

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

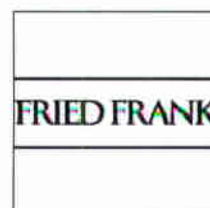
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# Executive Summary

## OVERVIEW

This report is the seventh quarterly report of the Office of the Independent Monitor (“OIM”), which covers the fourth calendar quarter of 2003. The OIM is in 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 October 1, 2003 through December 31, 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 Policy and Use of Force Incident Reports**

The overall number of investigated uses of force by MPD officers decreased significantly during each of the months of October (19), November (16), and December (14) 2003 from the totals reported during the last quarter. Based on only one year’s worth of data regarding the frequency of use of force incidents in the City, it remains too early to draw firm conclusions regarding trends in uses of force. It appears, however, that this decrease corresponds to seasonal variations in criminal activity. The frequency with which MPD officers completed Use of Force Incident Reports (“UFIRs”) increased significantly this quarter, which is an encouraging development. A close examination of all UFIRs on file from January 2003 through November 2003, however, demonstrated that a disappointingly high percentage of UFIRs are missing required information, such as a supervisor’s signature and

findings, the date on which a supervisor was notified of the use of force incident, CS tracking numbers, or narratives describing the incident.

### **Force Investigation Team (“FIT”) Investigations**

This quarter, the OIM continued its review of all preliminary and final FIT I and II use of force investigations prepared since January 1, 2003. As noted in previous quarterly reports, we have consistently found FIT investigations to be timely, complete, and sufficient. We also monitored a FIT “roll out” in response to a use of deadly force incident involving a weapon discharge. FIT was notified promptly and responded quickly to the scene. The investigation at the primary scene of the incident appeared to be thorough and professionally done.

### **Chain of Command Use of Force and Misconduct Investigations**

The OIM continued its review of statistical samples of chain of command use of force and misconduct investigations. This quarter, the OIM reviewed 80 such investigations opened during the period April 1, 2003 through June 30, 2003. Our findings this quarter were statistically similar in many significant areas to our findings developed during last quarter’s review of 244 investigations selected from the period June 13, 2001, the effective date of the MOA, through March 31, 2003. For example, only 48.4% of the investigations reviewed this quarter were completed within the 90-day window required by the MOA. Although the MOA specifically provides that a chain of command investigation may be completed outside of the 90-day window where there exist documented “special circumstances” justifying the delay, only 32% of the investigations we reviewed that were not completed within 90 days included a description of such “special circumstances.” Overall, our review of these 80 investigations found that only 52% of the investigations were “complete” and only 66% of the investigations were “sufficient.”

### **Auditing of the Citizen Complaint Hotline**

Last quarter, the Office of Citizen Complaint Review (“OCCR”) proposed a modification to the MOA provision requiring that OCCR tape record all conversations on the citizen complaint hotline and develop auditing procedures that include monthly reviews of random samples of those tape recordings. OCCR proposed replacing the tape recording requirement with a procedure involving follow-up calls to a random sample of citizen complainants to evaluate their experience with the

hotline. Although our review of OCCR's proposed hotline monitoring program is not complete, we have made certain preliminary observations regarding OCCR's proposed procedures, including, for example, (1) we are not confident that the proposed procedures would ensure the selection of a random sample of hotline complaints, (2) the proposed procedures do not appear to adequately document unsuccessful attempts to contact complainants, and (3) certain of the questions on the audit questionnaire were ambiguous. We will continue to monitor OCCR's proposed review and auditing methodologies in the coming quarter in order to provide our final assessment and recommendations regarding those procedures.

### **Tracking of Disciplinary Actions**

The OIM requested 34 disciplinary files related to cases in which misconduct allegations against an officer were sustained in order to evaluate MPD's systems for tracking and administering discipline. The OIM's review revealed that MPD has not yet established an effective centralized and formal system for documenting all forms of discipline and corrective action as required under the MOA. It appears that an MPD directive issued on January 18, 2002 that instructed all unit commanders to forward to the Department Disciplinary Review Office ("DDRO") copies of all corrective actions went largely, if not completely, ignored. Currently, the DDRO maintains central files only for "adverse actions" involving recommendations for serious discipline, such as termination, suspension, and reduction in grade or pay. Documentation related to less serious "corrective actions" resides in the officer personnel files maintained at the various districts. After the OIM advised MPD of this deficiency, MPD reissued, on December 25, 2003, the directive to forward documentation of all disciplinary actions to the DDRO for central filing and tracking.

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

MPD continued to devote substantial time and resources to the development of the PPMS. This quarter, among other things, MPD conducted 14 Joint Application Development ("JAD") sessions, which were workshops in which the PPMS vendors and various end users collaborated to identify system requirements. MPD reports that over 70 sworn and civilian personnel from over 25 units within the Department participated in these JAD sessions. MPD believes that these sessions produced a wealth of information for the PPMS developers to use as a "blueprint" for PPMS customization.

## **Training**

The OIM reviewed MPD's Field Training Officer ("FTO") program and found that significant improvement in the FTO program is necessary, including completion of the Enhanced Field Training Officer Program Protocol and development of selection criteria for FTOs as required under the MOA.

## **Development of Substantial Compliance Standards**

The OIM completed an initial draft of "substantial compliance" standards for each of the MOA's substantive provisions. These draft standards are being reviewed and revised internally by the OIM, after which the draft standards will be forwarded for MPD's and DOJ's consideration. In the coming months, the OIM, in close consultation with DOJ and MPD, will continue formulating and refining "substantial compliance" standards relating to each substantive provision of the MOA.

## **CONCLUSION**

During this quarter, MPD engaged in a broad array of MOA-related compliance activities. In particular, MPD continued to devote substantial time and resources to the development of the PPMS. Also, in response to the OIM's discovery that MPD had not yet established an effective centralized and formal system for documenting all disciplinary actions, MPD took appropriate action in reissuing a directive requiring that documentation of all corrective actions be forwarded to the DDRO.

Our observations this quarter again confirm our general experience that MPD has been working in good faith to comply with the requirements of the MOA and that MPD has made significant progress toward MOA compliance.

There remain, however, important areas in which significant improvement is necessary. For example, our review this quarter of a second sample of chain of command investigations reinforced our findings from last quarter that far too many of these investigations are incomplete or insufficient. Also, while the rate of UFIR completion improved dramatically over each of the three months in the last quarter, the quality of these reports remains an area of concern. Finally, as mentioned above, MPD currently lacks an effective centralized and formal system for documenting and tracking all disciplinary actions. MPD needs to take the necessary steps to improve its performance in this area.



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# Introduction

This report is the seventh quarterly report of the Office of the Independent Monitor (“OIM”), which covers the fourth calendar quarter of 2003. The OIM is in 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 October 1, 2003 through December 31, 2003.

This quarter, MPD continued to devote significant time and resources to the development of the Personnel Performance Management System (“PPMS”). For example, MPD held 14 Joint Application Development (“JAD”) sessions, which were workshops in which the PPMS vendors and various end users collaborated to identify system requirements. Over 70 sworn and civilian MPD personnel from over 25 units within the Department participated in these JAD sessions. Also of particular significance this quarter, MPD negotiated with DOJ a modification to the MOA eliminating the provision authorizing the OIM to direct MPD to reopen misconduct investigations identified as incomplete.

The OIM’s monitoring this quarter covered a wide range of activities, including a review of all Use of Force Incident Reports (“UFIRs”) filed between January 1, 2003 and November 30, 2003; observation of a Force Investigation Team (“FIT”) “roll out”; a detailed review of a second sample of 80 chain of command investigations; evaluation of the Office of Citizen Complaint Review’s proposed citizen complaint hotline audit procedures; a review of MPD’s systems for documenting and tracking disciplinary actions; observation of MPD’s progress in the development of the PPMS; reviews of in-service firearms training, ASP baton training, and canine training; and a review of MPD’s Field Training Officer (“FTO”) program.

Our review this quarter of 80 chain of command investigations found that there is substantial room for improvement in the quality of these investigations. For example, only 48.4% of the investigations reviewed this quarter were completed within the 90-day window required by the MOA. Although the MOA specifically provides that a chain of

command investigation may be completed outside of the 90-day window where there exist documented “special circumstances” justifying the delay, only 32% of the investigations we reviewed that were not completed within 90 days included a description of such “special circumstances.” Overall, our review of these 80 investigations found that only 52% of the investigations were “complete” and only 66% of the investigations were “sufficient.”

