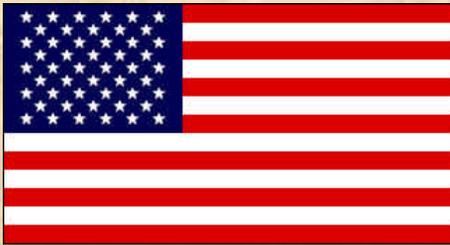


# Ninth Quarterly Report of the Independent Monitor for the Metropolitan Police Department



FRIED FRANK

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# Executive Summary

## OVERVIEW

This report is the ninth quarterly report of the Office of the Independent Monitor (“OIM”). The OIM has entered its third 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 in March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

This report summarizes the OIM’s monitoring activities undertaken from April 1, 2004 through June 30, 2004 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**

This quarter, the OIM continued reviewing and assessing a second year of statistics reflecting uses of force by MPD officers on a citywide basis. The overall number of use of force incidents involving MPD officers declined steadily during each of the three months comprising this quarter. This decline in the overall number of use of force incidents in April through June 2004 seems to run counter to the seasonal variation in total uses of force related to increases in criminal activity following the winter months that we observed in 2003. While it remains too early to draw any conclusions regarding trends in MPD’s use of force based on these data, the OIM will continue to monitor the use of force statistics provided by MPD.

With the exception of April 2004, Use of Force Incident Report (“UFIR”) completion rates this quarter were quite low, which continues a disappointing trend we observed last quarter. Although the UFIR

completion rate in April 2004 was nearly 75%, the completion rate for May 2004 was 19% -- the second worst month we have observed -- and the rate for June 2004 was only 27%.

### **In-Service Training on the Use of OC Spray**

In our Sixth Quarterly Report, the OIM recommended that MPD place additional emphasis on instruction with respect to the use of oleoresin capsicum ("OC") spray during the use of force continuum segment of MPD's in-service firearms training. In particular, we recommended that MPD devote focused attention during training to its policies regarding the use of OC spray, appropriate techniques for the deployment of the agent, and decontamination procedures. Our monitoring of in-service training this quarter found that MPD has not modified its training to place any additional emphasis on the proper use of OC spray. In particular, MPD officers still receive no instruction on decontamination procedures during the in-service use of force continuum training.

### **Non-FIT Use of Force and Misconduct Investigations**

This quarter, we reviewed a fourth statistical sample of MPD use of force and misconduct investigations conducted by units other than MPD's Force Investigation Team ("FIT"). This fourth sample consisted of 80 investigations opened during the period October 1, 2003 through December 31, 2003. The results of this quarter's sample indicate overall improvement in both the timeliness and quality of these investigations as compared to the samples reviewed during the prior two quarters. This quarter, we found that 74% of these investigations were timely -- *i.e.*, they either were completed within 90 days or contained documented "special circumstances" justifying a delay in the completion of the investigation. We also found that 59% of the investigations we reviewed this quarter were complete and 75% were sufficient. Both of those figures represent significant improvement over the prior two quarters.

### **Redeployment of OIA Investigators**

This quarter, investigators from MPD's Office of Internal Affairs ("OIA") contacted the OIM to express concerns related to the periodic redeployment of OIA investigators to the field in connection with MPD's anti-crime initiatives. The OIA investigators' concerns, as they relate to the MOA, appear to be twofold: (1) that the redeployments hamper the investigators' ability to complete investigations in a timely fashion and (2) that the redeployment of OIA investigators to the field creates the

potential for “conflicts of interest” because OIA investigators may be redeployed to serve with or be supervised by actual or potential subjects of OIA investigations. Based on the interviews of OIA investigators conducted to date and our review of the documentation that they have provided related to their grievances submitted to MPD, we cannot reach any conclusions with respect to whether the redeployment of OIA investigators has any effect on MPD’s compliance with MOA requirements related to MPD’s timely and sound investigation of allegations of officer misconduct. In the coming quarter, we will explore this issue further with MPD.

### **Public Information and Outreach**

This quarter, we monitored community outreach and public information meetings held in two patrol service areas (“PSAs”) in different districts. While one of these meetings appeared to be a model of effective police interaction with the community, the second meeting included significant complaints regarding the inaccessibility of the meeting site and the lack of notice as to the time and location of the meeting. We also canvassed public facilities -- such as schools, libraries, grocery stores, and community centers -- in advance of community outreach meetings in two other PSAs. In these instances, we found MPD’s compliance with the MOA’s requirements regarding community notification of outreach meetings to be spotty at best. We also found that, while the community calendar information posted on MPD’s Web site is detailed and up-to-date for most districts, the Internet community calendars for two districts are essentially blank. It is not clear whether community outreach and public information programs are not being held in the PSAs in those districts or the meetings are not being properly advertised.

### **Tracking and Administration of Discipline and Remedial Training**

This quarter, the OIM conducted a substantial review of MPD’s systems and procedures related to the administration and tracking of disciplinary and training recommendations flowing from the Use of Force Review Board’s (“UFRB”) review of use of force cases. The purpose of our review, which is ongoing, is to test the extent to which MPD is effective in disciplining officers found responsible for unjustified uses of force and in training officers found to be in need of remedial training to correct identified failures to properly implement MPD policy or employ sound police practices. We have found that, where the UFRB recommends discipline or remedial training, MPD has inadequate internal control mechanisms in place to ensure that the recommended discipline or

corrective action is administered. We also found MPD lacks a centralized and formal system for tracking discipline and remedial training.

### **Personnel Performance Management System**

Last quarter, MPD suffered a significant funding-related setback with respect to the development of the Personnel Performance Management System (“PPMS”). This quarter, it has become clear that, in all likelihood, MPD will not be able to restart the PPMS development effort until sometime in January 2005 at the earliest. Accordingly, MPD has requested DOJ to agree to a third modification of the MOA to provide for a revised PPMS development schedule that targets June 7, 2006 as the date for full implementation of PPMS.

### **Substantial Compliance**

This quarter, the parties made significant progress in reaching agreement as to the standards that will govern the determination as to whether MPD and the City have achieved “substantial compliance” with the terms of the MOA. The parties agreed that, while MPD’s compliance with the substantive provisions of the MOA will be measured, where feasible, based on objective standards (generally requiring at least 95% compliance), the evaluation of MPD’s achievement of substantial compliance also will include a subjective component involving assessments made by the OIM (or DOJ, where DOJ review and approval is required) and supported with appropriate analysis and explanation. The OIM also circulated a revised draft of the objective substantial compliance standards, which may be subject to further revisions as the parties continue to formulate and refine the meaning of “substantial compliance” with respect to each of the MOA’s substantive provisions.

### **CONCLUSION**

With the close of this quarter, MPD and the City have entered the two-year substantial compliance period under the MOA. Under paragraph 182 of the MOA, the agreement may terminate five years after its effective date (June 13, 2001) 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.” At this watershed, there are encouraging developments to report. For example, this quarter we observed significant improvement in the timeliness and quality of MPD’s internal use of force and misconduct investigations. Both the OIM and MPD have devoted substantial effort to these investigations over the past year.

However, there remains significant work to be done in several important areas. The funding-related setback in PPMS's development has pushed the MPD's projected implementation date back to June 7, 2006. In addition, in the past two quarters, MPD has experienced significant declines in the completion rates for UFIRs, and there remains significant room for improvement in the quality of UFIRs. Also, our monitoring activity this quarter revealed significant deficiencies in MPD's tracking and administration of discipline and remedial training with respect to use of force cases. Finally, we note that MPD has not yet obtained DOJ approval of several important policy documents, including the Disciplinary Process General Order, Citizen Complaint General Order, and the Enhanced Field Training Officer Program Protocol.

We continue to find that MPD is working in good faith to meet the challenges presented by the MOA. We look forward to the transition to the "substantial compliance" evaluation phase of our monitoring.



# Contents

- Introduction..... 1
- Compliance Assessment ..... 3
- I. General Use of Force Policy Requirements (MOA ¶¶ 36-52)..... 3
  - A. General Use of Force Policy (¶¶ 36-40)..... 3
    - 1. Requirements..... 3
    - 2. Status And Assessment..... 4
    - 3. Recommendations..... 7
  - B. Use of Firearms Policy (MOA ¶¶ 41-43)..... 7
    - 1. Requirements..... 7
    - 2. Status And Assessment..... 8
    - 3. Recommendations..... 9
  - C. Canine Policies and Procedures (¶¶ 44-46)..... 9
    - 1. Requirements..... 9
    - 2. Status And Assessment..... 9
    - 3. Recommendations..... 10
  - D. Oleoresin Capsicum Spray Policy (¶¶ 47-50) ..... 11
    - 1. Requirements..... 11
    - 2. Status And Assessment..... 11
    - 3. Recommendations..... 13
  - E. Implementation Schedule (¶¶ 51-52)..... 13

II.	Incident Documentation, Investigation, and Review (MOA ¶¶ 53-84).....	14
A.	Use of Force Reporting Policy and Use of Force Incident Report (¶¶ 53-55).....	14
1.	Requirements .....	14
2.	Status And Assessment.....	15
a.	Use of Force Incident Report (UFIR) .....	15
(1)	UFIR Completion.....	15
(2)	Pointing a Weapon at or in the Direction of a Person.....	18
(3)	UFIR Quality.....	19
(4)	Specialized Mission Unit After-Action Report.....	21
b.	AUSA Notification Log.....	22
3.	Recommendations .....	22
B.	Investigating Use of Force and Misconduct Allegations (MOA ¶¶ 56-84).....	22
1.	Use of Force Investigations (¶¶ 56-67) .....	22
a.	Requirements.....	22
(1)	FIT Use of Force Investigations .....	22
(2)	Other Use of Force Investigations .....	24
(3)	Use of Force Review Board.....	24
b.	Status And Assessment.....	25
(1)	FIT Manual.....	25

	(2)	FIT Use of Force Investigations.....	26
	(3)	Other Use of Force Investigations.....	26
	(4)	Use of Force Review Board.....	26
	c.	Recommendations.....	26
2.		Investigations of Misconduct Allegations (¶¶ 68-84).....	26
	a.	Requirements .....	26
	b.	Status And Assessment.....	29
	(1)	Investigation Reviews.....	29
	(2)	Redeployment of OIA Investigators .....	35
	(3)	Serious Misconduct Investigations General Order .....	37
	(4)	Chain of Command Investigations Manual.....	37
	(5)	Chain of Command Misconduct Investigations General Order.....	38
	(6)	Corporation Counsel Notification to OPR of Civil Claims.....	38
	c.	Recommendations.....	39
III.		Receipt, Investigation, and Review of Misconduct Allegations (MOA ¶¶ 85-104).....	39
	A.	Requirements .....	39

B.	Status And Assessment.....	42
1.	Coordination and Cooperation Between MPD and OCCR Generally (¶ 85) .....	42
a.	Complaints Filed with MPD on MPD Forms Involving OCCR Subject Matter .....	42
b.	Complaints Filed with OCCR that Exceed OCCR's Jurisdiction.....	42
c.	Weekly Notice to MPD of Formal OCCR Complaints .....	43
d.	Interviews of Witness Police Officers .....	43
e.	MPD Documents Requested by OCCR.....	43
2.	Public Information and Outreach (¶¶ 87-91) .....	44
3.	Receipt of Complaints by OCCR (¶¶ 92-95).....	45
4.	OCCR Investigation of Complaints.....	48
C.	Recommendations.....	49
IV.	Discipline and Non-Disciplinary Action (MOA ¶ 105).....	49
A.	Requirements.....	49
B.	Status And Assessment.....	50
1.	UFRB Log.....	51
2.	Use of Force Investigation.....	52
3.	UFRB.....	52
4.	DDRO .....	53
5.	IPS.....	53
6.	Officer Personnel Files.....	54

