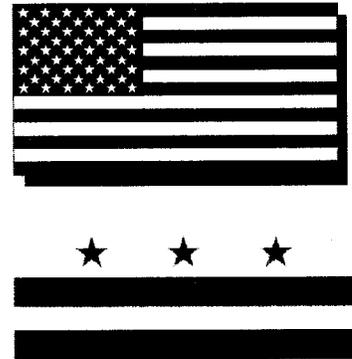


# Special Report of the Independent Monitor for the Metropolitan Police Department

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# Executive Summary

## OVERVIEW

Pursuant to paragraphs 161 and 179 of the Memorandum of Agreement (“MOA”) entered into on June 13, 2001, among the District of Columbia (“City”), the Metropolitan Police Department (“MPD”), and the United States Department of Justice (“DOJ”), this report describes and assesses MPD’s compliance with and implementation of the terms of that MOA. The Office of the Independent Monitor (“OIM”) has been in existence only since April 2002. In ordinary circumstances, we would have waited another month to comply with the reporting cycle specified in the MOA, which contemplates the issuance of quarterly public reports. Because of the one-year anniversary of the MOA on June 13, 2002, however, we decided to issue our first report at this time to provide a snapshot of MPD’s progress under the MOA after the first year. Even though this report reflects only approximately sixty days of work by the OIM, we believe that -- thanks to the full cooperation of DOJ and MPD -- we have been able to collect and evaluate a large quantity of information in a very brief period of time.

By design, the scope of this report is quite broad -- discussing MPD’s compliance with the MOA across the full range of its requirements. Much of the material in this report reflects MPD’s self-reporting on where it stands in making progress on various issues, although we have had complete access to DOJ and its views relating to compliance and were therefore able to test MPD’s representations as to where it stands on various matters at least with reference to the record known to DOJ on those issues. Reports that reflect the OIM’s detailed testing in specific areas of the MOA will be issued in the future. Despite the fact that we started our work in the tenth month of the MOA’s existence, we have included within the scope of this report activities that have taken place since the signing of the MOA in June 2001.

## MPD’S CURRENT STATE OF COMPLIANCE

Despite substantial efforts in the past several months to compensate for an extraordinarily slow start, MPD has failed to accomplish virtually all of the milestones identified in the MOA within

the time periods specified.\* This is not to say, however, that MPD has made no progress toward achieving those milestones. In fact, as described in this report, our review has revealed that MPD has made significant recent progress in meeting the specific requirements of the MOA. Furthermore, well before the execution of the MOA, MPD made significant progress in remedying many of the problems that had originally prompted Chief Ramsey to invite DOJ to investigate MPD and that led to the signing of the MOA. MPD's significant achievements in this regard -- which included, among other things, a revised Use of Force Policy, enhanced training, the purchase of new equipment, the creation of a dedicated team to investigate MPD uses of force, and an extensive re-engineering of the MPD canine unit -- have been identified and described in our report.

These achievements, however, many of which were made with the technical assistance of DOJ (a fact that speaks positively of the constructive working relationship between the two agencies), are no substitute for substantive compliance with the terms of the MOA, including compliance with its many deadlines for MPD action. While there are many reasons for this noncompliance -- each of which is detailed in this report and many of which have been mitigated by MPD's recently enhanced compliance activities -- the fact remains that MPD currently is not in compliance with most of the terms of the MOA.

### **Use of Force Policy**

The MOA requires MPD to prepare and implement a new Use of Force Policy that meets specific requirements outlined in the MOA. The MOA required that this policy be developed by July 13, 2001. After various false starts and delays, including the submission of unacceptable drafts to DOJ, MPD currently is finalizing this policy and has estimated that it will be issuing it in final form by the end of this month, if not sooner.

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\* It should be noted that MPD is not the only City entity with responsibilities under the MOA. For purposes of brevity, this Executive Summary refers only to MPD. The responsibilities of other City entities (such as the Office of Citizen Complaint Review ("OCCR"), the Office of the Mayor, and the Council of the District of Columbia) and their progress in meeting those responsibilities will be specified and discussed as relevant.

### **Use of Firearms Policy**

The MOA requires MPD to prepare and implement a new Use of Firearms Policy that meets specific requirements outlined in the MOA. As with the Use of Force Policy, the MOA required that this policy be developed by July 13, 2001. After various false starts and delays, including the submission of unacceptable drafts to DOJ, MPD is currently finalizing this policy -- renamed the Handling of Service Weapons General Order -- and has estimated that it will be issuing the policy in final form by the end of this month, if not sooner.

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

The MOA requires MPD to prepare a new Canine Policy and a new Oleoresin Capsicum Spray Policy. Both policies should have been developed by July 13, 2001. As of the publication of this report, MPD has not met either requirement. As with the development of the foregoing policies, MPD has made significant progress in recent months toward meeting these requirements and expects to issue the policies shortly.

### **Use of Force Investigations**

MPD has made significant progress in the area of use of force investigations. The creation of the Force Investigation Team ("FIT") to review serious uses of force is a reflection of this progress and the work of FIT appears on our preliminary review to be of high quality and to reflect substantial improvement in the way MPD investigates such matters since DOJ's investigation began in 1999. Despite this progress, and despite the significant accomplishments in this area, MPD has not yet demonstrated its compliance with the specific terms of the MOA. For example, MPD has not yet completed the development of its Use of Force Investigations General Order or its General Order governing MPD's Use of Force Review Board.

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

Our preliminary review suggests that confusion still permeates MPD regarding the handling of citizen complaints. We draw this conclusion from our meetings with MPD and OCCR management, our preliminary interviews of MPD officers, and an initial test of MPD's citizen complaint process. It should be noted, however, that MPD and OCCR have reported significant recent progress in this area. For example, according to the executive director of OCCR, MPD and OCCR are in the

process of developing a Memorandum of Understanding (“MOU”) to facilitate the handling of citizen complaints. Both parties expect this MOU to be completed in the near future.

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

By its own admission, MPD has made very little progress in this area. It anticipates that completing the work required by the MOA will be time-consuming for various reasons, including its intention to involve the Fraternal Order of Police closely in the disciplinary policy revision process. The OIM expects to undertake a comprehensive review of MPD’s activities in this area in the near future.

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

Again by its own admission, MPD has suffered significant setbacks in this area of MOA compliance. In fairness to MPD, many of these setbacks have been due to events beyond the scope of the MOA, including delays in the implementation of on-line systems that, according to MPD, are integral to the implementation of the PPMS. The OIM expects to undertake a comprehensive review of MPD’s activities in this area (as well as the activities of other City agencies involved in the development of the PPMS) in the very near future.

### **Training**

Because DOJ’s investigation identified serious training deficiencies within MPD, large portions of the MOA relate to training. The MOA’s training provisions address management oversight, curriculum development, instructor training, substantive training, and more. Our preliminary review suggests that MPD’s Institute for Police Science has made significant achievements in the area of training since the execution of the MOA. (Indeed, some of these achievements predate the execution of the MOA.) However, despite substantial effort in the training area -- including revisions to the MPD training program resulting from the collective efforts of MPD and DOJ -- MPD is not in compliance with the terms of the MOA, in large part because its training curriculum is not based on revised and updated policies.

### **Public Information**

The MOA requires that MPD prepare quarterly public reports setting forth statistics relating to the use of force by MPD officers. While MPD’s FIT maintains such statistics, it does not report them on a

quarterly basis. We have been in consultation with the commander of FIT and expect that MPD will be able to comply with this MOA requirement in the very near future.

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

Due to deficiencies in its initial approach toward achieving MOA compliance, MPD has made less overall progress in implementing the MOA and in reporting on its progress in implementation than the MOA requires. Recently, however, MPD management implemented several promising internal organizational changes designed to overcome these past deficiencies. Specifically, in early 2002, MPD created the Compliance Monitoring Team (“CMT”), led by Inspector Joshua Ederheimer, to facilitate and ensure MPD compliance with the terms of the MOA. The OIM has worked closely with Inspector Ederheimer and the CMT over the past two months. We believe that MPD will make significant additional progress in this area of implementation and reporting in the near future.

### **Conclusion**

Despite significant recent compliance-related activities on the part of MPD, MPD is not yet in compliance with the requirements of the MOA. We believe, however, that, if the level of energy that we have witnessed recently is maintained, MPD will be able to remedy these deficiencies.

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# Introduction

On June 13, 2001, the District of Columbia, the Metropolitan Police Department (“MPD”), and the United States Department of Justice (“DOJ”) entered into a Memorandum of Agreement (“MOA”) “to minimize the risk of excessive use of force, to promote the use of best available practices and procedures for police management, and to build upon recent improvements MPD has initiated to manage use of force issues.”<sup>1</sup> On April 9, 2002, DOJ and MPD jointly announced that they had selected an Independent Monitor to “review and report on MPD’s implementation of, and assist with MPD’s compliance with” the MOA.<sup>2</sup> This is the first report of the Independent Monitor.

Since April 2002, the staff of the Office of the Independent Monitor (“OIM”) has developed an organization to carry out the important responsibilities entrusted to the Independent Monitor under the MOA. At the same time, the OIM has been hard at work initiating the tasks necessary to satisfy its mission to “review and report on MPD’s implementation” of the MOA. To this end, the members of the monitoring team have met on numerous occasions and across a broad range of subjects with members of MPD and DOJ; reviewed reports, investigative files, and other documents; visited various MPD facilities; and are in the process of developing monitoring methodologies, benchmarks, and checklists to structure our monitoring activities. Due in large part to the cooperation of MPD’s Office of Professional Responsibility (“OPR”) -- and specifically its Compliance Monitoring Team (“CMT”) -- and DOJ’s Special Litigation Section, we have been able to make substantial progress in a very brief period of time.

The MOA contains 194 paragraphs that collectively contain a large number of very specific requirements that need to be monitored. It is the duty of the Independent Monitor to review and report on MPD’s compliance with each of these requirements. It is a duty that we intend to meet every quarter for the next five years. This first report, however, is somewhat different from those that will follow. Because of the length of

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<sup>1</sup> Memorandum of Agreement among the United States Department of Justice, the District of Columbia, and the District of Columbia Metropolitan Police Department (June 13, 2001), at ¶ 3 (hereinafter “MOA”).

<sup>2</sup> MOA at ¶ 161.

time between the signing of the MOA in June 2001, and the selection of the Independent Monitor in April 2002, we have focused our energies over the past two months on obtaining an overview of MPD's activities over the past twelve months that addresses the requirements of the MOA. Indeed, the theme of this report is, "Where is MPD one year later?"

In terms of commitment to meeting the substantive requirements of the MOA, improved internal organization, and quality of staffing, MPD is ahead of where it was in June 2001. In terms of its compliance with the timing requirements of the MOA, however, especially meeting the numerous aggressive deadlines incorporated into the MOA, MPD's progress has been less than satisfactory. The evidence in support of these two central conclusions is provided throughout this report.

Prior to our selection as Independent Monitor, we provided DOJ and MPD with a Mission Statement that we said would guide our monitoring and reporting activities throughout the life of the MOA. Among other things, this Mission Statement (a copy of which has been attached as Appendix D to this report) reflects our team's commitment to openness -- openness to the parties to the agreement and to the public. This report is evidence of our commitment to this principle.

Since we began the monitoring process, we have kept MPD and DOJ apprised of all of our activities. We will continue to do so. We have done the same throughout the drafting process, holding several meetings with MPD's CMT and DOJ's Special Litigation Section to discuss issues, ask questions, and generally obtain the benefit of their knowledge of the MOA and of MPD's activities relating to compliance with the MOA during the more than nine months between when it was signed and the commencement of our monitoring activities. Prior to publication, we made drafts of this report available to MPD and DOJ. (Additionally, we made relevant sections available to the District of Columbia Office of Citizen Complaint Review ("OCCR").) This process of sharing drafts prior to publication has provided both parties with the opportunity to correct factual inaccuracies, present more current information, and offer context where they believed context was lacking. The result of this process is a report that is as accurate as we can make it and that should contain no real surprises to the participants in the process.

# Chapter One: History

## I. Deadly Force

“The District of Columbia’s Metropolitan Police Department have shot and killed more people per resident in the 1990s than any other large American city police force.”<sup>3</sup> So began the first of a five-part *Washington Post* series, published in November 1998, focusing on MPD’s use of force. The facts exposed by the *Post* were disturbing.