Our monitoring with respect to MPD’s systems for tracking and administering discipline has revealed that MPD has not yet established an effective centralized and formal system for documenting all forms of discipline and corrective action as required under the MOA. It appears that an MPD directive issued on January 18, 2002 that instructed all unit commanders to forward to the Department Disciplinary Review Office (“DDRO”) copies of all corrective actions went largely, if not completely, ignored. After the OIM advised MPD of this deficiency, MPD reissued, on December 25, 2003, the directive to forward documentation of all disciplinary actions to the DDRO for central filing and tracking. MPD’s action in this regard is an appropriate step toward bringing MPD into compliance with this MOA requirement.

Finally, the OIM has continued the process of establishing standards for measuring MPD’s compliance with the MOA. 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.”

This quarter, the OIM completed an initial draft of “substantial compliance” standards for each of the MOA’s substantive provisions. These draft standards are being reviewed and revised internally by the OIM, after which the draft standards will be forwarded for MPD’s and DOJ’s consideration. In the coming months, the OIM, in close consultation with DOJ and MPD, will continue formulating and refining “substantial compliance” standards relating to each substantive provision of the MOA.



# 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” sections. 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>1</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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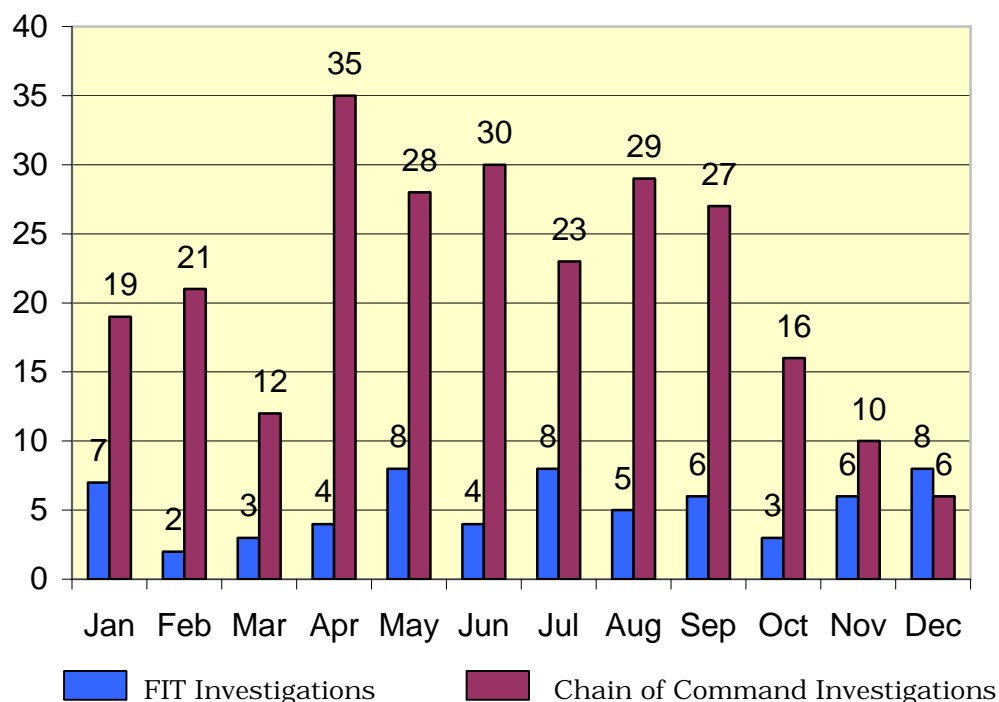
<sup>1</sup> MOA at ¶ 169.

- 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 relevant information that bears on the effectiveness of MPD's use of force policies and training. Accordingly, we have continued to review these statistics and to report on any apparent trends.

Last quarter we observed that the number of use of force incidents involving an MPD officer had remained relatively steady during each of the months June through August 2003 and that the statistics for those months were comparable to, albeit slightly lower than, the figures for April and May 2003. The frequency of use of force incidents for each of the months April through September 2003 was higher than that for the first three months of 2003. We also noted that, while the increases in such uses of force may well have understandable and satisfactory explanations, including higher levels of violent crime and seasonal variations in crime, we did not have sufficient information to dismiss or explain the increases in the number of use of force incidents.



**Source: Force Investigation Team Monthly Use of Force Report<sup>2</sup>**

As reflected in the above chart, while the total number of use of force incidents for September 2003 remained at a level comparable to the preceding five months, there was a marked decrease in total uses of force in the months October through December 2003. Although these statistics appear to indicate a seasonal variation in total uses of force related to decreases in criminal activity following the end of summer, we have not yet accumulated sufficient data to offer any firm conclusions regarding trends in uses of force. We note that the frequency in serious uses of force investigated by FIT does not appear to reflect the same seasonal relationship as does the total number of use of force incidents.

The OIM intends in a future quarter to evaluate whether the use of force statistics reported by MPD are comparable to other police departments of a similar size. 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 Statistics.

<sup>2</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.

### **3. Recommendations<sup>3</sup>**

In previous quarterly reports, we have recommended that FIT incorporate arrest and crime rate data into its monthly use of force summary report. We continue to believe this recommendation has substantial merit because such information would help ensure that the statistics compiled by FIT are viewed in proper context. In the coming quarter, we will discuss with MPD the feasibility of incorporating this data into the monthly use of force summary reports provided to the OIM.

#### **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;
- Require that MPD document in writing the cause of a weapon's malfunction -- *i.e.*, whether an inherent malfunction, a

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<sup>3</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.

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's monitoring activity with respect to firearms-related activity is discussed below in Section VI.B.2.

As noted in several previous quarterly reports, 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. Although MPD reports that it "is working on finalizing its policy so that it can be issued to the MPD members,"<sup>4</sup> well over a year now has passed without MPD's issuing a special order implementing this policy.

## **3. Recommendations**

The OIM repeats its strong encouragement to MPD to issue in the near future a special order concerning the carrying of service pistols by off-duty officers.

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

#### **1. Requirements**

The MOA requires MPD to develop a Canine Teams Policy that:

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<sup>4</sup> Memorandum of Agreement Progress Report, dated January 12, 2004 ("MPD January 2004 Progress Report"), at 8.

- 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

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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.

the term “Handler-Controlled Alert Methodology” -- the methodology identified in the MOA in which all MPD canine handlers should be trained.<sup>6</sup>

In our Fifth Quarterly Report, we observed that MPD has taken the OIM’s findings seriously and has taken steps to identify, assess, and correct deficiencies in its canine program.<sup>7</sup>

On June 4, 2003, MPD submitted a revised Canine Teams General Order to DOJ. On July 25, 2003, DOJ provided MPD comments on the revised order and, on September 30, 2003, also provided certain specific policy recommendations intended to provide additional guidance with respect to revision of the Canine Teams General Order. This quarter, on December 31, 2003, MPD submitted to DOJ a revised Canine Teams General Order as well as specific responses to DOJ’s policy recommendations for MPD’s canine program. Specifically, MPD has submitted revisions to the Canine Teams General Order intended to address DOJ’s concerns related to bites that occur while canines are “on-lead” and bites that occur without the prior issuance of a warning by the officer.

On September 30, 2003, DOJ provided MPD with comments on its Canine Lesson Plan and Training Curriculum and its Canine Operations Manual. MPD’s review of DOJ’s suggestions with respect to the training curriculum and manual is ongoing.

### **3. Recommendations**

We recommend that MPD continue working with DOJ to revise and finalize the Canine Teams General Order, canine training curriculum, and Canine Operations Manual to address DOJ’s concerns and to alleviate the areas of confusion identified in our Fourth Quarterly Report.

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

<sup>7</sup> OIM Fifth Quarterly Report at 11.

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

### **1. Requirements**

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

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

### **2. Status And Assessment**

MPD’s use of OC spray was the subject of detailed and specific monitoring by the OIM during the last quarter. We did not monitor activity specifically related to OC spray this quarter.



### **3. Recommendations**

In our Sixth Quarterly Report, we recommended that MPD's in-service training provide more focused attention on the use of OC spray, including training on MPD policies regarding OC spray, appropriate techniques for deployment of the agent, and decontamination procedures. In the coming quarters, we will continue to monitor MPD's in-service training programs, including evaluating the extent to which modifications in training on the use of OC spray have been implemented.