- C. Recommendations ..... 54
- V. Personnel Performance Management System (MOA ¶¶ 106-118) ..... 55
  - A. Requirements ..... 55
  - B. Status And Assessment..... 57
    - 1. PPMS..... 57
    - 2. Performance Evaluation System..... 58
  - C. Recommendations ..... 58
- VI. Training (MOA ¶¶ 119-148)..... 59
  - A. Requirements ..... 59
    - 1. Management Oversight ..... 59
    - 2. Curriculum ..... 60
    - 3. Instructors ..... 61
    - 4. Firearms Training ..... 62
    - 5. Canine Training ..... 62
  - B. Status And Assessment..... 62
    - 1. Sergeants and Above Training..... 62
    - 2. In-Service Training..... 62
    - 3. Canine Training (MOA ¶¶ 145-148)..... 63
    - 4. Lesson Plans..... 63
    - 5. Personnel Training Records..... 63
    - 6. Instructors ..... 63
  - C. Recommendations ..... 64

VII.	Specialized Mission Units (MOA ¶¶ 149-159).....	65
A.	Requirements.....	65
B.	Status And Assessment.....	66
C.	Recommendations.....	66
VIII.	Public Information (MOA ¶ 160).....	66
A.	Requirements.....	66
B.	Status And Assessment.....	67
C.	Recommendations.....	67
IX.	Monitoring, Reporting, and Implementation (MOA ¶¶ 161-193) .....	67
A.	Requirements.....	67
B.	Status And Assessment.....	68
1.	Compliance Monitoring Team (“CMT”) .....	68
2.	Full and Unrestricted Access to Staff, Facilities, and Documents .....	68
3.	MPD Quarterly MOA Progress Reports.....	68
C.	Recommendations.....	68
	Conclusion .....	69
	Appendix A: Acronyms	
	Appendix B: Summary of Results of the OIM’s Review of the Investigations Samples	

# Introduction

This report is the ninth quarterly report of the Office of the Independent Monitor (“OIM”). The OIM now has begun its third 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 in March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion. This report covers the period April 1, 2004 through June 30, 2004.

This quarter, the OIM monitored a wide range of activities, including our continuing review of all Use of Force Incident Reports (“UFIRs”) filed since January 2003, our continuing review of all investigations performed by MPD’s Force Investigation Team (“FIT”), our review of a fourth statistical sample of non-FIT use of force and misconduct investigations, a follow-on review of MPD’s in-service training with respect to the use of oleoresin capsicum (“OC”) spray, monitoring MPD’s community outreach and public information programs, monitoring MPD’s efforts to develop solutions to the funding crisis that has beset the Personnel Performance Management System (“PPMS”) development effort, and a major review of MPD’s systems for tracking the administration of discipline and remedial training in use of force cases.

Also this quarter, the OIM circulated a revised draft of the objective substantial compliance standards, which may be subject to further revisions as the parties continue to refine and revise the working definition of “substantial compliance” with respect to each of the MOA’s substantive provisions. Importantly, the parties made significant progress in reaching agreement as to the standards that will govern the determination as to whether MPD and the City have achieved “substantial compliance” with the terms of the MOA. The parties agreed that, while MPD’s compliance with the substantive provisions of the MOA will be measured, where feasible, based on objective standards (generally requiring at least 95% compliance), the evaluation of MPD’s achievement of substantial compliance also will include a subjective component involving assessments made by the OIM (or DOJ, where DOJ review and

approval is required) and supported with appropriate analysis and explanation.

# 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> In addition, the report format we have adopted is designed to ensure that, to the maximum extent possible, each report is self-contained and does not require extensive cross-referencing to other reports.

## **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:

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<sup>1</sup> MOA at ¶ 169.

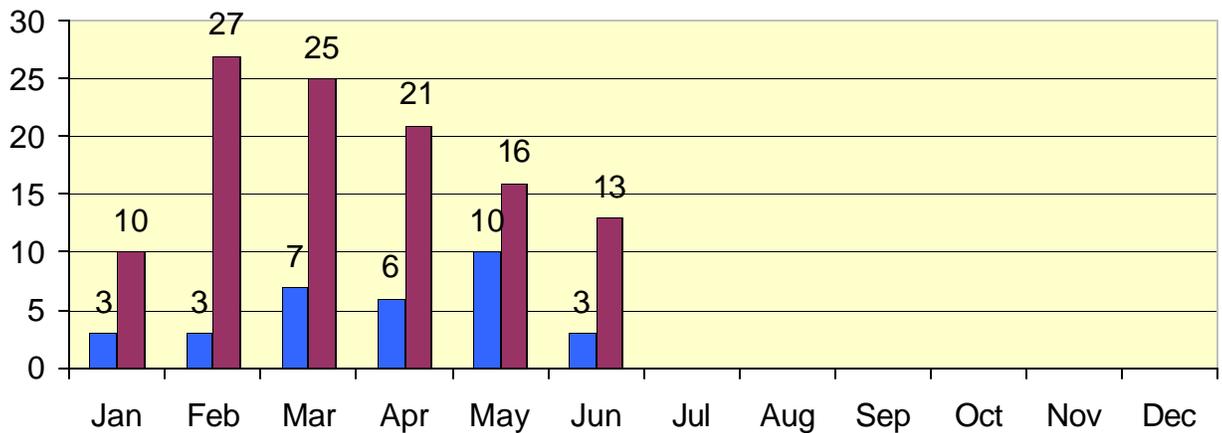
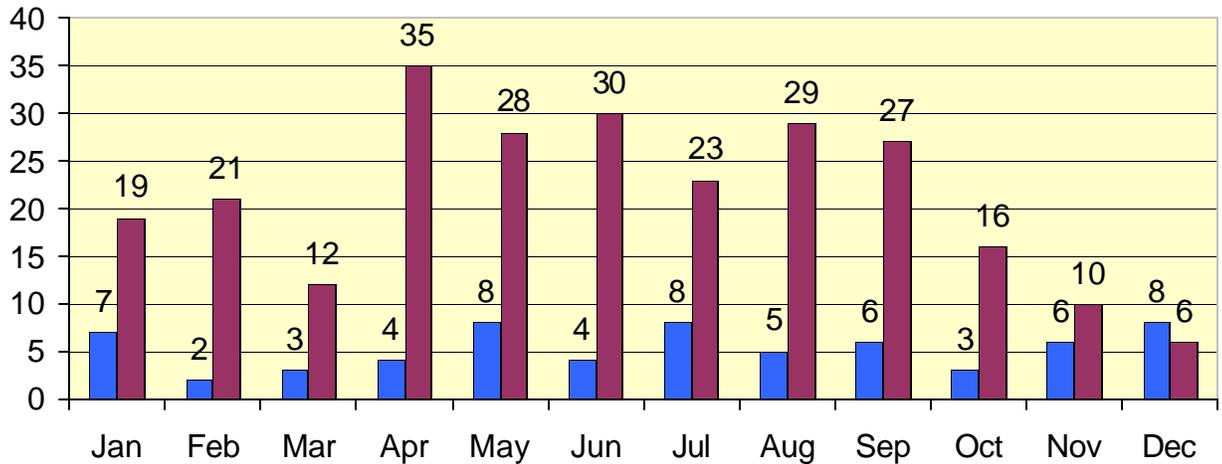
- Define and describe the different types of force and the circumstances under which the use of each type of force is appropriate;
- Encourage officers to use advisements, warnings, and verbal persuasion when appropriate and in general seek the goal of de-escalation;
- Prohibit officers from unholstering,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

This quarter, we continued our analysis and reporting with respect to a second year of use of force statistics. As reflected in the charts below, we have now accumulated 18 months of statistics reflecting MPD use of force incidents on a citywide basis. Although we anticipate this data will provide useful information regarding MPD's use of force and, over time, will allow for meaningful comparisons to be drawn between time periods, this data cannot yet support any firm conclusions regarding trends in uses of force.

**MPD Citywide Uses of Force January through December 2003  
and January through June 2004**



■ FIT Investigations      ■ Chain of Command Investigations

As shown in the above charts, the overall number of uses of force by MPD officers steadily declined during each of the three months comprising this quarter. These statistics also reflect fewer use of force incidents for each of the months April through June 2004 as compared to those months in 2003. This decline in the overall number of use of force incidents in April through June 2003 also seems to run counter to the seasonal variation in total uses of force related to increases in criminal activity following the winter months that we observed in 2003.

Last quarter, we observed that the statistics for February and March 2004 reflected a significantly larger number of total uses of force compared to February and March 2003. Each of the months April through June 2004, however, had significantly fewer use of force incidents than those months in 2003. April 2004 had 27 use of force incidents as compared to 39 in April 2003, a decrease of approximately 31%. May and June 2004 saw decreases of approximately 28% and 53%, respectively, as compared to those months in the prior year. While the data is insufficient for us to draw any definitive conclusions -- including, for example, whether these encouraging numbers for April through June 2004 are attributable, at least in part, to MPD's implementation of revised use of force policies, overall declines in criminal activity in the City, or a combination of these and other factors<sup>2</sup> -- the OIM will continue to monitor and review the citywide use of force statistics provided by MPD.<sup>3</sup>

In the coming quarters, the OIM intends to evaluate whether the use of force statistics reported by MPD are comparable to other 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. We also will compare the apparent trends in the frequency of use of force incidents reflected in the above charts with the statistics regarding levels of criminal activity in the City.

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<sup>2</sup> According to a recent press report, the City has experienced a significant decrease in crime during the first half of 2004. The Washington Post reported that "[o]verall crime during the first six months of the year was down 12 percent and violent crime had declined 17 percent compared with the same period in 2003, according to preliminary police statistics." Del Quentin Wilber, *Killings in D.C. at 20-Year Low Point*, WASHINGTON POST, July 6, 2004, at B1.

<sup>3</sup> The data reflected in the above charts 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 tables shown above.

### **3. Recommendations<sup>4</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. Although we have raised this suggestion with MPD in the past, we will continue to discuss with MPD the feasibility of providing such data along with the monthly use of force summary reports provided to the OIM or in some other form.

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

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

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

- Prohibit officers from possessing or using unauthorized ammunition and require officers to obtain service ammunition through official MPD channels;
- Specify the number of rounds that officers are authorized to carry;
- Establish a single, uniform reporting system for all firearms discharges;
- Require that, when a weapon is reported to have malfunctioned during an officer's attempt to fire, it promptly be taken out of service and an MPD armorer evaluate the functioning of the weapon;

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

- Require that MPD document in writing the cause of a weapon's malfunction -- *i.e.*, whether an inherent malfunction, a malfunction due to poor maintenance, or a malfunction caused by the officer's use of the weapon; and
- Provide that the possession or use of unauthorized firearms or ammunition may subject officers to disciplinary action.

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

## **2. Status And Assessment**

This quarter, the OIM monitored MPD's in-service firearms training, which is now conducted at the Federal Law Enforcement Training Center ("FLETC") facility in Cheltenham, Maryland. Our monitoring of MPD's in-service firearms training is discussed below in Sections I.D.2 and VI.B.2.

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.

On April 1, 2004, MPD issued a special order entitled Carrying Service Firearms While Off-Duty in the District of Columbia. MPD circulated this special order to DOJ and the OIM on April 5, 2004. On June 10, 2004, DOJ provided MPD with several recommendations concerning the special order as a form of technical assistance.<sup>5</sup> MPD currently is reviewing DOJ's recommendations.

