

# **City of Cincinnati Independent Monitor's Fifth Quarterly Report**

**April 1, 2004**

Quarterly Report regarding compliance with and implementation of the Memorandum of Agreement between the United States Department of Justice and the City of Cincinnati and the Cincinnati Police Department, and the Collaborative Agreement between the Plaintiffs, the Fraternal Order of Police and the City of Cincinnati

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# **CITY OF CINCINNATI INDEPENDENT MONITOR'S FIFTH QUARTERLY REPORT**

## **EXECUTIVE SUMMARY**

This is the fifth report of the Independent Monitor under the Memorandum of Agreement (MOA) between the City of Cincinnati and the United States Department of Justice, and the Collaborative Agreement (CA) among the City of Cincinnati, the Plaintiff class, and the Fraternal Order of Police. The period covered is from October 1, 2003, through December 31, 2003, though we also review more recent activities from January 1, 2004 to April 1, 2004.

This report details the implementation of and level of compliance with the MOA and CA. The MOA calls for police reforms in the areas of police use of force, citizen complaints, risk management, and training. The CA calls for the implementation of Community Problem Oriented Policing (CPOP), mutual accountability and evaluation, bias-free policing and the establishment of the Citizen Complaint Authority (CCA).

## **MEMORANDUM OF AGREEMENT**

### **General Policies**

The MOA requires the Cincinnati Police Department (CPD) to create a group of specially trained officers to respond to incidents involving persons who are mentally ill. The CPD has trained 110 officers as part of a Mental Health Response Team (MHRT), and revised its policies on dealing with the mentally ill. During this quarter, over 75% of MHRT calls resulted in an MHRT officer being dispatched to the call. The MHRT program is highly regarded, as is the CPD's partnership with the Mobile Crisis Unit of University Hospital. In-service training of MHRT officers is critical to keep them proficient in dealing with MHRT calls. The CPD has scheduled four in-service training sessions and recertification for 2004.

Our review of investigations of incidents in which there was a foot pursuit showed that supervisors have begun evaluating the tactical soundness of officers' foot pursuits.

## **Use of Force Policies**

The CPD's current Use of Force policy is in compliance with the MOA. Regarding implementation, the Monitor Team reviewed a sample of chemical spray reports from the 4th quarter of 2003. As in the prior quarters, there were several cases where it appeared that subjects were not warned that chemical spray would be used if they did not comply with the officer's commands.

The Monitor Team also reviewed the CPD's use of canines for locating and apprehending suspects. During the 4th quarter of 2003, there were two canine bites. The Monitor's review, however, was of investigations of bites that occurred in earlier quarters. Canine deployments are being properly authorized by supervisors, but canine announcements are not always made or documented.

## **Incident Documentation, Investigation, and Review**

On June 1, 2003, the CPD began implementing a new Use of Force reporting policy. Under this policy, officers self-report certain uses of force involving "hard hands" and takedowns on a new "Non-Compliant Suspect" form (Form 18NC). Last quarter, our review found that the 18NC Form did not capture sufficient information for supervisors to assess the appropriateness of the officer's use of force and tactics. In this quarter, there were a number of incidents in which officers added narratives on the back of the forms or on the Arrest Reports. In response to our recommendations, the CPD has modified the forms to require a narrative and comply with the MOA.

We also reviewed a sample of investigations of more serious Use of Force incidents. Supervisors are responding to the scene and conducting investigations, including taped interviews with officers, witnesses and the subject of the use of force. In this quarter, there were no investigations conducted by supervisors who had been involved in the incident or who had authorized the use of force. Improvements in the thoroughness of some of the investigations continue to be needed, however. The Monitor Team reviewed the training provided sergeants and other supervisors in conducting use of force investigations. The training covered the appropriate topics and the requirements of the MOA. It is our hope that investigations in future quarters will reflect this additional training.

## **Citizen Complaint Process**

The Internal Investigations Section (IIS) is now reviewing field investigations of use of force incidents and conducting additional investigation if necessary. Our examination of IIS complaint investigations continued to reveal some shortcomings, particularly with respect to whether sufficient efforts were made to resolve material inconsistencies among witnesses, and to examine the basis for the officer's initial interaction with the subject. We do note, however, that the CPD in several instances properly identified and investigated misconduct other than the violations alleged in the complaint. We also reviewed a sample of CCA complaint investigations. As a general matter, these investigations were evenhanded and thorough, although we noted some concerns similar to those found with respect to IIS investigations.

## **Management and Supervision**

The CPD continues to develop the risk management system required under the MOA. The CPD submitted a protocol for the Employee Tracking Solution (ETS) for Justice Department review, and both the Monitor and the Justice Department responded with suggested revisions. The CPD provided the Justice Department with a revised protocol, along with a Data Input Plan as required by the MOA. A "beta" version of the system is now ready for testing, and full implementation of the system is scheduled for the next quarter.

## **Training**

In the last quarter, the Monitor Team undertook an extensive review of the CPD's in-service training on use of force and other issues, and the CPD's Field Training Officer (FTO) program. The use of force training stressed adherence to Department policies and best practices through constant reinforcement of critical thinking skills. The training covered the full range of use of force options to be employed - including disengagement, voice commands, verbal warning of impending force, and force options ranging from restraint holds and the application of chemical irritants up to deadly force. Throughout the training, the Monitor Team noted the consistent emphasis by the instructors on the use of reasonable and appropriate force by officers. With respect to the FTO program, the CPD has now implemented a new selection process for FTOs in compliance with the MOA and has made commendable improvements in the training of new FTOs.

## **COLLABORATIVE AGREEMENT**

### **CPOP**

Several significant CPOP milestones were reached this quarter. The Community Police Partnering Center chose Richard Biehl as executive director, and hired four outreach workers on a contract basis. The parties launched the Friends of the Collaborative, an effort to include other community, business and charitable organizations in supporting CPOP and community dialogue. The Parties also continued work on a CPOP training curriculum for training community members and police officers in the SARA<sup>1</sup> method of problem solving and Cincinnati's new, joint approach to community policing and problem-oriented policing. The draft curriculum provides an explanation of CPOP, defines the roles of the Parties and describes the resources that can be brought to bear on problems. In March 2004, the CPD neighborhood officers and outreach workers from the Community Police Partnering Center met to plan and schedule the training.

In the meantime, there are a number of specific CPOP provisions where the Parties are not yet in compliance with the requirements of the CA. Improvements that can be made to sharpen the Parties' problem-solving efforts include:

- Using the analytic and research tools available to the CPD and the Parties to identify and develop "best practices" to crime problems
- Refining the District Commanders' quarterly problem-solving reports to focus more sharply on defining the problem to be addressed, using research and data to analyze the problem, developing specifically tailored responses using a range of solutions (including civil remedies, social services, community engagement and activism, not just the criminal law), and judging success quantifiable measures
- Enhancing the CPOP website to capture more details on problem-solving efforts
- Reporting problem-solving efforts separately from police-community outreach and other initiatives that support the CA

Community dialogue and interaction between the CPD and various segments of the community (paragraph 29(f)) is an area that continues to

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<sup>1</sup> SARA stands for Scanning, Analysis, Response, and Assessment.

be a vital need. We look forward to seeing a jointly developed plan for community dialogue. The community forums and dialogue the Parties have discussed in previous quarters as part of their “trust building” efforts have not yet begun.

### **Evaluation Protocol**

The Parties have chosen the RAND Corporation to be the Evaluator for the Evaluation Protocol. The Parties were able to reduce the cost for this aspect of the CA by concentrating on essential components of the Evaluation Protocol. RAND is preparing a revised Scope of Services for its work and when that is completed, the City and RAND will negotiate a contract for evaluation services. The Monitor will work closely with the Evaluator and the Parties to ensure that the evaluation process provides the necessary information to assess progress in achieving the goals of the CA. While we are hopeful that the Evaluation Protocol will quickly get underway once the contract with RAND is completed, because the work has not yet begun, the Parties are not in compliance with these provisions of the CA.