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

MPD's implementation efforts relating to its use of force policies continue to 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 ("UFIR"). 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>
- 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>

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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 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.

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. A "Reverse-Garrity" warning is a 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 (UFIR)**

In our Fifth Quarterly Report, we observed that there appeared to be lingering confusion among MPD officers and supervisors with respect to the UFIR. We also observed that an effect of this apparent confusion is that officers have not completed UFIRs in circumstances where MPD policy provides that they should. In our Sixth Quarterly Report, we found that the UFIR completion rate, even after discounting uses of force still subject to pending review by the USAO,<sup>12</sup> remained a problem.<sup>13</sup>

As reflected in the chart below, UFIR completion rates have increased dramatically during this quarter. UFIR completion rates, after discounting uses of force still subject to pending review by the USAO, approached 80% for each of the months of September through November 2003 and exceeded 80% in December 2003. Although there remains room for improvement, the increase in the number of completed UFIRs relative to the number of use of force incidents during this quarter is both significant and extremely encouraging.

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<sup>12</sup> Prior to July 2003, MPD's statistics regarding use of force incidents and UFIR completion did not take into account cases that were subject to pending reviews by the USAO. Because officers cannot be compelled to provide statements regarding a use of force prior to a written declination of prosecution by the USAO, UFIRs for those cases could not be completed. Accordingly, our chart regarding the percentage of use of force incidents resulting in a completed UFIR has been modified to reflect the information MPD now provides regarding cases pending USAO declinations.

<sup>13</sup> OIM Sixth Quarterly Report at 15.

	Total uses of force investigated by FIT	Total uses of force investigated by chain of command	Total uses of force as reported by FIT	Total number of UFIRs completed as reported by FIT	Uses of force in which no UFIR completed due to pending AUSA review	Percentage of uses of force resulting in completion of UFIR	Percentage of UFIRs completed, not including uses of force in which USAO review is pending
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	8	28	36	25		69.44%	
June 1, 2003 - June 30, 2003	4	30	34	14		41.18%	
July 1, 2003 - July 31, 2003	8	23	31	13	7	41.99%	54.17%
August 1, 2003 - August 31, 2003	5	29	34	15	6	44.12%	53.58%
September 1, 2003 - September 30, 2003	6	27	33	23	6	69.70%	79.31%
October 1, 2003 - October 31, 2003	3	16	19	15	0	78.95%	78.95%
November 1, 2003 - November 30, 2003	6	10	16	10	3	62.50%	76.92%
December 1, 2003 - December 31, 2003	8	6	14	9	3	64.29%	81.82%

MPD has proposed a revised and simplified UFIR and has submitted the proposed revisions to DOJ. On March 19, 2003, DOJ provided written responses to MPD's proposal. On December 10, 2003, MPD submitted a revised UFIR that incorporated all of DOJ's recommendations.<sup>14</sup>

On December 10, 2003, MPD also proposed to DOJ a modification to the MOA's requirement that officers complete a UFIR "immediately following the drawing and pointing of a firearm at, or in the direction of, another person . . . ."<sup>15</sup> MPD believes that, because the MOA does not include the pointing of a weapon within its definition of "use of force," reporting such incidents through the UFIR is not appropriate.

<sup>14</sup> MPD January 2004 Progress Report at 9.

<sup>15</sup> MOA at ¶ 53.

Accordingly, MPD has developed a draft MPD Reportable Incident Form, which it proposes should replace the UFIR as the mechanism for tracking “pointing” incidents.<sup>16</sup> In its comments on a draft of this report, DOJ noted that, while it currently is considering MPD’s proposal, the parties originally agreed to include in paragraph 53 of the MOA the requirement that a UFIR be completed following the drawing and pointing of a firearm in light of the high number of shooting incidents in the City, including erroneous and accidental shootings. DOJ also noted that it already has agreed with MPD to refer to the UFIR generically as a form “PD 901,” thus removing the term “use of force” from the name of the document.<sup>17</sup>

Last quarter, we reported that significant improvement with respect to the quality of UFIRs is necessary. As reflected in the chart below, a review of all UFIRs in MPD’s central UFIR files, which are maintained at FIT’s offices, for the months January through November 2003 has identified specific deficiencies in the thoroughness and completeness of a significant proportion of the UFIRs. For example, well over half (60.1%) of the completed UFIRs are missing the signature or findings of a reviewing supervisor. Approximately one third (32.8%) of the UFIRs on file do not reflect the time and date the reporting officer notified his supervisor of the use of force incident, as required by the form. Moreover, a significant proportion of the UFIRs do not identify CS tracking numbers (26.3%) or provide a narrative describing the incident (11.1%), information that also is required by the form.

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<sup>16</sup> MPD January 2004 Progress Report at 10.

<sup>17</sup> August 19, 2002 e-mail correspondence between Lisa Graybill and Joshua Ederheimer.

2003	Total UFIRs in file	Missing Supervisor's Signature or Finding <sup>1</sup>	Missing Date/Time Notification to Supervisor <sup>2</sup>	Missing CS Number <sup>3</sup>	Missing Narrative	Missing Other Information	Reverse Garrity Given
Jan	26	19	11	8	5	0	2
Feb	17	13	6	3	5	0	2
Mar	15	9	8	3	2	0	2
Apr	20	13	7	2	4	1	4
May	21	12	7	7	1	2	0
June	19	9	5	7	1	1	2
July	17	9	7	2	1	2	2
Aug	34	17	9	10	2	1	1
Sept	20	11	4	7	0	1	0
Oct	5	3	1	1	1	2	0
Nov	4	4	0	2	0	2	1
<b>Total</b>	<b>198</b>	<b>119 (60.10%)</b>	<b>65 (32.82%)</b>	<b>52 (26.26%)</b>	<b>22 (11.11%)</b>	<b>12 (6.06%)</b>	<b>16 (8.08%)</b>

<sup>1</sup> The UFIR requires the reviewing supervisor to reach a finding on the use of force incident and to make a recommendation. There are spaces on the form for entering this information and for the supervisor's signature.

<sup>2</sup> The UFIR directs the reporting officer to indicate the date and time the officer notified his supervisor of the use of force incident.

<sup>3</sup> There are two places on the UFIR for entering the CS number. The CS number is used to track reports generated in relation to the incident.

Finally, on March 25, 2003, MPD sent a letter to DOJ proposing an amendment to the UFIR reporting requirement as it relates to certain incidents involving MPD's Specialized Mission Units ("SMUs") during which multiple officers point their service weapons. MPD believes that the UFIR requirement as it relates to such incidents may give rise to delays that adversely affect operational efficiency because it requires multiple officers each taking time to complete a UFIR. As an alternative to the requirement that each officer prepare a UFIR documenting the pointing of a weapon, MPD proposed that the unit manager complete a single "After-Action Documentation Report." DOJ responded to MPD's proposal on August 25, 2003 by suggesting certain revisions to the draft After-Action Report. On December 31, 2003, MPD submitted to DOJ a revised draft "Specialized Mission Unit After-Action Report" incorporating DOJ's comments and a revised Specialized Mission Unit General Order including policies and procedures related to the SMU After-Action Report. DOJ currently is reviewing these revised drafts.

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

As we have on several previous occasions, this quarter we reviewed MPD's AUSA Notification Log, which is maintained at FIT's offices. We

found that MPD is continuing to make timely notifications to the USAO within 24 hours of a deadly or serious use of force incident.<sup>18</sup>

### **3. Recommendations**

The data set forth above suggest that MPD is improving in terms of the proportion of use of force incidents for which a UFIR is filed. Serious deficiencies exist, however, with respect to the quality and completeness of the UFIRs. In particular, despite MPD's revised training program and the completion of its supplementary sergeants and above training program, serious problems related to the review and approval of UFIRs persist. We recommend strongly that MPD devote significant attention, in terms of training and supervision, to improving the quality of the information recorded on UFIRs.

#### **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>19</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

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<sup>18</sup> MOA at ¶ 54.

<sup>19</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 by the MOA. MOA at ¶ 63.

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 compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.<sup>20</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>21</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.

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<sup>20</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>21</sup> In such cases, the reasons for failing to observe the ninety-day requirement must be documented.