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<sup>5</sup> The MOA does not provide that the Carrying Service Firearms While Off-Duty Special Order must be approved by DOJ.

### 3. Recommendations

The OIM has no specific recommendations on this topic at this time.

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

##### 1. Requirements

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

- Limits the high-risk deployment of canines -- off-leash deployments, use during searches, and other situations where there is a significant risk of a canine biting a suspect -- to cases where the suspect is either wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed;
- Requires supervisory approval for all canine deployments -- either a canine unit supervisor or a field supervisor;<sup>6</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

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

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<sup>6</sup> The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.

policy recommendations intended to provide additional guidance with respect to revision of the Canine Teams General Order. 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. DOJ provided additional comments on the revised Canine Teams General Order on March 31, 2004. On June 26, 2004, MPD submitted a revised version of the general order to DOJ. Thus, MPD's revised Canine Teams General Order has not yet received final DOJ approval.

MPD also has not yet finalized its Canine Operations Manual. MPD provided DOJ a draft of this manual on November 27, 2002, and DOJ returned comments related to the manual on September 30, 2003. MPD reports that it has delayed making revisions to the manual pending the finalization of the Canine Teams General Order in order to ensure that the manual and the general order are consistent.<sup>7</sup>

### **3. Recommendations**

We recommend that MPD continue working with DOJ to finalize the Canine Teams General Order and Canine Operations Manual.

Last quarter, we found that MPD's canine program currently is in substantial compliance with the MOA's requirements relating to supervisor approval of canine deployments and that, although there is room for improvement in the training of canine handlers, MPD's canine contacts with suspects in 2003 were within MPD's draft policy and were consistent with the MOA.<sup>8</sup> In light of the specific deficiencies we identified in the performance of canine handlers in certain cases, we recommended that MPD's canine in-service training program emphasize: (1) the importance of accurate and complete canine deployment reports; (2) handler control over canines in confrontations with suspects; and (3) reasonable efforts to obtain a suspect's compliance -- including consideration of the possibility that a suspect may not understand English -- prior to the release of a canine. In the coming quarters, we will report on MPD's response to these recommendations.

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<sup>7</sup> Memorandum of Agreement Progress Report, dated July 9, 2004 ("MPD July 2004 Progress Report"), at 13.

<sup>8</sup> OIM Eighth Quarterly Report at 9-10.

## **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 sixth quarter. 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.<sup>9</sup>

This quarter, we monitored two in-service firearms training sessions to evaluate, among other things, the extent to which MPD has enhanced its use of force continuum training with respect to the use of OC spray. As with past firearms and use of force in-service training sessions we have monitored, we found MPD's instructors to be knowledgeable and professional.

Based on the in-service training we observed this quarter, however, MPD does not appear to have placed any additional emphasis on training with respect to the use of OC spray, as we recommended in the Sixth Quarterly Report.

With the notable exception of decontamination procedures, the "In Service Firearms Re-Certification" lesson plan used during the classroom instruction component of the training session we observed addresses the MOA's requirements with respect to the use of OC spray, including instruction that (1) to use OC spray, an officer must have justification to detain or take into custody a suspect that is actively resisting the officer; (2) children 8 years of age or younger shall not be sprayed, absent exceptional circumstances; (3) elderly persons age 65 or older shall not be sprayed, absent exceptional circumstances; (4) officers are to distinguish between "passive" and "active" resistance in determining whether the use of OC spray is appropriate; (5) officers shall use two one-second bursts at a minimum of distance of three feet (unless absolutely necessary under the circumstances) and a maximum of twelve feet from the suspect; (6) when feasible, the officer shall issue a warning prior to dispensing the agent; and (7) when feasible, the officer shall permit a reasonable time to allow compliance with the warning prior to dispensing the agent.<sup>10</sup> No instruction regarding decontamination procedures appears in the OC spray section of the use of force in-service training lesson plan that we reviewed.<sup>11</sup>

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<sup>9</sup> OIM Sixth Quarterly Report at 13.

<sup>10</sup> See MOA at ¶¶ 47-50.

<sup>11</sup> Paragraph 50 of the MOA provides that MPD policy "shall require that, absent exceptional circumstances, officers shall decontaminate every sprayed subject with cool water or a decontamination solution within 20 minutes after

The classroom instruction actually delivered during the use of force continuum component of the firearms in-service training session that we observed, however, placed no special emphasis on the use of OC spray, did not cover all of the areas in the lesson plan devoted to OC spray, and did not cover decontamination procedures. The instructor did convey that active resistance is a required precursor to the use of OC spray and that the age of a suspect -- 8 or under and 65 or over -- must be taken into consideration before using the agent against the suspect. During an interview with the OIM, use of force instructors indicated that they had not received, since the issuance of our Sixth Quarterly Report, any guidance from MPD to place additional emphasis on training with respect to OC spray.

### **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. It does not appear that enhancements in training on the use of OC spray have been implemented. Accordingly, we reiterate our earlier recommendation that MPD improve its in-service training with respect to the use of OC spray.

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

For the most part, MPD's implementation efforts relating to its use of force policies appear to be on track. We encourage MPD to finalize the Canine Teams General Order and Canine Operations Manual.

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**Footnote continued from previous page**

application of the spray. Officers shall transport sprayed subjects to the hospital for treatment when they complain of continued effects after having been contaminated, or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by OC Spray."

## **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>12</sup> the serious use of force,<sup>13</sup> or any use of force potentially reflecting criminal conduct by an officer;<sup>14</sup>

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<sup>12</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>13</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>14</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.”

- 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>15</sup>

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

#### **(1) UFIR Completion**

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 one result of this confusion has been that officers have not completed UFIRs in circumstances where MPD

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<sup>15</sup> Memorandum of Agreement Progress Report, dated January 7, 2003, at 9.

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>16</sup> remained a problem.<sup>17</sup> Last quarter, we reported that, after months of gradual and steady improvement, UFIR completion rates declined precipitously.<sup>18</sup>

This quarter, with the exception of April 2004, UFIR completion rates remained extremely and disappointingly low. UFIR completion rates, after discounting uses of force still subject to pending review by the USAO, were approximately 74% in April 2004, 19% in May 2004 (the second worst month since MPD began providing UFIR completion statistics in October 2002), and 27% in March 2004.

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<sup>16</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 subtract from the totals the cases that remain pending a prosecutorial decision by the USAO.

<sup>17</sup> OIM Sixth Quarterly Report at 15.

<sup>18</sup> OIM Eighth Quarterly Report at 17-19.

	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
Oct. 2002 - Dec. 15, 2002	12	57	69	14		20.29%	
Jan. 1, 2003 - Jan. 31, 2003	7	19	26	6		23.08%	
Feb. 1, 2003 - Feb. 28, 2003	2	21	23	7		30.43%	
Mar. 1, 2003 - Mar. 31, 2003	3	12	15	13		86.67%	
Apr. 1, 2003 - Apr. 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%
Aug. 1, 2003 - Aug. 31, 2003	5	29	34	15	6	44.12%	53.58%
Sept. 1, 2003 - Sept. 30, 2003	6	27	33	23	6	69.70%	79.31%
Oct. 1, 2003 - Oct. 31, 2003	3	16	19	15	0	78.95%	78.95%
Nov. 1, 2003 - Nov. 30, 2003	6	10	16	10	3	62.50%	76.92%
Dec. 1, 2003 - Dec. 31, 2003	8	6	14	9	3	64.29%	81.82%
Jan. 1, 2004 - Jan. 31, 2004	3	10	13	9	1	69.23%	75.00%
Feb. 1, 2004 - Feb. 29, 2004	3	27	30	13	2	43.33%	46.42%
Mar. 1, 2004 - Mar. 31, 2004	7	25	32	3	7	9.38%	12.00%
Apr. 1, 2004 - Apr. 30, 2004	6	21	21	14	2	66.67%	73.68%
May 1, 2004 - May 31, 2004	10	16	26	4	5	15.38%	19.05%
June 1, 2004 - June 30, 2004	3	13	16	4	1	25.00%	26.67%

The reasons underlying the dramatic drop in UFIR completion rates MPD has experienced thus far in 2004 remain unclear. UFIR completion is a serious issue that the OIM will continue to address with MPD. In light of the low UFIR completion rates reported this quarter, it appears that MPD's extremely poor UFIR completion rates for February and March 2004 were not merely aberrational.

In its Progress Report this quarter, MPD explains that a “UFIR is considered ‘complete’ when the Force Investigation Team has a hard copy of the completed UFIR at their office.”<sup>19</sup> Although this statement suggests that MPD may attribute some portion of the low UFIR completion rates observed in 2004 to the failure of officers or units to transmit otherwise completed UFIRs to FIT on a timely basis, that would account for temporary delays in the rate of completed UFIRs but not the sustained low rates of UFIR completion over an extended period that the data reflect. The OIM will explore further with MPD the factors contributing to MPD’s unsatisfactory UFIR completion rates.

OPR recently began preparing reports for the Executive Assistant Chief of Police identifying all outstanding UFIRs by police district. MPD represents that these reports are being used to remind District Commanders of uncompleted UFIRs.<sup>20</sup> In the coming quarter, the OIM will monitor the use and effectiveness of these reports.

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. DOJ responded on February 27, 2004 with its remaining concerns regarding the revised UFIR, to which MPD replied on April 9, 2004. MPD feels that it and DOJ made progress this quarter in revising the UFIR, and MPD hopes to obtain DOJ approval for the revised UFIR during the coming quarter.<sup>21</sup>

## (2) Pointing a Weapon at or in the Direction of a Person

On December 10, 2003, MPD 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>22</sup> MPD believes that, because the MOA does not include the pointing of a weapon within its definition of “use of force,”

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<sup>19</sup> MPD July 2004 Progress Report at 15.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> MOA at ¶ 53.

reporting such incidents through the UFIR is not appropriate and has caused substantial concern within the ranks of MPD officers.

Accordingly, MPD has developed a draft MPD Reportable Incident Form that would, if DOJ accepts its use, replace the UFIR as the mechanism for tracking “pointing” incidents.<sup>23</sup> DOJ responded to MPD’s proposal on February 27, 2004 and raised several process concerns, including ensuring adequate supervisory review of the MPD Reportable Incident Form. MPD responded by preparing for DOJ’s review a draft teletype directive intended to ensure that Reportable Incident Forms receive appropriate supervisory review that is comparable to the review required to be performed for completed UFIRs.<sup>24</sup> DOJ’s review of the proposed Reportable Incident Form procedure is ongoing.

### **(3) UFIR Quality**

For the past two quarters, we have reported statistics regarding the quality of UFIRs. As reflected in the updated chart below, the OIM’s reviews of all UFIRs in MPD’s central UFIR files, which are maintained at FIT’s offices, for the months January 2003 through April 2004 have identified specific deficiencies in the thoroughness and completeness of a significant proportion of the UFIRs. To permit comparisons between years, this quarter we have divided the chart on UFIR quality to distinguish between UFIRs related to incidents occurring in months in calendar year 2003 from the UFIRs related to incidents occurring in months in calendar year 2004.

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<sup>23</sup> MPD July 2004 Progress Report at 16.

