction**

We reviewed 24 citizen complaints wrongly filed with OCCR this quarter to assess whether OCCR referred those complaints to MPD in a timely fashion. Of the 24 complaints, OCCR failed to meet the mandated 10-business-day referral requirement in nine instances, or 38% of the time. This 62% success rate is down from the 74% success rate we noted last quarter. It should be noted, however, that, during this quarter, OCCR underwent a transition in the position of Chief Investigator. As the Chief Investigator plays a significant role in tracking citizen complaints and overseeing compliance with the MOU, the disruption caused by the personnel shift may have played some role in the slowdown in the OCCR referral process.

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<sup>33</sup> MPD July 2003 Progress Report at 11.

**c. Weekly Notice to MPD of Formal OCCR Complaints**

The MOA requires OCCR to notify MPD on a weekly basis of formal citizen complaints filed with OCCR. We reviewed 53 formal complaints this quarter to assess OCCR's compliance with this requirement. OCCR met the weekly notification requirement in only 21 of the 53 cases. This amounts to a compliance rate of only 40%. Our Fourth Quarterly Report identified a compliance rate of 53%. As noted above, this decline may be due to the transition in the position of Chief Investigator.

**d. Interviews of Witness Police Officers**

We reviewed data encompassing 90 scheduled interviews of MPD police officers. In each case, OCCR gave the officer at least a one-week advance notice of his or her required appearance. OCCR's records reveal that MPD officers missed 8 of the 90 scheduled interviews. As noted above, MPD is in the process of automating the notification process to boost its compliance rate. Working with its Court Liaison Division, MPD intends to employ its pre-existing "court notification system" to notify officers of OCCR interviews, thus piggybacking a system widely used and relied on within MPD.

**e. MPD Documents Requested by OCCR**

MPD must respond to an OCCR document request within ten days. We reviewed 13 formal complaint cases, involving a total of 42 document requests, to assess OCCR's compliance with this requirement. In only 3 of these cases did MPD fail to produce the requested documents within ten days, giving MPD a 93% compliance rate.

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

As promised in its April 7, 2003 Progress Report, MPD submitted its revised Community Outreach Program for Filing Citizen Complaints Special Order on June 30, 2003. The submission of this revised draft follows DOJ's January 31, 2003 comments on MPD's initial draft, which was submitted to DOJ on September 28, 2002.

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

The MOA requires that MPD and OCCR offer citizens numerous channels for filing complaints against MPD officers, including telephone, mail, e-mail, facsimile, and personal visit. The OIM tests these complaint

channels periodically to ensure that they are working as intended. Our tests this quarter confirmed that MPD's and OCCR's hotlines were operational. Our e-mail to OPR asking whether we had the correct address for filing a citizen complaint never was answered. We have not yet tested either agency's "complaint-by-facsimile" capability.

In each of our three test telephone calls to OPR, we were referred to OCCR to file our complaint. We note that this is not consistent with the MOA, which gives citizens the option of filing complaints against officers with either OPR or OCCR. Indeed, this very issue currently is being discussed by MPD and OCCR as they consider developing a joint citizen complaint form that will facilitate a citizen's election of a filing venue.

### **C. Recommendations**

We recommend that MPD ensure that its staff understand that it is within the discretion of the complaining citizen, not the OPR, as to where to file a complaint. It is one thing to ensure that citizens understand that they have a choice of complaint forums, but it is quite another thing to channel complaints to one agency or the other when the MOA does not authorize such an action and, in fact, requires that the citizen make the choice.

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

### **A. Requirements**

The MOA, as modified by the MOA Modification, requires that, by the week of November 17, 2002, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.<sup>34</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

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<sup>34</sup> MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

- 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 And Assessment**

On May 19, 2003, MPD submitted its draft Disciplinary Policy to DOJ. The submission of this policy follows a lengthy delay on the part of MPD. As originally negotiated by MPD and DOJ, MPD's Disciplinary General Order was due to be completed by October 11, 2001. On September 30, 2002, as part of a major renegotiation of MOA deadlines, MPD and DOJ revised the due date of this General Order to November 22, 2002. On November 22, 2002, MPD notified DOJ that it would not be able to meet the revised deadline and committed to submit the General Order by December 31, 2002 -- the end of that quarter. On December 31, 2002, however, MPD notified DOJ that it would not meet that deadline either. MPD stated that the reason for this missed deadline was its desire to engage the Fraternal Order of Police ("FOP") in a dialogue regarding the draft order before it is submitted to DOJ. As of the publication of our Fourth Quarterly Report, MPD had been unable to state when the order would be submitted.

