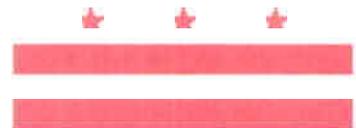
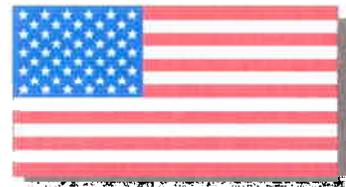


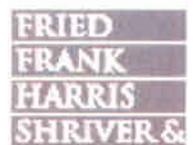
Sixth Quarterly Report of the Office of Independent Monitor for the Metropolitan Police Department

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Executive Summary

OVERVIEW

This report is the sixth quarterly report of the Office of the Independent Monitor (“OIM”), which covers the third calendar quarter of 2003. The OIM now is in its second year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established at the end of March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

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

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

Use of Force and Use of Force Incident Report Policies

The overall number of investigated uses of force by MPD officers remained relatively steady during each of the months of June (34), July (31), and August (34) 2003, and statistics for those months were comparable to, albeit slightly lower than, the figures for April and May 2003. The frequency of use of force incidents during this quarter was higher than that of the first quarter of 2003. Although we will continue reviewing the investigations of these uses of force, it remains too early to draw conclusions regarding the existence of any trends. Our review of Use of Force Incident Reports (“UFIRs”) this quarter indicates that the system for tracking and filing UFIRs remains confusing and that there is substantial progress that needs to be made in ensuring that UFIRs are filled out in all appropriate circumstances.

Use of Oleoresin Capsicum Spray

MPD's use of Oleoresin Capsicum ("OC") spray was the subject of close scrutiny by the OIM during this quarter. In monitoring MPD's use of OC spray, we (1) reviewed 29 MPD chain of command investigations involving an MPD officer's use of OC spray during the period January 2003 through June 2003, (2) observed in-service use of force training, and (3) interviewed Institute of Police Science ("IPS") personnel regarding the training provided to new recruits with respect to OC spray. The sample of OC spray cases we reviewed this quarter suggests that MPD is in overall compliance with MPD and MOA standards regarding the use of OC spray.

Investigating Use of Force and Misconduct Allegations

During this quarter, the OIM completed a major review of 244 MPD chain of command use of force and misconduct investigations in order to assess the quality of those investigations. The preliminary results of this review are divided into the following four categories: (1) administration and management of the investigations, (2) conduct of the investigations, (3) unit commander review of investigations, and (4) the OIM reviewers' overall ratings regarding the completeness and sufficiency of the investigations.

This review found that there is significant room for improvement in areas within each of these four categories. For example, only 63% of the cases reviewed were completed within the 90-day window required by the MOA.¹ While we found that MPD investigators were scrupulous in adhering to certain fundamental investigative techniques, application of certain other investigative methods, such as witness canvasses, were found to be woefully lacking. There is also significant room for improvement with regard to the frequency and timeliness of unit commanders' notification to the Force Investigation Team and the United States Attorney's Office where chain of command investigations reveal evidence of criminal wrongdoing. Overall, from our sample results, our police practices experts found only 60% of the investigations to be "complete" and only 77% of the investigations to be "sufficient."

¹ Of the cases that were not completed within the 90-day period provided by the MOA, only 11% contained an explanation of the "special circumstances" occasioning the delay.

As reported last quarter, during the course of our review of the 244 investigations, we developed serious concerns with respect to the integrity of MPD's systems for the maintenance of its investigation files. In response to technical assistance on file integrity issues provided by the OIM during this quarter, MPD's Office of Internal Affairs ("OIA") already has instituted several reforms to address some of the problems related to file integrity. We will continue to monitor MPD's progress with respect to this serious issue.

Personnel Performance Management System ("PPMS")

MPD made noteworthy progress on the PPMS system during this quarter. Most significantly, DOJ and MPD successfully renegotiated the outstanding deadlines for PPMS-related MOA deliverables and have agreed on a revised schedule to govern the development and implementation of the PPMS. The parties entered into a modification to the MOA relating to the PPMS on September 30, 2003, thereby discharging both MPD and the City from breach status with respect to the PPMS provisions of the MOA. MPD also selected IBM and CRISNet Incorporated as vendors in the PPMS development project, and these companies began their work with MPD in September 2003.

Training

This quarter, the OIM monitored in-service training related to firearms, cultural diversity, and community policing. For the most part, we found the instructors to be knowledgeable and professional and the training programs to be of high quality. We also reviewed MPD's compliance with MOA provisions related to management oversight of training. Although IPS acknowledges being out of compliance with several MOA provisions regarding management oversight of training, it has taken steps to bring MPD into compliance in this area in the relatively near future. We will continue to monitor MPD's progress in this regard.

Monitoring, Reporting, and Implementation

As in the past, we remain very impressed by the professionalism, efficiency, and responsiveness of MPD's Compliance Monitoring Team ("CMT"). In particular, the CMT and OIA staffs provided the MPD extraordinary cooperation in connection with our review of the 244 chain of command use of force and misconduct investigations. Due in a significant degree to their dedicated professionalism, we were able to complete this major monitoring activity within the aggressive timetable

that we established. Also, as in the past, we find MPD's quarterly reports to be well written, well organized, and generally informative.

Development of Substantial Compliance Standards

This quarter, the OIM compiled draft "substantial compliance" standards for 62 paragraphs of the MOA in the form of a matrix, which (1) sets forth the full text of the MOA provision, (2) summarizes the MOA requirements capable of being monitored that are contained in each provision, (3) defines substantial compliance in qualitative and quantitative terms, and (4) describes the data sources we will rely on in assessing substantial compliance. Whether the final form of these standards is a matrix of this type -- or captured in some other format -- will depend on the course of our future discussions with DOJ and MPD.

The OIM, DOJ, and MPD held two constructive meetings concerning the development of "substantial compliance" standards, and both DOJ and MPD have provided the OIM with written commentary regarding the draft matrix. In the coming months, the OIM, in close consultation with DOJ and MPD, will continue formulating and refining "substantial compliance" standards across the MOA.

Conclusion

During this quarter, MPD engaged in a broad array of MOA-related compliance activities. In particular, MPD continued to devote significant resources to the resolution of issues related to the development of the PPMS, and DOJ and MPD agreed to a modification of the MOA that establishes revised deadlines related to the development of the PPMS and discharges both the City and MPD from their breach status.

Our observations confirm our general experience that MPD has been working in good faith to comply with the requirements of the MOA and has made significant progress toward MOA compliance. Areas still remain, however, that will require MPD's continued vigilance. For example, our review of a statistical sampling of MPD chain of command use of force and misconduct investigations has revealed areas in need of significant improvement.

We have spent this quarter on a wide range of activities, including a review of UFIRs, completion of a major review of use of force and misconduct investigations, and a review of various training programs. In addition, we continued our work toward defining the meaning of "substantial compliance" across the full scope of the MOA, a project that

will take some additional time before it is completed. Our close scrutiny of OC spray cases suggests that MPD is in overall compliance with MPD and MOA standards regarding this important use of force alternative. However, we again have noted some significant problems with the frequency and manner in which UFIRs are being completed by officers involved in uses of force. Finally, during the course of our major review of chain of command use of force and misconduct investigations, we also noted serious shortcomings with the way in which investigation files are maintained, although MPD already has taken steps towards remedying these deficiencies. Because the quality of internal MPD investigations is a key element of the MOA, we will continue to devote significant efforts towards reviewing these investigations in upcoming quarters.

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Appendix A: Acronyms

Appendix B: Summary of the Results of the OIM's Review of the
Investigations Sample

Introduction

This report is the sixth quarterly report of the Office of the Independent Monitor (“OIM”), which covers the third calendar quarter of 2003. The OIM now is in its second year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established at the end of March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

This report covers the period July 1, 2003 through September 30, 2003, during which MPD engaged in a broad array of MOA-related compliance activities. In particular, MPD continued to devote significant resources this quarter to the resolution of issues related to the development of the Personnel Performance Management System (“PPMS”). As a result, DOJ and MPD agreed to a second modification of the MOA that establishes revised deadlines related to the development of the PPMS and discharges both the City and MPD from their breach status. MPD also selected IBM and CRISNet Incorporated as vendors in the PPMS development project, and these companies began their work with MPD in September 2003.

While we engaged in a broad range of monitoring activity this quarter, we devoted significant resources and energy to completing our review of a statistical sample of 244 MPD chain of command use of force and misconduct investigations. MPD provided extraordinary assistance to the OIM in facilitating the completion of this review within the aggressive timetable we had established.