## **(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 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>22</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>23</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,

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<sup>22</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>23</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.

and authorize the UFRB to direct City supervisors to take non-disciplinary action to encourage officers to modify their behavior;

- Require the UFRB to assign to FIT or return to the original investigating unit any incomplete or improperly conducted use of force investigations; and
- Empower the UFRB to recommend to the Chief of Police investigative standards and protocols for all use of force investigations.

In addition to these requirements, the UFRB must conduct annual reviews of all use of force investigations to identify patterns and problems 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. DOJ provided comments on the revised FIT Manual on August 25, 2003, all of which MPD incorporated into the draft FIT Manual that was returned to DOJ for approval on September 29, 2003. On December 31, 2003, DOJ approved the revised Force Investigation Team Organizational Plan and Operations Manual.

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

This quarter, we continued our review of all preliminary and final use of force investigation reports prepared by FIT I since January 1, 2003. As we have noted in the past, the quality of the FIT reports is generally substantially better than the internal investigation reports prepared by chain of command investigators. We found the FIT reports reviewed this quarter to be timely, complete, and sufficient.

We have observed that some FIT investigators recommend that subject officers receive additional training to remedy shortcomings or failures identified by the investigation. In the coming quarters, the OIM intends to conduct additional monitoring to determine the degree to

which FIT's recommendations in this regard reach the appropriate authority and remedial training is in fact administered to subject officers.

This quarter, we monitored a FIT "roll out" in response to a use of deadly force incident involving a weapon discharge. This investigation involved a primary scene, where the weapon discharge took place, and a secondary location a few blocks away, where the suspect abandoned the vehicle in which he had fled the primary scene.

We found that FIT was timely notified of the weapon discharge and that the FIT unit responded to the scene quickly. The FIT unit properly secured the primary location, and no officers other than FIT investigators were involved in conducting the investigation. We observed that sufficient FIT personnel were present to accomplish the investigation at the primary scene, including conducting interviews of witness officers and canvassing the area for additional witnesses. We observed no group interviews of the involved officers.

The secondary scene, where the abandoned vehicle was located, was not as well secured as the primary scene. The officers protecting the secondary scene belonged to the same unit as the officer who discharged his weapon. Although we have no information that these officers compromised the scene or evidence in any way, a better practice would have been to use FIT investigators or uninvolved officers to secure the secondary location until it could be processed for evidence. Finally, only one evidence technician was assigned to process both the primary and secondary scenes. Although such staffing may have been sufficient for this particular investigation, MPD should ensure that sufficient personnel are assigned to secure and process all scenes in a timely manner.

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

This quarter, we continued our review of chain of command use of force and misconduct investigations by selecting and reviewing a statistical sample composed of 80 such investigations opened between April 1, 2003 and June 30, 2003. The results of this quarter's review are discussed below in Section II.B.2.b(1).

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

The OIM intends to review a sample of UFRB cases in the coming quarter.

### **c. Recommendations**

Our recommendations with respect to use of force investigations are reflected in Section II.B.2.c below regarding the OIM's review of a statistical sample of chain of command investigations.

## **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>24</sup>

With respect to allegations in the above categories that are criminal, MPD's Office of Professional Responsibility ("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>25</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>24</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>25</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>26</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>27</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>26</sup> See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

<sup>27</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 the MOA Modification.

## **b. Status And Assessment**

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

Last quarter, the OIM completed its review of a statistical sample of 244 non-FIT chain of command use of force and misconduct investigations opened from June 13, 2001, the effective date of the MOA, through March 31, 2003. The selected sample included approximately 30 investigations from every MPD district to enable us to draw conclusions with a high degree of statistical confidence on an MPD-wide basis, as well as derive useful information on a district-by-district basis.

This quarter, we continued our review of chain of command investigations by selecting a second statistical sample of such investigations. The sample we reviewed this quarter consisted of 80 investigations opened during the period April 1, 2003 through June 30, 2003 and included at least 10 investigations drawn from each of the MPD districts. Once again, we received exceptional cooperation from MPD in facilitating our review of the 80 investigation files included in this quarter's database.

#### Preliminary Results of the OIM's Review of the Investigations Sample

As with our Sixth Quarterly Report, the preliminary results of the OIM's review of chain of command investigations this quarter are divided into the following four categories: (1) administration and management of the investigations, (2) conduct of the investigations, (3) unit commander review of the investigations, and (4) the overall ratings regarding the completeness and sufficiency of the investigations. We are in the process of conducting further analyses of the data gathered through our review of the 244 investigations last quarter and the 80 investigations this quarter, the results of which will be included in a subsequent report. The OIM's

specific findings with respect to each of these areas are discussed below.<sup>28</sup>

### 1. Administration and Management of the Investigations

Similar to our findings published in our Sixth Quarterly Report, the OIM's review of this quarter's sample of MPD investigations has found that, to a very high degree, the chain of command investigations are free of the types of conflicts of interest that would cast doubt on the integrity of the investigations. We identified no cases this quarter in which either the supervisor or the official responsible for the investigation was involved in the incident underlying the investigation. Moreover, we identified no apparent or actual conflicts of interest involving the supervisor or the official responsible for the investigation in any of the cases. Also, in all applicable cases, the proper authority investigated the allegations at issue. These are very positive results with respect to the integrity of MPD's investigations.

Of the investigation files we reviewed this quarter, 35.1% did not contain a report prepared by the investigator. In each of these cases, it appears that the case file was missing an investigation report because, although the 90-day limit for completion of the investigation had been exceeded, the investigation remained pending at the time of our review. While in some cases, MPD's delay in completing an investigation may be justified by "special circumstances," as discussed below, the timeliness of MPD's investigations is an area of concern. We found again this quarter that, to the extent they were present in the investigation files, the reports themselves consistently contained the necessary elements, including (1) a description of the use of force incident or misconduct alleged (100.0%), (2) a summary of relevant evidence gathered (100.0%), and (3) proposed findings and supporting analysis (100.0%).

This quarter's review reinforces that the timeliness of MPD investigations is deficient to a significant degree. Fewer than half (48.4%) of the cases reviewed this quarter were completed within the 90-day window required by the MOA.<sup>29</sup> The MOA specifically provides

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<sup>28</sup> We have included at Appendix B detailed summaries of the reviewers' questions and the results generated by this quarter's review of 80 chain of command use of force and misconduct investigations. For ease of comparison, we have also included in Appendix B the results of last quarter's review of 244 investigations.

<sup>29</sup> Our review last quarter of the sample of 244 investigations found that 63.1% of those investigations were completed within 90 days.



that chain of command investigations may be completed outside of the 90-day window where there exist documented “special circumstances” justifying the delay.<sup>30</sup> Of the cases we reviewed this quarter that were not completed within 90 days, only 32.0% contained any explanation of the “special circumstances” occasioning the delay.<sup>31</sup> MPD has indicated during our monthly meetings that it is placing substantial emphasis internally on improving the timeliness of the completion of chain of command investigations. We expect that the data gathered through our review of the 244 investigations last quarter and the 80 investigations this quarter will establish a reliable baseline by which to measure MPD’s progress in this regard.

## 2. Conduct of the Investigations

We found again this quarter that MPD investigators generally conduct sound investigations. For example, investigators employed fundamental investigative techniques, such as avoiding group interviews (96.3%) and interviewing all appropriate MPD personnel (98.0%). Moreover, this quarter’s results indicate that investigators properly documented and addressed inconsistencies among officers and witnesses (100.0%), addressed all apparent misconduct (94.5%), and avoided giving automatic preference to an officer’s statement over a citizen’s statement (98.0%).

As reflected in Appendix B, many of the figures in this area from our review of the sample of 80 show improvement over the results derived from our review of the sample of 244. While this is encouraging, such comparisons are fragmentary enough to preclude broad conclusions about a sustained improvement in the quality of MPD’s chain of command investigations. The OIM will continue to review statistical samples of chain of command investigations in the coming quarters to provide a fuller picture of all qualitative aspects of these investigations.

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<sup>30</sup> MOA at ¶¶ 65, 74.

<sup>31</sup> In future quarterly reports, and in connection with evaluating whether MPD is in “substantial compliance” with the terms of the MOA, we will assess the overall proportion of chain of command investigations that satisfy the MOA’s timeliness requirements by either (1) being completed within 90 days or (2) containing documented “special circumstances” occasioning a reasonable delay in completion of the investigation.