- “Washington’s officers fire their weapons at more than double the rate of police in New York, Los Angeles, Chicago, or Miami.”<sup>4</sup>
- “In the last five years, D.C. officers shot and killed 57 people -- three more than police reported in Chicago, which has three times the police force and five times the population.”<sup>5</sup>
- From 1994 through 1998, “D.C. officers were involved in 640 shooting incidents -- 40 more than the Los Angeles Police Department, which has more than double the officers and serves six times the population.”<sup>6</sup>

Equally disturbing were the *Post*’s findings regarding the manner in which MPD investigated these uses of force. According to the *Post*:

The extent and pattern of police shootings have been obscured from public view. Police officials investigate incidents in secret, producing reports that become public only when a judge intercedes. In a small hearing room closed to

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<sup>3</sup> Jeff Leen, Jo Craven, David Jackson, and Sari Horwitz, *District Police Lead Nation in Shootings -- Lack of Training, Supervision Implicated as Key Factors (first of five articles)*, Nov. 15, 1998 (hereinafter “*Deadly Force*” series), at A01.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

the public, nine out of every 10 shootings are ruled justified by department officials who read the reports filed by investigating officers but generally hear no witnesses.<sup>7</sup>

The *Post's* “*Deadly Force*” series, as it came to be called, was widely read throughout the District of Columbia.

In his introduction to MPD’s 1998 Annual Report, Chief Charles H. Ramsey acknowledged the problems facing MPD. The Chief’s statement was particularly candid and is worth repeating here:

When I became chief on April 21, 1998, I inherited a good police department. . . . But I also inherited a police department that was sorely lacking the infrastructure, support and leadership needed to do the job -- and do it effectively. A police department whose members often did without such basic necessities as scout cars and police radios that worked, toilet paper and air conditioning, computers and copier paper. A police department where accountability was not clearly affixed, and training (beyond recruit instruction) was almost non-existent. A police department internally demoralized by leadership instability and externally lacking the trust and confidence of much of the community.<sup>8</sup>

Other groups within MPD have made similar admissions as to the historical problems that affected MPD. For example, the Organizational Plan and Operations Manual of MPD’s Force Investigations Team (“FIT”), published in December 2001, notes that, “[i]n the past, it had become clear that the Metropolitan Police Department had not met community expectations, nor police industry standards, as it related to use of force and subsequent use of force investigations.”<sup>9</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Metropolitan Police Department 1998 Annual Report at 3.

<sup>9</sup> FIT Organizational Plan and Operations Manual at 1.

In an effort to remedy these deficiencies, in January 1999, following the publication of the *Post's* “*Deadly Force*” series, Chief Ramsey invited the DOJ to “review all aspects of the Washington Metropolitan Police Department’s use of force.”<sup>10</sup> While this was not Chief Ramsey’s first response to the problems identified in the 1998 annual report and in the *Post's* “*Deadly Force*” series -- almost immediately upon joining MPD, Chief Ramsey instituted a crash firearms qualification program and a comprehensive review of all MPD training materials -- it was, perhaps, the most unprecedented. While DOJ had investigated many law enforcement agencies across the country pursuant to its authority under the Violent Crime Control and Law Enforcement Act,<sup>11</sup> never before had it been *invited* into a law enforcement agency to conduct such an investigation.<sup>12</sup>

## II. DOJ Investigation

In parallel with DOJ’s investigation -- and, indeed, commencing prior to DOJ’s investigation -- Chief Ramsey was taking independent steps to remedy the deficiencies revealed in the *Post's* “*Deadly Force*” series. As a result of these steps, at the conclusion of its investigation, DOJ commended MPD’s “significant reforms in the manner in which it tracks, investigates, monitors, and manages use of force issues.”<sup>13</sup> DOJ recognized that

in the past two years, MPD has achieved a significant reduction in the rate at which it uses deadly force and the rate at which its canines bite subjects. In 1998, eleven fatalities resulted from MPD’s use of deadly force. Fatalities decreased to four in 1999 and to two in 2000.<sup>14</sup>

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<sup>10</sup> MOA at ¶ 1.

<sup>11</sup> 42 U.S.C. § 14141 (1994).

<sup>12</sup> Letter from William R. Yeomans, Acting Assistant Attorney General, Civil Rights Division, Department of Justice, to Charles H. Ramsey, Chief of Police, and Anthony Williams, Mayor of the District of Columbia (June 13, 2001) (hereinafter “DOJ Findings”).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Despite these noteworthy achievements, DOJ's investigation revealed "a pattern or practice of use of excessive force by MPD."<sup>15</sup> Specifically, DOJ's investigation revealed that

- Fifteen percent of the use of force incidents that occurred during the period under investigation involved the use of excessive force, compared to an expected occurrence of between 1 and 2 percent.<sup>16</sup>
- MPD's policies regarding the reporting of use of force were under-inclusive and inconsistently followed.<sup>17</sup>
- MPD's use of force investigations were deficient and often not impartial.<sup>18</sup>
- Nearly 70 percent of canine deployments resulted in bites, compared to a bite rate of about 10 percent in "tightly run police canine programs."<sup>19</sup>
- MPD lacked a comprehensive program to minimize the use of excessive force and relied upon a deficient use of force tracking system.<sup>20</sup>
- MPD relied upon an inadequate system for receiving, investigating, and resolving citizen complaints involving alleged officer misconduct.<sup>21</sup>

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<sup>15</sup> *Id.* DOJ's investigation covered reported uses of force, including canine bites, by MPD during the period 1994 through early 1999. According to DOJ, "[d]uring this period, approximately 1400 incidents involving uses of force by MPD officers were reported. This figure does not account for all uses of force occurring during the period under review because MPD does not require that officers report and supervisors review all uses of force." *Id.* at ¶ A.

<sup>16</sup> *Id.* at ¶ B.1.

<sup>17</sup> *Id.* at ¶ B.2.

<sup>18</sup> *Id.* at ¶ B.3. Notably, DOJ acknowledged improvements in the way the newly formed MPD FIT investigates uses of force. *Id.*

<sup>19</sup> *Id.* at ¶ B.4.

<sup>20</sup> *Id.* at ¶ B.5.

- The internal training program in which all MPD officers participated suffered from numerous deficiencies, including a lack of coordination, insufficient oversight, and lesson plans that included substantively improper information (such as guidance that conflicted with applicable law and MPD policy).<sup>22</sup>
- Of the 350 use of force incidents that MPD referred to the United States Attorney’s Office (“USAO”) for possible criminal prosecution, MPD recommended discipline for only 16 officers.<sup>23</sup>

On June 13, 2001, the District of Columbia, MPD, and DOJ entered into a formal MOA in an effort to remedy these deficiencies.<sup>24</sup>

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**Footnote continued from previous page**

<sup>21</sup> *Id.* at ¶ B.6. DOJ acknowledged, however, that, “[i]n 1998, the District passed legislation creating a new Office of Citizen Complaint Review (OCCR). The legislation became effective in March 1999, but OCCR did not begin accepting complaints until January 8, 2001. Accordingly, we do not discuss the new OCCR here.” *Id.*

<sup>22</sup> *Id.* at ¶ B.7.

<sup>23</sup> *Id.* at ¶ B.8.

<sup>24</sup> The MOA is available to the public at [www.usdoj.gov/crt/split/documents/dcmoa.htm](http://www.usdoj.gov/crt/split/documents/dcmoa.htm). On March 7, 2002, the Fraternal Order of Police (“FOP”) filed an Unfair Labor Practice Complaint with the District of Columbia Public Employee Relations Board regarding the MOA. The FOP contends that MPD’s leadership failed to negotiate certain MOA provisions that affect the terms and conditions of MPD employment in accordance with the terms of the collective bargaining agreement negotiated between MPD and the FOP. The complaint and its attachments identify the following MOA paragraphs (among others) as improper: paragraph 28, relating to transfers in the context of non-disciplinary actions; paragraph 105, relating to discipline; every paragraph that relates to MPD record keeping; and the entirety of MOA Section V, which requires the creation of a new Personnel Performance Management System (“PPMS”). In an effort to gain a better understanding of the FOP’s objections to the MOA, the OIM has met with ranking FOP officials. Additionally, to foster a continued open dialogue, the OIM has invited the FOP to attend the monthly status meetings hosted by the OIM and attended by DOJ, MPD, and ranking officials of other City agencies.

### III. Memorandum of Agreement

In the words of its signatories, the 194-paragraph MOA was designed “to minimize the risk of excessive use of force, to promote the use of the best available practices and procedures for police management, and to build upon recent improvements MPD has initiated to manage use of force issues.”<sup>25</sup> The MOA is a lengthy, comprehensive document. It details very specific policies, procedures, and practices that must be adopted by MPD in the areas of use of force; documenting, investigating, and reviewing uses of force; receiving, investigating, and reviewing citizen allegations of police misconduct; disciplining law enforcement personnel; training; and more. The MOA also provides for the selection and appointment of an “Independent Monitor” to “review and report on MPD’s implementation of, and assist with MPD’s compliance with” the MOA.<sup>26</sup>

### IV. Solicitation of the Independent Monitor

The scope of the Independent Monitor’s activities is extremely broad: It is to “review and report on MPD’s implementation of, and assist with MPD’s compliance with” the MOA.<sup>27</sup> The MOA spells out specific activities that are required of the Independent Monitor, but the Independent Monitor’s responsibilities extend beyond these specific activities to the overall review and assessment of MPD’s compliance with the MOA.<sup>28</sup> The solicitation issued by the District of Columbia, MPD, and DOJ in September 2001, summarized the duties of the Independent Monitor as follows:

1. Review and evaluate the quality and timeliness of MPD employee use of force reports and use of force investigations; disciplinary and non-disciplinary actions related to officer

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<sup>25</sup> MOA at ¶ 3. The MOA was executed by Acting Assistant Attorney General William R. Yeomans, Special Litigation Section Chief Steven H. Rosenbaum, and Special Counsel Shanetta Brown Cutlar for DOJ; Mayor Anthony A. Williams, Chief Charles H. Ramsey, Executive Assistant Chief Terrance W. Gainer, and Corporation Counsel Robert R. Rigsby for the District of Columbia.

<sup>26</sup> MOA at ¶ 161.

<sup>27</sup> MOA at ¶ 161.

<sup>28</sup> MOA at ¶ 169.

use of force or ordered as a result of a misconduct investigation; data contained in MPD's PPMS; complaints and results of investigations of excessive uses of force; and additional reviews as appropriate, making recommendations to the parties regarding measures necessary to ensure full and timely implementation of the MOA.

2. Review and evaluate the quality and timeliness of appropriate samples of MPD use of force and misconduct investigations; disciplinary and non-disciplinary actions ordered as a result of a misconduct investigation; data contained in the PPMS; and appropriate samples of Use of Force Incident Reports, Canine Search Reports, and Injury Reports.
3. Determine whether any misconduct investigation is incomplete and should be re-opened by MPD for further investigation, subject to stated limitations.
4. Consult with the parties regarding the development and implementation of a plan to ensure adequate training of OCCR staff.
5. Issue written quarterly reports (more frequently if deemed appropriate) detailing the City's and MPD's compliance with and implementation of each substantive provision of the MOA for the duration of the MOA.
6. Consult with the City and MPD on the development of the computerized personnel accountability and evaluation database, the PPMS required to be developed and fully implemented pursuant to the MOA; provide informal comments on the PPMS protocol for use; and participate in testing the beta version of the PPMS.
7. Review status reports submitted by MPD and the City delineating all steps taken during the reporting period to comply with each provision of the MOA.
8. Perform additional reviews as the Independent Monitor deems appropriate to monitor and report on MPD's implementation of each substantive provision of the MOA.

9. Maintain all documents obtained from the City, MPD, or DOJ in a confidential manner and without disclosing any non-public information to any person or entity, other than a court or DOJ, absent written notice to the City and either written consent by the City or a court order authorizing disclosure.
10. Offer the City and MPD technical assistance regarding compliance with the MOA and maintain effective communication with various representatives of the City, MPD, MPD Compliance Coordinator and DOJ.<sup>29</sup>

Clearly, the role of the Independent Monitor was intended to be quite broad.

At the same time, however, the Independent Monitor's role was limited quite specifically by the terms of the MOA. The MOA explicitly provides that the Independent Monitor "shall only have the duties, responsibilities and authority conferred" by the MOA.<sup>30</sup> Moreover, the discharge of the Independent Monitor's assigned responsibilities must be carried out in an institutional context occupied by MPD, MPD's OPR, OCCR, the Mayor's Office, and the Council of the District of Columbia. None of the parties involved in negotiating the MOA contemplated the Independent Monitor as a substitute for any of these other institutions. Instead, the parties to the MOA sought to create an entity that would work with them and review the roles of MPD and the City in implementing the specific provisions of the MOA.<sup>31</sup>

In short, the MOA contemplated the appointment of an Independent Monitor who would balance both the specific requirements established by the MOA and the general responsibilities for reviewing and assessing the implementation of those requirements against the need to respect the limits built into the Independent Monitor's role.