According to MPD, much of its delay was due to an effort to engage the FOP in the policy review process. MPD believes that the interaction between it and the FOP has had a positive effect, the results of which should be apparent when the final policy is implemented. Following DOJ's approval of the Disciplinary Policy, we plan to monitor closely MPD's implementation of that policy.

## **C. Recommendations**

We offer no specific recommendations on this topic at this time.

## **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.

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 UFIR forms or that are the subject of an MPD criminal or administrative investigation;
- All police canine deployments;
- All officer-involved shootings and firearms discharges, 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.

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 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 And Assessment**

### **1. PPMS**

According to the MOA, a Request for Proposal (“RFP”) related to the PPMS originally was scheduled to be issued by August 13, 2001, with a contractor having been selected by March 13, 2002 and a beta version of the system ready for testing by March 13, 2003. As we noted in our last three quarterly reports, while MPD, the City, and DOJ have negotiated a number of changes to the due dates set forth in the MOA, the parties have not yet agreed on a revised schedule to govern the development and implementation of the PPMS. Indeed, the MOA Modification, signed on September 30, 2002, explicitly provided that “MPD’s compliance with MOA provisions related to the Personnel Performance Management System (MOA paragraphs 106-117) is expressly excepted from this modification.”<sup>35</sup> As of the end of this quarter, MPD and DOJ still had not negotiated a new timeline. DOJ has specifically required that MPD provide detailed information about the various steps required to develop the PPMS system and a realistic timetable for developing the system before it will enter into a modification relating to the PPMS. Thus, MPD remains out of compliance with respect to the PPMS provisions of the MOA.

MPD has taken various steps relating to the PPMS and has increased its dedication of time, resources, and skilled manpower to the project. In addition, MPD has provided top-level management oversight to the development of the PPMS. Indeed, Chief Ramsey has involved himself personally in his Department's PPMS activities in an effort to get the project back on track. During this quarter, MPD has engaged in the following activities relating to the PPMS:

- Chief Ramsey reorganized the MPD's Information Technology Division and appointed a new Chief Information Officer (“CIO”) who reports directly to Chief Ramsey. The new CIO has been directed to make the PPMS project his top priority.
- Chief Ramsey now holds weekly meetings with the CIO, the PPMS Project Director, and a PPMS Steering Committee in order to monitor closely the status of the PPMS project.

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<sup>35</sup> MOA Modification at ¶ 5.

- The PPMS Project Director now holds weekly meetings with members from working groups involved in the PPMS project, as well as representatives from DOJ and the OIM, to facilitate the PPMS project.
- In May 2003, MPD presented to DOJ and the OIM a project methodology, staffing plan, project schedule, and estimated budget. This information was presented in conjunction with a PPMS briefing held on May 15, 2003.
- On June 6, 2003, MPD provided its Office of Contracting and Procurement (“OCP”) with a draft PPMS Statement of Work for its use in preparing an RFP for the development of the PPMS. The City has represented to the OIM that the development of this RFP will be a top priority of the OCP.
- On June 27, 2003, MPD awarded a contract to a consulting company to develop a PPMS Concept of Operations.

During the May 15, 2003 briefing, MPD stated that the dates MPD provided relating to the PPMS project schedule were firm and could be incorporated as a modification to the MOA. Despite MPD’s reference to those dates as firm, MPD already has missed several of those deadlines. Additionally, there are serious risks of further delays in light of the number of agencies within and outside MPD that are involved in this project. We will continue to give close attention to the development of the PPMS in the coming months.