### **Fair, Equitable and Courteous Treatment**

The CA calls for the City to report on its efforts to measure whether there is racial disparity in motor vehicle stops by the CPD. The University of Cincinnati study of data from 2001 was released in November 2003. Current data is being collected, but it is not being analyzed at this time.

The Parties remain out of compliance with the data collection and analysis provisions of the CA. The analysis under the Evaluation Protocol has not yet been started. Moreover, the CPD has not put in place procedures ensuring that officers will collect data on pedestrian stops.

### **Citizens Complaint Authority**

Cincinnati has not yet found a permanent executive director of the Citizens Complaint Authority (CCA) to replace the first director who resigned eight months ago. Without a full-time executive director who has the confidence of the Parties, the CCA Board and the community, it is difficult for the CCA to fulfill its mission of independently investigating citizen complaints. However, we are impressed with the sincerity and commitment of the CCA Board members to review citizen complaints in an unbiased and thorough manner. We are hopeful that with the selection of a new executive director, CCA will be able to function more

smoothly and begin its work in examining complaint patterns and trends.

## **CHAPTER ONE. INTRODUCTION**

This is the Independent Monitor's Fifth Quarterly Report. The Report documents steady progress in many areas in complying with and implementing the Memorandum of Agreement (MOA) and the Collaborative Agreement (CA). But it also reflects areas where improvements are still needed and where the Parties need to make greater efforts to meet the requirements of the Agreements.

In our MOA review this quarter, we paid particular attention to use of force reporting, investigations, and training. We noted in our Report last quarter that use of force reporting involving "hard hands" and take-downs without injury did not capture sufficient information. The CPD has now revised the reporting form used in these incidents to require a brief narrative of the force used and the events that led to the use of force. We also noted in our last Report that for "hard hands" and take-downs with injury, the current CPD procedure did not require a responding supervisor to complete a full Use of Force Report, including taped statements, unless the injury resulted in hospitalization. We determined that full use of force reporting is required whenever an injury or complaint of injury occurs. The City has now submitted a request to the Department of Justice (DOJ) for clarification of force reporting requirements, and acceptance of the current CPD reporting procedures.

Our review of force investigations this quarter showed that improvements can be made. A number of the MOA's requirements regarding force investigations were met. However, in some of the investigations, the investigating supervisor did not adequately evaluate the basis for the initial stop or seizure, and determine whether the officer's actions regarding the stop and seizure were within policy. Relevant areas of inquiry were not always explored and the investigators did not always make sufficient efforts to resolve material inconsistencies among witness statements.

One area where we have consistently been impressed is CPD training. This quarter, the Monitor Team observed CPD's in-service training on use of force and other issues, and CPD's training for its Field Training Officers (FTOs). The quality and content of the use of force training provided was consistent with and responsive to the provisions of the MOA. Instructors emphasized critical decision making, and that any force used had to be reasonable and appropriate. With respect to the FTO program, the CPD is demonstrating and emphasizing the importance the FTO plays in the training, development and acculturation of new CPD officers.

With respect to the CA, the Parties have made important steps in advancing CPOP implementation in Cincinnati. This quarter, the Parties further refined their jointly-developed CPOP curriculum and will roll out the training to additional neighborhoods next quarter. The Community Police Partnering Center selected its first executive director, Cincinnati Assistant Police Chief Richard Biehl. The Center launched a “Friends of the Collaborative” initiative to introduce potential supporters to the collaborative problem-solving efforts of the Partnering Center and its new executive director. The executive director has hit the ground running, hiring interim outreach workers, sending them to community building training, and engaging them with Cincinnati’s communities. The CPD problem-solving and joint CPOP teams are now operating in 13 Cincinnati neighborhoods and the interim outreach workers are meeting neighborhoods residents to establish a role and presence for the Partnering Center.

The CPD’s CPOP website remains in draft form, but each quarter since September 2003 new CPOP cases have been added to the site’s CPOP tracking system. There are now 18 cases in the tracking system, an addition of five CPOP cases in this quarter. The Partnering Center’s interim outreach workers have not yet been trained in the use of the website and tracking system, but are eager to receive training so they can join in documenting community problem-solving efforts.

Improvements can be made in the following areas to further the Parties movement towards CPOP:

- Refine the CPOP problem tracking system to make it more useful as a reporting and tracking system
- Boost the quality of the descriptions already in the CPOP problem tracking system
- Identify best practices and high quality problem-solving examples for inclusion in CPOP training
- Plan community forums to discuss use of force issues, requirements of the MOA and the CA, police response to individuals who are mentally ill or under the influence of drugs or alcohol, as well as the University of Cincinnati Vehicle Stop Study and the issue of fair and equitable policing
- Submit quarterly reports on problem-solving progress of special units within the CPD (in addition to the quarterly reports)

submitted by District Commanders, the CPOP Coordinator, and the Planning Section and Crime Analysis Unit)

In the coming quarter, the Parties have stated they expect to:

- Begin identifying best practices in crime-focused problem-solving
- Review officer job descriptions for the purpose of aligning them with CPOP principles
- Examine current personnel staffing models within the CPD in light of the expected departmental movement to CPOP
- Prepare a draft Request For Proposals (RFP) for a new Records Management System (RMS) and new Computer Aided Dispatch (CAD) system

## **CHAPTER TWO. MEMORANDUM OF AGREEMENT**

### **I. General Policies**

#### **A. Mental Health Response Team [MOA ¶ 10]**

##### **1. Requirement**

The CPD is required to create a “cadre of specially trained officers available at all times to respond to incidents involving persons who are mentally ill.” These officers will be called to the scene and assume primary responsibility for responding. Training for these officers shall include multi-disciplinary intervention training, with a particular emphasis on de-escalation strategies, as well as instruction by mental health practitioners and alcohol and substance abuse counselors. The CPD also shall implement a plan to partner with mental health care professionals, to make such professionals available to assist CPD officers on-site with interactions with mentally ill persons.

##### **2. Status**

As noted in previous reports, the CPD has trained 110 officers as Mental Health Response Team (MHRT) officers. The CPD has developed an in-service/recertification training program with the Mental Health Association (MHA), although the retraining has not yet been conducted. According to Cincinnati’s February 12, 2004, Status Report, the CPD is planning four in-service trainings in 2004 and one new MHRT training class of approximately 30 officers.

To gauge availability of MHRT officers in the field, the CPD tracks the number of MHRT officers deployed in each District and on each shift on a daily basis. This tracking allows the CPD and the Monitor to assess whether there are sufficient numbers of MHRT officers on patrol available to respond to calls involving mentally ill individuals.

A review of the statistics for October through December shows that for the City as a whole, there were MHRT officers working every shift each day. Broken down by Districts, however, there were a number of days where the coverage was light, where no MHRT trained officer was available within a particular District on a particular shift. However, the CPD policy calls for MHRT officers from adjoining Districts to be dispatched when there are no MHRT officers within a particular District. It appears that the CPD has been following this procedure, but it means that response time is slower, and puts added burden on those MHRT officers who have to respond to calls in more than one District.

The CPD also tracks the deployment of MHRT officers to MHRT calls. In October 2003, MHRT officers were dispatched on 75.6 percent of the calls that were designated as MHRT calls (264 out of 349 calls). In November 2003, the percentage was 77.2 percent (301 out of 390), and in December, it rose to 82.4 percent (267 out of 324 calls). According to the CPD, during this three month period, there were only 15 calls for which an MHRT officer was not available (1.4%). The remaining calls were either determined not to be MHRT situations and the call was “disregarded” by a supervisor, the call was handled before the arrival of the MHRT officer, the dispatcher did not enter an MHRT code, or the calls were initially not MHRT calls, but an officer on the scene called for an MHRT officer.

### **3. Assessment**

The CPD’s policies have been revised to comply with the requirements of the MOA relating to incidents involving persons suspected of being mentally ill. As we have noted in previous reports, CPD’s training of its MHRT officers also complies with the MOA. The training was multi-disciplinary, emphasized de-escalation, included role-play exercises and “shadowing” of mental health professionals, and provided officers with additional tools for identifying mental illness and responding to incidents involving the mentally ill. In-service training has been developed and scheduled, and continued compliance will depend on successful completion of the in-service training.