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<sup>29</sup> The Request for Proposal ("RFP") is available to the public at [www.usdoj.gov/crt/split/rfpmpd.htm](http://www.usdoj.gov/crt/split/rfpmpd.htm).

<sup>30</sup> MOA at ¶ 165 (emphasis added).

<sup>31</sup> MOA at ¶ 165.

## V. Selection of an Independent Monitor

Following a lengthy procurement process, the District of Columbia, MPD, and DOJ collectively selected a monitoring team led by Michael R. Bromwich, a partner with Fried, Frank, Harris, Shriver & Jacobson (“Fried Frank”). In addition to Mr. Bromwich and his colleagues, the monitoring team includes the international accounting firm of PricewaterhouseCoopers LLP and several extraordinarily experienced and knowledgeable veterans of local policing. A brief summary of the key members of the monitoring team follows:

- Michael R. Bromwich, Independent Monitor

Mr. Bromwich is a partner at Fried Frank where he chairs the firm’s Internal Investigations, Compliance, and Monitoring practice group. Prior to joining Fried Frank, he served as the Inspector General for DOJ from 1994 through 1999, where he oversaw the activities of several federal law enforcement agencies, including the FBI, the DEA, and the INS. Prior to that, Mr. Bromwich served as associate counsel in the Office of Independent Counsel for Iran Contra and as an Assistant United States Attorney in the Southern District of New York.

- Jonathan S. Aronie

Mr. Aronie has been an attorney with Fried Frank since 1994. He practices in the firm’s Internal Investigations, Compliance, and Monitoring and Government Contracts practice groups. Mr. Aronie joined Fried Frank after serving as a judicial law clerk to the Honorable Patricia A. Wynn, D.C. Superior Court.

- Jessica Pollner

Dr. Pollner is a principal at PricewaterhouseCoopers and has practiced as a professional statistician in Washington, D.C. since 1980. Dr. Pollner’s areas of expertise include, but are not limited to, the analysis of complex datasets using statistical modeling and computational techniques, sample design and evaluation, risk analysis, and time series analysis.

- Mitchell W. Brown, Policing Expert

Mr. Brown is the retired Police Chief of Raleigh, North Carolina. He has twenty-nine years of law enforcement experience, including seven years as chief. Mr. Brown has served on the Board of Directors for the North Carolina Association of Chiefs of Police and the Police Executive Research Forum.

- Ronald L. Davis, Policing Expert

Mr. Davis is a captain with the Oakland Police Department. He has served as SWAT Team leader, Criminal Investigations Commander, Area Commander, and Police Academy Director. His areas of expertise include racial profiling, use of force and police tactics, and training. Mr. Davis has developed national training programs in the area of police accountability, which have been presented in over fourteen states. He is also Senior Advisor to the Independent Monitor of the Los Angeles Sheriff's Department.

- Dennis E. Nowicki, Policing Expert

Mr. Nowicki is a senior law-enforcement professional whose career spans over thirty-five years of public service. Retiring as Chief of Police for Charlotte-Mecklenburg, North Carolina in 1999, Mr. Nowicki has also served as Chief of Police for Joliet, Illinois, Executive Director of the Illinois Criminal Justice Authority, and twenty-six years with the Chicago Police Department, attaining the rank of Deputy Superintendent. Since retiring from Charlotte-Mecklenburg, he has concentrated his work on assisting police departments and DOJ in matters relating to managing police use of force.

While each member of the Independent Monitor's team plays a substantive role in monitoring the City's and MPD's compliance with the MOA, Mr. Bromwich personally bears the primary responsibility for carrying out the monitoring functions set forth in the MOA. The resumes of all team members are attached as Appendix C to this report.

## VI. Creation of the Office of the Independent Monitor

As with any new entity, the creation of the OIM required a significant effort to initiate and organize its operations. It also involved a significant amount of education on the part of the monitoring team members. This education has come in the form of numerous meetings with DOJ, MPD, and other City officials and a detailed review of documents and other materials produced by MPD and DOJ. As a result of this process, the OIM is developing the necessary understanding of MPD, the environment in which it operates, and the challenges it has faced in the past and may continue to face in the future.

From the start, it has been a goal of the Independent Monitor to ensure that its review of MPD's compliance with the MOA is not conducted in a vacuum. As a result, it has been important to us to speak to and obtain the perspective of a wide range of individuals with official roles in City law enforcement affairs. To this end, the monitoring team has:

- Met on several occasions with members of MPD's CMT to discuss the changes that have occurred within MPD since the publication of the *Post's* "Deadly Force" series.
- Met with members of MPD's FIT to discuss issues relating to MPD's use of force and its investigations of uses of force.
- Met on two occasions with MPD commanders and command staff to familiarize MPD's leaders with the monitoring team and with the elements of the monitoring team's approach.
- Met with commanders and officers in various police districts to solicit comments and answer questions regarding the MOA.
- Met with members of MPD's training academy to discuss issues relating to the presentation of training programs, the development of course curricula, and the interplay between MPD's training staff and its field officers.
- Met with the executive staff of OCCR to discuss the elements of the MOA that relate to that office.
- Met with the United States Attorney for the District of Columbia and members of his staff to discuss the role his office plays in investigating use of force issues involving MPD.

- Met with ranking members of the FOP to discuss and respond to questions regarding certain objections the FOP has to the MOA.
- Met with City Councilperson Kathleen Patterson, Chair of the City Council's Committee on the Judiciary, and with Deputy Mayor for Public Safety and Justice Margret Nedelkoff Kellems.<sup>32</sup>
- Met with members of MPD's Use of Force Review Board ("UFRB") to discuss its role in reviewing uses of force.
- Met with ranking members of MPD's Office of Internal Affairs ("OIA") regarding the role its personnel play in the investigation of allegations of misconduct against MPD officers.
- Met on numerous occasions with members of DOJ's Special Litigation Section, the group responsible for conducting the investigation of MPD that led to the creation of the MOA.

The members of the OIM also met frequently among themselves -- in person, by phone, and via e-mail -- to discuss issues relating to MPD's compliance with the MOA and the OIM's role in monitoring that compliance.

To ensure the exchange of ideas among entities with an official interest in ensuring the success of the MOA, the monitoring team convened a monthly status meeting among City, MPD, and DOJ officials. The first meeting, held on May 6, 2002, included ranking officials from MPD (including Chief Ramsey), DOJ (including Special Litigation Section

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32 We also have tried repeatedly to meet with D.C. Mayor Anthony A. Williams because he was a signatory to the MOA, because MPD is an important City agency, and because some of the obligations of the MOA are imposed upon the City and not solely upon the MPD. On June 6, 2002, our repeated telephonic and written requests for a meeting culminated with a form e-mail response from the Mayor's office that stated, "Unfortunately, the Mayor's commitments prevent us from scheduling a meeting at this time. Should the time become available in the future, we will certainly contact you." We hope the Mayor's schedule permits such a meeting in the near future.

Chief Steven Rosenbaum), the Office of Corporation Counsel, the D.C. Office of the Inspector General, OCCR, and the OIM.<sup>33</sup>

The early stages of the monitoring team's activities also have involved the development of a comprehensive monitoring methodology, benchmarks against which MPD's compliance with the MOA could be measured, and a detailed "FIT report review protocol" aimed at ensuring that all FIT report reviews are conducted in a logical, efficient, and consistent manner. Each such document will evolve over time to incorporate changes in the OIM's monitoring methodology to reflect experience in using these tools.

## **VII. Initial Monitoring Activities**

As of the publication of this first report, the monitoring team is undertaking a number of activities specifically designed to assess MPD's compliance with the terms of the MOA. These activities include, but are not limited to, the following.

- Led by its three primary policing experts, the OIM has begun reviewing FIT use of force investigation reports going back to June 2001.
- The OIM also has begun reviewing a limited number of reports prepared prior to 1999 in an effort to assess the effect the creation of FIT (which came into being in 1999) has had on MPD's use of force and its investigation of use of force.
- The OIM is investigating the manner in which MPD handles citizen complaints that are brought directly to MPD.
- The OIM is reviewing orders and policies drafted by MPD pursuant to explicit MOA requirements.
- The OIM is developing a series of monitoring "checklists" and a monitoring handbook that will facilitate the review of MPD's compliance with elements of the MOA.

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<sup>33</sup> We also invited others the Deputy Mayor for Public Safety and Justice and the Chairperson of the City Council, to this monthly meeting. Neither attended.

Additionally, the OIM is working closely with MPD to ensure that members of MPD at all levels are aware of and understand the MOA and its content. To this end, the OIM has addressed MPD's Executive Staff and MPD's command staff to introduce the members of the OIM and to respond to questions regarding the MOA. Additionally, the OIM has prepared a brief "Questions and Answers" brochure that MPD has advised will be distributed throughout MPD this month. The OIM also has implemented a dedicated telephone number and e-mail address to make it easier for MPD to share thoughts and ideas with the monitoring team regarding MOA compliance, to report instances of noncompliance, or simply to ask questions regarding the OIM and the MOA. Further, the OIM has launched its own Web site ([www.policemonitor.org](http://www.policemonitor.org)) where it will post source documents relating to the MOA and the OIM's reports over the term of its monitoring activities. The site also offers various policing and monitoring links.

## Chapter Two: MPD's Post-MOA Compliance Efforts

Since the execution of the MOA in June 2001, MPD has undertaken efforts to respond to the deficiencies identified by DOJ (and, previously, by *The Washington Post*). These efforts, however, have not always produced the required results -- and in almost all instances have not put MPD in compliance with the stringent time requirements contained in the MOA. To put MPD's current state of compliance in proper perspective, it is important to understand this history.<sup>34</sup>

MPD's initial approach to ensuring compliance with the MOA was to identify an inspector to coordinate the creation or revision of the many policies, procedures, and practices mandated by the MOA. To accomplish this task in the time period allotted by the MOA, the inspector delegated the creation of each item to members of an MPD working group, composed primarily of lieutenants and sergeants, whose members lacked any training or experience in the areas of drafting policies, procedures, and orders. The status of each delegated activity would be discussed periodically in working group meetings. In an effort to comply with the MOA's time lines, however, the inspector frequently forwarded the drafts he received from the working group to DOJ without substantive review or revision, without quality control, and without any effort to reconcile or harmonize the various drafts. This approach, as MPD acknowledges, proved to be wholly inadequate and resulted in the wholesale rejection by DOJ of several of MPD's initial submissions.

According to the outgoing Assistant Chief of MPD's OPR, the inspector charged initially with coordinating MPD's compliance efforts was "not the right person for the job."<sup>35</sup> As a result, MPD's initial

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<sup>34</sup> Recognizing that its record in missing the deadlines contained in the MOA was going to be addressed and criticized in this report, MPD requested that we describe some of the background and history contained in this section to demonstrate the progress MPD has made over the past several years. We agreed that this information was relevant and appropriate for inclusion in this initial report.

<sup>35</sup> MPD appointed a new MOA Compliance Coordinator in February 2002 in the course of making significant modification to MPD's internal MOA compliance

compliance efforts produced very few tangible or satisfactory results. Our preliminary review, however, suggests that the shortcomings inherent in MPD's initial compliance efforts go beyond the activities of a single individual. It appears that a lack of sustained oversight and attention from the top levels of MPD -- and from the City generally -- contributed to MPD's initial compliance problems.

To be sure, many events of significance competed for the attention of top level MPD officials and distracted them from devoting the necessary attention to MOA-related issues. Chief among these were the events of September 11, which had an immediate and dramatic impact on the activities, focus, and priorities of MPD and its top leadership. In ordinary times, monitoring the implementation of the MOA would have been one of many important projects handled by MPD's top leadership. It must be acknowledged that, after September 11, the responsibilities of the MPD's top leadership grew dramatically. Even so, many of the deadlines in the MOA already had come and gone by September 11; and, even allowing for the tremendous burdens imposed by the terrorist attacks that took place that day, we cannot ignore the fact that delays in reorganizing the compliance effort did not occur until five months later, close to eight months after the MOA was signed.

To cure the shortcomings of its initial compliance approach, Chief Ramsey created a more formal CMT within MPD's OPR. Led by Inspector Joshua Ederheimer and made up of sworn and civilian personnel from various MPD units, including two consultants from the Institute for Law and Justice, the CMT's mission was -- and is -- to ensure MPD's compliance with the terms of the MOA. Under the new CMT, MPD's compliance activities, which now are guided by aggressive and determined leadership, seem to have been reenergized.

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**Footnote continued from previous page**

process. See paragraph 173 of the MOA for a description of the responsibilities of MPD's MOA Compliance Coordinator. On June 4, 2002, the outgoing Assistant Chief of OPR, Kim Dine, was named by Chief Ramsey to serve on assignment to the Office of the Executive Assistant Chief until Chief Dine takes over as the new chief of the Frederick, Maryland, Police Department in July 2002.