### 3. Unit Commander Review of Investigations

In all applicable chain of command investigations reviewed this quarter, the unit commander reviewed the investigation to ensure its completeness and that the findings were supported by the evidence. Although unit commanders appear to be consistently reviewing investigations, the data discussed below regarding the lack of completeness and sufficiency of many investigations suggest that unit commanders are not conducting thorough reviews. Also, our review this quarter of the chain of command investigations indicated that, in every case involving evidence of criminal wrongdoing, unit commanders eventually notified FIT and the USAO. In no case, however, was that notification made by the next business day as required under the MOA.<sup>32</sup>

### 4. OIM Reviewers' Overall Ratings Regarding Completeness and Sufficiency

As we found last quarter, the OIM's overall evaluation with respect to the quality of MPD's chain of command investigations demonstrates that improvement is necessary. Of the cases reviewed this quarter, we found that only 52.0% of the investigations were complete<sup>33</sup> and that a sufficient<sup>34</sup> investigation had been conducted in only 66.3% of the cases. As reflected in Appendix B, these figures are lower than those reported with respect to the OIM's review of the 244 investigations last quarter. Although PricewaterhouseCoopers LLP has determined that these differences in findings between the two reviews conducted thus far are not statistically significant, the figures for both quarters indicate that there exists significant room for improvement in the completeness and sufficiency of MPD's chain of command investigations.

Finally, as a result of an agreement between DOJ and MPD, the OIM is no longer considering whether to direct MPD to reopen certain

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<sup>32</sup> MOA at ¶ 54.

<sup>33</sup> Our police practices experts rated an investigation "complete" if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required by both the MOA and by generally accepted police practices.

<sup>34</sup> Our police practices experts rated an investigation "sufficient" if the evidence and analysis reflected in the investigation file were adequate to support a reasonable and defensible conclusion, even in cases where certain investigative procedures or analysis had not been completed.

investigations found to be incomplete. Paragraph 172 of the MOA originally provided that, “[s]ubject to the limitations set forth in this paragraph, MPD shall reopen for further investigation any misconduct investigation that the Monitor determines to be incomplete.” Because MPD was concerned that providing the OIM a meaningful period of time in which to review an investigation for completeness prior to notification of the subject officer of the outcome of the investigation would result in an undesirable delay in such notification, on October 9, 2003, MPD requested that DOJ consider modifying paragraph 172 of the MOA to eliminate the provision allowing for the reopening of investigations found by the OIM to be incomplete. On November 18, 2003, DOJ agreed to this proposed modification on the grounds that ensuring the prompt notification of officers of the results of misconduct investigations was one of the original goals of paragraph 172 of the MOA and that MPD has adopted a practice of notifying subject officers of the disposition of their cases as soon as the investigation is complete.<sup>35</sup>

## **(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>36</sup> MPD submitted a revised draft to DOJ on March 7, 2003. DOJ responded to the revised draft order on August 25, 2003. MPD responded to DOJ’s comments and submitted a further revised order on September 30, 2003. DOJ approved the Serious Misconduct General Order on December 31, 2003.

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

Pursuant to paragraph 83 of the MOA, MPD submitted a draft Administrative Investigations Manual to DOJ on October 25, 2002. DOJ provided comments on the manual on March 26, 2003. Paragraph 83

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<sup>35</sup> Letter from Shanetta Y. Cutlar to Chief Charles Ramsey (November 18, 2003).

<sup>36</sup> Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

requires that the manual “provide investigative templates to assist investigators.” Because MPD wishes to include this investigative template in the PPMS, a final template must be submitted to PPMS development vendors by January 12, 2004. In order to facilitate the template’s inclusion in the PPMS development process, DOJ has agreed to provide an expedited review of the draft administrative investigative template that MPD submitted on December 30, 2003. MPD’s work with respect to finalizing the remainder of the Administrative Investigations Manual is ongoing.

#### **(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. 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>37</sup> MPD provided an updated draft of this general order to DOJ on December 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.

As discussed in our Fifth Quarterly Report,<sup>38</sup> 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. For the reasons discussed in our Fifth Quarterly Report, we do not fully understand the nature of the delay in drafting a policy that meets the

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<sup>37</sup> Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

<sup>38</sup> OIM Fifth Quarterly Report at 27.

requirements of the MOA and that is acceptable to both the OCC and MPD. It appears, however, that this issue remains unresolved.

### **c. Recommendations**

We reiterate our recommendation that the OCC and MPD resolve any outstanding issues regarding the creation and implementation of a mutually acceptable notification policy as soon as possible. We also recommend that MPD complete revisions to the Administrative Investigations Manual in the near future and continue to work toward improving the timeliness and quality of chain of command investigations. In response to a request from Chief Ramsey, during the coming quarter the OIM will provide MPD with technical assistance in the form of specific recommendations for improving the quality of chain of command investigations.

## **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 the Office of Citizen Complaint Review ("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 ("CCRB").

- The provision of adequate funding and resources for OCCR to carry out its responsibilities as defined both by the MOA and the law creating OCCR;<sup>39</sup>
- 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
- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.<sup>40</sup>

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

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

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

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

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

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)**

MPD and OCCR continue to work to resolve certain MOA-related conflicts regarding the Memorandum of Understanding (“MOU”) previously signed by the two agencies on September 28, 2002. 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. On October 7, 2003, MPD and OCCR submitted a revised draft MOU to DOJ. This draft did not resolve the outstanding issue between MPD and OCCR related to the duties of the MPD member of the CCRB. On December 3, 2003, DOJ advised MPD and OCCR of its concern regarding the delay in finalizing the MOU. On December 31, 2003, MPD requested that DOJ proceed with its review of the draft MOU prior to the resolution of this outstanding issue.

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

The OIM did not perform specific monitoring in this area this quarter.

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

We reviewed 15 citizen complaints wrongly filed with OCCR this quarter to assess whether OCCR referred those complaints to MPD in a timely fashion. Of the 15 complaints, OCCR failed to meet the mandated 10-business-day referral requirement in 3 instances. This 80% success rate marks very significant improvement over the 14% success rate observed last quarter.

#### **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 35 formal complaints this quarter to assess OCCR's compliance with this requirement. OCCR met the weekly notification requirement in 30 of the 35 cases, which is a



compliance rate of 86%. This performance is similar to the 88% compliance rate observed in the last quarter.

**d. Interviews of Witness Police Officers**

This quarter, the OIM reviewed data relating to 46 scheduled interviews of MPD police officers. In all but 3 of these 46 cases, OCCR gave the officer at least one week's advance notice of his or her required appearance. OCCR's records reveal that MPD officers missed only 1 of the 46 scheduled interviews this quarter.

**e. MPD Documents Requested by OCCR**

Under the MOU, MPD must respond to an OCCR document request within ten days. This quarter we received data for only 4 complaint cases, involving a total of 11 document requests. MPD failed to produce the requested documents within ten days in response to 2 requests, which is an 82% compliance rate.

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

This quarter, the OIM continued its activity with respect to conducting telephonic surveys of citizens who had filed complaints with MPD to determine their level of satisfaction with the manner in which their complaints were investigated. This quarter we received from MPD additional citizen contact information, and this monitoring activity is ongoing. We will report our findings in a future quarterly report.

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

As noted in our Third and Fourth Quarterly Reports, on or about December 11, 2002, the OCCR hotline required by paragraph 93 of the MOA became operational. We noted in our Fourth Quarterly Report that, while OCCR recorded calls as required by the MOA, it had not yet developed the necessary auditing procedures to ensure "that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained, although

OCCR does check this last requirement through its general auditing of all complaints it receives.”<sup>43</sup>

Last quarter, OCCR proposed a modification to the requirement under paragraph 93 of the MOA that OCCR tape record all conversations on the hotline and develop an auditing procedure that includes monthly reviews of a random sample of tape recordings.<sup>44</sup> Citing a combination of personnel shortages and limitations in the equipment’s recording capacity, OCCR proposed the elimination of the tape-recording requirement of paragraph 93.<sup>45</sup> As an alternative, OCCR proposed that its Chief Investigator (“CI”) or Assistant Chief Investigator (“ACI”) audit the program by making follow-up calls to a random sample of citizen complainants in order to assess compliance with the mandates of paragraph 93. The OIM would then monitor OCCR’s compliance with these provisions of the MOA by reviewing OCCR’s written reports of the follow-up calls.