We have also determined that the CPD has met its requirement to plan and implement a partnership with health care professionals to make those professionals available on-site to assist in handling calls involving mentally ill individuals. In our last Report, we reported on the Mobile Crisis Unit and its work with the CPD.

One issue that the Monitor must evaluate is whether the size of the MHRT team is sufficient to meet the MOA’s requirement that the “specially trained cadre” of officers be “available at all times” to respond to MHRT calls. As noted above, there have been MHRT officers assigned to Patrol during each shift for each day during the fourth quarter of 2003. There are approximately 110 MHRT officers. This is almost one quarter of the officers assigned to patrol the five Districts, neighborhood officers, Downtown Services and Park officers.<sup>2</sup> In addition, the CPD plans to add another 30 MHRT officers this year.

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<sup>2</sup> According to CPD, there are 614 police officers and specialists assigned to Patrol, with an additional 135 supervisors. When supervisors, administrative personnel, and

With respect to whether MHRT officers are responding to the appropriate incidents, the CPD has maintained a consistent level of MHRT response to MHRT calls of over 75% for the final six months of 2003, based on the statistics provided by the CPD. The number of calls where it was documented that an MHRT officer was unavailable has been quite low: less than 2%. However, there are also a number of calls where there is no information regarding whether an MHRT officer was dispatched, or where the MHRT officer was disregarded by a supervisor, either because the call was handled by another officer, or the supervisor determined that the incident did not involve a mentally ill individual. We recognize that a 100% response rate is neither possible, nor desirable. There will be calls that are not really MHRT calls, and there will be emergencies that the first officer on the scene should handle whether or not he or she is an MHRT officer.

Based on the information available to us, we believe that the CPD is in compliance with this provision. However, we plan to conduct an audit of a sample of MHRT calls, and in particular those calls that were “disregarded,” to determine if MHRT officers are appropriately responding to calls that warrant an MHRT officer.

## **B. Foot Pursuits [MOA ¶ 11]**

### **1. Requirement**

The MOA requires the CPD to develop and adopt a foot pursuit policy. The policy must require officers to consider particular factors in determining whether a foot pursuit is appropriate.

### **2. Status**

There was no change in policy or procedures during this quarter. The CPD included several scenarios relating to foot pursuits in its roll call training program this quarter. In addition, the supervisory review of foot pursuits was emphasized in management training of supervisors conducted this quarter.

### **3. Assessment**

The CPD’s foot pursuit policy complies with the MOA. This policy has also been incorporated into CPD training for officers and supervisors. With respect to implementation, we reviewed a number of investigations

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detectives are taken out, there are 462 officers available to be trained as MHRT officers and available for dispatch to MHRT calls.

of Use of Force incidents and citizen complaints in which there was a foot pursuit. Documentation of the supervisor’s review of some of these foot pursuits suggests that the policy and training are beginning to become part of CPD’s routine reporting and review. There were a limited number of incidents, however, where the circumstances of the foot pursuit suggest that the officer did not consider the factors set out in the MOA and CPD policy. Based on our review of the CPD’s policy, training, supervision, and implementation, we conclude that the CPD is in partial compliance with this provision of MOA.

## II. Use of Force

In the table below, we provide the statistics for Use of Force incidents for the last six quarters. Because of the changes in policy and procedure over the last 18 months relating to reporting Use of Force incidents, it is difficult to assess the trends in CPD use of force and make definitive conclusions.

**USE OF FORCE TABLE**

	3 <sup>rd</sup> Q 2002	4 <sup>th</sup> Q 2002	1 <sup>st</sup> Q 2003	2 <sup>nd</sup> Q 2003	3 <sup>rd</sup> Q 2003	4 <sup>th</sup> Q 2004
Chemical Irritant	93 (24 restrained)	117 (15 restrained)	122 (26 restrained)	155 (15 restrained)	103 (19 restrained)	105 (15 restrained)
Physical Force	52	67	71	79	27, plus 26 takedowns with injuries listed as “Injury to Prisoner”  35 non-compliant suspects	29, plus 12 takedowns with injuries listed as “Injury to Prisoner”  48 non-compliant suspects
PR 24	9	7	5	3	5	4
Canine	5	5	2	5	2	2
Taser	1	1	1	2	0	0
Beanbag	1 (animal)	0	0	4	0	0
Pepperball	1	0	1	1	5	2
Firearms Discharge	0	0	1	0	0	1

## **A. General Policies [MOA ¶¶ 12-13]**

### **1. Requirements**

Under the MOA, Cincinnati is required to revise its Use of Force policy. The revised policy must do the following:

- It must clearly define the terms used in the policy
- The term “force” must be defined as it is defined in the MOA
- It must incorporate a “Use of Force model” that relates the officer’s responses and use of force options to the actions of the subject, and teaches that disengagement, area containment, or calling for reinforcement may be an appropriate response to a situation
- Whenever possible, individuals should be allowed to submit to arrest before force is used
- Advise against excessive force
- Prohibit choke holds
- The term “restraining force” must be removed from CPD’s policy
- The CPD’s revised Use of Force policy must be published on the CPD’s website and be disseminated to community groups

### **2. Status**

On July 29, 2003, the CPD issued a comprehensive Use of Force policy, Procedure 12.545, and included it in the CPD Staff Notes. In addition, on March 2, 2004, the CPD revised its Use of Force policy to incorporate new provisions relating to Tasers and Taser deployment.

Tasers have been added to the force options in the CPD’s Use of Force Continuum at the same level as chemical irritant. According to the policy, only officers who have undergone Taser training are authorized to use the Taser. Consistent with the MOA, officers are directed to provide the subject with a verbal warning that the Taser will be deployed, unless doing so would present a danger to the officer. Officers are also required to obtain appropriate medical treatment when necessary for suspects hit with the Taser.

### **3. Assessment**

The CPD's current Use of Force policy is in compliance with the MOA. The new provisions relating to Taser use and reporting also comply with the MOA. We assess the CPD's implementation of its policy in the more specific sections below (e.g., are officers providing suspects with an opportunity to submit to arrest; are officers using force consistent with the Use of Force model in its policy?).

#### **B. Chemical Spray [MOA ¶¶ 14-19]**

There were 105 incidents in which CPD officers used chemical irritant spray in this quarter. In this quarter, there were 15 uses of chemical spray on persons restrained (in handcuffs), compared to 19 in the last quarter, and 15 in the quarter before that. There were two uses of chemical spray in a crowd situation in this quarter.

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

CPD must revise and augment its chemical spray policy to do the following:

- Clearly define terms
- Limit use of spray, including against crowds, to only those cases where force is necessary to effect the arrest of an actively resisting person, protect against harm, or prevent escape
- Provide that chemical spray may be used only when verbal commands would be ineffective
- Require supervisory approval for use of chemical spray against a crowd, absent exigent circumstances
- Require a verbal warning and the opportunity to comply before using a chemical spray, unless doing so would be dangerous
- Require officers to aim at the subject's face and upper torso
- Provide guidance on duration of bursts and recommended distance
- Require officers to offer to decontaminate sprayed individuals
- Request medical response for complaining subjects
- Prohibit keeping sprayed subjects in a face down position any longer than necessary
- Prohibit use of spray on a restrained person, except to protect against harm or escape

- Use of spray against restrained persons must be investigated, including tape recorded statements of officers and witnesses. Investigations of these incidents must be reviewed by the CPD's Inspections Section.
- Provide restraining equipment in CPD squad cars
- Provide in-service training on chemical spray
- Account for chemical spray canisters
- Periodically review research on chemical spray

## **2. Status**

### **a. Policy**

There were two revisions to the CPD's Use of Force policy relating to chemical irritants. First, provisions relating to use of chemical spray on persons attempting to swallow contraband or evidence were relocated from Procedure 12.600 (Prisoners: Securing, Handling and Transporting) to Procedure 12.545, Use of Force. In doing so, the CPD added language recommended by the City Solicitor's Office. The use of chemical irritant on an individual attempting to swallow contraband or evidence is only permitted when:

- There is a clear indication that the object or substance in the subject's mouth is contraband
- There are exigent circumstances, such as imminent destruction of evidence or medical emergency
- The officer has issued, and the subject has refused to comply with, a verbal command to spit out any contraband

Second, the CPD issued a Staff Note instructing officers not to use a Taser at the same time as, or right after, the use of CS spray,<sup>3</sup> due to the flammability of CS spray.