Since the creation of the new CMT, MPD has submitted to DOJ nine revised documents required by the MOA.<sup>36</sup> DOJ has acknowledged that these items represent “marked improvements” over the documents previously submitted to DOJ prior to the creation of the CMT. On May 28, 2002, DOJ provided final approval of one of these nine documents and brief but substantive comments on seven other drafts.<sup>37</sup> At this time, DOJ is preparing substantive comments on the last of the nine documents, a draft special order relating to the Personal Assessment Management System (“PAMS”), the MPD’s interim personnel performance management system. Even if most of these documents are finalized by MPD and approved by DOJ in the near future, this does not alter the fact that completing these projects has taken as much as ten months longer than agreed to in the MOA.

In addition to its revitalized internal activities directed at preparing and producing the documents required by the MOA, MPD and the City have undertaken several new initiatives since the publication of the *Post’s “Deadly Force”* series. For example:

- Creation of the FIT. According to MPD’s 2001 Annual Report, “[t]he Force Investigation Team became operational on April 11, 1999, and was originally charged with the responsibility to investigate incidents in which Metropolitan Police Department officers killed suspects. Over the past two years, the investigative responsibilities of the team increased through the process of managed expansion. The responsibilities of the team eventually grew to include the investigation of almost all police-related firearm discharges, deaths of persons in police custody, officer suicides involving a service weapon, and firearm discharges by agents assigned to the District of Columbia Office of the Inspector General.”<sup>38</sup>

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<sup>36</sup> On June 6, 2002, MPD forwarded a tenth document to OIM and DOJ -- the Use of Force Review Board General Order. As of the publication of this report, neither DOJ nor the OIM has reviewed this submission.

<sup>37</sup> The completed order relates to carrying weapons on aircraft. Although not specifically required by the MOA, MPD classifies this order as relating to its Use of Firearms Policy, which is specifically required by the MOA and addressed in the report below.

<sup>38</sup> FIT Annual Report (2001), at 1.

- Creation of FIT II. In October 2001, MPD created a second FIT, known as FIT II, to supplement the initial team, known as FIT I. FIT II became operational on January 1, 2002. In the words of MPD, “[i]n addition to deadly force, the Force Investigation Team in 2002 will investigate uses of force resulting in broken bones, hospitalization, head strikes, loss of consciousness, police dog bites, and criminal referrals from the Office of Citizen Complaint Review.”<sup>39</sup>
- Improvement in Canine Operations. On May 4, 2000, MPD implemented a new interim Canine Policy and “initiated significant improvements in its canine operations.”<sup>40</sup> The interim Canine Policy reflects the procedures MPD proposed to DOJ on April 15, 2002, when it submitted the policy for DOJ review.<sup>41</sup>
- Development of PPMS. MPD has “invested a significant amount of time and energy in developing a Request for Proposal to create” the PPMS.<sup>42</sup>
- Implementation of new firearms training and qualifications rules. Almost immediately following his confirmation as police chief, Chief Ramsey undertook a significant effort to enhance MPD’s firearms training and qualification program.
- Creation of OCCR. The District of Columbia created OCCR and its governing body, the Citizen Complaint Review Board (“CCRB”), by statute in 1999. The mission of these two organizations is to “resolve citizen complaints of abuse of police

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39 *Id.* at 2.

40 MOA at ¶ 44.

41 Section I.C of this report provides details regarding MPD’s development of a new Canine General Order.

42 MOA at ¶ 106.

powers within the Metropolitan Police Department (MPD) . . . .”<sup>43</sup>

Additionally, since 1998, MPD has expanded its public outreach activities to include the development of its “Mobile Force,” the staffing of several “open air mini-stations” in high crime neighborhoods, and a sizeable gun buy-back program.<sup>44</sup>

While it is beyond the scope of this initial report to attempt to draw connections between the foregoing initiatives and the current MPD statistics regarding the use of force, it is worth noting that, since 1999, the use of force -- and the use of firearms -- by MPD resulting in death and injury has declined. According to statistics published by MPD,

[i]n 1998, officers shot a total of 32 people; 12 were killed and 20 were injured. In 1999, officers shot a total of 11 people; 4 were killed and 7 were injured. In 2000, one person was killed and 6 were injured. In 2001, 3 were killed and 14 were injured.<sup>45</sup>

These statistics suggest that MPD has made progress since *The Washington Post* concluded that “[t]he District of Columbia’s Metropolitan Police Department have shot and killed more people per resident in the 1990s than any other large American city police force.”<sup>46</sup> This report is our first effort to assess the progress that MPD has made in meeting its obligations under the MOA.

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<sup>43</sup> See Fiscal Year 2001 Annual Report of the Citizen Complaint Review Board and the Office of Citizen Complaint Review (hereinafter “OCCR 2001 Annual Report”) at 5.

<sup>44</sup> Metropolitan Police Department 1999 Annual Report at 4.

<sup>45</sup> *Id.* at 8.

<sup>46</sup> *Deadly Force* series at A01.



## Chapter Three: Compliance Assessment

The MOA negotiated and agreed to by the City, MPD, and DOJ incorporates specific deadlines by which MPD is contractually obligated to perform certain activities. Within thirty days of execution of the MOA, for example, MPD must “complete development of a Use of Firearms Policy that complies with applicable law and current professional standards.”<sup>47</sup> Other time lines are attached to other MOA requirements.

If the OIM’s sole responsibility were to report on MPD’s compliance or lack of compliance with the time lines identified in the MOA, this would be a very short initial report. As of the publication of this report, most of the deadlines identified in the MOA have not been met. The MOA makes it very clear, however, that the Independent Monitor “shall review and report on *MPD’s implementation of*” the MOA.<sup>48</sup> Obviously, this direction contemplates something more than 100 “yes or no” determinations. Thus, where MPD has not met an MOA requirement by an MOA deadline, we nonetheless have endeavored to review and report MPD’s *progress* toward meeting that requirement.

The OIM’s approach to reviewing MPD’s implementation of the MOA involves assessing MPD’s compliance with the numerous elements of the MOA. We are in the process of doing so -- and will continue doing so for the next five years -- but we also must assess MPD’s compliance with the ultimate objectives behind those elements. The specific MOA requirements and deadlines regarding a Use of Firearms Policy, for example, are a means to achieve the safe use of firearms and, thus, the reduction of the use of excessive force. Any review methodology that focuses on specific practices without an appreciation of the underlying purpose of those practices risks losing sight of the central objectives among the mass of details. The monitoring team has been sensitive to this issue throughout this report.

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<sup>47</sup> MOA at ¶¶ 41, 51.

<sup>48</sup> *Id.* at ¶ 161 (emphasis added).

This section of the report is organized in a manner consistent with the structure of the MOA. Within this structure, we first summarize the *requirements* imposed by each section of the MOA; then we provide the current *status* of progress toward compliance with those requirements; and, finally, we offer our *analysis and assessment* of factors that have impeded or advanced MPD's progress toward compliance, along with additional information we believe relevant. Summarizing the requirements imposed by the MOA makes this chapter quite lengthy, but we feel the discussion is necessary in order to live up to the requirement that we monitor "each substantive provision" of the MOA.<sup>49</sup>

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

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

#### **1. Requirements**

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

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

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<sup>49</sup> MOA at ¶ 169.

- 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**

The development of the Use of Force Policy has not yet been completed despite the MOA's requirement that it be developed fully within thirty days of the effective date of the MOA, *i.e.*, July 13, 2001. MPD supplied an initial draft of this policy to DOJ on October 16, 2001, but DOJ found it to be inadequate. On January 10, 2002, DOJ returned substantive comments to MPD and requested that MPD revise the draft policy within thirty days. Subsequently, on March 12, 2002, MPD submitted a substantially revised draft Use of Force Policy to DOJ. On May 28, 2002, DOJ sent MPD comments on the Use of Force Policy, which it views as a significant improvement over the earlier drafts. DOJ also stated that it anticipates approving the policy once the MPD responds to its comments.

## **3. Assessment and Analysis**

The delays in issuing the Use of Force Policy have been attributable to organizational and leadership problems that generally plagued MPD's efforts to comply with the MOA from the effective date of the MOA through early February 2002. Those problems now appear largely to have been resolved, and the quantity and quality of activity on this and other draft orders have improved noticeably. MPD expects the Use of Force Policy to be in a form acceptable to DOJ very shortly.

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

#### **1. Requirements**

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

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

In addition to these specific requirements relating to the Use of Firearms Policy, the MOA requires the Mayor to submit to the Council for the District of Columbia<sup>50</sup> a request to permit MPD's Chief of Police to determine the policy for MPD officers to carry firearms when they are off duty while in the District of Columbia, including any appropriate restrictions applicable to situations in which an officer's performance may be impaired.

## **2. Status**

The development of the Use of Firearms Policy has not yet been completed, despite the MOA's requirement that it be fully developed within thirty days of the effective date of the MOA, *i.e.*, July 13, 2001. MPD supplied an initial draft to DOJ on October 4, 2001, but DOJ found the draft inadequate. On January 10, 2002, DOJ provided substantive comments to MPD and requested that MPD revise the draft policy within

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<sup>50</sup> The submission to the City Council takes the form of an amendment to Section 206.1 of Title 6A of the District of Columbia Municipal Regulations.

thirty days. Subsequently, on April 15, 2002, MPD submitted a substantially revised draft Use of Firearms Policy to DOJ.<sup>51</sup> DOJ has advised MPD that the revised draft is a significant improvement over the earlier drafts. On May 28, 2002, DOJ sent MPD additional comments on the policy. MPD has indicated that it is hopeful it will be able to issue a final -- and approved -- Use of Firearms Policy in the near future. Because of concerns that the title "Use of Firearms Policy" could create confusion in the minds of MPD officers, MPD has proposed changing the name of this policy to the "Handling of Service Weapons General Order."

The required amendment to Section 206.1 currently is pending before the City Council as part of Bill No. 14-610, Title VIII. The amendment was introduced by Councilperson Kathleen Patterson, Chair of the Council's Committee on the Judiciary, on March 3, 2002. We have been advised by Ms. Patterson's office that a hearing on the Bill is scheduled for September 19, 2002.

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

As described above in connection with delays in issuing the Use of Force Policy, the development of the Use of Firearms Policy -- to be redesignated the "Handling of Service Weapons General Order" -- was slowed by general organizational and leadership problems that hindered MPD's compliance efforts for many months. MPD expects the Handling of Service Weapons General Order to be in a form acceptable to DOJ very shortly.

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

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

The MOA requires MPD to develop a Canine 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

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<sup>51</sup> According to MPD, this draft was submitted on April 15, 2002. According to DOJ, this draft was submitted on April 4, 2002. This discrepancy is not critical for purposes of this report.

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>52</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**

At the time of the execution of the MOA, MPD had implemented an interim Canine Policy, which was described in the MOA as reflecting “significant improvements in [MPD’s] canine operations, including the introduction of a new handler-controlled alert curriculum and the use of new canines.”<sup>53</sup> The Canine Policy required by the MOA, however, has not yet been completed despite the MOA requirement that the policy be fully developed within thirty days of the effective date of the MOA, *i.e.*, July 13, 2001.

MPD submitted an original draft of the policy required by the MOA to DOJ on October 15, 2001. Shortly thereafter, DOJ responded that the draft order was inadequate, but did not provide detailed comments at that time. DOJ subsequently sent detailed comments to MPD on March 15, 2002. On April 15, 2002, MPD provided DOJ with a revised version of the Canine Policy, together with a matrix reflecting the

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<sup>52</sup> The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.

<sup>53</sup> MOA at ¶ 44.

changes made by MPD in response to DOJ's comments. On May 28, 2002, DOJ sent MPD comments on the Canine Policy and stated that it believed the Canine Policy could be approved once the comments are incorporated into the policy.

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

The development of the Canine Policy was delayed by the same factors described above. MPD expects the Canine Policy to be in a form acceptable to DOJ very shortly.

#### **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**

MPD submitted a draft OC Spray Policy to DOJ on October 2, 2001. DOJ provided comments on the policy on January 10, 2002 and asked MPD to respond with a revised policy within thirty days. More than three months later, on April 15, 2002, MPD revised the draft OC Spray Policy and submitted it to DOJ along with a matrix reflecting changes and responses to DOJ. On May 28, 2002, DOJ sent MPD comments on the OC Spray Policy and stated that it likely would approve the OC Spray Policy once its comments were incorporated into the policy.

## **3. Assessment and Analysis**

Development of the OC Spray Policy was delayed by the same factors described above. MPD expects the OC Spray Policy to be in a form acceptable to DOJ very shortly.