During the course of our review of these investigations, the OIM identified numerous problems related to the integrity of MPD’s investigation files maintenance system. After welcoming technical assistance from the OIM’s police practices experts, MPD on its own initiative implemented several reforms with respect to the maintenance of these investigation files.

During this quarter, the OIM continued the process of establishing standards for measuring MPD's compliance with the MOA. Paragraph 182 of the MOA provides that:

[t]he Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have **substantially complied** with each of the provisions of this Agreement and maintained substantial compliance for at least two years. [Emphasis added.]

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

This quarter, the OIM compiled draft "substantial compliance" standards for 62 paragraphs of the MOA in the form of a matrix, which (1) sets forth the full text of the MOA provision, (2) summarizes the MOA requirements capable of being monitored that are contained in each provision, (3) defines substantial compliance in qualitative and quantitative terms, and (4) describes the data sources we will rely on in assessing substantial compliance. Whether the final form of these standards is a matrix of this type -- or captured in some other format -- will depend on the course of our future discussions with DOJ and MPD.

The OIM, DOJ and MPD held two constructive meetings concerning the development of "substantial compliance" standards, and both DOJ and MPD have provided the OIM with written commentary regarding the draft matrix. In the coming months, the OIM, in close consultation with DOJ and MPD, will continue formulating and refining "substantial compliance" standards across the MOA.

The OIM experienced another personnel change this quarter. OIM team member Melissa E. Lamb left Fried, Frank, Harris, Shriver & Jacobson to join the Enforcement Division of the United States Securities & Exchange Commission. Ms. Lamb has been an important contributor to the OIM, and we extend our sincere thanks for her hard work.

Compliance Assessment

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

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

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;

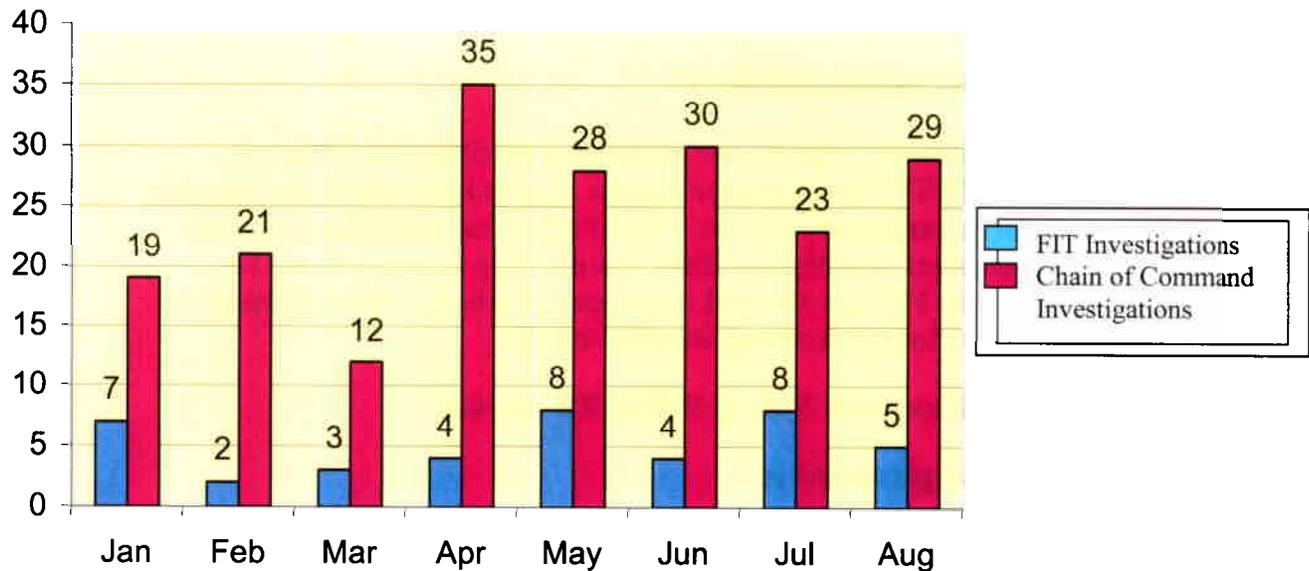
² MOA at ¶ 169.

- Encourage officers to use advisements, warnings, and verbal persuasion when appropriate and in general seek the goal of de-escalation;
- Prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may develop such that the use of deadly force would be authorized;
- Establish that officers must, wherever feasible, identify themselves as police officers and issue a warning before discharging a firearm;
- Require that, immediately following the use of force, officers must examine persons who have been subjected to the use of force and obtain medical care for them, if necessary; and
- Provide specific advice to officers that the use of excessive force will subject them to MPD disciplinary action and potential civil liability and criminal prosecution.

2. Status And Assessment

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

Last quarter, we noted that the number of uses of force involving an MPD officer in April and May 2003 had increased as compared to uses of force in the previous three months, January through March 2003. We also noted that, while the increase in such uses of force may well have understandable and satisfactory explanations, including higher levels of violent crime and seasonal variations in crime, we did not have sufficient information to dismiss or explain the increase in the number of uses of force.



Source: Force Investigation Team Monthly Use of Force Report³

As reflected in the above graphic, the overall number of uses of force by MPD officers remained relatively steady during each of the months June through August 2003, and statistics for those months were comparable to, albeit slightly lower than, the figures for April and May 2003. The frequency of use of force incidents during the past quarter was higher than that of the first three months of 2003.

As discussed last quarter, since MPD only began reporting use of force data in this fashion to the OIM in January 2003, it remains too early to draw conclusions regarding trends in uses of force or to make year-to-year rather than month-to-month comparisons, which may have various explanations. Moreover, since use of force statistics on a national level are not readily available, it also is difficult at this time to assess whether MPD's statistics are equivalent to those that might be expected in a police department of a similar size. The OIM plans to evaluate this issue in greater detail in a coming quarter. This evaluation, where possible, will take advantage of use of force data maintained by

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

the International Association of Chiefs of Police and the DOJ Bureau of Justice Statistics.

3. Recommendations⁴

In our last quarterly report, we recommended that the Force Investigation Team (“FIT”) incorporate arrest and crime rate data into its monthly use of force summary report. We made this recommendation because we believe such additional data would help ensure that the statistics compiled by FIT are viewed in proper context. We continue to think this recommendation has substantial merit.

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;

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

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

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

2. Status And Assessment

Other than the in-service firearms training, discussed below in Section VI.B.2, the OIM did not monitor firearms-related activities this quarter.

As noted in previous quarterly reports, however, on June 4, 2002, the District of Columbia City Council approved an amendment, entitled the "Off-Duty Service Pistol Authorization Amendment Act of 2002," that permits MPD's Chief of Police to designate his own policy as to when off-duty officers are required to carry their service pistols in the City. This measure was signed into law and became effective on October 1, 2002. We are concerned that an entire year has passed without MPD's issuing a special order implementing this policy.

3. Recommendations

The OIM strongly encourages MPD to issue in the near future a special order concerning the carrying of service pistols by off-duty officers.

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

1. Requirements

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

- Limits the high-risk deployment of canines -- off-leash deployments, use during searches, and other situations where there is a significant risk of a canine biting a suspect -- to cases where the suspect is either wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed;
- Requires supervisory approval for all canine deployments -- either a canine unit supervisor or a field supervisor;⁵
- Ensures that suspects are advised through a loud and clear announcement that a canine will be deployed, that the suspect should surrender, and that the suspect should remain still when approached by a canine; and
- Ensures that, in all circumstances where a canine is permitted to bite or apprehend a suspect,
 - The handler calls the canine off as soon as the canine can be safely released, and
 - MPD ensures that any individual bitten by a canine receives immediate and appropriate medical treatment.

2. Status And Assessment

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

In short, while we find that the small number of canine bites occurring in 2002 reflects marked and commendable improvement in the operation of MPD's Canine Unit, we also find that MPD's canine program has some issues -- both definitional and operational -- that need to be addressed. We note in this regard that a central issue is the confusion regarding the meaning of

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

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

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

On June 4, 2003, MPD submitted a revised Canine Teams General Order to DOJ. On July 25, 2003, DOJ provided MPD comments on the revised order and, on September 30, 2003, also provided certain specific policy recommendations intended to provide additional guidance with respect to revision of the Canine Teams General Order. MPD currently is reviewing DOJ’s comments and recommendations.

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

3. Recommendations

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

D. Oleoresin Capsicum Spray Policy (¶¶ 47-50)

1. Requirements

The MOA requires MPD to develop an Oleoresin Capsicum (“OC”) Spray Policy. The policy must comply with applicable law and be 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,

⁶ OIM Fourth Quarterly Report at 14.