### **b. Chemical Spray on Restrained Persons**

In its February 12, 2004, MOA Status Report, the CPD discussed the issue of using chemical spray on restrained persons.

There are also occasions in which officers are required to transport extremely disorderly and belligerent individuals. In some

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<sup>3</sup> The CPD uses a kind of chemical spray known as CS, which stands for 2-chlorobenzylidene malononitrile.

situations the prisoner will suddenly become violent after being placed in the rear of the cruiser. Other times, the behavior is evident from the time of the initial contact. In the case of the latter, the degree of resistance displayed by the offender will often dictate whether the transporting officer can safely apply restraint equipment. If the restraints cannot be applied or should the prisoner somehow defeat the restraints and begin kicking or thrashing body parts against any of the cruiser components, the CPD believes that the potential for injury is significant. Accordingly, the CPD maintains the use of irritant in these cases is clearly permissible under the MOA and feels the issue needs no further clarification.

### **c. Decontamination**

The CPD notes that of the 105 chemical spray incidents, six subjects were not decontaminated, 14 refused decontamination, and there were eight incidents in which decontamination was not reported and could not be documented. We note that police cars are now equipped with moist towelettes for officers to use to decontaminate sprayed individuals, at the recommendation of the CCA Board.

## **3. Assessment**

### **a. Policy**

The CPD's policies regarding the use of chemical spray comply with the MOA.

### **b. Review of Sample Investigations**

#### **i. Warning that force would be used**

The CPD's Use of Force Report now contains a check box -- "warned that force would be used" -- in the "verbalization" field of the form. In reviewing the chemical spray reports we sampled this quarter, three documented that a verbal warning was given, while six showed no indication of any verbal warning in either the "verbalization" field or the narrative portion of the report. In the investigations of chemical spray against restrained persons, and other force cases and complaints we reviewed this quarter, eight documented a verbal warning and six did not. While exigent circumstances may have been present in some or all of these cases, this fact must be documented in the Use of Force Report. The narrative section of the report is the best place to address these issues so that the Chain of Command (and the Monitor Team) can ensure that appropriate tactics and procedures were followed.

## **ii. Spray of restrained individuals**

As we have noted in prior Reports, the MOA limits the circumstances in which chemical spray can be used on an individual who is already in handcuffs. Because a number of these incidents occur when a prisoner is being transported in a police car, the MOA requires the CPD to have restraining equipment in its vehicles and to train its officers in using that equipment. The CPD cautions that officers should not have to endanger themselves when trying to place violent prisoners in the car's restraint equipment, such as the lap bars or seat belts. While true, training officers to use this equipment or other restraining devices safely is preferable to placing violent individuals in the police car without any restraints, where they can potentially injure the officers or themselves and damage the police car. The CPD should ensure that the investigations of such incidents determine whether the subject was restrained in any way other than handcuffs. If the subject was not restrained, the investigating supervisor should document the reason why restraining equipment was not used.

While the CPD takes the position in its Status Report that there is always the potential for injury whenever an arrested individual strikes or kicks any component of the police car with his or her body, we believe this presumption is too broad. For example, chemical spray would not be justified under the MOA and CPD policy where an arrested individual is being verbally abusive and simply "thrashing about." However, where an arrested individual does become violent and kicks out a window, that person could injure him or herself on broken glass or present a danger to officers. Thus, the investigating supervisors in such incidents must fully determine the facts of the situation to assess whether the chemical spray was justified.

## **iii. Duration of spray, targeting of spray, decontamination**

Our review of chemical spray incidents indicates that CPD officers are complying with the MOA provisions relating to the distance and duration of chemical spray, and targeting the subject's face and upper torso.

With respect to decontamination, the CPD states that the introduction of fresh air is the most expedient method to dissipate the effects of the irritant. The officers may use the towelettes to wipe off the subject's face if transportation to the detention facility would be delayed. In most cases, according to the CPD, transportation to the appropriate detention facility can be accomplished within the twenty minute period. In those cases, the arrestee is permitted to wash off his or her face at

that facility. Based on the information available, we believe the CPD is in compliance with this provision.

### **C. Canines [MOA ¶20]**

In the fourth quarter of 2003, there were 176 total canine deployments, 24 canine apprehensions (where a suspect was found and arrested) and 2 canine bites.

#### **1. Requirements**

The MOA requires the CPD to revise and augment its canine policies, subject to the review and approval of the Department of Justice. The CPD is to make continued improvements in its canine operations, including the introduction of an “improved handler-controlled alert curriculum” and the use of new canines. Specifically, the new canine policy must:

- Limit off-leash deployments to searches of commercial buildings or for suspects wanted for a violent offense or reasonably suspected of being armed.
- Require approval of a supervisor before deployment, except for on-leash deployments.
- Provide for a loud and clear announcement, warning of the canine deployment, and require officers to allow the suspect time to surrender.
- Handlers shall not allow their canines to bite a person unless the person poses an imminent danger, or is actively resisting or escaping.
- Where the canine does bite a person, the dog shall be called off at the first moment the dog can safely be released. The policy shall prohibit canines from biting nonresistant subjects. Also, immediate medical attention must be sought for all canine related injuries.
- The CPD shall track deployments and apprehensions, and calculate bite ratios. These bite ratios shall be included in the Risk Management System.

## 2. Status

Pursuant to MOA paragraph 20, the CPD calculated the bite ratio (the number of bites compared to the number of total apprehensions involving a canine, with and without a bite) for the canine unit for the following six-month periods:

	<u>Bite Ratio</u>
May 1, 2003 – October 31, 2003	11.9% (5 bites in 42 finds)
June 1, 2003 – November 30, 2003	6.6% (3 bites in 45 finds)
July 1, 2003 – December 31, 2003	7.6% (4 bites in 53 finds)

Each of these bite ratios is well below the 20% ratio that would trigger a review of the Canine Unit under the MOA. They also represent a reduction in the bite ratio from earlier six month periods. The CPD also calculated bite ratios for each handler/canine team. There were four individual teams that had a bite ratio exceeding 20% for one of the three six-month periods. No team has had a consistently high bite ratio. According to the CPD, each of the canine bites involved were “reviewed carefully and discussed with the handlers involved. The review showed their bite percentages are not related to any improper pattern of tactics or behavior.”<sup>4</sup>

In our Fourth Quarterly Report, we reviewed two investigations of canine bites from the 1<sup>st</sup> quarter of 2003 and two investigations of the five canine bites that occurred in the 2<sup>nd</sup> quarter of 2003. In this quarter, we reviewed three bite investigations from the 2<sup>nd</sup> quarter of 2003. We assess those investigations in Chapter Four and summarize them below. The CPD has not completed its investigations of the two canine bites that occurred in this quarter, in December 2003.

## 3. Assessment

### a. Policy

The CPD’s Canine policy meets the requirements of the MOA. As noted in Section VII.D below, the Monitor Team will continue to examine the canine training to assess compliance with the MOA’s requirement that the CPD introduce an “improved handler-controlled alert curriculum” consistent with the CPD’s revised policy.

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<sup>4</sup> Two handlers had bite ratios of 25% because of one bite and only four finds in the six month period.

## **b. Review of Investigations**

Based on the three canine bite investigations and 20 canine deployment forms from the 4<sup>th</sup> quarter of 2003 for deployments in which suspects were apprehended without a canine bite, we reviewed the following issues relating to the MOA canine provisions:

### **i. Have the off-leash deployments been limited to commercial building searches, offenses of violence, or situations where the subject was believed to be armed?**

Of the 20 apprehensions without a canine bite, there were only four off-lead searches; three were building searches, and one was an area search/article search for an armed suspect in an aggravated robbery. Thus, each of these was consistent with the MOA. Of three incidents where the suspect was bitten, one of the three searches was off lead, involving a suspect who had resisted arrest and fled earlier in the day. While the offense of resisting arrest is within the scope of a violent felony, it is not in a higher tier of violent offenses. The CPD counseled the officer regarding balancing the level of the offense with the risk involved in an off-lead deployment (the subject was in close proximity to a large business and an intersection where civilians could not be seen easily by the officer).