<sup>24</sup> *Id.*

Month	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 03	26	19	11	8	5	0	2
Feb 03	17	13	6	3	5	0	2
Mar 03	15	9	8	3	2	0	2
Apr 03	20	13	7	2	4	1	4
May 03	21	12	7	7	1	2	0
June 03	19	9	5	7	1	1	2
July 03	17	9	7	2	1	2	2
Aug 03	34	17	9	10	2	1	1
Sept 03	20	11	4	7	0	1	0
Oct 03	7	4	1	1	2	0	1
Nov 03	12	10	3	5	1	2	0
Dec 03	9	8	2	3	1	0	0
<b>2003 Totals</b>	<b>217</b>	<b>134</b> <b>(61.18%)</b>	<b>70</b> <b>(32.26%)</b>	<b>58</b> <b>(26.73%)</b>	<b>25</b> <b>(11.52%)</b>	<b>10</b> <b>(4.60%)</b>	<b>16</b> <b>(7.37%)</b>
Jan 04	10	3	1	5	0	0	1
Feb 04	22	13	14	11	4	3	4
Mar 04	9	9	6	5	0	0	0
Apr 04	11	3	2	3	0	0	1
<b>2004 Totals</b>	<b>52</b>	<b>28</b> <b>(53.85%)</b>	<b>23</b> <b>(44.23%)</b>	<b>24</b> <b>(46.15%)</b>	<b>4</b> <b>(7.69%)</b>	<b>3</b> <b>(5.77%)</b>	<b>6</b> <b>(11.54%)</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 and links the UFIR to subsequent investigations of the underlying use of force incident.

While over half (53.9%) of the completed UFIRs for incidents occurring in January through April 2004 are missing the signature or findings of a reviewing supervisor, this is an improvement over the percentage of UFIRs completed in 2003 that were missing this information. So far in 2004, however, the percentage of UFIRs we have found to be missing the date and time the reporting officer notified his supervisor of the use of force incident (44.2%) is higher than the percentage of 2003 UFIRs missing that information (32.3%). Also higher so far in 2004 is the percentage of UFIRs missing CS numbers (46.2%). We found that approximately 7.7% of the UFIRs for 2004 incidents do not provide a narrative describing the incident, which is information that also is required by the form.

#### **(4) Specialized Mission Unit After-Action Report**

On March 5, 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.

On March 30, 2004, DOJ provided final approval of MPD's Specialized Mission Unit General Order and outlined its remaining concerns with respect to the After-Action Report.<sup>25</sup> MPD requested a delay in the requirement that the Specialized Mission Unit General Order be implemented within 14 business days after DOJ's approval of the order. This request arose from MPD's concern that implementation of the Specialized Mission Unit General Order prior to the resolution of outstanding issues related to the Specialized Mission Unit After-Action Report might lead to confusion among officers in the field. Accordingly, MPD requested that implementation of both the Specialized Mission Unit General Order and Specialized Mission Unit After-Action Report be required to take place within 14 business days after DOJ's approval of the Specialized Mission Unit After-Action Report.<sup>26</sup> DOJ granted MPD's request, and, on April 9, 2004, MPD responded to DOJ's concerns regarding the Specialized Mission Unit After-Action Report. MPD reports that it and DOJ are continuing to work to resolve the remaining issues

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<sup>25</sup> Letter from Tammie M. Gregg to Captain Matthew Klein (March 30, 2004).

<sup>26</sup> E-mail from Maureen O'Connell to Tammie Gregg, Lisa Graybill, and Sarah Gerhart (March 31, 2004).

related to the Specialized Mission Unit After-Action Report, and MPD hopes to have those issues resolved in the coming quarter.<sup>27</sup>

**b. AUSA Notification Log**

Each quarter, the OIM reviews MPD's AUSA Notification Log, which is maintained at FIT's offices. This quarter, we again 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>28</sup>

**3. Recommendations**

The data set forth above suggests that, for the past two quarters, MPD has slipped significantly with respect to the rate at which officers complete UFIRs. Moreover, serious deficiencies continue to exist with respect to the quality and completeness of the UFIRs. Although MPD has indicated that it has initiated internal controls with respect to the UFIR, we reiterate our strong recommendation that MPD devote significant attention, in terms of training and supervision, to improving the rate at which UFIRs are completed as well as 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

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<sup>27</sup> MPD July 2004 Progress Report at 18.

<sup>28</sup> MOA at ¶ 54.

force from MPD district violent crime units or other MPD district supervisors to FIT.<sup>29</sup>

MPD is required to notify and consult with the USAO -- and vice versa -- in each instance in which there is an incident involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are handled by FIT rather than by any other unit of MPD. Even while the criminal investigation is pending, the MOA requires FIT's investigation of the officer's use of force to proceed in all such cases, although the compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.<sup>30</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>31</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:

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<sup>29</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.

<sup>30</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>31</sup> In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

- A determination of whether the use of force under investigation was consistent with MPD policy and training;
- A determination of whether proper tactics were used; and
- A determination of whether alternatives requiring lesser uses of force were reasonably available.

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

All use of force investigations, other than those specifically assigned to FIT, may be investigated by chain of command supervisors in MPD districts. In the alternative, the Chief of Police or his designee may assign investigations to chain of command supervisors from another 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>32</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>33</sup>

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<sup>32</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>33</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

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

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

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#### **Footnote continued from previous page**

non-FIT use of force incidents in an effort to identify incidents that should be referred to the UFRB.

## **(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. Again this quarter, we found the investigations performed by FIT to be timely, complete, and sufficient.

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

We also continued our review of chain of command and OPR use of force and misconduct investigations by selecting and reviewing a statistical sample composed of 80 such investigations opened between October 1, 2003 and December 31, 2004. The results of this quarter's review are discussed below in Section II.B.2.b(1).

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

On January 31, 2003, DOJ approved the Use of Force Review Board General Order.

This quarter, the OIM monitored a monthly meeting of the UFRB during which the Board reviewed six use of force investigations performed by FIT. We have decided to defer reporting on our monitoring of the UFRB until we have had the opportunity to monitor additional meetings of the Board in the coming quarter.

### **c. Recommendations**

Our recommendations with respect to chain of command 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. Although we make no recommendations with respect to the UFRB at this time, we may in the future.

## **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>34</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>35</sup> In addition to criminal allegations, the MOA requires that MPD assign for investigation outside the chain of command allegations involving:

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<sup>34</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>35</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.

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;
- 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>36</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>37</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;
- 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**

This quarter, we reviewed a fourth statistical sample of MPD's misconduct and non-FIT chain of command use of force investigations. The first sample included 244 such investigations opened from June 13, 2001, the effective date of the MOA, through March 31, 2003, with at least 30 investigations drawn from each of the MPD districts. The second sample 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. The third sample,

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<sup>36</sup> See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

<sup>37</sup> In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

which we reviewed during January through March 2004, consisted of 79 investigations drawn proportionately from each of the districts that were opened during the period July 1, 2003 through September 30, 2003.

The sample of chain of command and OPR investigations that we reviewed this quarter consisted of 80 such investigations, again drawn proportionately from all of MPD's districts 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. The cases in this sample were opened during the period October 1, 2003 through December 31, 2003; as with our past work on these investigations, the dates were selected to ensure that at least 90 days had passed from the time when the latest investigation was opened before we reviewed the file to ensure that MPD had the maximum time authorized under the MOA, absent special circumstances, to complete the investigation. As has been the case in prior quarters, 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 in our prior reports regarding the results of our reviews of samples on non-FIT use of force and misconduct investigations, 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. The OIM's specific findings with respect to each of these areas are discussed below.<sup>38</sup>

##### 1. Administration and Management of the Investigations

Consistent with our findings from the prior three samples, the OIM's review of this quarter's sample of 80 MPD investigations has found that, to a very high degree, the chain of command investigations are free

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<sup>38</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 and OPR use of force and misconduct investigations. For ease of comparison, we have also included in Appendix B the results of the first sample of 244 investigations, the second sample of 80 investigations, and the third sample of 79 investigations.

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 cases in which there existed an apparent or actual conflict of interest involving the supervisor or the official responsible for the investigation. Also, in all of the cases we reviewed this quarter, the proper MPD entity investigated the allegations at issue. The consistency with which MPD observes these requirements reflects favorably on the institutional integrity of MPD's system of internal investigations.

We found again this quarter that the investigative reports for completed investigations consistently include the MOA-mandated 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 (96.7%).<sup>39</sup>

The timeliness of MPD investigations has improved significantly over the prior three samples. This quarter, 66.9% of the cases reviewed were completed within the 90-day window required by the MOA, as compared to 48.4% and 53.7% in the samples of cases reported on in our Seventh and Eighth Quarterly Reports. The MOA specifically provides that chain of command investigations may be completed outside of the 90-day window where there exist documented "special circumstances" justifying the delay.<sup>40</sup> Of the cases we reviewed this quarter that were not completed within 90 days, 23.1% contained an explanation of the "special circumstances" that allegedly caused the delay.

The most significant figure regarding the timeliness of MPD's non-FIT use of force and misconduct investigations is the overall statistic regarding the proportion of investigations that satisfied the MOA's timeliness requirements by either (i) being completed within 90 days or (ii) containing a documented explanation of the "special circumstances" justifying a delay beyond 90 days for the completion of the investigation. This quarter, 74.0% of investigations reviewed were either completed within 90 days or contained documented special circumstances justifying the delay. This figure reflects a marked improvement over 60.8% of

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<sup>39</sup> MOA at ¶ 65.

<sup>40</sup> MOA at ¶¶ 65, 74.

investigations from the seventh quarter and 57.0% of investigations from the eighth quarter that satisfied the MOA's timeliness provisions.

## 2. Conduct of the Investigations

We found again this quarter that MPD investigators generally conduct sound investigations. For example, investigators employed appropriate investigative techniques, such as avoiding group interviews (100.0%) and interviewing all appropriate MPD personnel (99.3%). Moreover, this quarter's results indicate that investigators properly documented and addressed inconsistencies among officers and witnesses (100.0%), addressed all apparent misconduct (98.11%), and avoided giving automatic preference to an officer's statement over a citizen's statement (93.4%). While the results in these areas, as reflected in Appendix B, have varied somewhat in each of the four samples we have completed, MPD's chain of command and OPR investigations have generally met these requirements across all four sample periods.

## 3. Unit Commander Review of Investigations

In 100.0% of the 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 regarding the lack of completeness and sufficiency in a significant -- although improving -- number of investigations suggest that unit commanders are not conducting sufficiently thorough reviews.

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

The quality of MPD's chain of command investigations appears to be improving, although there is significant room for additional improvement. Of the cases reviewed this quarter, we found that 58.8% of the investigations were complete<sup>41</sup> and that a sufficient<sup>42</sup> investigation

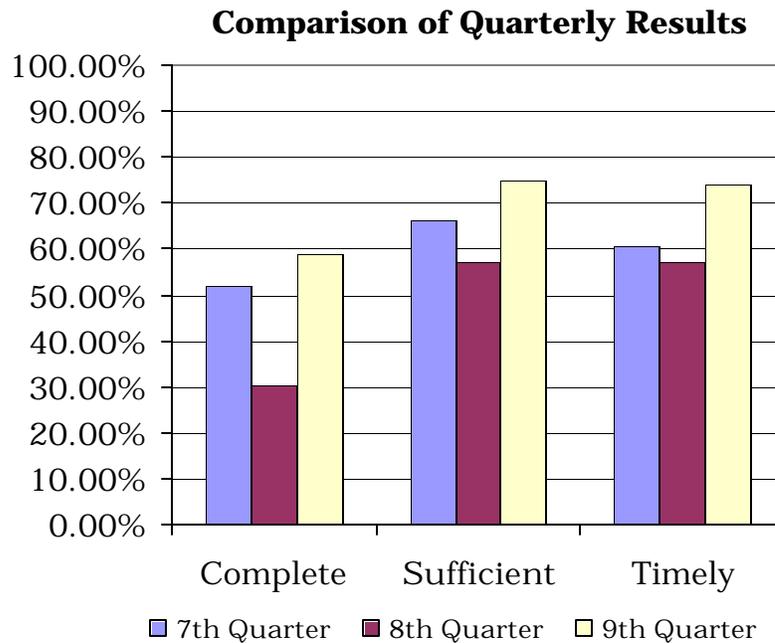
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<sup>41</sup> Our police practices experts rated an investigation "complete" if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required by both the MOA and by generally accepted police practices.