⁷ OIM Fifth Quarterly Report at 11.

or maintain the suspect in custody and unless the suspect is actively resisting the officer;

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

2. Status And Assessment

MPD's use of OC spray was the subject of a "detailed and specific monitoring" by the OIM during this quarter. In monitoring MPD's use of OC spray, we (1) reviewed 29 of 30 MPD chain of command investigations⁸ involving an MPD officer's use of OC spray during the period January 2003 through June 2003,⁹ (2) observed in-service use of

⁸ The OIM's review of 29 MPD chain of command investigations related to uses of OC spray was not a scientific survey. Accordingly, statistical extrapolations and conclusions based on the findings described in this section would not be appropriate.

⁹ The incidents underlying three of these "2003" cases occurred in December 2002.

force training, and (3) interviewed Institute of Police Science (“IPS”) personnel regarding the training provided to new recruits with respect to OC spray.

The sample of OC spray cases we reviewed this quarter suggests that MPD is in overall compliance with MPD policy and MOA standards regarding the use of OC spray, but there remains room for improvement. In all 29 cases, it appears that MPD officers had legal cause to detain the suspect sprayed.¹⁰ None of the 29 cases involved the use of OC spray to disperse a crowd or small group of people.¹¹ In all but 1 of the 29 cases, the MPD officers issued verbal warnings, where practical, prior to the use of OC spray.¹² In all 29 cases, the use of OC spray was limited to the suspect’s head and torso.¹³

Two of the cases we reviewed suggested areas in which enhanced training of MPD officers regarding the use of OC spray would be beneficial. One of the 29 cases reviewed involved the use of OC spray against a 70-year-old male. Although this suspect was not complying with the officer’s commands, the investigation report indicates that three officers were present at the scene. Accordingly, there may not have existed the “exceptional circumstances” necessary to justify the use of OC spray against an elderly subject.¹⁴ Finally, 2 of the 29 investigations reviewed indicate that the suspect did not receive immediate decontamination treatment after being sprayed.¹⁵

Our review of the 29 OC spray-related investigations reflects that MPD officers appeared to administer OC spray in a judicious and highly effective manner. In all but 2 of the 29 cases, the suspect was subdued and taken into custody without further incident after only one or two bursts of OC spray. The evidence contained in the reports we reviewed suggests that the use of OC spray contributed to the virtually complete absence of injuries to officers and suspects in all of the cases reviewed.

¹⁰ MOA at ¶ 47.

¹¹ *Id.*

¹² MOA at ¶ 49.

¹³ MOA at ¶ 50.

¹⁴ MOA at ¶ 48.

¹⁵ *Id.*

Based on interviews with IPS training staff, it appears that MPD's training methodology with respect to the use of OC spray is similar to the basic training principles employed by law enforcement agencies nationwide. New recruits receive instruction with respect to: (1) proper deployment of the OC spray, (2) the appropriate use of OC spray in relation to the use of force continuum, and (3) the decontamination process. During basic training, new recruits also are exposed to OC spray by either direct or indirect contact to foster a direct understanding of the incapacitating effects of this use of force.¹⁶

In-service training concerning the use of OC spray is less comprehensive than the training provided to new recruits. In-service training regarding OC spray is provided only in the context of in-service firearms training and recertification sessions. To the extent the use of OC spray is addressed during these sessions, the training involves primarily the re-familiarization of officers with the appropriate role for the use of OC spray in the use of force continuum. This instruction on the use of force continuum is delivered in lecture and role-play formats.

MPD's in-service training typically does not address policy issues such as (1) prohibiting the use of OC spray to disperse crowds and (2) avoiding, absent exceptional circumstances, the use of OC spray on children and elderly persons. While the in-service training may include an overview of the proper deployment of OC spray (e.g., verbal warnings, one or two bursts from at least three feet away, and aiming at the suspect's face or torso), this is not a focus of the training session, which is devoted primarily to the use of firearms. Moreover, the in-service training does not address decontamination procedures to be employed following the use of OC spray.

The OIM intends in future quarters to review additional chain of command use of force investigations involving uses of OC spray. The OIM will explore monitoring techniques intended to provide insight into whether OC spray, as an effective use of force alternative, is over- or under-utilized relative to other options available to officers along the use

¹⁶ The OIM did not monitor new recruit training on the use of OC spray this quarter. Our observations regarding new recruit training are based on interviews with IPS training staff.

of force continuum. We also intend to monitor directly new recruit training with respect to the use of OC spray.¹⁷

3. Recommendations

The OIM recommends that in-service training provide more focused attention to the use of OC spray, including training on MPD policies regarding OC spray, appropriate techniques for deployment of the agent, and decontamination procedures.

E. Implementation Schedule (§§ 51-52)

While not flawless, MPD's implementation efforts relating to its use of force policies appear to be on track.

II. Incident Documentation, Investigation, and Review (MOA §§ 53-84)

A. Use of Force Reporting Policy and Use of Force Incident Report (§§ 53-55)

1. Requirements

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

- Notification of an officer's supervisor immediately following any use of force or after the lodging of any allegation of excessive use of force;
- An officer to fill out a UFIR immediately after he or she uses force, including the drawing and pointing of a firearm at another person or in such a person's direction;
- An officer's supervisor to respond to the scene upon receiving notification that force has been used or that an allegation of excessive force has been received;

¹⁷ In connection with our focused review of OC spray-related uses of force, we also developed several observations regarding the quality and completeness of the 29 chain of command use of force investigations reviewed. Those findings are discussed below in Section II.B.1.b(3).

- Immediate notification to FIT in every instance involving deadly force,¹⁸ the serious use of force,¹⁹ or any use of force potentially reflecting criminal conduct by an officer;²⁰
- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on UFIRs into MPD's PPMS.

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

In all uses of force requiring a Use of Force Incident Report, the member shall immediately notify his/her supervisor of the use of force, intentional or unintentional, exercised by the member, any accusation of excessive force made against the member, or immediately following the drawing of and pointing a firearm at or in the direction of another person, and shall promptly complete the Use of Force Incident Report.²¹

¹⁸ "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."

¹⁹ "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."

²⁰ "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."

²¹ Memorandum of Agreement Progress Report, dated January 7, 2003, at 9.

The parties also agreed upon certain language regarding the process of compelling an officer to complete a UFIR following a declination by the United States Attorney's Office ("USAO") and/or issuance of an authorized Reverse -Garrity warning. A "Reverse -Garrity" warning is a statement given to an officer, typically following a declination to prosecute issued by the USAO, requiring the officer to answer questions relating to his or her official duties but precluding the use of statements made by the officer against him in any criminal prosecution.

2. Status And Assessment

a. Use of Force Incident Report (UFIR)

In our Fifth Quarterly Report, we observed that there appeared to be lingering confusion among MPD officers and supervisors with respect to the UFIR. We also observed that an effect of this apparent confusion is that officers have not completed UFIRs in circumstances where MPD policy provides that they should. As reflected in the chart below, the UFIR completion rate, even after discounting uses of force still subject to pending reviews by the USAO,²² remains a problem.

²² Prior to July 2003, MPD's statistics regarding use of force incidents and UFIR completion did not take into account cases that were subject to pending reviews by the USAO. Because officers cannot be compelled to provide statements regarding a use of force prior to a written declination of prosecution by the USAO, UFIRs for those cases could not be completed. Accordingly, our chart regarding the percentage of use of force incidents resulting in a completed UFIR has been modified to reflect the information MPD now provides regarding cases pending USAO declinations.

	Total uses of force investigated by FIT	Total uses of force investigated by chain of command	Total uses of force as reported by FIT	Total number of UFIRs completed as reported by FIT	Uses of force in which no UFIR completed due to pending AUSA review	Percentage of uses of force resulting in completion of UFIR	Percentage of UFIRs completed, not including uses of force in which USAO review is pending ²³
October 2002 - December 15, 2002	12	57	69	14		20.29%	
January 1, 2003 - January 31, 2003	7	19	26	6		23.08%	
February 1, 2003 - February 28, 2003	2	21	23	7		30.43%	
March 1, 2003 - March 31, 2003	3	12	15	13		86.67%	
April 1, 2003 - April 30, 2003	4	35	39	11		28.21%	
May 1, 2003 - May 30, 2003	8	28	36	25		69.44%	
June 1, 2003 - June 30, 2003	4	30	34	14		41.18%	
July 1, 2003 - July 31, 2003	8	23	31	13	7	41.99%	54.17%
August 1, 2003 - August 31, 2003 ²⁴	5	29	34	15	6	44.12%	53.58%

As reported last quarter, MPD has revised and simplified the UFIR and submitted those proposed revisions to DOJ. On March 19, 2003, DOJ provided written responses to MPD's proposal. According to its October 10, 2003 Progress Report, MPD's efforts in "assessing the comments and making adjustments to the draft revised form" are ongoing.²⁵ As of the close of this quarter, MPD had not submitted a revised form to DOJ.