### **ii. Were canine announcements made?**

Of the three bite investigations, canine announcements were made in two, and a decision was made in the third not to make an announcement, based on information regarding dangerousness of suspect. Of the 20 apprehensions without bite, only seven documented a canine announcement. The remaining deployment forms were silent as to whether an announcement was made, or an announcement was specifically determined to be inadvisable. Based on this lack of documentation, the CPD is not in compliance with this provision.

### **iii. Was authorization from supervisor obtained?**

Supervisory authorization was documented in all of the deployments and bite investigations. The CPD is therefore in compliance with this provision.

### **iv. Thoroughness of investigations**

The investigations of the canine bites we reviewed were thorough and complete, and the CPD is in compliance with the MOA.

#### **v. Were bites consistent with MOA provisions?**

Two of the three canine bites we reviewed met the MOA criteria. In the third case, the subject was actively escaping – one of the circumstances in which a canine bite is allowed – but because justification for the off-lead search was unclear, we cannot say that the canine bite was in compliance with the MOA.

#### **D. Beanbag Shotguns [MOA ¶¶ 21-23]**

There were no beanbag shotgun deployments in the fourth quarter of 2003.

In the second quarter of 2003, the CPD's beanbag shotgun policy was revised to comply with the MOA requirements, and there have been no changes to the policy since that time. The new procedures allow the use of a beanbag shotgun only to subdue or incapacitate a suspect who poses an imminent threat of physical injury to the officers or others. Thus, the active resistance of a suspect, without threatened harm, would not be sufficient justification for the use of a beanbag shotgun. The CPD issued a Staff Note on March 2, 2004, reiterating the beanbag shotgun policy.

The CPD is in compliance with the MOA requirements relating to beanbag shotgun deployment.

### **III. Incident Documentation, Investigation**

#### **A. Documentation [MOA ¶¶ 24-25]**

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

- All uses of force are to be reported. The Use of Force form shall indicate each use of force and require evaluation of each use of force. Use of Force Reports will include the supervisor's and officer's narrative description, and the officer's audio-taped statement.
- The CPD will implement an automated data system allowing supervisors access to all use of force information.
- The CPD will implement a Canine Deployment form.

- If the gun pointing requirement is triggered under the Collaborative Agreement, data reported shall be included in the risk management system.

## **2. Status**

### **a. Hard Hands and Takedowns without Injury**

On June 1, 2003, the CPD began implementing a new Use of Force policy worked out with the Department of Justice. Under this policy, officers self-report certain uses of force involving “hard hands” and takedowns, when there is no injury to the subject, on a new “Non-Compliant Suspect” form (Form 18NC). For these types of incidents, supervisors do not need to respond to the scene and conduct an investigation, but they do need to review the completed Non-Compliant Suspect form and assess the appropriateness of the officer’s use of force and tactics. For other types of force, such as chemical spray, physical strikes, Taser, beanbag or pepperball deployments, supervisors continue to respond to the scene and complete a Use of Force Report (Form 18).

The Use of Force Reporting chart in CPD’s Use of Force policy, Procedure 12.545, states that for ‘hard hands’ use of force “by means of leverage displacement, joint manipulation, pain compliance, and pressure point tactics; without injury or complained of injury:”

The arresting officer will be required to notify a supervisor and document a narrative account of the subject’s form(s) of resistance and the officer’s specific defensive tactics used to overcome that resistance in the narrative of the arrest report and complete an officer’s report of non-compliant suspect/arrestee form report to be reviewed and approved by a supervisor. The use of force report will require the officer to identify the events leading up to the use of force and the supervisor will be required to evaluate the tactics used by the officer.

In response to the concerns raised in our last Quarterly Report, the CPD has revised the 18NC form to require a brief narrative of the force used and resistance met. In addition, the CPD revised its Use of Force policy to require that the Form 18NC be reviewed by a supervisor before the end of his or her tour of duty.

### **b. Hard Hands and Takedowns with Injuries**

The Use of Force Reporting chart contained in CPD’s Use of Force policy states that for “any use of force resulting in injury or complained

of injury or allegation of excessive force,” supervisors are required to respond to the scene and conduct a supervisory investigation, including a description of events leading to the force used, and audio-taped statements of all witnesses (except in chemical spray incidents where the subject was not restrained).

As we noted in our last Report, however, the current procedure for takedowns with injury is for the responding supervisor to complete an Injury-to-Prisoner Report (18I) rather than a Use of Force Report (18F), unless the injury is sufficiently serious to require admission to the hospital.<sup>5</sup> In cases of serious injury, both the MOA and CPD procedure require an investigation by both IIS and the Criminal Investigation Section (CIS).

The principle difference between the 18I and 18F reports is that the 18I investigation does not require taped statements of witnesses. As noted in the City’s February 12, 2004, Status Report and reiterated at the February all-Parties meeting, the City will initiate a dialogue with the Department of Justice to clarify the reporting requirements and request that the CPD’s current procedures be accepted as meeting the MOA requirements. On March 19, 2004, Cincinnati presented its request to the Department of Justice.<sup>6</sup>

### **c. Tasers**

In January 2004, Cincinnati began the purchase of Tasers for all CPD officers. Before deploying Tasers, the CPD developed Taser training, drafted a revised Use of Force policy, and provided demonstrations of the Taser for the Cincinnati City Council, the Parties, and others in the community.

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<sup>5</sup> Current practice is also different than the letter sent by the City Solicitor to the DOJ on April 25, 2003, proposing the change from the MOA provision: Where the force used is “hard hands” or a takedown “resulting in an obvious injury, complained-of injury, or allegation of excessive force, the same procedure that applies to any other use of force would govern. Specifically, a supervisor would be summoned to the scene and an investigation would follow, including but not limited to obtaining audio-taped statements of those involved.” Finally, we note that the CPD’s Use of Force Procedure 12.545 states that “[s]upervisors will complete a Form 18I for any injury to the arrested, not the result of the use of force, while under or just prior to police control, and as a result of police activity.”

<sup>6</sup> As part of the June 2003 agreement between the CPD and DOJ, the Monitor would evaluate the Use of Force Reports under the revised procedures for six months, and DOJ and the CPD would then have the opportunity to reassess whether the revised procedures were consistent with the purpose of the MOA.

With respect to reporting of Taser use, the revised CPD Use of Force policy requires that all Taser incidents be investigated by a supervisor who responds to the scene and completes a Use of Force Report, Form 18TBFP (Taser, Beanbag, Foam, Pepperball). As part of the investigation, supervisors are required to take taped statements from the subject, all involved officers and all witnesses to the incident. In addition, the Tasers contain an internal tracking chip that automatically records the date and time of all deployments. The data from the Taser can be downloaded and printed. CPD policy requires that investigating supervisor retrieve and print the information stored on the Taser data chip and record the information in the Use of Force Report.

### **3. Assessment**

#### **a. Non-Compliant Suspect Forms (Form 18NC)**

The Monitor Team sampled 12 Non-compliant Suspect Forms (Form 18NC) and associated arrest reports from the 4<sup>th</sup> quarter of 2003. A discussion of our review is contained in Chapter Four. As we noted in our last Report, the information captured on the forms themselves is not sufficient to assess compliance with the MOA and CPD policy. The 18NC form does not require a narrative, so there is no place for the officer to identify the events leading to the use of force or to describe the force used; nor have the officers' arrest reports generally contained the narratives required by the MOA and CPD policy. We did note, however, that for the 4<sup>th</sup> quarter of 2003, several officers provided a narrative of the events and a description of the use of force either on the back of the form or on the Arrest Report. In addition, supervisors in some of the cases provided additional written comments on the officer's tactics. With the revisions that the CPD is now making to the form and the change in CPD policy to require a narrative statement, supervisors will have a better opportunity to evaluate the appropriateness of the force used.