<sup>42</sup> Our police practices experts rated an investigation "sufficient" if the evidence and analysis reflected in the investigation file were adequate to support a

had been conducted in 74.9% of the cases. As reflected in Appendix B, these completeness and sufficiency figures represent significant improvements over the samples reviewed during the prior two quarters.

Our findings this quarter with respect to the improved timeliness, completeness, and sufficiency of MPD’s non-FIT use of force and misconduct investigations, as reflected in the chart below, are encouraging. Over the past several quarters, MPD has devoted significant attention toward improving the timeliness and quality of its internal investigations, and that effort appears to be producing results. We will continue to monitor MPD’s progress in achieving compliance in this critical area of the MOA.



Technical Assistance Regarding MPD’s Chain of Command Investigations

Last quarter, at the request of Chief Ramsey, the OIM provided MPD technical assistance in the form of a lengthy memorandum detailing the 18 distinct deficiencies we have identified in MPD’s chain of command investigations and making specific recommendations to

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**Footnote continued from previous page**

reasonable and defensible conclusion, even in cases where certain investigative procedures or analysis had not been completed.

address these deficiencies.<sup>43</sup> MPD responded to the recommendations contained in OIM's technical assistance memorandum by implementing several measures this quarter intended to improve the quality and timeliness of MPD's internal investigations.

First, MPD reports that it has revised the four chain of command investigation templates that it has developed over the past several months to reflect OIM's recommendations.<sup>44</sup> In late May 2004, MPD distributed these chain of command investigation templates to all of its Assistant Chiefs and Senior Executive Directors. OPR also gave a presentation explaining the templates during MPD's Daily Crime Briefing on May 27, 2004 and is currently working to place the templates on MPD's intranet.<sup>45</sup>

Second, on May 27, 2004, MPD issued a teletype entitled "Special Circumstances' for Investigations" regarding the documentation of special circumstances justifying the completion of an MPD internal investigation outside of the 90-day window provided under the MOA. The teletype requires that written requests for extensions document the "special circumstances" justifying an enlargement of time to complete an investigation and that such a request be submitted to OPR for approval at least 5 business days prior to the due date for the investigation. The teletype also provides that commanding officers who submit an investigation after the due date for the investigation without written approval by OPR for an extension must also submit documentation reflecting the discipline imposed on the investigating officer as a result of the investigation being overdue.<sup>46</sup>

Finally, MPD developed an "OPR Investigations Integrity Checklist," which is to be used by OPR officials in connection with reviewing MPD internal investigations for completeness and sufficiency.<sup>47</sup> MPD reports

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<sup>43</sup> Memorandum from Michael R. Bromwich to Chief Charles H. Ramsey regarding Technical Assistance Related to MPD's Chain of Command Investigations (April 9, 2004).

<sup>44</sup> MPD July 2004 Progress Report at 22.

<sup>45</sup> MPD circulated these chain of command investigation templates to DOJ and the OIM on June 7, 2004.

<sup>46</sup> The May 27, 2004 teletype entitled "Special Circumstances' for Investigations" is an attachment to MPD's July 2004 Progress Report.

<sup>47</sup> MPD July 2004 Progress Report at 24.

that the checklist also has been provided to the districts and other MPD units for use as a guideline for chain of command investigations.<sup>48</sup>

The OIM is gratified that MPD has found our technical assistance with regard to chain of command investigations useful and that it appears MPD has adopted many of the key recommendations contained in that technical assistance. Although it may be several quarters before we observe the impact, if any, of the measures MPD has taken in response to the OIM's technical assistance, we hope that these measures contribute to a marked improvement in the quality and timeliness of MPD's chain of command investigations.

## **(2) Redeployment of OIA Investigators**

This quarter, investigators from MPD's Office of Internal Affairs ("OIA") contacted the OIM to express concerns related to the periodic redeployment of OIA investigators to the field in connection with MPD's anti-crime initiatives. The OIA investigators' concerns, as they relate to the MOA, appear to be twofold: (1) that the one-week redeployment of OIA investigators every six weeks hampers the investigators' ability to complete timely investigations within the 90-day period prescribed by the MOA<sup>49</sup> and (2) that the redeployment of OIA investigators to the districts creates the potential for "conflicts of interests" to arise because OIA investigators may be redeployed to serve with or be supervised by subjects of misconduct investigations being performed by the OIA.<sup>50</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> *See, e.g.,* MOA at ¶ 74.

<sup>50</sup> With respect to the "conflict of interest" issue, it is not clear which particular provision of the MOA is alleged to be offended by the redeployment of officers to the districts. Paragraph 80 of the MOA, for example, provides that "MPD shall prohibit any officer who has a potential conflict of interest related to a pending misconduct investigation from participating in any way in the conduct or review of that investigation." The OIA investigators' complaint appears, however, not to be related to a concern that parties with an interest in the outcome of misconduct investigations are becoming involved with or participating in the conduct of those investigations as a result of the redeployment of OIA investigators. Rather, the investigators' complaint appears to be more in the nature of a concern over the potential that OIA investigators may be retaliated against or placed in compromising situations if they are assigned to work alongside or under the supervision of officers in the districts who are, or may one day be, subjects of OIA investigations.

OIA investigators also expressed concerns that (1) OIA is understaffed and suffering from low morale; (2) the familiarity that patrol officers have developed with OIA investigators as a result of the redeployments has caused officers in the districts to lose respect generally for OIA and has deprived the investigators of the “fear factor” among rank and file officers that they once enjoyed; (3) OIA investigations are not afforded sufficient levels of confidentiality within the OPR chain of command and among command staff; and (4) during redeployments, OIA investigators, who are not included in the collective bargaining agreement between the City and the Fraternal Order of Police (“FOP”), are exposed to the same risks as FOP members without the benefits afforded to union members, such as counsel to assist in responding to allegations of misconduct. Also, the OIM recognizes that redeployments have the potential to expose OIA investigators to circumstances that might lead them to become witnesses in or even subjects of internal MPD misconduct investigations that ordinarily would be investigated by OIA.<sup>51</sup>

Prior to contacting the OIM, OIA investigators raised their concerns regarding redeployments in several forums. OIA investigators initiated an informal grievance with Chief Ramsey in August 2003, filed a formal grievance with Chief Ramsey in October 2003, hired private counsel to assist with their formal grievance, contacted Councilperson Patterson of the District of Columbia City Council in March 2004, and had a meeting with Chief Ramsey in May 2004. Although alternatives in terms of locations and supervisors for OIA investigators during redeployments have been discussed, MPD has not exempted OIA investigators from periodic redeployment.

Based on the interviews of OIA investigators conducted to date and our review of the documentation that they have provided related to their grievances submitted to MPD, we cannot reach any conclusions with respect to whether the redeployment of OIA investigators has any adverse impact on MPD’s compliance with the MOA requirements related to MPD’s timely and sound investigation of allegations of officer misconduct. In the coming quarter, we will explore this issue further with MPD.

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<sup>51</sup> We currently are not aware of any case in which an OIA investigator has been accused of misconduct during a redeployment. In the coming quarter, we will discuss with MPD how a misconduct investigation under such circumstances would be conducted.

### **(3) 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 and commended MPD “for its efforts to revise this MPD [General Order] consistent with the MOA and other applicable standards.”<sup>52</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.

### **(4) Chain of Command Investigations Manual**

Pursuant to paragraph 83 of the MOA, MPD submitted a draft Chain of Command Investigations Manual to DOJ on October 25, 2002. DOJ provided comments on the manual on March 26, 2003. Paragraph 83 requires that, among other things, the manual “provide investigative templates to assist investigators.” Because MPD wanted to include these investigative templates in PPMS, final templates had to be submitted to PPMS development vendors by January 12, 2004. In order to facilitate the templates’ inclusion in the PPMS development process, DOJ agreed to provide an expedited review of the draft administrative investigative templates that MPD submitted on December 30, 2003. On January 7, 2004, DOJ provided its preliminary approval of the templates subject to MPD’s acceptance of certain suggested changes to the templates. On January 12, 2004, MPD provided the final revised templates to DOJ and the PPMS development contractor IBM/CRISNet. MPD submitted a revised draft of the Chain of Command Investigations Manual to DOJ for approval on February 26, 2004. DOJ returned comments on the Chain of Command Investigations General Order and Chain of Command Investigations Manual on June 29, 2004, and MPD is currently reviewing those comments.<sup>53</sup>

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<sup>52</sup> Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

<sup>53</sup> MPD July 2004 Progress Report at 11.

In response to the recommendations contained in the OIM's April 9, 2004 memorandum entitled "Technical Assistance Related to MPD's Chain of Command Investigations," MPD revised its misconduct investigation template and created a "preliminary" misconduct investigation template. These templates were submitted for DOJ's review on June 7, 2004.

#### **(5) 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. MPD provided an updated draft of this general order to DOJ on December 31, 2003. MPD then submitted a revised version of the Chain of Command Misconduct Investigations General Order to DOJ on February 26, 2004. DOJ provided comments on the draft order on June 29, 2004, and MPD currently is reviewing those comments.

#### **(6) 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"), the OCC and MPD have met to draft a policy to facilitate such notification. Currently, no policy exists.

As discussed a year ago in our Fifth Quarterly Report,<sup>54</sup> the implementation of this 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 requirements of the MOA and that is acceptable to both the OCC and MPD. It appears that this issue remains unresolved. In the coming quarter, the OIM will request that OCC and MPD provide a written status report concerning this policy, including an explanation of any reasons underlying the delay in its development.

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<sup>54</sup> OIM Fifth Quarterly Report at 27.

### **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 continue to work toward improving the timeliness and quality of chain of command investigations. This quarter, MPD appears to have taken several steps to implement the recommendations contained in the OIM's technical assistance memorandum as well as taken other significant measures intended to improve the investigations performed by MPD's chain of command. We look forward to continued monitoring in this area to determine the effect of MPD's recent actions with respect to improving its internal 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>55</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>56</sup>

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<sup>55</sup> District of Columbia Law 12-208.

<sup>56</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>57</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>58</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>57</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>58</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. On May 3, 2004, MPD and OCCR notified DOJ that the CCRB had approved the revised “MPD member recusal” section of the MOU. DOJ provided its comments regarding the MOU on May 25, 2004, and OCCR and MPD worked this quarter to address the issues raised by DOJ. MPD reports that it and OCCR “hope to submit final revisions to the MOU to the Department of Justice during the next quarter.”<sup>59</sup>

#### **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**

This quarter, OCCR referred 10 citizen complaints to MPD because they did not fall within OCCR’s investigative jurisdiction. Of these 10 complaints, OCCR failed to satisfy the 10-business-day referral requirement in only one instance.<sup>60</sup> This 90% compliance rate is a

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<sup>59</sup> MPD July 2004 Progress Report at 20.