## **2. Performance Evaluation System**

On May 2, 2003, DOJ circulated comments on MPD's Enhanced Performance Evaluation System Protocol. According to MPD, it "currently is working on incorporating those comments."<sup>36</sup>

### **C. Recommendations**

We recommend that MPD maintain its commitment to meeting the MOA’s requirements for the PPMS project and, as soon as possible, develop a schedule that is achievable by MPD and acceptable to DOJ.

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<sup>36</sup> MPD July 2003 Progress Report at 6.

## **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, MPD is required to centrally coordinate the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.<sup>37</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;
- 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;
- Developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;<sup>38</sup> and
- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

In addition, MPD's Curriculum Development Specialist ("CDS") is required to review, revise, and implement, subject to DOJ approval, all use of force-related training material to ensure that the materials are

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<sup>37</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.

<sup>38</sup> The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

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;
- 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. Supervisory and leadership training on these issues is 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. Training materials relating to these aspects of MPD must be 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. MPD is 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. MPD is 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, MPD was required 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, subject to DOJ's approval, MPD was required 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, 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 its focus, 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 and re-qualification, including the successful completion of the Range 2000

and Role Play courses. MPD must revoke the police powers of all officers who do not properly re-qualify. 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. MPD was required to have all its canines certified in the “new 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 And Assessment**

#### **1. Sergeants & Above Training**

In our Fourth Quarterly Report, we described the specialized training program that MPD implemented in response to shortcomings of MPD’s initial use of force training identified last year by the OIM. This specialized training is designed for supervisors at or above the rank of sergeant. The “Sergeants & Above” training program was created by IPS, with the involvement of DOJ. The program consists of intensive training in MPD’s new use of force policies within each police district. As we described in our Fourth Quarterly Report, each training session begins with an 18-minute video presentation featuring Chief Ramsey that summarizes the key elements of MPD’s new policies and procedures and emphasizes the importance MPD -- and Chief Ramsey personally -- attaches to these policies and procedures. The Sergeants & Above training for personnel at the rank of sergeant and above is in addition to the 40-hour in-service training that all members of MPD are required to attend.

The premise of this special training is that proper training of the senior management of MPD is critical to understanding and acceptance

of the new policies and procedures by the rank and file within MPD. Members of FIT attended each training session to support the efforts of the regular IPS instructors. Additionally, each supervisor who attended the program received a Frequently Asked Questions memorandum that previously had been approved by DOJ.

The Sergeants & Above training began on March 3, 2003 and ran for one week. A second week initially was scheduled for March but had to be delayed due to MPD's emergency mobilization in response to the war with Iraq. We attended three different sessions in three different districts last quarter and two additional sessions this quarter.

As was the case last quarter, we found the Sergeants & Above training to be substantively sound and effectively communicated to the audience. Several of the classes included multiple instructors. While the instructors differed somewhat in their abilities, they all generally used adult learning principles and real life examples and encouraged the class to participate. The instructors also took time to review the frequently asked questions from the handout and the use of force policies.

## **2. In-Service Training**

We noted in our Third Quarterly Report that, following an initial review by OIM revealing an inadequate training program, MPD had improved the quality, substance, and tone of its instruction. This quarter, we again monitored MPD's in-service use of force training using one of our police practices experts and observed continued improvement in the quality and content of instruction. In particular, we noted that the instructors appear confident in their demeanor and know the subject material well. They have significantly improved their ability to answer questions from the officers, including questions regarding the legal aspects of the UFIR and when a UFIR must be completed. In some cases, the instructors anticipated the questions and provided answers before the questions were asked. The instructors effectively used adult teaching techniques, gave good examples, and followed their lesson plans.

## **3. Canine Training (MOA ¶¶ 145-148)**

In an effort to assess further MPD's canine program, consistent with the issues identified in our Fourth Quarterly Report, we monitored several different aspects of MPD's canine training program this quarter, including searching, obedience, agility, criminal apprehension, and night

deployment. The particular program we reviewed involved five handler/canine pairs.

Having monitored the very early phases of this training program, we were well situated to assess the effectiveness of the overall program and the progress of the particular canines involved. We found that the handlers and the canines made striking progress over the course of the 14-week program. The training program that we monitored was well organized, properly structured, and well run.