The CPD is not yet in compliance with the force reporting requirement with respect to takedowns without injury. The revisions to the Non-compliant Suspect Form should help, and we expect that the forms we review for the next quarter will reflect this change. The Monitor Team will assess compliance at that time.

## **b. Takedowns with Injury**

As noted above, when a takedown or the use of “hard hands” results in an obvious injury, complaint of injury or allegation of excessive force, a supervisor is required to respond to the scene to conduct a use of force investigation. It is the DOJ’s and Monitor’s view that, until there is agreement between Cincinnati and the DOJ to further modify the MOA, the supervisor’s investigation should include audio-tapes of involved officers, witnesses and the subject of the use of force, and the investigation should be documented on a Use of Force Report, Form 18F. For the fourth quarter of 2003, the CPD reported takedowns and hard hands with injuries as an “Injury-to-Prisoner Report” (Form 18I).

The CPD is not in compliance with the Use of Force reporting provisions for these incidents.

## **c. Tasers**

The CPD’s revised Use of Force policy on Tasers complies with the MOA use of force reporting requirements. The CPD recently provided copies of the Use of Force reports for the first nine Taser deployments, all of which occurred since February 1, 2004. The Monitor will be reviewing the full investigative file for these incidents in the next quarter.

## **B. Investigation [MOA ¶¶ 26-31]**

### **1. Requirements**

- Officers to notify supervisor following any use of force, or allegation of excessive force. Supervisor to respond to scene. Incident not to be investigated by officer who used force or who authorized force.
- CPD supervisors will investigate each use of force incident, with evaluation of compliance with CPD policies and tactics, including the basis of any stop or seizure.
- IIS will respond to scene of all “serious uses of force” and all canine bites with serious injuries. Inspections Section will review all investigations of canine bites, beanbags, foam rounds and baton uses.
- Investigators prohibited from asking leading questions. Investigators to consider all relevant evidence and make credibility determinations. No automatic preference for

officer's statement over citizen's; statements of witness with connection to complainant should not be discounted. The CPD to resolve material inconsistencies. The CPD will train investigators on factors to consider in investigations.

- Investigators to ensure that all witness officers provide statement. Supervisors will ensure that reports list all officers involved or on scene, and document any medical treatment or refusal of medical care.
- Lieutenant or higher will review each investigation conducted by CPD supervisors and identify any deficiency and require corrections. CPD supervisors to be held accountable for quality of investigations. Appropriate non-disciplinary or disciplinary action will be taken if investigations are not thorough, properly adjudicated, or where appropriate corrective action is not recommended.

## **2. Status**

The Monitor raised concerns in our last Report regarding the completeness of Use of Force investigations by field supervisors, particularly with respect to interviews of witnesses. Members of the Monitor Team met with the IIS Commander to discuss the training provided to CPD supervisors on conducting field investigations of use of force incidents. The Monitor Team also reviewed materials from the 2004 Annual In-Service Training for supervisors.

## **3. Assessment**

### **a. Policy**

The CPD's policies on investigating Use of Force incidents comply with the MOA.

## **b. Review of Sample of Force Investigations**

During this quarter, the Monitor Team reviewed 45 investigative files depicting Use of Force incidents. We determined:

- Supervisors were notified by officers who were involved in a use of force incident, and the supervisors responded to the scene to conduct a use of force investigation.
- Incidents were not investigated by officers involved in the use of force or by officers who authorized the use of force.
- Where subjects of force made a complaint of excessive force or other violation, supervisors completed complaint forms and faxed them to IIS.
- Use of Force investigations included taped interviews with all officers on scene, and witnesses [there were a few cases where we noted that an area canvass for witnesses would have been helpful].<sup>7</sup>
- The investigations documented medical care provided or the refusal of medical care.
- The Use of Force Reports (Form 18) were reviewed and signed by a CPD official at the rank of lieutenant or higher. Many of the investigations also had separate written memoranda by Command personnel with an assessment of the force used and the investigation of force. In one investigation in particular, Command determined that the supervisor did not do an adequate job of investigating. The CPD sustained a policy violation, but the corrective action in the case (in the Monitor's view) was minimal.

At the same time, we found:

- The investigations did not always evaluate the basis for the initial stop or seizure, and determine whether the officer's actions regarding the stop and seizure were within policy.

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<sup>7</sup> As noted above, interviews were taped except those that involved takedowns with injuries, where supervisors used Injury to Prisoner Forms and did not tape interviews.

- The investigator's interviews often did not follow up on relevant areas of inquiry, and in some cases included leading questions.
- The investigators did not always make sufficient efforts to resolve material inconsistencies between witness statements, and to make credibility determinations to resolve the investigation.

Based on these observations, the CPD is in partial compliance. We believe that the lesson plan and curriculum used to train supervisors on field investigations of use of force incidents addresses the thoroughness of investigations and the requirements of CPD policy and the MOA. Therefore, we are hopeful that compliance will be forthcoming as supervisors conduct investigations based on this training.

### **C. Review of Critical Firearms [MOA ¶¶ 32-34]**

#### **1. Requirements**

- Critical Firearms Discharges. The CPD investigations will account for all shots, and locations of officers discharging their firearm. The CPD will conduct appropriate ballistics or crime scene analysis, including gunshot residue or bullet trajectory tests.
- A Firearms Discharge Board (FDB) shall review all critical firearms discharges; review IIS and CIS investigation for policy compliance, tactical and training implications. The FDB will prepare a report to the Chief of Police. The FDB will determine (a) whether all uses of force during encounter were consistent with CPD policies and training; (b) whether the officer(s) used proper tactics; (c) whether lesser force alternatives reasonably were available.
- The policy for the FDB shall include: a review within 90 days from the end of the criminal investigation; FDB to act as quality control; authorize recommendations to the Chief of Police; require annual review for patterns, with findings to the Chief of Police.

#### **2. Status**

There was one firearms discharge in the fourth quarter of 2003. The investigation of that incident has been completed and a Firearms

Discharge Board was scheduled to begin work on March 22, 2004. In addition, since January 1, 2004, there have been three additional firearms discharges. All three of these incidents are being investigated by CID and IIS.

### **3. Assessment**

The CPD's policy on critical firearms discharges complies with the MOA. The Monitor will continue to review CPD's implementation of these provisions when the Firearms Discharge Board completes its work.

## **IV. Citizen Complaint Process**

### **A. Openness of Complaint Process [MOA ¶¶ 35-38]**

#### **1. Requirements**

- Publicity program for complaint process
- Availability of complaint forms, informational brochure
- Complaints may be filed in any form; intake officers not to opine on veracity or mental capacity. Complaint form completed for every complaint
- Every complaint to be resolved in writing
- Each complaint gets a unique identifier that will be provided to the complainant, and each complaint is tracked by the type of complaint
- Copies of allegations filed with the Citizen's Police Review Panel (CPRP), the Office of Municipal Investigations (OMI), Citizen Complaint Authority (CCA), Human Relations Commission referred to IIS within five (5) days

#### **2. Status**

Pursuant to the MOA and the CA, all citizen complaints, regardless of where they are initially filed, are to be directed to the CCA. In prior Reports, we raised concerns about the time taken for complaints that were filed with the CPD to be referred to the CCA. Many complaints were not referred to CCA until after they had been fully investigated by IIS. In response to these concerns, the CPD changed its procedures to ensure

that complaints made to CPD personnel in the Districts would be faxed to IIS by the end of the shift, and would then be sent to CCA.

### **3. Assessment**

As required by the MOA, the CPD accepts complaints in any format, including in person, by mail, from the CCA or stemming from a supervisor's investigation of a use of force incident. The CPD also accepts third party complaints, and our review of complaints in this quarter included third party complaints. Our review of complaint investigations generally did not reveal barriers to filing a complaint or discouragement by officers of persons seeking to make a complaint against a member of the CPD. There were two cases we reviewed where discouragement was alleged. In the first, it was alleged that a supervisor discouraged a formal complaint, urging an informal resolution instead. Complainants stated that they were given a complaint form only after they insisted on filing a complaint. The CPD determined that the complainants were given a complaint form when they asked for one and closed the allegation as unfounded. In the second case, a desk officer was counseled after he failed to retrieve a supervisor when the complainants came to the District to talk to the supervisor.