<sup>60</sup> MOU at ¶ 3.C.

significant improvement over the 63% compliance rate we observed in the first quarter of 2004<sup>61</sup> and is higher even than the 80% compliance rate we observed for the last quarter of 2003. OCCR's referral rate should stabilize at a consistently high figure in future quarters.

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

The MOU requires OCCR to notify MPD on a weekly basis of formal citizen complaints filed with OCCR.<sup>62</sup> We reviewed 29 formal complaints lodged with OCCR this quarter to assess OCCR's compliance with this requirement. OCCR met the weekly notification requirement in 26 of the 29 cases, which is a compliance rate of 90%. OCCR's rates of compliance with this provision of the MOU for the prior three quarters have been 76%, 86%, and 88%.

**d. Interviews of Witness Police Officers**

This quarter, the OIM reviewed data relating to 56 scheduled interviews of MPD officers. In 2 of these 56 cases, OCCR did not provide the officer with at least one week's advance notice of his or her required appearance.<sup>63</sup> This 96% compliance rate with this provision of the MOU is an improvement over the 89% and 93.5% compliance rates for the prior two quarters. MPD officers failed to appear for 10 of the 54 interviews for which the requisite one-week notice was provided. Thus, this quarter, MPD officers failed to appear for approximately 19% of properly noticed OCCR interviews.

**e. MPD Documents Requested by OCCR**

Under the MOU, MPD must respond to an OCCR document request within ten business days.<sup>64</sup> This quarter, we reviewed data

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<sup>61</sup> OCCR attributed last quarter's dip in its timely referral rate to the agency's implementation of new complaint management software in January 2004 and a related review of open complaints which by OCCR identified complaints that should have been referred to MPD earlier but had not been. Those untimely referrals were made last quarter, which contributed to the decline in the observed rate of timely referral of complaints by OCCR to MPD in the first quarter of 2004.

<sup>62</sup> *Id.*

<sup>63</sup> MOU at ¶ 3.D

<sup>64</sup> MOU at ¶ 3.E.

related to a total of 74 document requests directed by OCCR to MPD. MPD failed to produce the requested documents within ten business days in connection with 58 of the 74 requests, which is a compliance rate of only 22% this quarter. This is a significant decrease from the 58% and 69% compliance rates we observed over the prior two quarters.

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

The MOA requires that, after the first year of the MOA, MPD hold at least one community outreach and public information meeting semi-annually in each of the patrol service areas (“PSAs”) in the City.<sup>65</sup> The MOA also requires that, at least one week before such meetings, the City publish notice of the meeting in public areas, including “libraries, schools, grocery stores, [and] community centers,”<sup>66</sup> and on the Internet. Notices related to community outreach and public information meetings must be in the primary languages spoken in the communities located in the particular PSAs.<sup>67</sup>

This quarter, the OIM monitored community meetings held in PSAs 301 and 402. We observed the meeting in PSA 301 to be upbeat and lively, and it addressed topics including gang activity, street lighting, communication difficulties between ethnic groups, panhandling, graffiti, vandalism, management of park property, and crime statistics. The MPD commander in attendance provided an overview of a recent major drug-related arrest in the PSA. The meeting in PSA 301 was attended by three MPD members and nine members of the community. No MPD members attended the meeting held at PSA 402 due to the funeral proceedings for President Reagan. The meeting went forward, nevertheless, and major topics of discussion were the difficulty community members were experiencing in traveling to the meeting site and the lack of notice regarding the time and location of community meetings in PSA 402.

We also canvassed schools, service stations, recreation and community centers, libraries, and major grocery stores in PSAs 404 and 405 in advance of scheduled community outreach and public information meetings to monitor compliance with the MOA’s notification requirements. Community notification in those PSAs was spotty at best

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<sup>65</sup> MOA at ¶ 91.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

and not nearly as comprehensive as required under the MOA. In PSA 404, we found no notices available at the schools, library, and grocery store we canvassed. There were flyers, printed in English, available at the police station. In PSA 405, we did not find notices in the convenience store and school we canvassed. Flyers printed in Spanish and English were available, however, at a community recreation center we visited.

Finally, we have found that the quality of community calendar information posted on MPD's Web site varies a great deal by district. Most districts, including 1D, 2D, 3D, 4D, and 5D, post a substantially detailed and up-to-date calendar of events on the Web site. The community calendars for other districts, such as 6D and 7D, are essentially blank. It is not clear whether community outreach and public information programs are not being held in the PSAs in those districts or the meetings are not being properly advertised. Also, to the extent the districts may be relying heavily on the calendars posted on MPD's Web site to notify the public about community outreach meetings, we are concerned that such an approach is both inconsistent with the terms of the MOA and presumes, probably incorrectly, that most citizens in each of the districts are able to readily access the Internet.

The OIM will continue monitoring both community outreach meetings and MPD's efforts to comply with the MOA's notification requirements related to those meetings in the coming quarters.

### **3. Receipt of Complaints by OCCR (§§ 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>68</sup>

In July 2003, OCCR proposed a modification to the requirement under paragraph 93 of the MOA that OCCR tape record all conversations

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<sup>68</sup> Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

on the hotline and develop an auditing procedure that includes monthly reviews of a random sample of tape recordings.<sup>69</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>70</sup> As an alternative, OCCR proposed that its Chief Investigator or Assistant Chief Investigator 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.

In response to OCCR's proposal, DOJ expressed its concern that the proposed plan may not adequately accomplish the objectives of paragraph 93 because of the variety of problems that may arise 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 also expressed the concern 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>71</sup> To furnish adequate time to evaluate OCCR's proposed auditing procedures in light of DOJ's concerns, DOJ granted provisional approval of OCCR's proposed plan for a six-month period, beginning on August 29, 2003. DOJ also requested that the OIM review OCCR's proposed hotline auditing procedures. If OCCR's proposed hotline auditing procedures were found to operate satisfactorily, DOJ stated that it would consider a formal modification to paragraph 93 of the MOA.<sup>72</sup>

On March 31, 2004, the OIM issued a memorandum to DOJ and OCCR regarding OCCR's proposed modification to paragraph 93 of the MOA as that provision relates to the tape-recording and auditing of calls placed to OCCR's citizen complaint hotline.<sup>73</sup>

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<sup>69</sup> Letter from Tammie M. Gregg to Deputy Director Thomas Sharp (August 25, 2003).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Memorandum from Michael R. Bromwich to Philip K. Eure, Thomas Sharp, and Tammie M. Gregg regarding Office of Citizen Complaint Review's Proposed Modification of MOA ¶ 93 (March 31, 2004).

As discussed in the OIM's memorandum, our review of OCCR's processes for receiving citizen complaints found that only approximately 5.3% of the complaints received by OCCR in 2003 were lodged through the hotline. OCCR received an average of only 2.58 calls per month to the hotline in 2003. By comparison, 289 -- approximately half (49.7%) -- of the complaints OCCR received in 2003 were placed through OCCR's regular business telephone lines, which are not subject to any tape recording or auditing procedures under the MOA. The chart below summarizes the sources of all citizen complaints placed with OCCR during calendar year 2003.

	Hotline	Fax	Phone	Mail	Walk In	MPD	Other	N/A	Total
Jan '03	2	3	24	6	9	1	0	0	45
Feb '03	0	4	19	6	2	0	0	0	31
Mar '03	2	4	32	15	2	2	0	0	57
Apr '03	10	7	39	9	10	1	1	1	78
May '03	6	1	12	5	17	0	0	0	41
Jun '03	2	1	25	9	10	0	0	0	47
Jul '03	3	7	25	8	8	0	0	0	51
Aug '03	3	6	23	10	6	0	1	0	49
Sep '03	2	4	18	14	12	1	0	4	55
Oct '03	0	1	21	6	10	1	0	1	40
Nov '03	1	1	30	15	3	1	0	2	53
Dec '03	0	2	21	8	1	2	0	1	35
<b>Total</b>	<b>31</b>	<b>41</b>	<b>289</b>	<b>111</b>	<b>90</b>	<b>9</b>	<b>2</b>	<b>9</b>	<b>582</b>
<b>Percent of total</b>	<b>5.3%</b>	<b>7.0%</b>	<b>49.7%</b>	<b>19.1%</b>	<b>15.5%</b>	<b>1.5%</b>	<b>0.3%</b>	<b>1.5%</b>	

In light of the infrequency with which the OCCR hotline is used and the availability of viable quality control alternatives, the OIM concluded that the current tape recording and auditing requirements of paragraph 92 of the MOA place a burden on OCCR's financial and human resources that is disproportionate to the value, in terms of quality control and responsiveness to citizen concerns, advanced by those procedures.

Our memorandum also explained that the OIM does not discern a practical distinction between citizen complaints lodged with OCCR via the hotline and those placed with OCCR by various other means, including the significant number of complaints made over OCCR's regular business telephone lines. Accordingly, we have recommended that DOJ and the City agree to amend paragraph 93 of the MOA to replace that provision's hotline-specific tape recording and auditing requirements with a citizen complainant survey procedure. In addition,

we have suggested that DOJ and the City consider making survey-based audit procedures applicable to all complaints received by OCCR from the general public, regardless of the medium through which the complaints are made.<sup>74</sup>

By letter dated April 9, 2004, OCCR renewed its request that DOJ agree to modify the hotline auditing provisions of paragraph 93 of the MOA. DOJ responded on May 21, 2004 by extending the provisional modification of paragraph 93 for an additional six months in order to permit OCCR time to address certain preliminary concerns raised by the OIM in our Seventh Quarterly Report<sup>75</sup> with respect to OCCR's proposed survey-based audit procedure for hotline complainants and to demonstrate the ability of that procedure to satisfy the goals of paragraph 93.<sup>76</sup> On June 3, 2004, OCCR agreed to DOJ's proposed extension of the provisional modification of paragraph 93. In the coming quarters, the OIM will continue evaluating OCCR's procedures for auditing citizen complaints received via the hotline.

#### **4. OCCR Investigation of Complaints**

Last quarter, the OIM reviewed investigations performed by OCCR of citizen complaints alleging misconduct on the part of MPD officers. We reported statistics related to the timeliness of the 128 OCCR investigations closed during the period March 1, 2003 through February 29, 2004. The OIM also selected for substantive review a statistical sample of 30 of the OCCR investigations from the group of 128 and performed substantive reviews of the quality of those investigations. In sum, the OIM found that, while OCCR investigations are generally

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<sup>74</sup> As discussed in our Eighth Quarterly Report, the OIM has experienced a low response rate in connection with our efforts to survey citizen complainants regarding their experiences with MPD misconduct investigations. We believe that several factors increase the likelihood that survey-based audit procedures may be effective in assessing the OCCR complaint and investigation process, including (1) OCCR is required under the D.C. Code to obtain the complainant contact information that would facilitate survey-based audit procedures; (2) OCCR, as an independent agency, should be able to obtain a reasonably high degree of citizen cooperation in the audit process; and (3) OCCR should be able to conduct its citizen surveys on a timely basis while citizen contact information is most likely to be current and reliable.

<sup>75</sup> Seventh Quarterly Report at 35-38.

<sup>76</sup> Letter from Tammie M. Gregg to Thomas Sharp, dated May 21, 2004.

sufficient (85.7%), there is significant room for improvement in both the completeness and timeliness of those investigations.<sup>77</sup>

In response to the OIM's findings last quarter, OCCR requested that the OIM provide technical assistance regarding observed deficiencies in OCCR's investigations similar to the technical assistance that we provided to MPD last quarter with respect to its chain of command investigations.<sup>78</sup> The OIM will respond to OCCR's request for technical assistance in the near future.