Our prior report found problems with MPD's implementation of the "Handler-Controlled Alert Methodology," the canine methodology mandated by the MOA. We commented that these problems may have been a contributing factor to the number of on-lead bites revealed during our review of the Canine Unit's deployment data. Our recent review of the canine training program suggests that, whatever problems remain regarding Handler-Controlled Alert Methodology, they do not appear to be caused by the training program. By the end of the training program, the handlers had excellent control of the dogs and we witnessed no incident where a dog acted without the authorization of the handler. We also noted that, with the exception of a 2-3 second period when a dog rounded a corner or entered a room in advance of a handler, the handlers were in view of the dogs at all times.

We also observed that the canine training involved a discussion of using alternative methods of extricating a passively resisting suspect prior to permitting the canine to apprehend the suspect. We suggested in our Fourth Quarterly Report that this did not seem to be taking place and are pleased to see the issue properly addressed in the canine training program.

#### **4. Lesson Plans**

Last year, MPD's IPS developed sixteen new lesson plans in an effort to incorporate substantive provisions of the MOA into the Department's in-service training program. DOJ approved five of these plans in November 2002 and returned the rest to MPD with comments. MPD revised the plans and resubmitted them to DOJ last quarter. This quarter, DOJ approved the following three additional lesson plans:

- Bias-related Hate Crimes,
- Crime Scene Preservation, and

- Defensive Tactics.

In addition, DOJ has provided comments on the following lesson plans and materials: Administrative Procedure and Misconduct Policies and Procedures; Arrest, Custody, and Restraint Procedures; Transportation of Prisoners General Order; Processing of Prisoners' Property and Arrest Paperwork; Canine Policies and Procedures; Diversity; Interview and Interrogation; Use of Force/Use of Force Continuum; Use of Force Incident Report; and Use of Force Review Board.

MPD currently is working on revising the remaining plans in accordance with DOJ's comments. MPD has not provided a date by which these final revisions will be completed.

## **5. Personnel Training Records**

As part of our continued monitoring of MPD's effort to improve its electronic training record keeping system, we reviewed the information stored in, and the capabilities of, MPD's "Compliance Suite," one of two systems MPD uses to track training. In October 2002, MPD began using Compliance Suite to track information about training curricula, instructors, and training histories of MPD officers. This system allows MPD to schedule training for officers and to track the training an individual officer has received. While this system still is in its infancy, it appears to have many features to help MPD better track the training of officers, provided that information on all training provided by MPD and historical information is entered into the system.

The Compliance Suite system includes three primary components:

1. Curricula. This component includes information such as course title, description, and objectives. It also identifies whether a given course requires mere attendance or passing a test. Additionally, it captures information reflecting each time the course has been taught. The Manager of Records at IPS represented that she is in the process of scanning every lesson and instruction plan into the system. To our knowledge, the project does not currently have a projected completion date.

The MPD General Order relating to training requires that personnel at IPS approve any course before it is taught. MPD's adherence to this requirement will permit the

Department to better track MPD training that occurs outside of IPS. According to the IPS Manager of Records, MPD is attempting to have the General Order amended to require that the applicable lesson and instruction plans be submitted with any request for approval so that these items also may be scanned into the system.

2. Instructors. This component captures instructor information, including the classes each instructor is qualified to teach and the classes each instructor actually teaches.
3. Officers' Training History. This component encompasses the training history of each MPD officer. Once completely populated, the data stored in the Compliance Suite will reflect the training each officer has received, including course, date, and status (*i.e.*, pass/fail/absent); the training each officer is scheduled to receive; and the date by which any required future training must occur (*i.e.*, firearms requalification training must take place every six months). MPD has represented that all training that has occurred within MPD since October 2002 currently has been entered into the Compliance Suite system.

Our review of the Compliance Suite system revealed that the basic identifying information for each officer is downloaded from the payroll system every six months; and, according to the IPS Manager of Records, MPD also updates the information based upon the daily MPD "teletypes" received regarding additions and transfers of officers. The current information and the linking of officers to their individual units within the system allows MPD to run searches for particular units. While the system focuses on the training taught within MPD, the notes section for a particular officer will include outside training the officer has received, if the officer has provided documentation of the training.