Last quarter, we also reported that, in addition to UFIRs being completed too infrequently, the quality of completed UFIRs and the

²³ Use of force statistics for periods prior to July 2003 did not include the number of UFIRs not completed due to the pendency of AUSA reviews.

²⁴ MPD typically is unable to provide use of force statistics for the last month of each quarter in time for inclusion in that period's quarterly report. Therefore, this quarterly report includes reference to statistics for June 2003, which were unavailable for inclusion in our Fifth Quarterly Report, but does not include statistics for September 1, 2003 through September 30, 2003.

²⁵ Memorandum of Agreement Progress Report, dated October 10, 2003 ("MPD October 2003 Progress Report"), at 9.

manner in which MPD maintained UFIRs were defective.²⁶ Our reviews of UFIRs this quarter found that, in addition to the UFIR completion rate remaining at low levels, the UFIR filing system continues to be confusing. For instance, it is unclear whether UFIRs are filed by “CS” number, officer name, or incident. Also, the quality of UFIRs appears to remain in need of improvement. This quarter, our reviewers identified two UFIRs that were identified as “complete” by MPD despite the lack of responses in certain information fields and the absence of supervisory signatures indicating approval of the UFIRs. These are areas in which significant improvement is necessary, and we will continue to revisit issues related to the UFIRs on a regular basis in future quarters.

On March 25, 2003, MPD sent a letter to DOJ proposing amendment to the UFIR reporting requirement as it relates to certain incidents involving MPD’s Specialized Mission Units (“SMUs”) during which multiple officers point their service weapons. MPD believes that the UFIR requirement as it relates to such incidents may give rise to delays that adversely affect operational efficiency. As an alternative to the requirement that each officer prepare a UFIR documenting the pointing of a weapon, MPD proposed that the unit manager complete a single “After Action Documentation Report.” DOJ responded to MPD’s proposal on August 25, 2003, and MPD is currently reviewing DOJ’s recommendations.

b. AUSA Notification Log

Previously, MPD described several improvements to the manner in which FIT manages and reports its investigations. One such improvement was the creation of an “AUSA [Assistant United States Attorney] Notification Log.”²⁷ As we have on several past occasions, we reviewed the AUSA Notification Log again this quarter and found it to be accessible and current.

3. Recommendations

The data set forth above suggest that, despite MPD’s revised training program and the completion of its supplementary sergeants and above training program, serious problems related to the UFIR persist. MPD’s statistics indicate that, even after discounting cases in which a

²⁶ OIM Fifth Quarterly Report at 16.

²⁷ Memorandum of Agreement Progress Report, dated October 4, 2002, at 11.

declination from the USAO is pending, only just over half of the uses of force in July and August 2003 resulted in a completed UFIR on file with FIT. We repeat our recommendation that MPD take advantage of the expert technical assistance available from DOJ and the OIM to remedy these shortcomings in MOA compliance.

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

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

a. Requirements

(1) FIT Use of Force Investigations

The provisions of the MOA that address use of force investigations take as their point of departure the January 1999 creation of FIT as the entity within MPD charged with investigating all firearms discharges by MPD. The MOA creates a protocol for handling the investigation of use of force by MPD and the manner in which such investigations are to be coordinated. At the core of the protocol is the requirement to transfer responsibility for MPD criminal investigations involving officer use of force from MPD district violent crime units or other MPD district supervisors to FIT.²⁸

MPD is required to notify and consult with the USAO -- and vice versa -- in each instance in which there is an incident involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are handled by FIT rather than by any other unit of MPD. Even while the criminal investigation is pending, the MOA requires FIT's investigation of the officer's use of force to proceed in all such cases, although the compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.²⁹

²⁸ Consistent with this approach, the MOA requires that MPD train and assign a sufficient number of personnel to FIT to fulfill the duties and responsibilities assigned to it by the MOA. MOA at ¶ 63.

²⁹ 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).

FIT is required to respond to the scene of every such incident described above and to conduct all such investigations, whether the investigation results in criminal charges, administrative sanctions, or both. No officers from any unit other than FIT are permitted to participate in the investigation. The MOA requires FIT's administrative (non-criminal) use of force investigations to be completed within ninety days of a decision by the USAO not to prosecute, unless special circumstances prevent their timely completion.³⁰

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

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

(2) Other Use of Force Investigations

All use of force investigations, other than those specifically assigned to FIT, may be investigated by chain of command supervisors in MPD districts. In the alternative, the Chief of Police or his designee may assign investigations to chain of command supervisors from another district. In the absence of special circumstances, these use of force investigations, like FIT's investigations, must be completed within ninety days and must contain all of the elements prescribed above for FIT investigation reports. Once such investigations are complete, the investigation report must be submitted to the Unit Commander, who will review it to ensure completeness and to ensure that its findings are

³⁰ In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

supported by the evidence. The Unit Commander has the power to order additional investigation if necessary. Once the investigation is complete, the investigation file is forwarded to the Use of Force Review Board (“UFRB”).³¹

(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;³²
- Establish the membership of the UFRB;
- Establish timeliness rules for the review of investigations;
- Authorize the UFRB to recommend discipline for violations of MPD policies, recommend further training where appropriate, and authorize the UFRB to direct City supervisors to take non-disciplinary action to encourage officers to modify their behavior;
- Require the UFRB to assign to FIT or return to the original investigating unit any incomplete or improperly conducted use of force investigations; and
- Empower the UFRB to recommend to the Chief of Police investigative standards and protocols for all use of force investigations.

³¹ 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.

³² Recognizing that the UFRB might be overwhelmed by reviewing all use of force investigations, DOJ and MPD agreed to modify the MOA to require the UFRB to conduct timely reviews only of use of force investigations investigated by FIT I or FIT II. Additionally, according to DOJ, it agreed to allow non-FIT force reviews, with some exceptions, to be conducted by chain of command officers (and conclude at the Assistant Chief level) so long as FIT continues to review all non-FIT use of force incidents in an effort to identify incidents that should be referred to the UFRB.

In addition to these requirements, the UFRB must conduct annual reviews of all use of force investigations to identify patterns and problems in such investigations. The UFRB must issue a report summarizing the findings of its review to the Chief of Police.

b. Status And Assessment

(1) FIT Manual

MPD submitted its FIT manual to DOJ on February 5, 2002. Following comments from DOJ, MPD submitted a revised FIT manual on November 1, 2002. Following additional comments from DOJ on March 26, 2003, MPD submitted a newly revised draft manual on April 21, 2003. DOJ provided comments on the revised FIT Manual on August 25, 2003, all of which MPD incorporated into the draft FIT Manual that was returned to DOJ for approval on September 29, 2003.

(2) FIT Use of Force Investigations

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

(3) Other Use of Force Investigations

During this quarter, we conducted an intensive review of 29 chain of command use of force investigations related to uses of OC spray, as described in Section I.D.2. above. We identified deficiencies in several of these investigations.³³

³³ Section II.B.2.b(1) below contains a detailed discussion of the preliminary results of the OIM's review of a statistical sampling of MPD misconduct and use of force investigations. The OIM's observations with respect to the quality of the 29 OC spray-related cases reviewed in connection with this quarter's intensive focus in that area are not based on a scientific sampling. The discussion of these OC spray cases above at Section I.D.2 focuses on the appropriateness of the use of OC spray and MPD's compliance with the specific requirements relating to its use. The assessment contained in this section addresses the merits of MPD's investigations into its use.

The investigations in 18 of these 29 cases were found to be either insufficient, incomplete or lacking in documentation reflecting that a canvass for witnesses had been conducted in accordance with the MOA.³⁴ Six of the 29 cases were not completed within the 90-day period required by the MOA, and in 2 of those cases the investigation file provided no explanation as to reason for the delay.³⁵ In at least one case, the investigator failed to identify or address inconsistencies in statements provided by the MPD officer and witnesses.³⁶

(4) Use of Force Review Board

The OIM intends to review a sample of UFRB cases in the near future.

c. Recommendations

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

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

a. Requirements

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

- Allegations for which an officer has been arrested or charged criminally;
- Allegations where an officer has been named as a party in a civil lawsuit

³⁴ MOA at ¶ 81.f.