### **C. Recommendations**

This quarter, the OIM has no additional recommendations concerning OCCR's review and auditing of the citizen complainant process or the conduct of OCCR's investigations of allegations of officer misconduct. We welcome OCCR's request for technical assistance and will respond to that request in the coming quarter.

## **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>79</sup> Specifically, the policy must:

- Prescribe when non-disciplinary action is appropriate;
- Prescribe when district-level discipline or corrective action is appropriate;
- Establish a formal and centralized system for documenting and tracking discipline and corrective action; and
- Develop a procedure for providing written notice to complainants regarding the most significant aspects of the

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<sup>77</sup> The OIM's detailed findings related to these reviews is contained in the Eighth Quarterly Report at pages 46-49.

<sup>78</sup> E-mail from Thomas Sharp to Tommy Beaudreau, dated May 17, 2004.

<sup>79</sup> MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

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 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>80</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>81</sup> MPD has not yet responded to DOJ's letter or finalized the Disciplinary Process General Order. MPD reports that it currently is reviewing DOJ's comments in consultation with the FOP.<sup>82</sup>

This quarter, the OIM conducted a substantial review of MPD's systems and procedures related to the administration and tracking of disciplinary and training recommendations flowing from the UFRB's review of use of force cases. The purpose of this review, which is

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<sup>80</sup> Letter from Tammie Gregg to Captain Matthew Klein regarding "Disciplinary General Order" (August 25, 2003).

<sup>81</sup> *Id.*

<sup>82</sup> MPD July 2004 Progress Report at 13.

ongoing, is to test the extent to which MPD is effective in disciplining officers found responsible for unjustified uses of force and in training officers found to be in need of remedial training to correct identified failures to properly implement MPD policy or employ sound police practices. Where officers are found to have acted outside of MPD policy, to have used unjustified levels of force, or to be in need of remedial training, it is critical that MPD's disciplinary and training systems effectively and efficiently address these issues to conform officer conduct to the requirements of MPD policy and the MOA.

Although MPD has established the UFRB as a body for the review of investigations involving uses of force, we are continuing to evaluate whether the Board is fulfilling its role as a "quality control mechanism" by conducting comprehensive reviews of each use of force incident and by identifying "patterns/problems" suggesting the need for improved training or policy modifications.<sup>83</sup> We have found that, where the UFRB recommends discipline or remedial training, MPD has inadequate internal control mechanisms in place to ensure that the recommended discipline or corrective action is administered. Finally, we also found MPD lacks a centralized and formal system for tracking discipline and remedial training.<sup>84</sup>

### **1. UFRB Log**

Our review began with the log recording all of the cases the UFRB reviewed in 2003. The log contains summary information identifying the incident case number, the officer's name, the UFRB hearing date, the type of force used, the finding, and a comments section. The "findings" column contains one of the following entries for each case: (1) "no force," (2) "justified," (3) "justified/policy violation," or (4) "not justified." The "comments" column contained one of the following entries: DDRO, AA, TIO, TIO-IPS, or FIT.<sup>85</sup> For our review, we selected all UFRB cases heard

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<sup>83</sup> MOA at ¶ 67.

<sup>84</sup> MOA at ¶ 105.

<sup>85</sup> These abbreviations on the UFRB log indicate the following: (1) DDRO - referral to the Department Discipline Review Office for discipline; (2) AA - referral to the officer's unit or district for Administrative Action; (3) TIO - Tactical Improvement Opportunity specific to the officer; (4) TIO-IPS - Tactical Improvement Opportunity-Institute of Police Science - indicating a recommendation for a review of IPS curriculum; and (5) FIT - indicating the file was returned to the Force Investigation Team for additional investigation.

during 2003 that indicated a finding of “not justified” or “justified/policy violation” and any case, regardless of the findings, that contained an entry in the comments column. This resulted in the selection of 37 cases in which there was a recommendation for adverse action, tactical improvement opportunity (“TIO”), or policy improvement opportunity (“PIO”).

## **2. Use of Force Investigation**

Each of the 37 cases we selected involved a use of force by an MPD officer. Depending on the level of force used, the investigation of the use of force would be conducted either by FIT in cases involving uses of serious or deadly force or by the officer’s chain of command in cases involving less serious uses of force. We were successful in locating a FIT investigation report for 31 of the 37 cases. We were not able to locate the investigation report related to 6 of the 37 cases. Upon completion of a use of force investigation, a memorandum should be prepared reflecting transmittal of the case to the UFRB for review. Eight of the 31 investigation files we reviewed did not contain a memorandum reflecting transmittal of the investigation to the UFRB.

## **3. UFRB**

The UFRB is charged with reviewing use of force investigation files in order to make determinations as to whether the force at issue was justified and to identify training needs, equipment upgrades, or policy modifications that may be necessary in light of the facts of particular cases coming before the Board. The UFRB meets once a month and is comprised of five members of the command staff with a designated chairperson. The UFRB is supported by a staff person who is a sergeant assigned to FIT.

In 2003, the UFRB reviewed 93 use of force incidents involving 113 officers. Of those 93 cases, 15 were found to involve a use of force that was not justified. Additionally, the UFRB determined that 12 officers, while their use of force was justified, had violated MPD policy. The UFRB recommended adverse action with respect to each of the 27 officers involved in these cases.

In 17 of the 93 cases the UFRB reviewed in 2003, the UFRB found that the documented actions of the officers presented a TIO through remedial training of the officer. Two additional cases resulted in UFRB findings of a TIO and a recommendation that IPS review and, if necessary, modify its training curriculum. In each of these 19 cases, the

UFRB findings memorandum documents the finding of a TIO, and IPS is identified as an addressee of the memorandum.<sup>86</sup>

Although copies of the UFRB findings memoranda are included with the FIT investigation files maintained by FIT, we were surprised to learn that the UFRB does not maintain a separate file in which copies of its findings memoranda are retained and stored. Accordingly, the UFRB administrator was unable to produce copies of the Board memoranda recommending discipline. The UFRB administrator indicated that the a copy of the Board's finding memorandum recommending disciplinary action is forwarded either to DDRO or to the subject officer's district or unit.

#### **4. DDRO**

The OIM requested that DDRO produce files related to all 27 cases in which the UFRB recommended adverse action against an officer in 2003. DDRO was able to produce only 16 of the requested files. Our review of these 16 files found that 7 officers were to be terminated, suspended, or required to forfeit compensatory time as a result of the disciplinary process. Although the DDRO files document the discipline intended to be imposed, they contain no documentation reflecting that the officer actually was terminated or served the suspension. While DDRO advised us that its personnel conducts an annual audit to confirm that suspensions are actually implemented, DDRO was not able to provide us with any documentation related to such audits for prior years. After several days, DDRO was able to confirm that 6 of the 7 officers who were to be terminated or suspended actually received the appropriate punishment. DDRO staff could not locate any records confirming that the 3-day suspension imposed on the seventh officer was enforced.

#### **5. IPS**

As indicated above, in 2003 the UFRB made 17 recommendations that MPD officers receive remedial training in the form of a TIO. In addition, the UFRB identified 2 other cases as presenting a TIO through curriculum modification. The UFRB memoranda containing these recommendations identify IPS as an addressee. We found that IPS has

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<sup>86</sup> None of the UFRB findings memoranda that we reviewed identified a PIO. However, during the UFRB meeting we monitored this quarter, the Board recommended a review of MPD's policy on carrying OC spray as it relates to the carrying of OC spray by officers in plain clothes.

no record of receiving a copy of any of these UFRB findings memoranda and that personnel at IPS were not generally aware that the UFRB had made referrals to IPS related to TIOs. The Deputy Director of IPS, who is a member of the UFRB, acknowledged an awareness that the UFRB made TIO recommendations but admitted that he had not followed up on such recommendations to ensure that the remedial training was administered. The Curriculum Development Specialist at IPS was not aware of any recommendations from the UFRB that modifications to training curricula be considered.

## **6. Officer Personnel Files**

We also reviewed the unit and district level personnel files of 36 of the 37 of officers involved in the 2003 UFRB cases we selected.<sup>87</sup> These files were found to contain copies of the UFRB's notices to either DDRO or IPS. Few of the personnel files, however, contained a copy of the UFRB's findings memorandum. In cases in which adverse action is to be taken against an officer, the officer's personnel file should contain a form PD-77 reflecting the discipline imposed. However, only two of the files we reviewed contained a PD-77. None of the files relating to officers who had been recommended for TIO training reflected that such training had ever taken place.

Also, the units and districts often maintain separate personnel and corrective action files for individual officers. This practice gives rise to the potential for misfiling. Indeed, during the course of this review, we identified an officer personnel file that contained four personnel action forms belonging to four different officers.

## **C. Recommendations**

Prior to the close of this quarter, the OIM held two conference calls with representatives from the UFRB, DDRO, IPS, and MPD command staff to discuss the preliminary findings of our review of MPD's disciplinary tracking systems. We found MPD to be responsive to the problems we have identified with respect to the MPD's tracking and administration of discipline and remedial training in use of force cases. In fact, MPD's Progress Report indicates that MPD already has taken steps to follow up on UFRB's recommendations for remedial training

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<sup>87</sup> MPD was unable to produce 1 of the 37 files for our review.

from 2003.<sup>88</sup> In the coming quarters, the OIM will continue its review of MPD's disciplinary tracking systems and will continue to share its findings and recommendations with MPD as promptly 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;

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<sup>88</sup> MPD July 2004 Progress Report at 25-26.

- 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**

Last quarter, MPD suffered a significant setback with respect to the development of PPMS. By teleconference on March 8, 2004, MPD notified DOJ that a loan for PPMS development that MPD expected to receive from the City's Office of the Chief Technology Officer would not be forthcoming until MPD could establish that it would receive a sufficient budgetary allocation in fiscal year 2005 to re-pay the loan.<sup>89</sup> Because the City's budget for fiscal year 2005 has not yet been approved and funding allocations with respect to PPMS have not yet been made, MPD was forced to suspend the PPMS development project when existing funds were exhausted as of the end of March 2004.<sup>90</sup>

MPD, the City, and DOJ have been actively attempting to develop solutions to the PPMS funding crisis. Under the most recent timetable agreed to by MPD and DOJ, a beta version of PPMS is to be available by June 25, 2004 and PPMS is to be fully implemented by February 25, 2005. On June 14, 2004, MPD formally notified DOJ that it would be unable to meet the deadlines agreed to under Joint Modification No. 2 to the MOA and requested a third modification to the MOA to establish a

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<sup>89</sup> Letter from Captain Matthew Klein to Chief Shanetta Cutlar (March 15, 2004).

<sup>90</sup> On two occasions, DOJ expressed in writing its concerns relating to the possibility that MPD would experience a funding shortfall that would impact the development of PPMS. Letter from Shanetta Y. Brown Cutlar to Chief Charles Ramsey (March 26, 2003); Letter from Tammie M. Gregg to Captain Matthew Klein (August 21, 2003).

revised timetable for PPMS development.<sup>91</sup> On June 18, 2004, MPD forwarded a proposed revised schedule for PPMS development that provides for the full implementation of PPMS by June 7, 2006.<sup>92</sup> Also, on June 8, 2004, MPD received IBM's agreement to extend its proposal related to PPMS to until January 31, 2005. MPD expects that this agreement will obviate the need to re-compete the PPMS contract as a result of the funding crisis.