The CPD has also audited the availability of complaint forms in CPD Districts and in police vehicles and found that the forms are available as required.

From the information reviewed in this quarter, it appears that the CPD is in compliance with the complaint intake provisions of the MOA. We would recommend, however, that the CPD remind officers (through training or otherwise) of their responsibility for accepting complaints.

## **B. Investigation of Complaints [MOA ¶¶ 39-50]**

### **1. Requirements**

- Preponderance of evidence standard; City will develop appropriate training
- Officers who used spray or force, or authorized the conduct at issue, may not investigate the incident
- All relevant evidence to be considered

- No automatic preference of officer's statements; investigators will attempt to resolve inconsistencies; no leading questions; all officers on the scene are required to provide a statement
- All relevant police activity, including each use of force, will be investigated; searches and seizures will be evaluated; investigations are not to be closed simply because a complaint has been withdrawn
- Conviction of the complainant will not be used as evidence of the appropriateness of the action of the CPD officer
- Complainant to be kept informed
- IIS to investigate complaints of force, pointing firearms, searches, discrimination
- Citizen Complaint Resolution Process (CCRP) complaints will be fully investigated
- CCRP complaints will be investigated by chain of command, with report. District or unit commander will evaluate investigation
- For IIS Investigations:
  - tape all interviews with complainants, involved officers, and witnesses
  - interviews at convenient times
  - prohibit group interviews
  - notify supervisors of complaints
  - interview all appropriate CPD officers, including supervisors
  - collect and analyze all appropriate evidence, canvass scene for witnesses, obtain medical records
  - identify material inconsistencies
- Report on investigation to include a summary, proposed findings and analysis
- Investigation to be complete within 90 days, absent exceptional circumstances.

## **2. Status**

The CPD's policy for handling citizen complaints, Procedure 15.100, was revised on October 7, 2003, to provide that IIS will conduct an investigative review of citizen complaints alleging excessive force.

### **a. Discrimination complaints**

One concern the Monitor raised in our previous Report is that discrimination complaints were being handled by field investigations and the CCRP process, rather than by IIS investigations, as required by the MOA and by CPD procedure.

According to the CPD, the police department receives a number of complaints where allegations of discrimination merely reflect the complainant's dissatisfaction with the outcome of a police interaction. An example cited would be where a motorist is given a ticket that he believes should not have been given, and therefore attributes the reason for the ticket to racial bias, even though there is no overt indication that race played a role in the decision. The CPD believes some of these complaints are best resolved by the Citizen Complaint Resolution Process (CCRP). In these cases, the meeting that occurs between the investigator, the involved officer, and the complainant can resolve misconceptions and inferences drawn from the event in question.

Based on this view, the CPD has proposed to modify the procedure for handling discrimination complaints. Where an allegation of discrimination has "some corroborating evidence to support the assertion that the action or inaction by Department personnel was based upon some form of racial bias" the allegation would be investigated by IIS. Where there is "no corroborating evidence" that the police action was based on some form of bias, the allegation would be investigated in the field and handled through the CCRP process. (Emphasis in CPD original).

## **3. Assessment**

The Monitor Team reviewed 12 IIS citizen complaint investigations, 11 CCRP field investigations of citizen complaints, and 13 CCA investigations.

### **a. IIS investigations**

Our review of IIS investigations revealed MOA compliance on the following issues:

- IIS is now reviewing District use of force investigations
- In most of the investigations, involved officers and witnesses were identified and interviewed on tape
- There were no group interviews conducted
- In several of the investigations, the CPD properly identified and investigated misconduct other than the violations alleged in the complaint
- No cases were investigated by officers who were involved in the use of force or who authorized the use of force or conduct at issue in the complaint.
- As a general matter, IIS investigators were not asking leading questions of officers

We noted that improvements are needed in the following areas:

- Investigators are not always reviewing the initial stop or seizure (other than checking the box on the use of force form)
- In some cases, additional follow-up questions should have been asked, additional evidence collected or a canvass performed, and further efforts made to resolve material inconsistencies

### **b. CCRP investigations**

Our review of CCRP files revealed that CPD District supervisors generally were complying with the MOA provisions requiring that CCRP cases be fully investigated; that a determination be made of the appropriateness of the officer's actions; and that the investigation be concluded prior to, and be independent of, the resolution meeting.

Until an agreement can be reached between the CPD and the DOJ regarding the handling of discrimination complaints, however, we can only conclude that the CPD is in partial compliance with these

provisions. In addition to discrimination complaints, there also was a complaint of an improper pointing of a firearm that was investigated through the CCRP process. While the investigation was thorough, CPD procedures and the MOA require these types of complaints to be handled by IIS.

### **c. Time period for investigations**

The Monitor also reviewed the amount of time taken to investigate citizen complaints. For IIS investigations, there were a total number of 67 cases that were closed in the 4<sup>th</sup> quarter of 2003. Twenty of those cases took longer than 90 days to investigate. With respect to CCRP cases, 12 of the 78 cases closed in the 4<sup>th</sup> quarter took longer than 90 days to investigate, while there were two additional cases for which the dates are uncertain. For the 41 CCA cases completed in the fourth quarter, there were nine cases that took longer than 90 days to complete.

## **C. Adjudication of Complaints [MOA ¶44-45]**

### **1. Requirements**

- Every allegation to be resolved with one of four determinations – unfounded, sustained, exonerated, not sustained
- Unit commanders to evaluate each investigation to identify problems and training needs

### **2. Status**

The City has revised the CCRP process so that the MOA complaint closure terms [sustained, not sustained, unfounded, exonerated] are applied to complaints adjudicated through the CCRP process. The investigating supervisor continues to determine whether the officer's actions "met" or "didn't meet" CPD standards. However, the Bureau Commander reviewing the CCRP file now determines which of the closure terms is appropriate prior to the file being sent to the Police Chief for final review. Procedure 15.100, Citizen Complaints, has been revised to reflect this change, effective July 8, 2003.

The CPD reports that there were 70 CCRP complaints involving 84 allegations that were closed in the 4<sup>th</sup> quarter of 2003. The results of the investigations were as follows:

Sustained	15
Sustained Other	5
Exonerated	15
Not Sustained	18
Unfounded	30
Case referred to IIS	1

The CPD also reports that there were 63 investigations involving 99 allegations closed through IIS in the 4<sup>th</sup> quarter of 2003. Those cases were closed as follows:

Sustained	38
Sustained Other	1
Exonerated	3
Not Sustained	28
Unfounded	29

### **3. Assessment**

The City is in compliance with the requirement that every complaint be closed with one of four dispositions: sustained, not sustained, unfounded or exonerated.

#### **D. Investigations by the CCA [MOA ¶¶ 51-56]**

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

- The CCA is to assume all of the responsibilities of the Office of Municipal Investigation (OMI) within 120 days from the date of the Agreement
- Copies of all complaints, no matter with which office they are filed, will be directed to the CCA; the CCA is to have jurisdiction over complaints of excessive force, pointing firearms, unreasonable search or seizure, or discrimination; CCA shall have sufficient number of investigators, with a minimum of five
- CPD officers must answer CCA questions; CCA director to have access to CPD files and records

- City to develop procedures to coordinate parallel investigations
- City will take appropriate action on CCA completed investigations
- CCA will complete investigations within 90 days; City Manager to take appropriate action within 30 days of CCA completion of investigation

## **2. Status**

In the 4<sup>th</sup> quarter of 2003, there were 24 cases investigated by the CCA.

## **3. Assessment**

### **a. General Operations**

The CCA has been accepting complaints since January 6, 2003. It has logged in over 500 cases (both those investigated by the CCA itself and those investigated through the CCRP process, but reviewed by CCA). In 2003, it accepted approximately 180 cases for CCA investigators to investigate. An additional 28 cases were accepted for investigation in January and February of 2004.

The CCA is now receiving complaints filed with the CPD in a timely manner. Our review indicates that the CCA is investigating those cases coming under its mandatory jurisdiction, and taking a number of additional demeanor complaints and other CCRP-type complaints for investigation. In addition to its own investigations, the CCA Board also reviews the results of CPD's CCRP investigations and states whether it concurs or not with the CPD findings.