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

The implementation schedule set forth in the MOA required MPD to complete development of the policies and procedures relating to use of force, use of firearms, canines, and OC spray by July 13, 2001. MPD has provided various drafts of all of these policies to DOJ, which has provided comments. MPD candidly acknowledges that the original drafts submitted to DOJ were inadequate and that, even though deadlines already had been missed, insufficient quality control was exercised in submitting the original drafts to DOJ. This has caused serious and preventable delays in MPD's compliance with the terms of the MOA. Moreover, our preliminary review has revealed that the top leadership within MPD was not advised that the process for developing these drafts was inadequate and that the quality of the drafts submitted to DOJ made it inevitable that they would be rejected, which they subsequently were.

Even though it is undeniable that substantial progress has been made relating to each of these policies in the past three months, none of the due dates were met or even came close to being met. According to DOJ, the tight deadlines in the MOA were set because both MPD and DOJ believed that comparatively little work was left to do as substantial work

in developing these policies had been undertaken during DOJ's investigation and while the MOA was being negotiated. That may have been an unduly rosy view, but, whether it was or not, even MPD acknowledges that much of the time between the signing of the MOA and the creation of the CMT in February 2002 was wasted. MPD has furnished us with new estimated dates but these new dates must be provided directly to DOJ and must be agreed to by DOJ.<sup>54</sup> Once that has taken place, we will be monitoring compliance with MPD's newly estimated due dates and the implementation of the substantive policies.<sup>55</sup>

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

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

#### **1. Requirements**

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

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

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<sup>54</sup> Although the CMT has provided us with the dates for the projected completion of various tasks, which appear at various points in this report, this is not a substitute for furnishing the dates to DOJ and obtaining DOJ's agreement, as required under the MOA. MPD has indicated that it intends to discuss with DOJ revisions to the MOA deadlines in the near future.

<sup>55</sup> In comments on the draft of this report, MPD suggested that, although it bears "the majority of the responsibility" for the delays in developing these general orders, responsibility for at least some portion of those delays should be shared by DOJ, which MPD claims has been slow in responding to some of its drafts. In reply to MPD's comments on the draft, DOJ stated that it has responded to all of the drafts as promptly as it could and that any delays were largely attributable to the poor quality of the drafts it received.

- 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>56</sup> the serious use of force,<sup>57</sup> or any use of force potentially reflecting criminal conduct by an officer;<sup>58</sup>
- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on Use of Force Incident Reports into MPD’s PPMS.

## 2. Status

According to both DOJ and MPD, the parties are treating the Use of Force Reporting Policy as an element of the overall Use of Force Policy. We discussed MPD’s progress with respect to the Use of Force Policy in Section I.A of this chapter.

MPD submitted an initial copy of the Use of Force Incident Report form to DOJ in October 2001. DOJ responded unfavorably to this initial submission in its correspondence to MPD dated January 11, 2002. MPD’s CMT revised the form and resubmitted it to DOJ on March 12,

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<sup>56</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>57</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>58</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.”

2002. On May 28, 2002, DOJ sent MPD comments on the Use of Force Incident Report form. According to DOJ, the form reflects significant improvement, but DOJ requested a demonstration of its use to determine whether it has the capacity to track the use of multiple types of force by multiple officers and multiple subjects.

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

Development of the Use of Force Reporting Policy and the Use of Force Incident Report was delayed by the same factors described above. MPD expects this policy and report to be in a form acceptable to DOJ very shortly. With respect to the Use of Force Incident Report, it is worth noting that this report is intended to be completed and submitted electronically by MPD officers to their supervisors. According to MPD, the technology exists to seek and obtain the necessary supervisory approvals electronically as well. MPD, however, currently is not in a position to take advantage of this technology. The OIM recommends that, in order most effectively and efficiently to facilitate the implementation of the MOA requirements relating to use of force reporting, MPD take steps to permit the electronic submission of approvals to the extent practicable.

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

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

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

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

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

force from MPD district violent crime units or other MPD district supervisors to FIT.<sup>59</sup>

MPD is required to 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>60</sup>

FIT is required to respond to the scene of every such incident described above and to conduct all such investigations, whether the investigation results in criminal charges, administrative sanctions, or both. No officers from any unit other than FIT are permitted to participate in the investigation. The MOA requires FIT's administrative (non-criminal) use of force investigations to be completed within ninety days of a decision by the USAO not to prosecute, unless special circumstances prevent its timely completion.<sup>61</sup>

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

- A description of the use of force incident and other uses of force identified during the investigation;
- A summary and analysis of all relevant evidence; and
- Proposed findings, which include:

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<sup>59</sup> Consistent with this approach, the MOA requires that, by October 13, 2001, MPD train and assign a sufficient number of personnel to FIT to fulfill the duties and responsibilities assigned to it under the MOA. MOA at ¶ 63.

<sup>60</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>61</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 investigative reports. Once such investigations are complete, the investigative report must be submitted to the Unit Commander, who will review it for completeness and to ensure that its findings are supported by the evidence. The Unit Commander has the power to order additional investigation if necessary. Once the investigation is complete, the investigative file is forwarded to the UFRB.<sup>62</sup>

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

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

- Ensure that the UFRB conducts prompt reviews of all use of force investigations;
- Establish the membership of the UFRB;
- Establish timeliness rules for the review of investigations;
- Authorize the UFRB to recommend discipline for violations of MPD policies, recommend further training where appropriate,

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<sup>62</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.

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 in a report to the Chief of Police.

## **b. Status**

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

FIT, which is responsible for conducting use of force investigations involving all firearms discharges, was created in January 1999 and became operational in April 1999. From its inception through 2001, it has conducted 146 investigations broken down as follows:

	<u>Preliminary Investigations</u>	<u>Final Investigations</u>
1999	29	12
2000	26	20
2001	36	23

The OIM has been provided with all of FIT's investigation reports since FIT's inception. Our monitoring team has preliminarily reviewed a small sample of these reports in order to understand the nature and scope of the reports and to develop a methodology for reviewing them in the future, as required under the MOA. We have just begun the process of reviewing all of FIT's investigative files, which are comprised of records of the interviews of personnel involved in the use of force incidents, descriptions of the incident scenes and physical

evidence, additional relevant documents, and interim and preliminary or final comprehensive reports submitted by the investigators.

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

In March 2002, MPD submitted a revised Use of Force Investigations General Order to DOJ, along with a matrix identifying revisions made by MPD subsequent to the rejection of the initial General Order by DOJ in January 2002. This Use of Force Investigations General Order covers FIT investigations and non-FIT use of force investigations. On May 28, 2002, DOJ sent MPD comments on the revised General Order. DOJ expects to approve the Use of Force Investigation General Order once its comments are incorporated into the policy by MPD.

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

MPD's UFRB currently operates under the guidance provided by a draft General Order. On November 20, 2001, MPD submitted to DOJ a draft policy aimed at enhancing the UFRB but this policy, which initially was due in August 2001, was rejected by DOJ because it had not been approved within MPD at sufficiently high levels to warrant DOJ review at that time. MPD submitted a revised draft policy to DOJ on June 6, 2002.

MPD has advised the OIM that it is implementing a plan to meet the annual review and reporting requirements set forth in paragraph 67 of the MOA. MPD currently has no time line for the implementation of such annual reports. The OIM has reminded MPD of this MOA requirement and expects MPD to come within compliance in the near future.

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

The OIM has emphasized to MPD the need to expedite its time line in this area. To this end, the OIM has stressed to the CMT and the UFRB the need for involvement by the UFRB in the drafting process prior to submission of a final policy to DOJ. Our preliminary assessment suggests that the members of the UFRB have been insufficiently involved in the drafting process to date.

## **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>63</sup>

With respect to allegations in the above categories that are criminal, MPD's OPR is required to conduct the investigation rather than chain of command supervisors in MPD's districts. In these categories of

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<sup>63</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.

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>64</sup> In addition to criminal allegations, the MOA requires that MPD assign for investigation outside the chain of command allegations involving:

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

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

- Interviews of complainants, involved officers, and material witnesses be tape-recorded or videotaped whenever the investigation involves the serious use of force or a serious physical injury;
- 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

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<sup>64</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.

- Inconsistencies in statements gathered from officers and other witnesses during the investigation be identified and reported.

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

- By August 13, 2001,<sup>65</sup> MPD must develop a plan (subject to approval by DOJ) under which OPR would become responsible for the *criminal misconduct* allegations described in the bulleted points listed at the beginning of this section, which would include provision for sufficient personnel and adequate procedures to implement this objective;
- By August 13, 2001, MPD must develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint investigations* from chain of command supervisors to MPD's OPR;<sup>66</sup>
- In its fiscal year 2002 budget, the District of Columbia is required to provide the funds necessary to provide for the full implementation of these plans and sufficient resources for administrative complaint investigations to be completed within ninety days of the receipt of a complaint by MPD;<sup>67</sup>
- By September 13, 2001, MPD must develop a plan (subject to DOJ approval) to ensure that all MPD officers responsible for conducting investigations receive adequate training in a wide range of subjects;

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<sup>65</sup> The MOA sets due dates in terms of number of days following the execution of the MOA (e.g., 30, 60, 90, 120 days after the execution of the MOA, etc.). For convenience and simplicity, throughout this report we have provided calendar dates for those due dates of all items and, because the MOA was signed on June 13, 2001, have made all due dates fall on the 13th day of various months.

<sup>66</sup> See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

<sup>67</sup> In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- By October 13, 2001, MPD must develop a manual (subject to DOJ approval) for conducting all MPD misconduct investigations.

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

## **b. Status**

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

Paragraph 68 of the MOA requires that, within sixty days of the execution of the MOA, MPD must draft a “plan . . . to allocate sufficient personnel” and establish “procedures to accomplish” its responsibilities relating to the investigation of misconduct allegations.<sup>68</sup> As of the publication of this report, neither task has been accomplished.<sup>69</sup>

MPD intends to submit a personnel allocation plan to DOJ by June 30, 2002. MPD also intends to incorporate the requirements of paragraph 68 into its Misconduct Investigations General Order (target delivery date: June 30, 2002), Office of Internal Affairs Manual (target delivery date: July 22, 2002), and Misconduct Investigations Manual (target delivery date: August 21, 2002).<sup>70</sup>

MPD also has continued to take steps to implement the substance of paragraph 68. On May 21, 2002, an e-mail was sent to MPD OIA staff listing the types of misconduct allegations the MOA requires OPR to investigate.

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<sup>68</sup> MOA at ¶ 68.

<sup>69</sup> In the draft of this report, we had indicated that MPD had submitted such a plan in August 2001. DOJ responded that a status report had been submitted at that time, but not a plan as required by the MOA.

<sup>70</sup> As indicated previously, these projected dates have been provided to the OIM, but have not yet been directly provided to, or agreed to by, DOJ.

## **(2) Funding**

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

## **(3) Training**

Paragraph 84 of the MOA requires MPD to develop a plan to train its investigators responsible for investigating misconduct allegations. This plan should have been completed within 90 days of the execution of the MOA, with the actual training occurring within 180 days after DOJ's approval of that plan. As of the publication of this report, MPD has not submitted a training plan to DOJ for its approval and, consequently, has not implemented the training program required by paragraph 84 of the MOA. Moreover, it appears that MPD has not yet devised an internal plan to ensure that these tasks are accomplished as promptly as possible.

Even though MPD has failed to meet the requirements of paragraph 84 to submit a comprehensive plan regarding the training of its investigators for conducting use of force and misconduct investigations, it is worth noting that MPD has taken steps to improve the quality and continuity of its training, including, for example, incorporating relevant material in the training of newly-promoted sergeants. More information about the training that has taken place relating to the MOA is set forth in Section VI below. Once again, it is the failure to focus on the specific requirements of the MOA, and to mobilize the necessary resources from within MPD to achieve this objective, that has caused MPD to fall short of meeting this objective.

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

Paragraph 83 of the MOA requires MPD to prepare and transmit to DOJ a manual for the investigation of misconduct allegations. While MPD submitted an early draft of a manual to DOJ in connection with the submission of its 90-120 day report, MPD subsequently requested that

DOJ not review the draft due to errors that it contained. On February 12, 2002, DOJ agreed to return the draft to MPD, but informed MPD that a revised draft was due by June 30, 2002.