On November 18, 2003, MPD submitted a draft PPMS Protocol to DOJ for technical assistance review.<sup>93</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. MPD submitted its plan for compliance with paragraph 113 of the MOA on January 5, 2004, and DOJ provided comments to MPD's draft plan on May 6, 2004.<sup>94</sup> MPD currently is reviewing DOJ's comments.

## **2. Performance Evaluation System**

On May 2, 2003, DOJ provided comments on MPD's Enhanced Performance Evaluation System Protocol. On September 30, 2003, MPD provided DOJ with a "status report" concerning DOJ's comments, to which DOJ responded on October 6, 2003. On March 5, 2004, MPD provided DOJ with another update regarding the Department's efforts to revise the Personnel Evaluation System. MPD reports that the primary outstanding tasks related to the Performance Evaluation System are (1) staffing of the Performance Management System pursuant to the Sworn Members Serving in the Ranks/Positions of Officer, Agent, and Sergeant General Order and (2) revision of the manuals containing officer and sergeant performance evaluation standards.

## **C. Recommendations**

The OIM is obviously concerned about the funding-related stoppage in PPMS development that MPD experienced this quarter and the ripple effect this stoppage will have on the deadlines that MPD and

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<sup>91</sup> Letter from Maureen O'Connell to Tammie Gregg, dated June 14, 2004.

<sup>92</sup> Letter from Maureen O'Connell to Tammie Gregg, dated June 18, 2004.

<sup>93</sup> MOA at ¶¶ 111, 112, and 114.c.

<sup>94</sup> MPD July 2004 Progress Report at 34.

DOJ have agreed upon with respect to the implementation of PPMS. In prior quarters, we have recognized MPD's commitment to the PPMS development effort. PPMS is a critical aspect of the MOA that deserves substantial continuing attention from MPD as well as from the City. We will continue to monitor closely the development of the PPMS in the coming months.

## **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>95</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>96</sup> and

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<sup>95</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>96</sup> The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

- 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 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 visited the FLETC facility in Cheltenham, Maryland where MPD now conducts its in-service firearms training and pistol re-certification programs. We found the FLETC indoor firing range to be an impressive, state-of-the-art facility that is a significant upgrade over the prior facility used by MPD for firearms-related training.

As discussed above, we found MPD's firearms instructors to be professional and knowledgeable. We note, however, that, at the time of our monitoring at the new FLETC facility, MPD did not have the capacity to videotape the role play component of firearms and use of force in-service training.<sup>97</sup> The MPD instructors acknowledged this deficiency and reported that MPD was working to develop a solution. We will revisit this issue in a coming quarter.

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

The OIM did not monitor training related to MPD's canine units this quarter.

### **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>98</sup> On March 30, 2004, DOJ returned comments on the review, which MPD is currently considering.<sup>99</sup> Another semi-annual review was due to DOJ on June 30, 2004, but MPD has requested a delay in the submission of that report.<sup>100</sup>

Last quarter, MPD submitted for DOJ approval the following five lesson plans: (1) Arrest, Custody, and Restraint Procedures; (2) Interview and Interrogation; (3) OC Spray; (4) Officer Street Survival; and (5) Use of Force Continuum (with Manual). DOJ returned comments on these lesson plans on June 29, 2004, which MPD currently is reviewing.

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

The OIM monitoring activities related to personnel training records is discussed above in Section IV.B.5.

### **6. Instructors**

During the Seventh Quarter, the OIM performed a detailed review of the Field Training Officer ("FTO") program. We found that significant

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<sup>97</sup> MOA at ¶ 132.

<sup>98</sup> MOA at ¶ 119.

<sup>99</sup> MPD July 2004 Progress Report at 31.

<sup>100</sup> *Id.*

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.<sup>101</sup> In particular, we found that the existing protocol being used by FTOs in the field training program to train Probationary Police Officers is disjointed and out of date.

We also found that MPD does not appear to have established selection criteria for FTOs as required under paragraphs 121.f and 135 of the MOA and that Master Patrol Officers designated to serve as FTOs generally are selected based on interviews conducted and controlled at the district level. Accordingly, we concluded that, without formal criteria governing the selection of FTOs, the qualifications of personnel selected to be FTOs risked significant variation by district and would be inconsistent with the substantive requirements of paragraph 135 of the MOA.<sup>102</sup>

MPD has not made any significant progress with respect to its FTO program this quarter. Although DOJ returned comments on the draft Enhanced Field Training Officer Program Protocol on September 30, 2003, MPD has not yet submitted a revised protocol for DOJ's approval.<sup>103</sup> Moreover, MPD still has not established selection criteria for FTOs as required under paragraphs 121.f and 135 of the MOA.

### **C. Recommendations**

Again this quarter, 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>101</sup> OIM Seventh Quarterly Report at 50-51.

<sup>102</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 to allegations of excessive force and other misconduct, history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity."

<sup>103</sup> MPD July 2004 Progress Report at 13.

## **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**

As discussed above, on March 30, 2004, DOJ approved MPD's revised Specialized Mission Unit General Order.<sup>104</sup> MPD, however, requested and received leave to delay implementation of the approved policy to allow time for outstanding issues related to the Specialized Mission Unit After Action Report to be resolved.

We remind MPD that the OIM has 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>105</sup> This list will be useful in facilitating our further review of MPD's compliance with paragraphs 149 through 159 of the MOA.

### **C. Recommendations**

The OIM has no recommendations with respect to Specialized Mission Units this quarter.

## **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.

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<sup>104</sup> MPD July 2004 Progress Report at 17-18.

<sup>105</sup> OIM Fourth Quarterly Report at 75.

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**

The OIM has 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 July 9, 2004. The OIM appreciates MPD’s timely issuance of this report, which we found to be 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

**W**ith the close of this quarter, MPD and the City enter the starting point for measuring “substantial compliance” under the MOA. At this watershed, there are encouraging developments to report. For example, this quarter we observed significant improvements in the timeliness and quality of MPD’s internal investigations of use of force and allegations of misconduct, which is an area to which both the OIM and MPD have devoted substantial effort over the past year.

There remains significant work to be done in several important areas, however. The funding-related setback in PPMS’s development has pushed the MPD’s projected implementation date back to June 7, 2006. In the past two quarters, MPD has experienced significant declines in the completion rates for UFIRs, and there remains significant room for improvement in the quality of UFIRs. Also, our monitoring activity this quarter revealed significant deficiencies in MPD’s tracking and administration of discipline and remedial training with respect to use of force cases. Finally, we note that MPD has not yet obtained DOJ approval of several important policy documents, including the Disciplinary Process General Order, Citizen Complaint General Order, and the Enhanced Field Training Officer Program Protocol.

We continue to find that MPD is working in good faith to meet the challenges presented by the MOA. We look forward to the transition to the “substantial compliance” evaluation phase of our monitoring.



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July 28, 2004

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# Appendix A (Acronyms)

AA	administrative action
AUSA	Assistant United States Attorney
CCRB	Citizen Complaint Review Board
CDS	Curriculum Development Specialist
CMT	Compliance Monitoring Team
DDRO	Department Discipline Review Office
DOJ	Department of Justice
FIT	Force Investigation Team
FLETC	Federal Law Enforcement Training Center
FOP	Fraternal Order of Police
FTO	Field Training Officer
IPS	Institute of Police Science
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding between MPD and OCCR
MPD	Metropolitan Police Department
OC	Oleoresin Capsicum
OCC	Office of Corporation Counsel
OCCR	Office of Citizen Complaint Review
OIM	Office of the Independent Monitor
OPR	Office of Professional Responsibility
PIO	policy improvement opportunity
PPMS	Personnel Performance Management System

PSA	patrol service area
SMU	specialized mission unit
TIO	tactical improvement opportunity
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>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	95.9%	100.0%	96.6%	100.0%
NO:	4.1%	0.0%	3.4%	0.0%

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

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	0.9%	0.0%	3.4%	0.0%
NO:	99.1%	100.0%	96.6%	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>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	2.2%	0.0%	3.4%	0.0%
NO:	97.8%	100.0%	96.6%	100.0%

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

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	88.3%	64.9%	69.4%	99.1%
NO:	11.7%	35.1%	30.6%	0.9%

- Does the investigator’s report include [MOA ¶¶ 62, 65, 74, 102]:

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	95.3%	100.0%	100.0%	100.0%
NO:	4.7%	0.0%	0.0%	0.0%

- A description of the use of force incident or alleged misconduct?

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	91.4%	100.0%	98.0%	100.0%
NO:	8.6%	0.0%	2.0%	0.0%

- A summary of relevant evidence gathered?

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	90.2%	100.0%	98.0%	96.7%
NO:	9.8%	0.0%	2.0%	3.3%

- Proposed findings and analysis supporting findings?

- 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]

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	25.6%	38.9%	61.6%	33.1%
NO:	74.4%	61.1%	38.4%	66.9%

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

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	63.1%	48.4%	53.7%	66.9%
NO:	36.9%	51.6%	46.3%	33.1%

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

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	10.9%	32.0%	5.5%	23.1%
NO:	89.1%	68.0%	94.5%	76.9%

**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>	<b><u>Quarter 8</u></b>	<b><u>Quarter 9</u></b>
YES:	98.1%	96.3%	100.0%	100.0%
NO:	1.9%	3.7%	0.0%	0.0%

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

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>	<b><u>Quarter 8</u></b>	<b><u>Quarter 9</u></b>
YES:	84.6%	98.0%	84.7%	99.3%
NO:	15.4%	2.0%	15.3%	0.7%

- *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>	<b><u>Quarter 8</u></b>	<b><u>Quarter 9</u></b>
YES:	94.4%	96.6%	100.0%	100.0%
NO:	5.6%	3.4%	0.0%	0.0%

- *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>	<b><u>Quarter 8</u></b>	<b><u>Quarter 9</u></b>
YES:	84.3%	100.0%	91.6%	100.0%
NO:	15.7%	0.0%	8.4%	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>	<b><u>Quarter 8</u></b>	<b><u>Quarter 9</u></b>
YES:	89.6%	93.9%	93.7%	98.1%
NO:	10.4%	6.1%	6.3%	1.9%

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

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>	<b><u>Quarter 8</u></b>	<b><u>Quarter 9</u></b>
YES:	88.7%	94.5%	85.3%	98.3%
NO:	11.3%	5.5%	14.7%	1.7%

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

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	62.8%	98.0%	94.5%	93.4%
NO:	37.2%	2.0%	5.5%	6.6%

- *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]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	80.9%	100.0%	100.0%	98.6%
NO:	19.1%	0.0%	0.0%	1.4%

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

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	97.0%	98.6%	100.0%	100.0%
NO:	3.0%	1.4%	0.0%	0.0%

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

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	59.3%	98.0%	87.0%	89.8%
NO:	40.7%	2.0%	13.0%	10.2%

**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>	<u>Quarter 8</u>	<u>Quarter 9</u>
YES:	99.4%	100.0%	95.3%	100.0%
NO:	0.6%	0.0%	4.7%	0.0%

**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?*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>	<b><u>Quarter 8</u></b>	<b><u>Quarter 9</u></b>
YES:	60.7%	52.0%	30.4%	58.8%
NO:	39.3%	48.0%	69.6%	41.2%

- *Was the investigation sufficient?*

	<b><u>Quarter 6</u></b>	<b><u>Quarter 7</u></b>	<b><u>Quarter 8</u></b>	<b><u>Quarter 9</u></b>
YES:	77.6%	66.3%	57.0%	74.9%
NO:	22.4%	33.7%	43.0%	25.1%