The IPS Manager of Records is responsible for maintaining the system and entering information into the system. Each MPD unit has a coordinator who is responsible for scheduling an officer for a particular course and tracking whether an officer has passed the required courses. For example, if an officer fails a course, then the officer is responsible for notifying the coordinator for the unit, who, in turn, is responsible for scheduling the officer to re-test in that area. Similarly, the unit coordinator should track whether the officers in the unit have completed the semi-annual firearms re-qualification, although personnel at IPS also

check this information at the end of each six-month period. Managers for the special mission units are responsible for entering data related to any training that occurs through their units, and not at IPS.

The information in the system currently is limited to all training since October 2002 and the additional information officers have provided about outside training. After the personnel responsible for the training records and the records are moved to a new location during the next quarter, MPD intends to have a team begin to enter historical data, focusing first on active officers. MPD has not provided a projected completion date for this activity.

MPD is in the process of converting the Compliance Suite from Access to SQL to enhance its performance. MPD also is working on linking Compliance Suite with the Wise System, the system that MPD uses to test officers and record results of tests and courses. The linking of these systems will allow MPD to continue using the Wise System to test officers and have that information automatically transferred to the Compliance Suite.

According to IPS, there are many enhancements being made to the electronic training record system. We will continue to monitor the progress and improvements to the system.

### **C. Recommendations**

We recommend that MPD set aggressive but realistic timetables for achieving the prompt implementation of its electronic training records software system.

## **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 (“SMUs”) to achieve various legitimate law enforcement objectives. As to such SMUs, the MOA establishes the following requirements:

- Pre-screening procedures must be employed to ensure that only officers suited to participate in such SMUs 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 SMU.
- MPD must disqualify from participation in such SMUs (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 SMUs 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 SMUs 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 SMU participants must be closely and continually monitored. Such monitoring must encompass a review of any complaints filed against officers participating in SMU activities.

Further, the MOA requires that 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 And Assessment**

MPD submitted its revised draft Specialized Mission Units General Order to DOJ on June 30, 2003. This revised draft follows MPD's January 31, 2003 comments on MPD's October 4, 2002 initial draft policy. Obviously, since the reporting period closed on June 30, 2003, DOJ has not yet commented on the most recent revised order.

As noted in our Fourth Quarterly Report, to facilitate our review of MPD's compliance with this General Order once approved (as well as with the totality of the SMU requirements spelled out in the MOA), we have

requested that MPD provide us with a list of all officers assigned to an SMU within one week of DOJ's final approval of the Specialized Mission Units General Order. This list will be extremely useful in facilitating our review of MPD's compliance with paragraphs 149 through 159 of the MOA when the time comes.

### **C. Recommendations**

We offer no specific recommendations on this topic at this time.

## **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 And Assessment**

During this quarter, MPD released its FIT Lethal Use of Force Report and Less than Lethal Use of Force Report through its official Web site. The Lethal Use of Force Report complied with the MOA by containing statistics broken down by geographic area of the City, race-ethnicity of the subject of the use of force, weapon used, and enforcement action taken in conjunction with the use of force. In addition, the Lethal Use of Force Report included information about use of force investigations that have been conducted and the disposition of excessive use of force allegations.

However, as we noted in our Third Quarterly Report,<sup>39</sup> MPD still has not provided, in the Less than Lethal Use of Force Report, data regarding the investigations of those uses of force and the outcomes of those investigations. While the report includes statistics indicating the number of excessive force complaints MPD has received and the disposition of those complaints, MPD still has not provided correlation between that required data and the MOA's requirement for MPD to provide information regarding "use of force investigations conducted, including the outcome."<sup>40</sup>

In addition, we noted in our Fourth Quarterly Report that MPD's classification of the types of force continues to be confusing.<sup>41</sup> We drew specific attention to a statistical table summarizing "Less Lethal Uses of Force," in which MPD used certain classifications (such as Administrative/Allegation or Civil Action), but did not indicate what types of force actually fell within those categories. MPD's current Less than Lethal Use of Force Report does not cure this deficiency. To make the use of force statistics more understandable to the public, we recommend that MPD either change the labels for these classifications to something that is more descriptive or explain what types of force fall within each category.