MPD has not yet prepared this manual. According to MPD, the delay in preparation is due to the fact that the manual should not be prepared until the Misconduct Investigation Plan has been developed by MPD and approved by DOJ. MPD states that it will submit the Misconduct Investigation Plan, which is taking the form of a general order, by June 30, 2002; MPD further proposes that it will submit the manual by August 21, 2002.<sup>71</sup>

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

Over the past several years, MPD has revised and improved significantly its process for investigating misconduct allegations. Despite these notable and considerable achievements, the OIM questions whether the funding allocated to these entities is sufficient to ensure that MPD meets its MOA obligation to complete administrative misconduct investigations within ninety days and otherwise meet the requirements of the MOA to have a fully staffed OIA capability. In our meetings with OIA personnel, we inquired about the method for calculating the degree of additional staffing that would be needed to meet the requirement of the MOA to have adequate personnel to carry out this function. We were advised that informal calculations of OIA to sworn officer ratios for one or two major metropolitan police departments formed the basis for the OIA's request for additional resources. Even then, the request for sufficient personnel to approximate this ratio was substantially cut for budgetary reasons.

We have suggested that the caseload of OIA investigators is a better measure for full staffing than OIA/sworn officer ratios. Accordingly, we have suggested to the leadership of OIA that it canvass various police departments throughout the country -- including several

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<sup>71</sup> DOJ has not agreed to this new date and in its comments on the draft report specifically objected to MPD's developing new target dates in any way other than through the modification process set forth in the MOA. We regret any confusion we may have caused by pushing the MPD over the past several weeks to provide us with dates by which various tasks and projects would be completed. Providing us with this information is not a substitute for providing DOJ with notice of such dates and obtaining its consent to the modification of due dates contained in the MOA.

known to have excellent OIA operations and several known to have poor OIA operations -- to gather comparative statistics to help support arguments about whether OIA is sufficiently staffed.

Finally, it is worth noting that MPD has not resolved its internal “ownership” issues with respect to the misconduct investigations manual. We strongly recommend that MPD identify an individual or group of individuals within MPD to ensure that this manual is completed as promptly as possible.

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

#### **A. Requirements**

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

More specifically, the MOA requires the following:

- By August 13, 2001, the development of a plan, in consultation with DOJ, that defines the roles and responsibilities of -- and the relationship between -- MPD and OCCR with regard to
  - 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 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>72</sup>
- By September 13, 2001, the development of a plan to ensure that the investigative staff of OCCR is adequately trained, including in a wide range of MPD policies and procedures;
- By September 13, 2001, the development of a manual, in consultation with DOJ, for conducting OCCR complaint investigations, which should include time lines and investigative templates;
- By September 13, 2001, the development and implementation of an effective program to inform citizens of their right to lodge complaints against MPD officers, which must include, among other things, the distribution of complaint forms, facts sheets, informational posters, and public service announcements, in English, Spanish, and any other languages appropriate for particular areas, which describe MPD and OCCR complaint processes;
- By October 13, 2001, the broad availability of complaint forms and informational materials at OCCR, MPD headquarters, and various other MPD locations; through the Internet; and to community groups and community centers; and
- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.<sup>73</sup>

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<sup>72</sup> District of Columbia Law 12-208.

<sup>73</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

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

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

In addition, the MOA sets forth a series of requirements for evaluating and resolving allegations of misconduct against MPD officers. These include establishing that a preponderance of the evidence standard should be applied in such investigations; that all relevant evidence should be considered and weighed, including the credibility of various witnesses;<sup>74</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>75</sup>

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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.

<sup>74</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>75</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

**Footnote continued**

Misconduct investigations require the preparation of a written report, which should include a description of the alleged misconduct, summary and analysis of all relevant evidence, and proposed findings and analysis. Except in cases of unusual complexity, such investigations must be completed within ninety days after the allegations have been received. Each investigation should be reviewed by Unit Commanders to determine the existence of any underlying problems and training needs, and the Unit Commanders shall implement any appropriate non-disciplinary actions.

## **B. Status**

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

Our preliminary review suggests that the District of Columbia has made less progress in this area than in some other areas of the MOA. The City has not yet developed the written plan required by paragraph 85 of the MOA, and it appears that inadequate resources have been dedicated to the development of this plan. DOJ has apprised former Executive Assistant Chief Terrance Gainer<sup>76</sup> of the City's noncompliance in this area. Based upon our preliminary review, it appears that at least an element of the City's lack of progress seems to be due to a misunderstanding between MPD and OCCR regarding the citizen complaints for which each agency is responsible. In addition, there is some confusion as to who bears the responsibility for requirements when the MOA refers to "the City" as an entity distinct from "the MPD."<sup>77</sup> It should be noted, however, that, according to OCCR, misunderstandings with MPD have been greatly reduced recently.

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cases where the conduct alleged took place but did not violate MPD policies, procedures, or training.

<sup>76</sup> Chief Gainer recently was named the Chief of the Capitol Police in Washington, D.C., and assumed that position on June 3, 2002.

<sup>77</sup> See, e.g., MOA at ¶¶ 88 and 96. We believe that this confusion further highlights the importance of the involvement of high-level City officials (beyond MPD and OCCR) in the MOA compliance process. Our preliminary review suggests that the Mayor's Office has not yet involved itself as deeply in this process as it must to ensure timely compliance with the MOA requirements.

Additionally, our review revealed some evidence of a lack of full cooperation between the two organizations.<sup>78</sup> The description of the relationship between OCCR and MPD included in OCCR's 2001 Annual Report is instructive in this regard:

The CCRB and the OCCR have enjoyed a mostly cooperative relationship with the MPD in getting operations off the ground. As an example of that cooperation, it is significant that the OCCR has not had to subpoena a single MPD officer to appear for an investigative interview, although this authority exists under our governing statute. But the success of our agency will depend on even greater levels of cooperation in the future. In order to prevent the severe backlog of cases that contributed to the demise of the predecessor Civilian Complaint Review Board in 1995, the MPD will have to implement mechanisms to provide the OCCR with more direct and quicker access to subject and witness officers whom we wish to interview as part of our investigations. As well, the OCCR must be permitted timely and unfettered access to relevant documentary evidence in the possession of the MPD if our independent oversight function is to be meaningful.<sup>79</sup>

The OIM will continue to monitor the relationship between OCCR and MPD closely.

OCCR has advised the OIM that a draft memorandum of understanding between OCCR and MPD recently has been circulated

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<sup>78</sup> MPD described some level of friction between MPD and OCCR. While OCCR was uncomfortable with the use of the term "friction," it conceded the existence of problems that have impeded progress in working out the terms of its relationship with MPD. For example, OCCR indicated that MPD failed to involve OCCR in, or seek OCCR's input regarding, the MOA negotiation process regarding the creation of a citizen complaint hotline. According to OCCR, "[a]s with so many issues pertaining to OCCR and the MOA, the MPD did not bother to consult this agency." Letter from OCCR to OIM (June 6, 2002).

<sup>79</sup> OCCR 2001 Annual Report at 3.

throughout OCCR. OCCR has refrained from circulating the draft externally, however, until the release of its forthcoming administrative regulations. Following the initial publication of these regulations, and the thirty-day comment period required by law, OCCR expects to revise the regulations as necessary and issue them in final form. Even before OCCR's administrative regulations are finalized, OCCR plans to work with MPD to complete the memorandum of understanding between the two agencies. OCCR told us it expects the memorandum of understanding to be finalized by mid-July.

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

Neither MPD nor the City has taken adequate steps to satisfy the MOA requirement to develop and implement an effective public outreach program aimed at apprising citizens of the substance of the MOA.<sup>80</sup> MPD advised the OIM that steps have been taken to prepare public outreach material, but that such material has not yet been reviewed within MPD. As of the publication of this report, the OIM has been provided with no such material. MPD estimates that this material will be reviewed within ninety days. MPD could not estimate when it would come into compliance with these provisions of the MOA.<sup>81</sup>

OCCR, however, has made some progress in the area of public outreach. It has prepared a Citizen Complaint "Information Sheet" and posted information regarding the citizen complaint process on its Web site. It also has prepared the Information Sheet and its complaint forms in Chinese Mandarin, French, Haitian Creole, Japanese, Russian, Spanish, and Vietnamese, in addition to English. Additionally, members

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<sup>80</sup> While we have worked with MPD and OCCR over the past two months to assess the steps that they have taken in the area of public outreach, we have seen no evidence of involvement by elements of City government outside MPD and OCCR in activities, such as public outreach, that under the MOA are the responsibility of the City as a whole. We recommend that the Office of the Mayor take steps to involve itself in ensuring the City's compliance with this element of the MOA.

<sup>81</sup> MPD has advised the OIM, however, that it has participated in discussions with various civil rights organizations, most notably the NAACP Civil Rights Task Force, and has met with other community groups regarding use of force issues.

of OCCR's staff have appeared in public forums to describe the citizen complaint process and the roles of OCCR and MPD in that process.<sup>82</sup>

Finally, it is worth noting that the OIM's preliminary review revealed some degree of coordination in the area of public outreach between MPD and OCCR, but that the level of coordination could be improved. OCCR acknowledges that it continues to be dogged to some extent by the reputation of its civilian review predecessor and that this constitutes an obstacle to public acceptance. In addition, because of its status as an independent agency, OCCR faces a dilemma regarding whether it should conduct public outreach jointly with MPD: If OCCR engages in public outreach jointly with MPD, it may be viewed as being too closely allied with MPD; if OCCR engages in public outreach separately, it may have difficulty generating sufficient community interest to make the outreach effective. In any event, the OIM recommends that the City take steps to foster a more constructive and broader working relationship between these two agencies.

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

Paragraph 92 of the MOA is designed to facilitate the filing of citizen complaints against members of MPD. We asked several members of Fried Frank's legal staff to visit MPD stations (i) to ask station personnel how one goes about filing a complaint and (ii) to obtain a complaint form. The results of this very preliminary test<sup>83</sup> suggest that MPD is not yet in compliance with paragraph 92 of the MOA. These tests also suggest that the members of MPD do not yet understand the manner in which citizen complaints are handled under the MOA. It is worth noting, however, that none of the subjects of this test attempted to dissuade the tester from filing his or her complaint. We intend to initiate a broader review of this area in the near future.

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<sup>82</sup> Information regarding the citizen complaint process is available on the MPD Web site, as well as through OCCR's Web site. The information provided by MPD appears at <http://mpdc.dc.gov/info/comm/citizencomplaints.shtm>. Due to the need to navigate through multiple links, however, obtaining this information is not as simple as it could be.

<sup>83</sup> The OIM does not suggest that this initial test is statistically valid or that it reflects MPD's true overall level of compliance with paragraph 92 of the MOA. Rather, we performed this initial test simply to better understand the manner in which at least some members of MPD currently respond to citizen complaints.

With respect to the creation of a citizen complaint hotline as required by paragraph 93 of the MOA, OCCR purchased the equipment necessary to institute such a hotline in late October 2001, but has not yet instituted the hotline. OCCR expects that the hotline will be staffed and operational by mid-June 2002. It is worth noting that the OIM's preliminary investigation revealed that there exists some confusion within the City regarding which agency will have responsibility for instituting the hotline. The MOA makes it abundantly clear that the hotline shall be *operated* by OCCR, but is vague regarding the responsibility for *instituting* the hotline.<sup>84</sup> Additionally, our preliminary investigation revealed a lack of coordination between OCCR and other City agencies regarding the technical implementation of the hotline.<sup>85</sup> It appears that this lack of coordination has hindered OCCR's compliance with paragraph 93 of the MOA.

MPD has made some progress with respect to the requirement set forth in paragraph 94 of the MOA that MPD's OPR shall receive all complaints filed directly with any unit of MPD within twenty-four hours or the next business day. MPD issued internal "teletypes" on June 30, 1998 and on December 13, 2000, instructing all MPD personnel to report citizen complaints and allegations of misconduct to OPR within one hour and to fax a copy of the preliminary report and any supporting documentation to OPR before the officer who is the subject of the complaint is relieved from his/her tour of duty. MPD also is in the process of revising Citizens Complaint General Order 1202.5 in order to formalize the procedures in these teletypes and to refer specifically to the 24-hour/next business day requirement. MPD has advised the OIM that, since 2000, all police districts have been alerted that use of force complaints must be reported immediately to OPR. While the OIM has not yet tested this statement, our preliminary investigation suggests that the police districts generally adhere to this requirement. Additionally, MPD has implemented a filing system that permits MPD to track every complaint filed with MPD or OCCR. The OIM plans to review this electronic filing system in the near future.

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<sup>84</sup> MOA at ¶ 93. This confusion highlights the importance of securing the active involvement of the Office of the Mayor in the MOA compliance process.

<sup>85</sup> As we have not yet investigated this matter fully, we reach no conclusion regarding the source of this lack of coordination.

MPD candidly acknowledges that it is not always able to report complaints filed with MPD to OCCR within twenty-four hours as required by paragraph 94 of the MOA. It appears that the implementation of an internal, on-line MPD complaint system would facilitate MPD's compliance with the timing requirements relating to citizen complaints filed with MPD.