³⁵ The MOA requires that chain of command investigations be completed within 90 days following the use of force incident, absent "special circumstances" which must be documented. MOA at ¶ 65. Thus, 2 of the 29 OC spray cases we reviewed were untimely and contained no documentation reflecting "special circumstances" that might justify the delay.

³⁶ MOA at ¶ 81.g.

- 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.³⁷

With respect to allegations in the above categories that are criminal, MPD's Office of Professional Responsibility ("OPR") is required to conduct the investigation rather than chain of command supervisors in MPD's districts. In these categories of cases, MPD is required to notify the USAO within twenty-four hours of the receipt of such allegations, and MPD and the USAO are required, in the absence of extraordinary circumstances, to consult with each other following such notification.³⁸ 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

³⁷ 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.

³⁸ 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.

2. Incidents where evidence has been suppressed because of a constitutional violation involving potential misconduct by an MPD officer or where a judicial officer either has made a finding of misconduct against an officer or has requested MPD to conduct an investigation into such an allegation.

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

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

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

- MPD must develop a plan (subject to approval by DOJ) under which OPR would become responsible for the *criminal misconduct* allegations described in the bulleted points listed at the beginning of this section, which would include provision for sufficient personnel and adequate procedures to implement this objective;
- MPD must develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint*

investigations from chain of command supervisors to MPD's OPR;³⁹

- 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;⁴⁰
- MPD must develop a plan (subject to DOJ approval) to ensure that all MPD officers responsible for conducting investigations receive adequate training in a wide range of subjects;
- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- MPD must develop a manual (subject to DOJ approval) for conducting all MPD misconduct investigations.

The foregoing plans must be implemented fully, with all necessary positions filled, by the various deadlines set forth in the MOA Modification.

b. Status And Assessment

(1) Investigation Reviews

Taking advantage of the sampling methodology developed by the OIM, in consultation with MPD and DOJ, the OIM completed its review of 244 misconduct and non-FIT use of force investigations identified by PricewaterhouseCoopers LLP ("PwC") using that methodology.⁴¹ PwC

³⁹ See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

⁴⁰ In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

⁴¹ The statistical sample size originally identified by PwC was 240. Through application of the sampling methodology, PwC ultimately selected 244 usable MPD use of force and misconduct investigations for inclusion in the investigations review database. Pursuant to the sampling methodology, we systematically excluded from the sample all FIT use of force investigations, OCCR misconduct investigations, EEO-related investigations, and civil cases

Footnote continued

drew the statistical sampling from MPD investigations opened from June 13, 2001, the effective date of the MOA, through March 31, 2003. The selected sample includes approximately 30 investigations from every MPD district, which will enable us to draw conclusions with a high degree of statistical confidence on an MPD-wide basis, as well as derive useful information on a district-by-district basis.

To facilitate our review of these (and future) misconduct investigations, the OIM, working closely with PwC, has developed an electronic database that allows our police practices experts to streamline their investigation file reviews and allows the OIM to compile data regarding those reviews efficiently. We established an ambitious schedule for the completion of our review of qualifying investigations by the end of this quarter. We are pleased that we have achieved this goal, and we are in a position to present preliminary findings derived from the MPD chain of command use of force and misconduct investigations we have reviewed during this quarter and the preceding quarter.

We received extraordinary cooperation from MPD in connection with our review of the 244 investigation files included in the database. In particular, we recognize the exceptional effort of MPD's Compliance Monitoring Team ("CMT") and Office of Internal Affairs ("OIA") staffs in responding promptly on all occasions to the OIM's serial requests for files and data. We would have been unable to complete this review within the aggressive schedule we established without the dedicated professionalism of these MPD personnel.

Our report this quarter regarding the OIM's review of the 244 investigations includes both (1) an analysis of substantive preliminary findings derived from the database and (2) the results of our review of issues related to the integrity of MPD's investigation files maintenance procedures and systems.

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

The preliminary results of the OIM's review of MPD use of force and misconduct investigations are divided into the following four categories:

Footnote continued from previous page

assigned a complaint summary ("CS") tracking number. Inclusion of 244 cases, rather than 240, in the investigations review database does not affect the statistical integrity of the sampling.

(1) administration and management of the investigations, (2) conduct of the investigations, (3) unit commander review of investigations, and (4) the OIM reviewers' overall ratings regarding the completeness and sufficiency of the investigations. We will conduct further analyses of the data gathered through our review of these 244 investigations in our next quarterly report. The OIM's specific findings with respect to each of these areas are discussed below.⁴²

1. Administration and Management of the Investigations

The OIM's review has found that, to a very high degree, MPD's chain of command use of force and misconduct investigations are free of the types of conflicts of interest that would cast doubt on the integrity of the investigations. In 99.1% of the cases, the supervisor or official responsible for the investigation was not involved in the incident underlying the investigation. Moreover, in 97.8% of the cases, our reviewers identified no apparent or actual conflict of interest involving the supervisor or official responsible for the investigation. Also, in 95.9% of the cases, the proper authority investigated the allegations at issue. These are encouraging data with respect to the integrity of MPD's investigations.

While most of the investigation files reviewed (88.3%) contained a report prepared by the investigator, there is room for improvement with respect to this important aspect of the investigative process. The reports themselves, for the most part, contained the necessary elements, including (1) a description of the use of force incident or misconduct alleged (95.3%), (2) a summary of relevant evidence gathered (91.4%), and (3) proposed findings and supporting analysis (90.2%). These figures indicate, however, that there is also room for improvement in the preparation of investigation reports.

The timeliness of MPD investigations is deficient to a significant degree. Only 63% of the cases were completed within the 90-day window required by the MOA. Of the cases not completed within 90 days, only 10.9% contained any explanation of the "special circumstances" occasioning the delays. Moreover, complaints made at locations other than OPR were forwarded to OPR within the required 24-hour or next business day period in only 25.6% of such cases.

⁴² We have included at Appendix B detailed summaries of the reviewers' questions and results generated with respect to each of these four areas.

2. Conduct of the Investigations

While MPD investigators, based on our review, generally conduct sound investigations, there are areas related to the gathering of evidence that should be improved upon, in some cases quite substantially. For example, while investigators were scrupulous in adhering to fundamental investigative techniques such as avoiding group interviews (98.1%), in only 84.6% of the cases were all appropriate MPD personnel interviewed.

Again, while most of the investigations contained adequate analysis, a small but significant minority of the investigations were found to be inadequate in this area. In 15.7% of the cases, the investigator did not document and address inconsistencies among statements provided by officers and/or other witnesses. In 11.3% of the cases, the investigator did not adequately address all apparent misconduct. Finally, investigators appeared in 37.2% of applicable cases to have failed to avoid giving automatic preference to an officer's statement over a citizen's statement.

3. Unit Commander Review of Investigations

In 99.4% of the chain of command investigations, the unit commander reviewed the investigation to ensure its completeness and that the findings were supported by the evidence, which obviously reflects consistently strong performance in this area. However, where the investigation revealed evidence of criminal wrongdoing, unit commanders failed to notify FIT and the USAO in 27.7% of such cases. Where such notification was made, it was untimely in 35.93% of the cases. These figures plainly reflect performance that requires improvement.

4. OIM Reviewers' Overall Ratings Regarding Completeness and Sufficiency

The OIM's overall findings with respect to quality of MPD's chain of command use of force investigations and misconduct investigations demonstrate that improvement is necessary. Our police practices experts found that only 60.3% of the investigations were complete,⁴³ and

⁴³ Our police practices experts rated an investigation "complete" if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required by both the MOA and by generally accepted police practices.

they found that a sufficient⁴⁴ investigation had been conducted in only 77.2% of the cases.

Investigation File Integrity

In our Fifth Quarterly Report, the OIM noted significant shortcomings with respect to MPD's maintenance of investigation files. This quarter we have additional and expanded observations regarding investigation file integrity at MPD. We summarize these observations as follows:

- Some files contain investigation materials from completely unrelated investigations involving different allegations.
- Some files bear notations that the investigation has been transferred to another investigative unit without any further documentation regarding the matter. No further information is contained in the files, including the report prepared by the other unit or any evidence of the outcome of the investigation.
- Many files are missing reports referred to in the final investigation summary, *e.g.*, medical reports, witness statements, or recovered evidence inventory and analysis documentation.
- Reports are *frequently* undated. Undated materials found in the investigation files included: final investigation reports, preliminary investigation reports, letters to complainants sent by certified mail, letters to the USAO seeking review of an investigation, letters of prejudice to officers, and memoranda recommending change in duty status.
- Chain of command investigations were filed in manila folders that did not have metal clasps securing the materials related to the investigation.