MPD supported OCCR’s proposed plan. DOJ is concerned that the proposed plan may not adequately accomplish the objectives of paragraph 93 because of the variety of problems that may occur in conducting audits based on follow-up telephone calls to citizen complainants (*i.e.*, complainants may have changed addresses or phone numbers, may be difficult to reach, may not remember details about their calls, etc.). DOJ is also concerned that the OIM’s monitoring may be less accurate if it reviews OCCR’s written reports as opposed to auditing tape recordings of calls or conducting the telephone audit itself.<sup>46</sup> As a result, DOJ granted provisional approval of OCCR’s proposed plan for a six-month period, beginning on August 29, 2003. If OCCR’s hotline auditing procedure operates satisfactorily, DOJ will consider a formal modification to paragraph 93 of the MOA.<sup>47</sup>

This quarter, we reviewed three samples of citizen interviews conducted by OCCR in connection with its proposed review and auditing

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<sup>43</sup> Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

<sup>44</sup> Letter from Tammie M. Gregg to Deputy Director Thomas Sharp (August 25, 2003).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

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

procedure. Although the OIM's review of OCCR's proposed hotline monitoring program is not complete, we have made the following preliminary observations.

- OCCR's proposed procedure for selecting hotline complaints to be audited through follow-up interviews provides that the CI or ACI at the end of each month will collect a complete list of all hotline complaints received by OCCR that month and from that list "will select a random sample, as determined by his or her discretion, of the complaints for review."<sup>48</sup> This method of selecting the hotline calls to be audited, because it involves the discretion of the CI or ACI, would not achieve the selection of a random sample of calls subject to audit. We note, however, that the volume of complaints placed through OCCR's hotline has been very low. OCCR reports receiving only a total of eight complaints through the hotline during the sixth and seventh quarter reporting periods.
- OCCR's procedure for documenting calls to hotline complainants does not require the documentation of unsuccessful attempts to contact a selected complainant. This deficiency is significant because, for example, the inability of the auditor to contact a complainant might indicate a deliberate or accidental failure during the receipt of the original hotline call to record correct contact information. Moreover, in cases in which the complainant could not be contacted, the procedure does not require the auditor to provide an explanation as to the reasons why attempts to reach the complainant were unsuccessful.
- Occasionally, no response was indicated for certain questions on the three Hotline Complaint Questionnaires we reviewed. Because no explanation for the lack of a response is provided, it is unclear whether the question was simply skipped, the complainant refused to answer, the complainant did not know an answer, or some other reason accounted for the lack of a response.
- Certain of the questions on the Hotline Complaint Questionnaire are compound questions or are ambiguous. For

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<sup>48</sup> Draft OCCR Investigation Manual provision regarding review of hotline calls.

example, it is unclear whether a “No” response to Question 5, “Have you completed and returned a formal complaint form to OCCR yet?,” indicates that the complainant never received a complaint form or received the form but failed to complete it. Also, it is unclear whether a “No” response to Question 16, “Do you know if the witnesses you identified have been interviewed by OCCR?,” indicates the complainant’s lack of knowledge or indicates that to the complainant’s knowledge OCCR, in fact, has not interviewed the identified witnesses. As our review continues, the OIM will provide OCCR with additional feedback with respect to the phrasing of the questions on the Hotline Complaint Questionnaire.

The OIM will continue to monitor OCCR’s proposed auditing procedures in the coming quarter to evaluate whether such procedures are adequate to satisfy the requirements of paragraph 93 of the MOA.

### **C. Recommendations**

The OIM has no specific recommendations on this topic at this time, but we will continue to monitor OCCR’s proposed review and auditing methodologies in the coming quarter in order to provide a final assessment.

## **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>49</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>49</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 followed 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.

On August 25, 2003, DOJ provided MPD with comments on the draft Disciplinary General Order. DOJ noted that, "[a]lthough the [General Order] was not timely submitted pursuant to the renegotiated deadline contained in the parties' September 30, 2002 Joint Modification to the MOA, we appreciate and commend the efforts of MPD and the local FOP in working collaboratively to resolve their differences and to identify issues for collective bargaining."<sup>50</sup> In its August 25, 2003 letter to MPD, DOJ also noted that the draft Disciplinary General Order "does not specifically 'establish a centralized and formal system for documenting and tracking all forms of discipline and corrective action' as required by MOA paragraph 105."<sup>51</sup> MPD has not yet responded to DOJ's letter or finalized the Disciplinary General Order. MPD reports that it currently is reviewing DOJ's comments in consultation with the FOP.<sup>52</sup>

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<sup>50</sup> Letter from Tammie Gregg to Captain Matthew Klein regarding "Disciplinary General Order" (August 25, 2003).

<sup>51</sup> Id.

<sup>52</sup> MPD January 2004 Progress Report at 8.

This quarter, the OIM requested disciplinary files related to 34 misconduct investigations during the period January 1, 2003 through June 30, 2003 that MPD's PAMS database indicates resulted in sustained allegations against the subject officers. The purpose of this review was to evaluate MPD's systems for tracking and administering discipline where allegations of misconduct against an officer are sustained. This review of MPD's discipline tracking systems also involved several interviews with MPD personnel, including MPD's Director of DDRO.

Our attempt to review the 34 requested disciplinary files revealed that MPD has not yet established an effective "centralized and formal system for documenting all forms of discipline and corrective action, whether imposed centrally or at the District level."<sup>53</sup> Historically, MPD has classified disciplinary actions in two general categories: (1) "adverse actions," which are cases involving recommendations of serious punishment, such as termination, suspension, and reduction in grade or pay, and (2) "corrective action," which are cases involving recommendations of less severe disciplinary measures, such as PD 750s,<sup>54</sup> official reprimands, letters of prejudice, and remedial training. Only recommendations for adverse action have been forwarded to the DDRO for central tracking and administration. Recommendations for corrective action are administered by the individual districts to which the subject officers are assigned and are not centrally documented or tracked by the DDRO. Accordingly, the DDRO was able to produce for our review only 15 of the requested disciplinary files, those that involved recommendations for adverse action. We were advised that records related to the remaining 19 corrective action cases would be maintained in the personnel files located at the district headquarters to which the subject officers are currently assigned.

On January 18, 2002, the DDRO issued a teletype directive<sup>55</sup> instructing unit commanders to forward to the DDRO copies of all corrective actions at the time such corrective action is issued. This directive attempting to establish a centralized tracking system for all disciplinary actions in accordance with paragraph 105 of the MOA was

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<sup>53</sup> MOA at ¶ 105.

<sup>54</sup> The PD 750 is the least severe form of discipline and usually consists of a counseling record.

<sup>55</sup> TT 01-262-02.

largely, if not completely, ignored. Moreover, the DDRO never received additional staffing to handle the additional workload anticipated in establishing this function.

After being advised by the OIM of this serious deficiency, on December 25, 2003, MPD's Executive Assistant Chief of Police reissued the January 18, 2002 teletype directing that documentation reflecting all disciplinary actions, including corrective actions, be forwarded to the DDRO for central tracking. This is an appropriate step toward improving MPD's compliance with paragraph 105 of the MOA.

In addition to further monitoring of the systems for the documentation and tracking of disciplinary actions, the OIM will be reviewing the administration of recommended discipline. For example, in disciplinary cases involving recommendations of remedial training, we will continue our monitoring to determine the promptness and frequency with which such remedial training occurs and the district-level systems in place to ensure that such forms of corrective action are administered.

### **C. Recommendations**

As discussed above, by reissuing the January 18, 2002 directive, MPD already has taken an initial step toward establishing a centralized system for documenting and tracking all forms of disciplinary and corrective actions. We encourage MPD to move quickly to establish a reliable, centralized disciplinary tracking system with adequate staffing and resources. We also recommend that MPD finalize the Disciplinary General Order as soon as possible.

## **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**

This quarter, MPD continued to devote significant time and resources to the development of the PPMS. In particular, during October and November 2003, MPD conducted 14 Joint Application Development ("JAD") sessions, which were workshops in which the PPMS vendors and various end users collaborated to identify system requirements. MPD reports that over 70 sworn and civilian personnel from over 25 units

within the Department participated in these JAD sessions.<sup>56</sup> MPD believes that these sessions generated a wealth of information for the PPMS developers to use as a “blueprint” for PPMS customization.