Finally, it warrants comment that our preliminary review revealed a certain amount of tension -- or at least confusion -- between MPD and OCCR. This tension manifests itself in the following ways:

- MPD and OCCR do not coordinate their activities as well as they could.
- MPD and OCCR have not developed an efficient process for the sharing of documents that are important to the missions of both agencies.
- MPD and OCCR have not developed a clear understanding regarding each agency's jurisdiction with respect to the handling of citizen complaints.

While, at this time, we reach no conclusion regarding the source of these inefficiencies, it is clear to us that they do exist. It is unclear whether the weaknesses in the relationship between MPD and OCCR are caused by a lack of understanding of the terms of the MOA, a lack of communication between the two agencies, or simply by the general tension that tends to exist between police departments and civilian oversight agencies. And, while we note that, recently, this relationship has been improving -- the assignment of an OCCR investigator to serve as a liaison between OCCR and the various MPD districts, for example, appears to have been a useful step in this regard -- significant room for improvement still exists in this area. The OIM will continue to monitor this situation.

#### **4. Training (§ 96)**

Our discussions with members of OCCR's executive staff suggest that OCCR's investigators are receiving adequate training. OCCR describes this training in its most recent annual report as follows:

Investigators have received comprehensive training that includes a week-long course in investigative techniques taught at the Institute

of Police Technology and Management at the University of North Florida in Jacksonville, Florida; 40 hours of training provided by the MPD in police procedures; and in-house courses on various topics ranging from mediation to excessive force issues.<sup>86</sup>

OCCR's executive director credited MPD with part of its success in the area of training. OCCR provided us with documentation of the training its investigators have received, including training facilitated by MPD, training furnished by other agencies and entities, and training furnished from OCCR's own resources and by its own personnel. The training OCCR received from MPD included a basic forty-hour training course in May 2001, just before the signing of the MOA, as well as training in various specialized areas. The OIM has not independently evaluated or audited the training furnished to OCCR.

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

On November 1, 2001, OCCR submitted a draft copy of a complaint investigation manual in accordance with paragraph 97 of the MOA. DOJ has advised the OIM that it will be returning the draft policy to OCCR with detailed comments.

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

While MPD and the City, through OCCR, have taken steps toward compliance with the terms and conditions of the MOA relating to citizen complaints, both MPD and the City so far have failed to comply with the MOA's specific requirements. This noncompliance seems to be due to multiple factors, including inadequate staffing within OCCR<sup>87</sup> and MPD's

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<sup>86</sup> OCCR 2001 Annual Report at 2.

<sup>87</sup> According to OCCR, its investigator to police officer ratio is 1 to 450. By way of comparison, OCCR reports that the ratio in San Francisco is 1 to 150. Additionally, it is worth noting that at least an element of OCCR's staffing problems seems to stem from MPD's transfer of voluminous CCRB files to OCCR in early January 2001. Apparently, OCCR's possession of these files has created a significant burden for OCCR in that it now must respond to frequent FOIA requests relating to those documents. According to OCCR, it and MPD have been working together recently to resolve this matter. As of the publication of this report, this matter has not been resolved.

OIA, an inadequate level of attention devoted to public outreach within MPD, and confusion within the City regarding the citizen complaint process generally. Additionally, our preliminary discussions with members of OCCR suggest that citizen distrust regarding the complaint process resulting from the ineffectiveness of OCCR's predecessor agency lingers. We raise this issue simply to highlight the importance of the MOA's public outreach requirements.

Furthermore, it is worth noting here that MPD's and OCCR's efforts to comply with the requirements of the MOA would benefit from greater City involvement. Thus, we recommend that the Office of the Mayor become more engaged in ensuring compliance with the MOA, especially as to those provisions whose terms impose obligations on the City and not merely on MPD.

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

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

The MOA requires that, by October 13, 2001, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.<sup>88</sup> Specifically, the policy must:

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

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<sup>88</sup> MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

## **B. Status**

By its own admission, MPD has made very little progress toward compliance with paragraph 105 of the MOA. According to MDP, this lack of progress is due, in part at least, to the need to involve the FOP in the revision process. MPD estimates that it will not be able to submit a revised and updated disciplinary policy to DOJ before the end of the year.

At the request of the OIM, MPD has developed a proposed time line for the production of the Discipline General Order required by paragraph 105 of the MOA. This time line encompasses the following milestones:

- Prior to June 2002, MPD will have completed its Use of Force Review Board General Order, which MPD views as the first step toward the completion of the Discipline General Order.
- Prior to September 2002, MPD will complete revisions to the following General Orders: Misconduct Investigations, Revocation and Restoration of Police Powers, Citizen Complaints, OCCR, and Public Outreach. MPD views these general orders as important, high-priority milestones on the path toward completing the Discipline General Order.
- Prior to October 2002, MPD will complete a draft Discipline General Order for internal MPD review by the subject matter experts within MPD.
- Prior to November 2002, MPD will subject the draft order to internal MPD review by the CMT and the Chief of Police.
- Prior to December 2002, MPD will offer the draft order to the FOP for its review and, subsequent to that review, finalize the draft order (with any revisions) for submission to DOJ.
- MPD expects to submit the final Discipline General Order to DOJ in December 2002.

MPD has represented to the OIM that this protracted timetable is necessary due to the coordination that is required among MPD, OCCR, the FOP, and other City agencies. We have not yet sufficiently explored this issue to reach any conclusion regarding the correctness of this representation, nor has DOJ agreed to these dates.

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

Until we circulated the draft of this report on May 30, 2002, DOJ was not aware of the specifics of MPD's estimated time line, although it was quite troubled when, during the course of informal discussions in mid-May, we shared MPD's overall projection of how long the entire process would take. The OIM has not yet explored the time line in sufficient detail to comment favorably or unfavorably as to its realism or reasonableness. The OIM will do so in the near future. In the meantime, we will continue to monitor MPD's progress toward meeting this proposed time line.

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

- All uses of force that must be reported on MPD Use of Force Incident Report forms or that are the subject of criminal or administrative investigation by MPD;

- All police canine deployments;
- All officer-involved shootings and firearms discharge, whether on or off duty, and all other lethal uses of force;
- All reviews of use of force, including all decisions on whether the use of force was within MPD policy;
- All vehicle pursuits and traffic collisions;
- All complaints regarding MPD officers, whether made to MPD or OCCR;
- Chronologies and results of investigations, adjudications, and discipline relating to any of these matters;
- All commendations received by MPD about an officer's performance;
- All criminal, civil, and administrative proceedings initiated on the basis of MPD operations and the actions of MPD personnel; and
- With respect to each MPD officer, that officer's:
  - Educational history,
  - Military service and discharge status,
  - Assignment and rank history,
  - Training history,
  - All management and supervisory actions taken pursuant to review of PPMS information, and
  - All instances in which a prosecution declination or a motion to suppress was based upon concerns about the officer's credibility or on evidence of a Constitutional violation by the officer.

The MOA also requires MPD to develop, subject to DOJ approval, a "Data Input Plan" to facilitate the entry of historical data into the 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 use of the computerized management system.

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

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

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

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

## **B. Status**

### **1. PPMS**

Despite taking certain actions directed toward procuring the PPMS, MPD has not yet complied with paragraphs 106-117 of the MOA. At least part of this noncompliance is due to the District of Columbia's failure to solicit database developers in a timely fashion. The District of

Columbia Office of Contracting and Procurement (“OCP”) issued an initial request for proposals on December 19, 2001 to companies registered to receive such solicitations from the District of Columbia. According to OCP, the award of this solicitation is on hold pending budget review and evaluation of potential alternative commercial off-the-shelf products. In addition, MPD has been reviewing similar kinds of systems currently in place in Phoenix, Pittsburgh, and Fairfax County, Virginia. The survey will extend to other locations, likely to include New Jersey and Chicago.

Another reason for the delay in implementing the PPMS, according to MPD, is that MPD’s implementation of its “PRIDE Records management and Automated Field Reporting System” also has been delayed. PRIDE is MPD’s general records management system that is intended to provide officers with a direct link to multiple data sources from their offices or their vehicles. When fully implemented, PRIDE will provide for automated field reporting; arrest and booking support; case management, crime analysis, and prosecution support; intelligence support; property and evidence management; and traffic accident reporting and analysis.<sup>89</sup>

MPD was unable to offer the OIM an estimate as to when it would come into compliance with paragraphs 106-118 of the MOA. This inability is due, in part, to the delays mentioned above and also to the fact that purchases over \$1 million require City Council approval, an action beyond the scope of MPD. We should note, however, that, in the absence of the PPMS, MPD is collecting at least some personnel performance management information in its newly-created PAMS database. We plan to review the PAMS and meet with MPD personnel charged with maintaining this system in the very near future.

We note with respect to the PAMS that, on April 15, 2002, MPD submitted to DOJ a protocol for its use. Although DOJ will be providing detailed comments on this protocol, it has stated that it views the PAMS solely as an interim solution that does not meet all the requirements of the MOA. We have not yet reviewed the PAMS protocol and, thus, reach no conclusion as to whether it meets the requirements of paragraph 111 of the MOA, which requires the preparation and implementation of a protocol for using PPMS that will permit MPD managers and supervisors

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<sup>89</sup> We note that, according to MPD’s Web site, MPD expects to select its PRIDE vendor by the third quarter of 2002. Our conversations with MPD have suggested that this expectation is overly optimistic.

to identify patterns of incidents that indicate that an officer may be engaging in at-risk behavior.

MPD has advised the OIM that, in light of the difficulties and delays it has faced with respect to developing a fully-functional PPMS, it likely will move ahead with plans to develop a “scaled down” early warning tracking system that is fully compliant with the MOA.<sup>90</sup> To this end, MPD has provided the OIM with the following time line:

- Before September 2002, MPD will conduct “mid-level systems analysis” of its existing MPD on-line systems to determine “which existing databases can be enhanced and whether new systems need to be created in order to come into compliance with the MOA.”
- Before November 2002, MPD, working with the District of Columbia’s OCP, will identify an appropriate contractual vehicle to procure the systems necessary to meet with requirements of the MOA relating to the PPMS.
- Before December 2002, MPD will select a contractor to develop the PPMS.
- MPD will complete its beta testing of the PPMS before December 2003.

MPD has advised the OIM that, under the foregoing time line, it expects the PPMS to be fully operational by May 2004.

Due to the scope of the MOA’s PPMS requirements and the complexity of the proposed PPMS, the OIM has not yet assessed the reasonableness of MPD’s proposed development and implementation time

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<sup>90</sup> In its comments on the draft of this report, MPD suggested that the report reflect MPD’s intention to explore plans to develop a “scaled down” early warning tracking system that nevertheless will meet the requirements of the MOA. In response, DOJ indicated that the PAMS is an interim solution that does not meet the requirements of the MOA. As a matter of definition, it is not clear to us how a “scaled down” tracking system, whether it is the PAMS or some other system, could satisfy the MOA -- presumably, it is “scaled down” from a system that meets all the MOA’s requirements. Therefore, it would, again almost by definition, be deficient in some ways when measured against what the MOA requires.

line. The OIM will do so in the near future. In the meantime, the OIM will continue to monitor MPD's progress toward meeting all of the MOA's requirements relating to the PPMS.

## **2. Performance Evaluation System**

MPD has not yet complied with paragraph 118 of the MOA, requiring the preparation and implementation of a "plan to enhance its new Performance Evaluation System . . . ." Our preliminary review did not reveal a reason for this noncompliance, although MPD stated that much of the delay was the result of the need to undertake negotiations with the FOP. MPD was unable to estimate when it would come into compliance with paragraph 118 of the MOA.

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

It appears that MPD has made less progress in this area than in other areas of the MOA. In part, this lack of progress is due to the City's delay in preparing and publishing a solicitation for a developer for the PPMS. MPD has informed the OIM that it is working closely with the District of Columbia's OCP in order to select a developer in the very near future. We recommend that MPD and the OCP accelerate their efforts in this regard. In the meantime, the OIM will continue to monitor MPD's use of the PAMS, its current personnel management system.

## **VI. Training (MOA ¶¶ 119-148)**

### **A. Requirements**

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

#### **1. Management Oversight**

Regarding management oversight training, MPD is required, by July 13, 2001, to have centrally coordinated the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.<sup>91</sup> MPD's Director of Training is responsible for overseeing

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<sup>91</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.

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;
- By October 13, 2001, developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;<sup>92</sup> and
- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

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

## **2. Curriculum**

The MOA prescribes various features of MPD's training programs that address the content of MPD training. First, all force-related training must incorporate critical thinking and decision-making skills and must

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<sup>92</sup> The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

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. By December 13, 2001, initial supervisory and leadership training on these issues was required, with re-training to take place on an annual basis.