⁴⁴ Our police practices experts rated an investigation "sufficient" if the evidence and analysis reflected in the investigation file were adequate to support a reasonable and defensible conclusion, even in cases where certain investigative procedures or analysis had not been completed.

- Investigation files were loosely placed in standard filing cabinets without dividers between files, which creates an increased likelihood that documents will be inadvertently misfiled.
- There is no centralized storage facility for all misconduct investigations relating to MPD personnel.
- MPD does not have a protocol for tracking investigation files removed from storage room at OIA's offices.
- File storage facilities at FIT and OPR were found to be unsecured.

While our investigation reviews have focused primarily on the substance of the investigations conducted, the integrity of the investigation files is itself an extremely important issue. Our observations about the state of the investigation files cause us serious concern. Moreover, failure by MPD to maintain adequate documentation with regard to chain of command use of force and misconduct investigations hampers our efforts to monitor all relevant MOA sections and impairs our ability to carry out our functions as prescribed in paragraphs 171 and 172 of the MOA.

In response to technical assistance on file integrity issues provided by the OIM during this quarter, the OIA has instituted several reforms to address some of the problems related to file integrity. MPD reports that: (1) OIA now stores investigations in sturdy file folders with two-prong clasps; (2) OIA has developed instructions regarding the assembly of investigation files; (3) on August 26, 2003, the OIA implemented a policy entitled "Policy and Procedures for Establishing and Maintaining Complaint System (CS) Chain of command Investigative Files"; and (4) MPD has developed a formalized case file check-out system and limited access to its file storage room. MPD also has welcomed the OIM's technical assistance in developing a "CS Integrity Sheet" checklist to ensure that all MOA-required information is included in investigation files prior to their submission for final approval.⁴⁵

⁴⁵ MPD October 2003 Progress Report at 15-16.

(2) Serious Misconduct Investigations General Order

MPD submitted its Serious Misconduct Investigations General Order to DOJ on July 23, 2002. DOJ replied with detailed comments on September 13, 2002, to which MPD responded on November 22, 2002. On January 31, 2003, DOJ responded with a small number of additional comments, commending MPD “for its efforts to revise this MPD [General Order] consistent with the MOA and other applicable standards.”⁴⁶ MPD submitted a revised draft to DOJ on March 7, 2003. DOJ responded to the revised draft order on August 25, 2003. MPD responded to DOJ’s comments and submitted a further revised order on September 30, 2003.

(3) Administrative Investigations Manual

Pursuant to paragraph 83 of the MOA, MPD submitted a draft Administrative Investigations Manual to DOJ on October 25, 2002. DOJ provided comments on the manual on March 26, 2003. As of the close of this quarter, MPD had not yet submitted the revised manual.

(4) Chain of Command Misconduct Investigations General Order

Pursuant to paragraph 83 of the MOA, MPD submitted its draft Chain of Command Misconduct Investigations General Order to DOJ on November 1, 2002. While this draft was submitted after the expiration of the October 25, 2002 deadline applicable to paragraph 83 of the MOA, DOJ responded with a number of substantive comments on January 31, 2003. In its response, DOJ noted that it “will be able to approve [the General Order], assuming the changes we identified are addressed, in the next draft.”⁴⁷ As of the close of this reporting period, MPD has not yet submitted a revised draft to DOJ.

⁴⁶ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

⁴⁷ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

(5) Corporation Counsel Notification to OPR of Civil Claims

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

As discussed in our Fifth Quarterly Report,⁴⁸ the implementation of the policy apparently has been delayed due to some confusion regarding the meaning of the term "claim" as it is used in the MOA. For the reasons discussed last quarter, we do not fully understand the nature of the delay in drafting a policy that meets the requirements of the MOA and that is acceptable to both the OCC and MPD. It appears, however, that this issue remains unresolved.

c. Recommendations

As discussed above, MPD already has taken steps based on the technical assistance provided by the OIM to improve the integrity of its investigation file maintenance systems. The OIM will continue to provide such assistance, which MPD has welcomed. We also reiterate our recommendation that the OCC and MPD resolve any outstanding issues regarding the creation and implementation of an mutually acceptable notification policy as soon as possible.

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

A. Requirements

This section of the MOA addresses the procedures designed to help members of the public aggrieved by the actions of MPD officers lodge complaints concerning officer conduct. It relates to MPD's role in facilitating the filing of such complaints and also to MPD's responsibility to coordinate with the Office of Citizen Complaint Review ("OCCR") to

⁴⁸ OIM Fifth Quarterly Report at 27.

ensure that the respective roles and responsibilities of MPD and OCCR are clearly defined and that the agencies are working properly together.

More specifically, the MOA requires the following:

- The development of a plan, in consultation with DOJ, that defines the roles and responsibilities of -- and the relationship between -- MPD and OCCR with regard to
 - Receiving, recording, investigating, and tracking complaints;
 - Conducting community outreach and education regarding making complaints against officers;
 - Exchanging information between MPD and OCCR; and
 - Defining the responsibilities of the MPD official who serves on the Citizen Complaint Review Board (“CCRB”).
- The provision of adequate funding and resources for OCCR to carry out its responsibilities as defined both by the MOA and the law creating OCCR;⁴⁹
- The development of a plan to ensure that the investigative staff of OCCR is adequately trained, including training in a wide range of MPD policies and procedures;
- The development of a manual, in consultation with DOJ, for conducting OCCR complaint investigations, which should include timelines and investigative templates;
- The development and implementation of an effective program to inform citizens of their right to lodge complaints against MPD officers, which must include, among other things, the distribution of complaint forms, facts sheets, informational posters, and public service announcements, in English, Spanish, and any other languages appropriate for particular areas, which describe MPD and OCCR complaint processes;
- The broad availability of complaint forms and informational materials at OCCR, MPD headquarters, and various other MPD

⁴⁹ District of Columbia Law 12-208.

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.⁵⁰

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

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

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

⁵⁰ The program must include at least the following elements: one open meeting per quarter in each of the patrol service areas for the first year of the MOA and one meeting in each patrol service area semi-annually in subsequent years. The purpose of these meetings is to inform the public about the provisions of the MOA and the various methods of filing a complaint against an officer. At least one week before such meetings, the City shall publish notice of the meeting as follows: (i) in public areas, including libraries, schools, grocery stores, and community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD Web sites; and (iv) in the primary languages spoken by the communities located in such areas. In order to enhance interaction between officers and community members in daily policing activities, the open public meetings must include presentations and information on MPD and its operations.

various witnesses;⁵¹ 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.”⁵² Misconduct investigations require the preparation of a written report, which should include a description of the alleged misconduct, summary and analysis of all relevant evidence, and proposed findings and analysis. Except in cases of unusual complexity, such investigations must be completed within ninety days after the allegations have been received. Each investigation should be reviewed by Unit Commanders to determine the existence of any underlying problems and training needs, and the Unit Commanders shall implement any appropriate non-disciplinary actions.

B. Status And Assessment

1. Coordination and Cooperation Between MPD and OCCR Generally (§ 85)

As reported by all parties at the OIM’s monthly MOA meetings, and as reconfirmed in MPD’s October 10, 2003 Progress Report, MPD and OCCR continue to work closely to resolve certain MOA-related conflicts regarding the Memorandum of Understanding (“MOU”) previously signed by the two agencies on September 28, 2002. In April 2003, MPD advised the OIM that it would issue a revised MOU by June 30, 2003. MPD and OCCR did not meet this deadline. MPD reports, however, that MPD and OCCR met several times during this quarter and that both parties believe the meetings were productive.

During this quarter MPD and OCCR have agreed to a number of revisions to the MOU, including in the areas of information exchange and training for OCCR investigators. One unresolved issue that was highlighted during the OIM’s October monthly MOA meeting is the reconciliation of the obligation of the MPD representative on the CCRB to

⁵¹ 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.

⁵² Although the meanings of “sustained” and “insufficient facts” are self-evident, the other dispositions may not be. “Unfounded” refers to cases in which the investigation found no facts to support the allegation; “exonerated” refers to cases where the conduct alleged took place but did not violate MPD policies, procedures, or training.

maintain the confidentiality of certain aspects of CCRB business with that representative's reporting duties within MPD.