During this quarter, MPD also provided DOJ with certain PPMS-related deliverables. On October 17, 2003, MPD submitted a plan for compliance with paragraph 117 of the MOA. On December 31, 2003, DOJ provided comments on this draft plan, which MPD is currently reviewing.

On November 18, 2003, MPD submitted a draft PPMS Protocol to DOJ for technical assistance review.<sup>57</sup> At the request of MPD, on December 3, 2003, DOJ extended the due date of MPD’s plan for compliance with paragraph 113 of the MOA from November 14, 2003 to January 5, 2004.

## **2. Performance Evaluation System**

On May 2, 2003, DOJ circulated comments on MPD's Enhanced Performance Evaluation System Protocol. On September 30, 2003, MPD provided DOJ with a “status report” concerning DOJ’s comments. MPD reports that it accepts the majority of DOJ’s comments, but, consistent with the terms of the Collective Bargaining Agreement between MPD and the FOP, MPD must provide the FOP with notice of any recommended changes to the performance evaluation system. MPD also notified DOJ that, because MPD’s Performance Management Program (“PMP”) is a citywide performance evaluation system, all recommendations pertaining to PMP would need to be pursued with the City’s Office of Personnel. On October 6, 2003, DOJ commented on MPD’s notification regarding the PMP, and MPD currently is reviewing those comments.

### **C. Recommendations**

We recommend that MPD maintain its high level of dedication to meeting the MOA’s requirements for the PPMS project. This is a critical aspect of the MOA that deserves all the attention it is currently receiving from the Chief of Police down through the Department. We will continue to monitor closely the development of the PPMS in the coming months.

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<sup>56</sup> MPD January 2004 Progress Report at 25-27.

<sup>57</sup> MOA at ¶¶ 11, 112, and 114.c.

## **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>58</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>59</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>58</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>59</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' 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 and Above Training**

We did not monitor activity related to sergeants and above training this quarter.

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

This quarter, the OIM monitored in-service training sessions related to (1) use of the ASP baton and (2) firearms and pistol re-certification.

We found the ASP in-service training class comprehensive and consistent with the MOA. The class covered the use of force continuum, proper ASP control, striking techniques, and the acceptable striking areas of the body. The instructor was knowledgeable and employed MOA-required teaching techniques, such as engaging the class in meaningful dialogue<sup>60</sup> and the use of real life scenarios and examples.<sup>61</sup>

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<sup>60</sup> MOA at ¶ 129.

The instructor also conducted the course in a safe manner with an appropriate instructor-to-student ratio.

The firearms training and pistol re-certification session we monitored this quarter included classroom instruction regarding the use of force continuum, the Use of Force General Order, the UFIR, weapon safety and security, authorized equipment, basic shooting techniques, role play, pistol re-certification on the firing range, and exercises on the Range 2000 course. As with past firearms training sessions we have monitored, we found the instructors to be knowledgeable and professional. The curriculum was consistent with the MOA, and the instructors used adult learning principles and examples based on real life experiences.

Finally, we met with a Glock representative who was on site during the in-service firearms training. The representative does not have regularly scheduled meetings with MPD personnel but, rather, is available for consultation with MPD as needed. He estimated that his contact with MPD varies from several times a week to once every couple of months. In a coming quarter, we will seek documentation reflecting whether the frequency of MPD's consultation with Glock is consistent with the MOA's requirement.<sup>62</sup>

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

This quarter we monitored a basic canine training course conducted at the Institute of Police Science ("IPS") facility. Students included both new and experienced canine handlers. The training session included an on-lead tracking exercise, obedience training, agility tests, a search exercise, and a "take down" test evaluating the animal's ability to respond to hand signals and remain under control while off leash and faced with a fleeing suspect. We found the canine training session to employ sound instruction and methodology.

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**Footnote continued from previous page**

<sup>61</sup> MOA at ¶ 130.

<sup>62</sup> MOA at ¶ 144.

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

On December 31, 2003, MPD issued its Semi-Annual Review of the Use of Force Curriculum, which was prepared by the CDS.<sup>63</sup> MPD reports that the CDS placed significant emphasis in this review on MPD's in-service pistol re-certification curriculum.<sup>64</sup> The OIM looks forward to reviewing this important document during the coming quarter.

On December 31, 2003, MPD also submitted to DOJ a revised pistol re-certification lesson plan. DOJ had approved MPD's pistol re-certification lesson plan on September 30, 2003. MPD reports that, since that time, it has made several changes to the curriculum, including updates to reflect the requirements of the Use of Force General Order approved by DOJ. This quarter, MPD also revised the Pistol Performance Checklist used to evaluate each stage of the pistol re-certification examination.<sup>65</sup>

#### **5. Personnel Training Records**

The OIM did not monitor activities related to personnel training records this quarter.

#### **6. Instructors**

This quarter, the OIM performed a significant review of the Field Training Officer ("FTO") program. We found that significant improvement in the FTO program is necessary, including finalization of the Enhanced Field Training Officer Program Protocol and establishment and application of formal selection criteria for FTOs.

MPD submitted a draft Enhanced Field Training Officer Program Protocol to DOJ on December 6, 2002. DOJ returned comments on the draft protocol on September 30, 2003. MPD reports that it is currently reviewing DOJ's comments.<sup>66</sup> We found the existing protocol being used by FTOs in the field training program to train Probationary Police Officers ("PPOs") to be disjointed and out of date. Accordingly, until the Field

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<sup>63</sup> MOA at ¶ 119.

<sup>64</sup> MPD January 2004 Progress Report at 23.

<sup>65</sup> MOA at ¶ 142.

<sup>66</sup> MPD January 2004 Progress Report at 7.



Training Officer Program Protocol is finalized and implemented, MPD's field training program will have significant issues related to quality.

Importantly, MPD does not appear to have established selection criteria for FTOs as required under paragraphs 121.f and 135 of the MOA. We found that Master Patrol Officers designated to serve as FTOs generally are selected based on interviews conducted and controlled at the district level. Accordingly, without formal criteria governing the selection of FTOs, the qualifications of personnel selected to be FTOs may vary by district and be inconsistent with the substantive requirements of paragraph 135 of the MOA.<sup>67</sup>

This quarter, the OIM began reviewing MPD's program for training instructors and certifying their competency.<sup>68</sup> On December 31, 2002, MPD advised DOJ that IPS had selected the State of Maryland Police and Corrections Training Commission ("MPCTC") Enhanced Instructor Certification Course to train MPD police instructors. On September 30, 2003, DOJ notified MPD that it was requesting that the OIM observe and evaluate the MPCTC instructor training program.<sup>69</sup> Although it is too early for the OIM to offer firm conclusions, our preliminary review of the phases of the MPCTC program indicates that the program is quite comprehensive. The OIM's evaluation of the MPCTC instructor training program will continue in the coming quarter.

### **C. Recommendations**

We strongly encourage MPD to finalize the Enhanced Field Training Officer Program Protocol and to develop and apply formal criteria for the selection of FTOs.

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<sup>67</sup> Paragraph 135 of the MOA requires that the FTO selection criteria "address, inter alia, knowledge of MPD policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement officer, with particular attention paid allegations of excessive force and other misconduct, history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity."

<sup>68</sup> MOA at ¶¶ 136-137.

<sup>69</sup> MPD January 2004 Progress Report at 24.

## **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**

On December 31, 2003, MPD submitted to DOJ a revised Specialized Mission Unit General Order reflecting comments received from DOJ on August 25, 2003.<sup>70</sup> We have an outstanding request to MPD that we receive a list of all officers assigned to all SMUs within one week of DOJ's final approval of the Specialized Mission Unit General Order.<sup>71</sup> This list will be useful in facilitating our further review of MPD's compliance with paragraphs 149 through 159 of the MOA.

This quarter, we monitored activity related to the Third District's Focus Mission Unit and Street Enforcement Unit, both of which are SMUs. Specifically, the OIM gathered information related to MPD's compliance with MOA provisions regarding the establishment of pre-screening mechanisms for SMU participants;<sup>72</sup> development of a pool of seasoned and competent officers with exemplary records and up-to-date training who are interested in participating in an SMU;<sup>73</sup> specific tracking of enforcement actions, complaints, and misconduct investigations involving SMU members;<sup>74</sup> and specialized training.<sup>75</sup>

The OIM's SMU-related review this quarter was limited in scope and based primarily on interviews with Third District command staff. Accordingly, the OIM is not in a position at this time to report on the status of MPD's compliance with the SMU-related provisions of the MOA. The information we gathered this quarter will contribute to our ongoing evaluation of SMUs.