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

Finally, the MOA sets forth specific requirements regarding training with respect to aspects of the MOA itself. By October 13, 2001, MPD was required to distribute copies of the MOA to all officers and employees and explain its terms. Further, as MPD adopts new policies

and procedures mandated by the MOA, it must incorporate them into in-service and new recruit training.

### **3. Instructors**

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

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

### **4. Firearms Training**

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

## **5. Canine Training**

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

### **B. Status**

#### **1. Substantive Training**

MPD has made progress toward meeting the MOA requirements relating to training. From July 2001 through December 2001, MPD’s Institute of Police Science (“IPS”) worked closely with the then-coordinator of MPD’s MOA compliance working group and prepared several documents aimed at facilitating MPD’s compliance with the MOA. The IPS continues to review and revise its training program -- and implement new programs -- to meet the requirements of the MOA relating to training. For example, the IPS reports that it:

- Currently is concluding its third series of in-service training programs, designed to provide supplemental education to MPD personnel during roll call meetings;
- Has developed a Standard Operating Procedure that it claims satisfies several of the requirements of paragraph 121 of the MOA (relating to ensuring the quality of all use of force training provided by all trainers);<sup>93</sup>
- Has developed a protocol to enhance its Field Training program;
- Has contracted with the University of the District of Columbia to provide cultural diversity and community-policing training for all MPD recruits and lateral officers. According to the Assistant Chief responsible for overseeing the IPS, so far almost

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<sup>93</sup> DOJ has not yet reviewed or approved this document.

3,000 MPD employees have taken part in this UDC training program.

- Has incorporated several “real-life experiences” into its force-related training.

Despite these (and many other) achievements, our preliminary review suggests that MPD is not yet in compliance with paragraphs 119-148 of the MOA. Much of the reason for this noncompliance is due to an admitted failure to document many of the changes that have taken place at IPS over the past three years. Another reason stems from the internal coordination problems that plagued MPD’s initial compliance efforts during the early months of the MOA.

In recent meetings with the director of the IPS, however, the OIM was advised that IPS would be redoubling its efforts directed at meeting the requirements of the MOA and its efforts to maintain and produce documentation regarding those efforts. Since the initially negotiated deadlines all have passed, MPD has offered the following schedule for the submission of MOA documents relating to training:

- MPD will submit its protocol to enhance its Field Training program (MOA ¶ 121(f)) to DOJ by July 31, 2002.
- MPD will submit its force-related training materials (MOA ¶ 122) to DOJ by July 31, 2002.<sup>94</sup>
- MPD will submit supervisory and leadership training documentation (MOA ¶ 129) to DOJ by June 30, 2002.
- MPD will submit its plan for addressing training instructor needs (MOA ¶ 134) to DOJ by August 15, 2002.
- MPD will submit new selection criteria for all Academy, Field Training, and formal training positions (MOA ¶ 135) to DOJ by July 31, 2002.
- MPD will submit a formal instructor training course plan (MOA ¶ 137) to DOJ by July 15, 2002.

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<sup>94</sup> DOJ provided detailed comments on an earlier draft of these materials on January 10, 2002.

MPD provided the OIM with other similar proposed deadlines for other elements of its training program. These need to be provided to, and agreed to, by DOJ. Due to the scope of this area of compliance, the OIM will focus on the issue of training in a forthcoming quarterly report. At the same time, we will assess MPD's success or failure in meeting the deadlines that it set for itself in light of the passage of the deadlines initially negotiated by the City, MPD, and DOJ. Additionally, we are hopeful that we soon will receive a copy of MPD's semi-annual training review report required by paragraph 119 of the MOA.

## **2. MOA Training**

As noted earlier in this report, the MOA required enhanced education not only in the area of police practices, but also in the area of the MOA itself. Our preliminary review suggests that the MPD has not met the requirements of paragraph 133 of the MOA, which requires MPD to "provide copies and explain the terms of [the MOA] to all MPD officers and employees" "within 120 days" of the execution of the MOA. We noticed a widespread misunderstanding regarding the terms of the MOA and, in some cases, a complete lack of familiarity. MPD reported to DOJ in early September 2001 that it was exploring ways to distribute the MOA to MPD rank and file, but, as of the publication of this report, this distribution has not taken place. More recently, the OIM was advised that MPD plans to distribute the MOA to all sworn and civilian MPD personnel in the near future.

To assist MPD familiarize its personnel with the MOA -- and to introduce the members of the Independent Monitor's team to those personnel -- the OIM prepared and provided to MPD a short "Questions and Answers" brochure for distribution within MPD. We have been advised that this brochure soon will be distributed to all MPD personnel along with the MOA. We further have been advised that the distribution of the brochure and the MOA will be followed by a series of short roll call presentations focusing on the terms of the MOA and the work of MPD with respect thereto. MPD has indicated that these roll call presentations will involve a short video introducing the MOA to MPD rank and file. While MPD reported to DOJ that this video was completed in early September 2001, MPD recently reported to the OIM that a portion of this video will have to be reproduced due to certain substantive errors contained in the video. MPD expects the revised video to be available for roll call release in the very near future, but no precise date has been provided to the OIM. If these plans come to fruition, we believe that they will go a long way toward fostering a spirit of

compliance within MPD rank and file that will facilitate the implementation of the requirements of the MOA.

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

Our preliminary review suggests that IPS managers have been diligent in striving to meet the training requirements of the MOA. In the past, much of this effort was ineffectual due to poor coordination by the group within MPD responsible for MOA compliance. We believe that the newly organized CMT will greatly enhance the IPS's ability to meet the substantive requirements of the MOA. (The due dates negotiated between MPD and DOJ already have passed.) We recommend, however, that the IPS and the CMT work even more closely together in an effort to produce to DOJ and the OIM the documentation required by the MOA as soon as possible. A close working relationship also will help ensure that MPD receives credit for achieving MOA requirements that otherwise may be lost as a result of a failure to document such achievements.

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

### **A. Requirements**

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

- Pre-screening procedures must be employed to ensure that only officers suited to participate in such units are permitted to participate. Participating officers must
  - be current on firearms certification and training, and
  - have a satisfactory record relating to the use of force, be adequately trained, be generally fit for service in a patrol unit, and match the needs of the specialized unit.
- MPD must disqualify from participation in such units (i) officers against whom there have been filed numerous credible complaints for excessive use of force and (ii) officers who are otherwise known to have used questionable force frequently in the past;

- Advance notice of which officers will be participating in such units must be provided to unit supervisors to permit enhanced supervision or tailoring of activities;
- MPD must establish adequate supervision and clear lines of supervision and accountability for such units and must ensure that supervisory officers who volunteer for such units maintain their other supervisory responsibilities;
- Adequate specialized training (including training in relevant legal issues) must be provided to officers serving in such units; and
- All specialized mission unit participants must be closely and continually monitored. Such monitoring must encompass a review of any complaints filed against officers participating in special mission unit activities.

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

### **B. Status**

As of the publication of this report, the OIM has not undertaken a review of MPD's compliance with the MOA's requirements regarding special mission units. The OIM will be initiating such a review, the results of which will be reported in an upcoming quarterly public report.

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

See note above.

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

### **A. Requirements**

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

- By geographic areas of the City;

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

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

## **B. Status**

MPD's FIT maintains detailed statistics relating to the use of force for MPD officers. Our preliminary review has satisfied us that these statistics generally encompass the information required by paragraph 160 of the MOA.<sup>95</sup> MPD does not, however, publish its use of force statistics on a quarterly basis as required by the MOA. Thus, MPD technically is not in compliance with the MOA.

## **C. Assessment and Analysis**

Because FIT already maintains the use of force statistics required by the MOA, it will not be difficult for MPD to bring itself into full compliance with paragraph 160 of the MOA. The OIM has discussed this issue with MPD and expects full compliance to be achieved prior to the end of June 2002.

# **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;

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<sup>95</sup> See FIT Annual Report (1999), at 4-7.

- 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**

MPD acknowledges that its original effort to centralize responsibility for coordinating compliance with the MOA and ensuring its proper and timely implementation was a failure. Despite some participants in the process who were fully committed to achieving the objectives of the MOA, leadership and proper organization of the overall effort was lacking. That appears to have been changed with the reorganization of the effort in February 2002 and the creation of the CMT headed by then-Captain/now-Inspector Joshua Ederheimer. Since that time, key orders and policy documents have been drafted in a more timely way and reflect a level of quality that, according to DOJ, was notably lacking in the earlier efforts.

Prior to the creation of the CMT, MPD issued two status reports to DOJ. The first, dated October 31, 2001 (the “October report”), was submitted in matrix form along with the following items: Investigations of Misconduct Manual, Informational Materials for the Citizen Complaint Process, Field Training Program Protocol, Role Play and Range 2000 Course Review, Training Instructor Assessment and Development Plan, and MPD Progress Report. As discussed previously, the DOJ found each of these items to be inadequate.

The second pre-CMT report, dated February 5, 2002 (the “February report”), also was in matrix format. Like the October report, the February report indicated MPD’s compliance status with each MOA requirement. The February report included the following documents to demonstrate examples of improvements made as a result of MPD’s cooperative efforts: the FIT Organizational Plan and Operational

Manual, the FIT Training Report, a report announcing the expanded duties of FIT, and two preliminary reports regarding canine deployments.

Approximately two months after its creation, on April 15, 2002, the CMT issued a status report that described MPD's renewed efforts to comply with the terms of the MOA and included copies of the following documents: Handling of Service Weapons General Order; Handling of Service Weapons General Order Revision Matrix, based on January 10, 2002 DOJ letter; Use of O.C. Spray General Order; Use of O.C. Spray General Order Revision Matrix, based on January 10, 2002 DOJ letter; Canine Teams General Order; Canine Teams General Order Revision Matrix, based on March 15, 2002 DOJ letter; Force-Related Duty Status Procedure General Order; Performance Assessment Management System (PAMS) Special Order; Carrying Weapons Aboard Aircraft General Order; April 10, 2002 MPD internal newsletter, "The Dispatch," communicating the selection of the Independent Monitor to MPD employees; PPMS Proposal Information; and Workshop Proposal for the 109th IACP Annual Conference entitled *Law Enforcement and DOJ Partnerships: Creating and Implementing a Memorandum of Agreement*.

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

MPD's recent effort to comply with the MOA appears to be far more successful and productive than its earlier efforts. We believe the challenge will be to hold the CMT together, ensure continuity, and ensure an adequate level of staffing. Already, there are two key staffing vacancies on the CMT that must be filled quickly if it is to help MPD catch up in the various areas in which it has fallen behind.

The CMT's recent status report, dated April 15, 2002, is a well-written, useful, and informative document, although it lacks some of the details that are called for by the MOA.<sup>96</sup> We look forward to this document being the principal quarterly reflection of MPD's progress across all the requirements of the MOA.

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<sup>96</sup> Paragraph 175 of the MOA states: "Between 90 and 120 days following the effective date of this Agreement [June 13, 2001], and every three months thereafter until this agreement is terminated, MPD and the City shall file with DOJ and the Monitor a status report delineating all steps taken during the reporting period to comply with each provision of this agreement." (Emphasis added.)

## Conclusion

**B**ased on our preliminary review over the past two months, we believe that leadership within MPD and the current leadership of the CMT is committed to fulfilling the objectives of the MOA. However, as detailed in this report, MPD got off to an extremely slow start in the months following the signing of the MOA, in effect losing close to eight important months during which very little of substance -- except in the area of training -- was accomplished to implement the MOA's many and diverse requirements. The result has been a wholesale failure to meet deadlines. These deadlines were quite ambitious to begin with and would have posed significant challenges even if MPD had been organized properly. The fact that it was not, and that the MPD squandered so much time at the beginning of the process, has created very significant problems for compliance with the MOA that the MPD is now working very hard to overcome.

On the basis of what we have seen in the two months we have been monitoring the MOA, we believe that MPD now is proceeding toward compliance with the MOA's substantive requirements. However, with the legacy of missed deadlines and the failure to elevate compliance with the MOA to a top priority of MPD, it will take a combination of substantial vigilance and the devotion of substantial resources to bring MPD's performance in complying with the MOA in line with what appears to be a genuine commitment to its goals and objectives. In addition, MPD will need the full support and, where appropriate, the involvement of the City in order to meet these obligations, as well as those obligations the MOA imposes on the City as a whole. Our future reports will attempt to measure MPD's ongoing efforts to bring its performance in line with its stated commitment to the MOA and its objectives.

A handwritten signature in black ink, appearing to read "Michael R. Bromwich". The signature is written in a cursive style with a horizontal line underneath it.

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

June 12, 2002

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