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

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

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

We reviewed 21 citizen complaints wrongly filed with OCCR this quarter to assess whether OCCR referred those complaints to MPD in a timely fashion. Of the 21 complaints, OCCR failed to meet the mandated 10-business-day referral requirement in 18 instances, or 86% of the time. This 14% success rate is a dramatic drop-off from the 62% successful compliance rate we observed last quarter. OCCR reports that it is investigating the reasons for this slowdown in the OCCR referral process.

c. Weekly Notice to MPD of Formal OCCR Complaints

The MOA requires OCCR to notify MPD on a weekly basis of formal citizen complaints filed with OCCR. We reviewed 26 formal complaints this quarter to assess OCCR's compliance with this requirement. OCCR met the weekly notification requirement in 23 of the 26 cases, which is a compliance rate of 88%. This is a marked improvement over OCCR's 40% compliance rate observed in the last quarter.

d. Interviews of Witness Police Officers

This quarter, the OIM reviewed data encompassing 55 scheduled interviews of MPD police officers. In all but 1 of these 55 cases, OCCR gave the officer at least a one-week advance notice of his or her required appearance. OCCR's records reveal that MPD officers missed only one of the 55 scheduled interviews this quarter. As noted previously, MPD is in the process of automating the notification process to boost its compliance rate. Working with its Court Liaison Division, MPD intends

to employ its pre-existing "court notification system" to notify officers of OCCR interviews, thus piggybacking a system widely used and relied on within MPD.

e. MPD Documents Requested by OCCR

Under the MOU, MPD must respond to an OCCR document request within ten days. We reviewed 14 formal complaint cases, involving a total of 43 document requests, to assess MPD's compliance with this requirement. In only 5 of these cases did MPD fail to produce the requested documents within ten days, giving MPD a 88% compliance rate, which is down slightly from the 93% compliance rate reported last quarter.

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

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

3. Receipt of Complaints (§§ 92-95)

As noted in our Third and Fourth Quarterly Reports, on or about December 11, 2002, the OCCR hotline required by paragraph 93 of the MOA became operational. We noted in our Fourth Quarterly Report that, while OCCR recorded calls as required by the MOA, it had not yet developed the necessary auditing procedures to ensure "that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained, although OCCR does check this last requirement through its general auditing of all complaints it receives."⁵³

This quarter, OCCR proposed a modification to paragraph 93 of the MOA, specifically to the requirement that OCCR tape-record all conversations on the hotline and develop an auditing procedure that

⁵³ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

includes monthly reviews of a random sample of tape recordings.⁵⁴ Due to a combination of personnel shortages and limitations in the equipment's recording capacity, OCCR proposed the elimination of the tape-recording requirement of paragraph 93.⁵⁵ As an alternative, OCCR proposed that the Chief Investigator or Assistant Chief Investigator audit the program by making follow-up calls to a random sample of citizen complainants in order to assess compliance with the mandates of paragraph 93. The OIM would then monitor OCCR's compliance with these provisions of the MOA by reviewing OCCR's written reports of the follow-up calls.

MPD supported OCCR's proposed plan. DOJ is concerned that the proposed plan may not adequately accomplish the objectives of paragraph 93 because of the variety of problems that may occur in conducting audits based on follow-up telephone calls to citizen complainants (*i.e.*, complainants may have changed addresses or phone numbers, may be difficult to reach, may not remember details about their calls, etc.). DOJ is also concerned that the OIM's monitoring may be less accurate if it reviews OCCR's written reports as opposed to auditing tape recordings of calls or conducting the telephone audit itself.⁵⁶ As a result, DOJ granted provisional approval of OCCR's proposed plan for a six-month period, beginning on August 29, 2003. If OCCR's hotline auditing procedure operates satisfactorily, DOJ will consider a formal modification to paragraph 93 of the MOA.⁵⁷

In the coming quarter, the OIM intends to monitor OCCR's new review and auditing methodology.

C. Recommendations

The OIM has no specific recommendations on this topic at this time, but we look forward to monitoring OCCR's new review and auditing methodology in the coming quarter.

⁵⁴ Letter from Tammie M. Gregg to Deputy Director Thomas Sharp (August 25, 2003).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

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

A. Requirements

The MOA, as modified by the MOA Modification, requires that, by the week of November 17, 2002, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.⁵⁸ Specifically, the policy must:

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

B. Status And Assessment

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

On August 25, 2003, DOJ provided MPD with comments on the draft Disciplinary General Order, which MPD is currently reviewing in

⁵⁸ MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

consultation with the FOP. DOJ noted that, “[a]lthough the [General Order] was not timely submitted pursuant to the renegotiated deadline contained in the parties’ September 30, 2002 Joint Modification to the MOA, we appreciate and commend the efforts of MPD and the local FOP in working collaboratively to resolve their differences and to identify issues for collective bargaining.”⁵⁹

C. Recommendations

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

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

A. Requirements

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

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

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

⁵⁹ Letter from Tammie Gregg to Captain Matthew Klein regarding “Disciplinary General Order” (August 25, 2003).

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

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

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

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

B. Status And Assessment

1. PPMS

OIM commends the substantial progress made by MPD on the PPMS during this quarter. The OIM noted in its prior reports that the PPMS was the most problematic of MPD's MOA-related activities and was most in need of sustained commitment of attention and resources. MPD has shown significant dedication to the PPMS and has devoted high-level attention to the project.

Most notably, DOJ and MPD successfully renegotiated the outstanding deadlines for PPMS-related MOA deliverables and have agreed on a revised schedule to govern the development and implementation of the PPMS. The parties entered into a modification to the MOA relating to the PPMS on September 30, 2003, thereby discharging both MPD and the City from breach status with respect to the PPMS provisions of the MOA. We have included this modification to the MOA as Appendix C to this quarterly report.

This quarter, MPD has engaged in the following activities relating to the PPMS:

- Chief Ramsey continues to hold weekly meetings with MPD’s Chief Information Officer, the PPMS Project Director, and the PPMS Steering Committee in order to monitor closely the status of the PPMS project. The Steering Committee is composed of command staff members of MPD who provide guidance and oversee the work of the PPMS Project Team.
- The PPMS Director continues to hold weekly meetings with members from working groups involved in the PPMS project, as well as representatives from DOJ and the OIM, to facilitate the PPMS project and to discuss implementation issues. Representatives from the FOP and one of the MPD civilian bargaining units have joined the PPMS Project Team.
- In July 2003, MPD worked with DOJ to revise the Statement of Work (“SOW”).⁶⁰ MPD submitted the SOW for review on July 10, 2003, and DOJ’s technical expert provided comments on July 11, 2003. MPD provided a revised SOW on July 16, 2003 and incorporated subsequent edits from DOJ.
- MPD appointed a Vendor Selection Team to review vendor proposals and select a vendor. The Selection Team formally selected CRISNet Incorporated, in partnership with IBM, to develop the PPMS. MPD timely notified DOJ of its selection on September 16, 2003.⁶¹
- MPD submitted its Data Input Plan to DOJ on July 18, 2003.⁶² DOJ provided comments on the plan on August 1, 2003. MPD is currently reviewing those comments.
- MPD submitted plans for compliance with paragraphs 107, 109, and 110 of the MOA on August 29, 2003. DOJ provided comments on these plans on September 30, 2003. MPD is currently reviewing those comments.

⁶⁰ MOA at ¶ 114.a.

⁶¹ MOA at ¶ 114.b.

⁶² MOA at ¶ 108.

- DOJ extended the deadline for MPD to submit the initial draft of the PPMS protocol to November 18, 2003 and set June 25, 2004 as the date for submission of the final draft for approval.
- MPD held a brainstorming session, called a “Transformation Session,” on September 24, 2003, during which members of the PPMS Project Team (not including OIM and DOJ representatives) developed a vision and mission statement of the PPMS. Team members also identified core values and defined key outcomes and goals for the PPMS.

2. Performance Evaluation System

On May 2, 2003, DOJ circulated comments on MPD's Enhanced Performance Evaluation System Protocol. On September 30, 2003, MPD provided DOJ with a “status report” concerning DOJ's comments.⁶³ MPD reports that it accepts the majority of DOJ's comments, but, consistent with the terms of the Collective Bargaining Agreement between MPD and the FOP, MPD must provide the FOP with notice of any recommended changes to the performance evaluation system.

C. Recommendations

We recommend that MPD maintain its high level of dedication to meeting the MOA's requirements for the PPMS project. We will continue to monitor closely the development of the PPMS in the coming months.

VI. Training (MOA ¶¶ 119-148)

A. Requirements

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

1. Management Oversight

Regarding management oversight, MPD is required to centrally coordinate the review of all use of force training to ensure quality

⁶³ MPD October 2003 Progress Report at 25.

assurance, consistency, and compliance with applicable law.⁶⁴ MPD's Director of Training is responsible for overseeing the full scope of MPD's training program as it relates to the terms of the MOA, including:

- Ensuring the quality of all use of force training across MPD;
- Developing and implementing appropriate use of force training curricula;
- Selecting and training MPD trainers;
- Developing and implementing all in-service training and roll call curricula;
- Developing tools to evaluate all training;
- Developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;⁶⁵ and
- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

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

⁶⁴ 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.