### **C. Recommendations**

MPD is continuing to show improvement in supplying its use of force statistics but has not yet met all the requirements of paragraph 160 of the MOA. To fully comply with the purpose of having MPD publicly report statistics, MPD should clarify the different types of less than lethal force discussed above and provide statistics that the public can understand.

## **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,

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<sup>39</sup> OIM Third Quarterly Report at 70.

<sup>40</sup> MOA at ¶ 160.

<sup>41</sup> OIM Fourth Quarterly Report at 76.

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 And Assessment**

### **1. Compliance Monitoring Team ("CMT")**

As in the past, we remain very impressed by the professionalism, efficiency, and responsiveness of MPD's CMT.

### **2. Full and Unrestricted Access to Staff, Facilities, and Documents**

As we have reported previously, MPD continues to provide us with full and unrestricted access to MPD staff, facilities, and documents. Among other groups, MPD's CMT, FIT, Canine Unit, IPS, and OPR deserve particular recognition in this regard.

### **3. MPD Quarterly MOA Progress Reports**

MPD published its quarterly MOA Progress Report on July 10, 2003. As in the past, the report is well written, well organized, and generally informative. Once again, we found MPD's Progress Report to be extremely useful in preparing this quarterly report.

### **C. Recommendations**

We offer no specific recommendations at this time. As noted above, we continue to find the work of MPD's CMT to be fully consistent with the requirements of the MOA. The quantity and quality of the CMT's compliance-related efforts have served to foster a constructive and productive relationship among MPD, DOJ, and the OIM.

## Conclusion

**D**uring this quarter, MPD engaged in a broad array of MOA-related compliance activities. It submitted four new or revised policies to DOJ, while concurrently continuing work on a host of other policies that previously had been returned to MPD by DOJ with comments. MPD also dedicated significant resources this quarter to problems identified by the OIM in prior quarters relating to MPD's canine program and its delayed development of the PPMS mandated by the MOA. In response to our (and DOJ's) concerns, MPD held a host of meetings (internal, as well as with DOJ and the OIM), reassigned internal personnel, and generally rededicated itself to the requirements of the MOA in these two areas.

Our observations confirm our general experience during MPD's first year under the MOA that MPD has been working in good faith to comply with the requirements of the MOA and has made significant progress toward MOA compliance. Areas still remain, however, that will require MPD's continue vigilance. The PPMS, for example, despite MPD's renewed commitment to that project, still is far behind schedule.

We have spent the past quarter on a wide range of activities, including an extensive review of UFIRs, the first phase of a major review of misconduct investigations, and a review of various kinds of training. In addition, we developed a long-range monitoring plan and began to work toward defining the meaning of "substantial compliance" across the full scope of the MOA. We have noted some significant problems with the manner in which UFIRs are being completed by officers involved in uses of force. During the course of our misconduct investigations review, we also have noted serious shortcomings with the way in which misconduct investigation files are maintained. Finally, we have serious concerns about the status of the PPMS project, which, despite the involvement of MPD top management, continues to proceed very slowly. These are all

issues we will continue to monitor and issues to which the MPD must pay careful attention.



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July 31, 2003

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## Appendix A

AUSA	Assistant United States Attorney
CIO	Chief Information Officer
CDS	Curriculum Development Specialist
CMT	Compliance Monitoring Team
DOJ	Department of Justice
FIT	Force Investigation Team
FOP	Fraternal Order of Police
IPS	Institute of Police Science
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding between MPD and OCCR
MPD	Metropolitan Police Department
OC	Oleoresin Capsicum
OCC	Office of Corporation Counsel
OCCR	Office of Citizen Complaint Review
OCP	Office of Contracting and Procurement
OIM	Office of the Independent Monitor
OPR	Office of Professional Responsibility
PPMS	Personnel Performance Management System
PwC	PricewaterhouseCoopers
RFP	Request for Proposal
SMU	specialized mission unit
UFIR	Use of Force Incident Report
UFRB	Use of Force Review Board
USAO	United States Attorney's Office