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<sup>70</sup> MPD January 2004 Progress Report at 6.

<sup>71</sup> Fourth Quarterly Report at 75.

<sup>72</sup> MOA at ¶ 150.

<sup>73</sup> MOA at ¶ 152.

<sup>74</sup> MOA at ¶ 158.

<sup>75</sup> MOA at ¶ 156.

### **C. Recommendations**

The OIM encourages MPD to finalize the Special Missions Unit General Order in the near future.

## **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**

The OIM did not monitor MOA activity related to public information this quarter.

### **C. Recommendations**

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

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

### **A. Requirements**

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

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

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

## **B. Status 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. In particular, the CMT continues to be helpful in facilitating our review of the MPD chain of command use of force and misconduct investigations.

### **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, Office of Internal Affairs, FIT, IPS, and OPR deserve particular recognition in this regard.

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

MPD published its quarterly MOA Progress Report on January 12, 2004. 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. In particular, MPD continued to devote substantial time and resources to the development of the PPMS. Also, in response to the OIM's discovery that MPD had not yet established an effective centralized and formal system for documenting all disciplinary actions, MPD took appropriate action in reissuing a directive requiring that documentation of all corrective actions be forwarded to the DDRO.

Our observations this quarter again confirm our general experience that MPD has been working in good faith to comply with the requirements of the MOA and that MPD has made significant progress toward MOA compliance.

There remain, however, important areas in which significant improvement is necessary. For example, our review this quarter of a second sample of chain of command investigations reinforced our findings from last quarter that far too many of these investigations are incomplete or insufficient. Also, while the rate of UFIR completion improved dramatically over the last quarter, the quality of these reports remains an area of concern. Finally, as mentioned above, MPD currently lacks an effective centralized and formal system for documenting and tracking all disciplinary actions. MPD needs to take the necessary steps to improve its performance in this area.

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Independent Monitor

January 30, 2004

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# Appendix A (Acronyms)

ACI	Assistant Chief Investigator
AUSA	Assistant United States Attorney
CCRB	Citizen Complaint Review Board
CDS	Curriculum Development Specialist
CI	Chief Investigator
CMT	Compliance Monitoring Team
DDRO	Department Disciplinary Review Office
DOJ	Department of Justice
FIT	Force Investigation Team
FOP	Fraternal Order of Police
FTO	Field Training Officer
IPS	Institute of Police Science
JAD	Joint Application Development
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding between MPD and OCCR
MPCTC	Maryland Police and Corrections Training Commission
MPD	Metropolitan Police Department
OC	Oleoresin Capsicum
OCC	Office of Corporation Counsel
OCCR	Office of Citizen Complaint Review
OIM	Office of the Independent Monitor
OPR	Office of Professional Responsibility
PPMS	Personnel Performance Management System



SMU	specialized mission unit
UFIR	Use of Force Incident Report
UFRB	Use of Force Review Board
USAO	United States Attorney's Office

# Appendix B

## Summary of Results of the OIM's Review of the Investigations Samples

### 1. Specific questions and results related to the administration and oversight of MPD investigations are summarized below.

- *Did the proper authority investigate the allegation? [MOA ¶¶ 57, 61, 64, 68, 72, 79, 80]*

	<u>Quarter 6</u>	<u>Quarter 7</u>
YES:	95.9%	100.0%
NO:	4.1%	0.0%

- *Was the supervisor/official responsible for the investigation involved in the incident? [MOA ¶ 80]*

	<u>Quarter 6</u>	<u>Quarter 7</u>
YES:	0.9%	0.0%
NO:	99.1%	100.0%

- *Did the supervisor/official responsible for the investigation have an apparent or potential conflict of interest related to the misconduct investigation? [MOA ¶ 80]*

	<u>Quarter 6</u>	<u>Quarter 7</u>
YES:	2.2%	0.0%
NO:	97.8%	100.0%

- *Were any compelled statements taken before a written criminal declination was obtained from the USAO? [MOA ¶¶ 60, 71]*

	<u>Quarter 6</u>	<u>Quarter 7</u>
YES:	2.8%	0.0%
NO:	97.2%	100.0%

- Does the file include a report prepared by the investigator? [MOA ¶¶ 62, 65, 74, 102]

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	88.3%	64.9%
NO:	11.7%	35.1%

- Does the investigator's report include [MOA ¶¶ 62, 65, 74, 102]:
  - A description of the use of force incident or misconduct alleged?

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	95.3%	100.0%
NO:	4.7%	0.0%

- A summary of relevant evidence gathered?

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	91.4%	100.0%
NO:	8.6%	0.0%

- Proposed findings and analysis supporting findings?

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	90.2%	100.0%
NO:	9.8%	0.0%

- If the complaint was made at a location other than OPR, was it received by OPR within 24 hours or the next business day? [MOA ¶ 94]

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	25.6%	38.9%
NO:	74.4%	61.1%

- Was the investigation completed within 90 days? [MOA ¶¶ 62, 65, 74, 103]

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	63.1%	48.4%
NO:	36.9%	51.6%

- *If not completed within 90 days, were special circumstances for the delay explained? [MOA ¶¶ 62, 65, 74]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	10.9%	32.0%
NO:	89.1%	68.0%

**2. Specific questions and results related to the conduct of MPD investigations are summarized below.**

- *Were group interviews avoided? [MOA ¶ 81.c]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	98.1%	96.3%
NO:	1.9%	3.7%

- *Were all appropriate MPD officers, including supervisors, interviewed? [MOA ¶ 81.e]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	84.6%	98.0%
NO:	15.4%	2.0%

- *If practicable and appropriate, were interviews of complainants and witnesses conducted at sites and times convenient to them? [MOA ¶ 81,b]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	94.4%	96.6%
NO:	5.6%	3.4%

- *Were inconsistencies among officers and/or witnesses documented and addressed? [MOA ¶ 81.g]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	84.3%	100.0%
NO:	15.7%	0.0%

- *Was the conduct of each officer involved in the event adequately addressed for its propriety? [MOA ¶ 82]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	89.6%	93.9%
NO:	10.4%	6.1%

- *Was all apparent misconduct adequately addressed? [MOA ¶ 82]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	88.7%	94.5%
NO:	11.3%	5.5%

- *Did the investigator avoid giving automatic preference to an officer's statement over a citizen's statement? [MOA ¶ 99]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	62.8%	98.0%
NO:	37.2%	2.0%

- *Was the basis for closing the investigation without further investigation something other than the withdrawal of the complaint or the unavailability of the complainant? [MOA ¶ 101]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	80.9%	100.0%
NO:	19.1%	0.0%

- *Were the findings based upon a preponderance of the documented evidence? [MOA ¶ 98]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	97.0%	98.6%
NO:	3.0%	1.4%

- *Did all allegations of misconduct addressed by the investigation result in a finding of either unfounded, sustained, insufficient facts, or exonerated? [MOA ¶ 100]*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>
YES:	59.3%	98.0%
NO:	40.7%	2.0%

**3. Specific questions and results related the unit commanders' review of MPD investigations are summarized below.**

- *Did the unit commander review the investigation to ensure its completeness and that the findings are supported by the evidence? [MOA ¶ 66]*

	<u>Quarter 6</u>	<u>Quarter 7</u>
YES:	99.4%	100.0%
NO:	0.6%	0.0%

- *If the investigation revealed evidence of criminal wrongdoing, did the unit commander notify FIT and the USAO? [MOA ¶ 66]*

	<u>Quarter 6</u>	<u>Quarter 7</u>
YES:	72.3%	100.0%
NO:	27.7%	0.0%

- *Was the notification timely (no later than the next business day)? [MOA ¶ 69]*

	<u>Quarter 6</u>	<u>Quarter 7</u>
YES:	64.1%	0.0%
NO:	35.9%	100.0%

**4. Below is a summary of the OIM reviewers' overall findings with respect to the completeness and sufficiency of MPD investigations.**

- *Was the investigation complete?*

	<u>Quarter 6</u>	<u>Quarter 7</u>
YES:	60.7%	52.0%
NO:	39.3%	48.0%

- *Was the investigation sufficient?*

	<u>Quarter 6</u>	<u>Quarter 7</u>
YES:	77.6%	66.3%
NO:	22.4%	33.7%