⁶⁵ The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

2. Curriculum

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

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

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

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

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

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

3. Instructors

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

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

4. Firearms Training

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

5. Canine Training

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

B. Status And Assessment

1. Sergeants and Above Training

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

2. In-Service Training

This quarter, we observed the following in-service training programs: (1) midnight firearms and pistol re-certification, (2) Hate Crimes, (3) Sikh Awareness and Protocol for Law Enforcement, and (4) Diversity.

The firearms re-certification training continues to be of high quality, and we found the instructors to be knowledgeable and professional. In addition to pistol re-certification, this program includes a review of the use of force policy, the use of force continuum, use of firearms, use of unauthorized ammunition, use of OC spray and other less-than-lethal weapons, and weapon maintenance. Absent from the use of force training, however, was any discussion of the UFIR.

The MOA requires continuous training of officers in issues related to cultural diversity and community policing.⁶⁶ We observed the Hate Crimes training, which was conducted by an AUSA, and found it to be excellent and highly interactive. The Sikh Awareness program instructor was knowledgeable and made an effective and useful presentation regarding a sensitive and, in light of world events, important area. The Diversity training session we observed was disappointing due to a

⁶⁶ MOA at ¶ 128.

relatively poor presentation, but not due to deficiencies in the lesson plan.

3. Canine Training (MOA ¶¶ 145-148)

MPD submitted a comprehensive Canine Lesson Plan and Training Curriculum to DOJ on October 4, 2002.⁶⁷ DOJ provided comments regarding the training program on September 30, 2003, which MPD is currently reviewing.

4. Lesson Plans

During this quarter, the OIM met with the IPS command staff and the CDS to assess MPD's compliance with those provisions of the MOA pertaining to curriculum and lesson plan development; instructor certification, training, and evaluation; and training management oversight. IPS acknowledged that it is not in compliance with certain provisions of the MOA pertaining to management oversight of training.

Paragraph 119 of the MOA requires MPD to "conduct regular" reviews of use of force training components "at least semi-annually and produce a report of such reviews to the monitor and DOJ." MPD acknowledged that, to date, it had delivered only one such report. On September 30, 2003, the Director of IPS ordered that reports reflecting use of force training reviews be submitted to DOJ and the OIM semi-annually no later than June 30 and December 31 of each calendar year.

On September 30, 2003, IPS also issued a letter directive requiring the CDS to evaluate the quality of every course proposal, outline, and lesson plan submitted to IPS' Academic Services and Studies Branch using a newly-created "quality and content" checklist.⁶⁸ This directive, however, does not appear to require evaluations of existing use of force lesson plans and curricula. This quarter, IPS also directed the CDS, beginning October 1, 2003, to evaluate all instructors using a newly-created instructor form incorporating the following six evaluation points: knowledge of subject matter, practical experience, communication,

⁶⁷ MOA at ¶ 145.

⁶⁸ Paragraph 121.e of the MOA requires MPD and the CDS to "establish procedures for evaluating all training (which shall include an evaluation of instructional content and the quality of instruction)."

receptivity, presentation skills, and classroom management. This directive does not, however, indicate the frequency of instructor evaluation.

We also note that MPD has not conducted a “needs assessment” regarding use of force training since the development of the current use of force curriculum.⁶⁹ IPS has advised the OIM that it intends to conduct an extensive training needs assessment within the coming months. IPS also has advised the OIM that, in connection with this upcoming needs assessment, it will assess all instructors and lesson plans to ensure adequate management supervision of use of force instruction.⁷⁰

In the coming quarters, the OIM will continue to monitor MPD’s and IPS’ progress with respect to the above issues related to management oversight of use of force training.

5. Personnel Training Records

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

C. Recommendations

We recommend that MPD and IPS aggressively pursue the implementation of the evaluation and management oversight procedures to which they committed this quarter.

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

A. Requirements

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

⁶⁹ Paragraph 121.g of the MOA requires MPD and the CDS to “conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.”

⁷⁰ Paragraph 138 of the MOA provides that “MPD shall ensure adequate management supervision of use of force training instructors to ensure that their training is consistent with MPD policy, the law and proper police practices.”

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

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

B. Status And Assessment

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

C. Recommendations

The OIM did not monitor MOA activity related to Special Mission Units this quarter.

VIII. Public Information (MOA ¶ 160)

A. Requirements

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

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

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

B. Status And Assessment

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

C. Recommendations

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

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

A. Requirements

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

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

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

B. Status And Assessment

1. Compliance Monitoring Team

As in the past, we remain very impressed by the professionalism, efficiency, and responsiveness of MPD's CMT. In particular, the CMT was extraordinarily helpful this quarter in facilitating our review of the MPD chain of command use of force and misconduct investigations.

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

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

3. MPD Quarterly MOA Progress Reports

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

C. Recommendations

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

Conclusion

During this quarter, MPD engaged in a broad array of MOA-related compliance activities. In particular, MPD continued to devote significant resources this quarter to the resolution of issues related to the development of the PPMS, and DOJ and MPD agreed to a second modification of the MOA that establishes revised deadlines related to the development of the PPMS and discharges both the City and MPD from their breach status.

Our observations confirm our general experience that MPD has been working in good faith to comply with the requirements of the MOA and has made significant progress toward MOA compliance. Areas still remain, however, that will require MPD's continue vigilance. For example, our review of a statistical sampling of MPD chain of command use of force and misconduct investigations has revealed areas in need of significant improvement.

We have spent this quarter on a wide range of activities, including an extensive review of UFIRs, completion of a major review of chain of command use of force and misconduct investigations, and a review of various kinds of training. In addition, we continued our work toward defining the meaning of "substantial compliance" across the full scope of the MOA, a project that will take some additional time before it is completed. Our close scrutiny of OC spray cases suggests that MPD is in overall compliance with MPD and MOA standards regarding this important use of force alternative. However, we again have noted some significant problems with the frequency and manner in which UFIRs are being completed by officers involved in uses of force. Finally, during the course of our investigations review, we also have noted serious shortcomings with the way in which misconduct investigation files are maintained, which MPD already has taken steps towards remedying. Because the quality of internal MPD investigations is a key element of the

MOA, we will continue to devote significant efforts towards reviewing investigations in coming quarters.

A handwritten signature in dark ink, appearing to read "M.R. Bromwich", written in a cursive style.

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

October 30, 2003

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Appendix A

(Acronyms)

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

Appendix B

Summary of Results of the OIM's Review of the Investigations Sample

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

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

YES:	95.9%
NO:	4.1%

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

YES:	0.9%
NO:	99.1%

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

YES:	2.2%
NO:	97.8%

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

YES:	2.8%
NO:	97.2%

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

YES:	88.3%
NO:	11.7%

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

YES:	95.3%
NO:	4.7%
 - A summary of relevant evidence gathered?

YES:	91.4%
NO:	8.6%
 - Proposed findings and analysis supporting findings?

YES:	90.2%
NO:	9.8%
- If the complaint was made at a location other than OPR, was it received by OPR within 24 hours or the next business day? [MOA ¶ 94]

YES:	25.6%
NO:	74.4%
- Was the investigation completed within 90 days? [MOA ¶¶ 62, 65, 74, 103]

YES:	63.1%
NO:	36.9%
- If not completed within 90 days, were special circumstances for the delay explained? [MOA ¶¶ 62, 65, 74]

YES:	10.9%
NO:	89.1%

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

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

YES:	98.1%
NO:	1.9%

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

YES:	84.6%
NO:	15.4%

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

YES:	94.4%
NO:	5.6%

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

YES:	84.3%
NO:	15.7%

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

YES:	89.6%
NO:	10.4%

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

YES:	88.7%
NO:	11.3%

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

YES:	62.8%
NO:	37.2%

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

YES: 80.9%
NO: 19.1%

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

YES: 97.0%
NO: 3.0%

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

YES: 59.3%
NO: 40.7%

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

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

YES: 99.4%
NO: 0.6%

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

YES: 72.3%
NO: 27.7%

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

YES: 64.1%
NO: 35.9%

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

- *Was the investigation complete?*

YES:	60.3%
NO:	39.7%

- *Was the investigation sufficient?*

YES:	77.2%
NO:	22.8%

- *Do you recommend that the investigation be reopened?*

YES:	4.0%
NO:	96.0%