### **b. Sample Investigations**

During this quarter, we reviewed the investigative files in a sample of 13 CCA investigations. Summaries of those investigations are contained in Chapter 4. What follow are our general observations:

- Officers are responding to the CCA offices to be interviewed
- CCA has access to CPD records

- Parallel investigations by the CCA and the CPD do not appear to be impairing the effectiveness of either investigation
- The CCA investigations include an investigator's report, summaries of interviews, descriptions of evidence, and conclusions
- The CCA Executive Director also prepares a summary report for the CCA Board
- The investigative files are generally well-organized and thorough.

CCA has used various checklists and forms to ensure that the investigations are well managed and thorough. These include: Case checklist; Scheduling Witness Form; Contacting Witness Form; Case Status Report; Other Evidence Form; and Case Contacts list.

There are also areas where we believe improvements are needed:

- Investigators need to make efforts to resolve material inconsistencies in witness statements.
- In several cases, the CCA exonerated allegations of excessive use of force. In these cases, the investigator credited the officers' versions of the incident, though this was not always stated explicitly. To the extent that the CCA determines that the complainant's allegations (that the force used was excessive) were not true, the complaints should be closed as unfounded rather than exonerated.
- The CCA exonerated an officer who had accidentally discharged his firearm. Where a weapon is fired accidentally, the officer has violated Department policy, as officers are only to fire their weapons when confronted with an imminent threat, and officers are only to have their fingers inside the weapon's trigger guard when there is an immediate target. Thus, the case should be closed with a sustained violation.

Based on data provided by CCA, it appears that the City Manager is taking action on completed CCA cases ("agreeing" or "agreeing in part" with CCA recommendations), as required by the MOA and CA. However, at this point, we do not have sufficient information regarding what actions are then taken by the CPD with respect to discipline to determine whether the City is in compliance with provision requiring the City to

take “appropriate action, including imposing discipline and providing for non-disciplinary action where warranted.”

## **V. Management and Supervision**

### **A. Risk Management [MOA ¶¶ 57-64]**

#### **1. Requirements**

Under the MOA, the CPD is required to enhance and expand its risk management system by creating a new “computerized, relational database.” The CPD is to use the data in this system “to promote civil rights and best practices, manage risk and liability, and evaluate the performance of CPD officers.”

- The information in the Risk Management System is to include:
  - uses of force
  - canine bite ratio
  - canisters of chemical spray used
  - injuries to prisoners
  - resisting arrest, assault on a police officer, and obstruction charges, where a use of force has occurred
  - critical firearms discharges
  - complaints, dispositions
  - criminal and civil proceedings against officers
  - vehicle pursuits
  - pointing of firearms (if added)
  - disciplinary actions
- The CPD must develop a plan for inputting historic data now in existing databases (Data Input Plan)
- The CPD must develop a protocol for using the risk management system, subject to Department of Justice approval
- The protocol will include the following elements:
  - data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit
  - the system will generate monthly reports
  - CPD commanders, managers and supervisors must review, at least quarterly, system reports and analyze officer, supervisor, and unit activity

- CPD commanders and managers must initiate intervention for officers, supervisors or units, based on appropriate “activity and pattern assessment” of the information in the system
  - intervention options are to include counseling, training, action plans; all interventions must be documented in writing and entered into the system
  - the data in system must be accessible to CPD commanders, managers and supervisors; they must review records of officers transferred into their units
- Schedule for system development and implementation:
    - 90 days from April 12, 2002: issuance of RFP, with DOJ approval
    - 210 days from RFP: selection of contractor
    - 12 months from selection of contractor: beta version ready for testing
    - 18 months from selection of contractor: computer program and hardware to be “operational and fully implemented”

## **2. Status**

At the Parties’ January 22, 2004, all-Party meeting, the CPD provided a copy of the ETS protocol to DOJ, the Monitor and the Collaborative Partners. In addition, during the Monitor’s January site visit, a demonstration of the ETS system was conducted at the CPD Information Technology Management Section facility. Based upon our review of the protocol and the information learned from the demonstration, the Monitor provided comments to the CPD in February. While the ETS Protocol provided in January 2004 was significantly more detailed than earlier versions presented by the CPD, there were three areas that needed additional clarification:

- The protocol did not provide sufficient detail regarding the criteria or process to be used by supervisors in reviewing the performance of officers identified by the system as meeting the at-risk thresholds. Nor did it provide sufficient detail regarding the criteria for appropriate interventions.
- While the protocol described various analyses that would be conducted regarding individual officer performance, the protocol did not provide detail regarding the types of analyses that would be undertaken regarding the performance of units and shifts.

- The “records retention” provisions of the ETS protocol were inconsistent with the MOA. For example, the ETS system must be able to analyze data regarding complaints against officers that are determined to be “not sustained,” so that patterns and trends can be identified. The protocol, however, stated that not sustained complaints would be eliminated from the system.

The DOJ followed with additional comments and recommendations.

In response to these comments, Cincinnati provided a revised ETS Protocol and a Data Input Plan on March 15, 2004. The revisions to the ETS protocol were intended to address each of the concerns described above. In addition, the Data Input Plan provided by the CPD included detailed information about the specific data fields that will be used and tracked within the ETS application. The Data Input Plan provided information on the key data elements that will allow the CPD to connect the various activities and reports of all of its members. Additionally, information was provided on how the CPD was going to enter current paper information into the new ETS application.

On March 22, 2004, DOJ wrote to the City that while the Protocol is “close to a final product that we can approve,” there are still three issues that still need to be resolved. First DOJ continues to have concerns about whether the “interventions” section of the protocol provides sufficient guidance to supervisors. Second, DOJ states that the lack of detail relating to the unit-to-unit analysis means that there will be a greater burden on the City and Monitor to ensure that implementation of the analysis satisfies the MOA. Third, DOJ requests greater clarification regarding the “retention” section of the Protocol to ensure that it does not conflict with the MOA.

### **3. Assessment**

#### **a. Protocol and Data Input Plan**

There has been a great deal of progress toward implementation of the ETS system. If the three issues raised by DOJ can be resolved, the CPD states that it can implement the ETS system on schedule by June 2004.

#### **b. Manual Risk Management System**

While the ETS system is being developed, the MOA requires the CPD to use existing databases to monitor officer behavior. As we have noted in prior reports, the CPD maintains a manual risk management system known as the Department Risk Management System (DRMS). This system uses existing databases and a matrix of risk factors to identify officers who are subject to an administrative review. Officers who accumulate more than a certain number of points within a 12 month period based on this matrix are identified for review.

For the 12 months ending October 1, 2003, there were two CPD officers who exceeded the threshold; for the 12 months ending November 1, 2003, there were four officers exceeding the threshold; and for the 12 months ending December 1, 2003, there were no CPD officers who exceeded the threshold. For each of the officers identified, supervisors met with the officer and reviewed their performance. In the case of one officer, the supervisor recommended additional driving/pursuit training. While there was adequate attention paid to the officers' use of force incidents, in only one case did the supervisor review or comment on citizen complaint issues.

## **B. Audit Procedures [MOA ¶67-69]**

### **1. Requirements**

- CPD to develop a protocol for audits
- Regular audits of the citizen complaint process and Integrity audits of IIS investigations
- Meetings with prosecutors to identify officer performance issues

### **2. Status**

The Inspections Section also conducted its quarterly audit of the CCRP process. The audit, dated January 15, 2004, consisted of a review of the following criteria:

- Were the complaints logged into the CCRP database, and was the proper documentation completed?
- Did each District/Section/Unit have complaint forms and feedback forms accessible to the public?

- Were complaint forms and feedback forms in Department vehicles?
- Were complainants notified of the outcome of the CCRP process, including whether corrective or disciplinary action was taken?

According to the CPD, the audit found that all Districts/Sections/Units were complying with Department procedures regarding the CCRP process.

The Inspections Section also conducted its semiannual audit of IIS investigations. The audit consisted of a review of seven investigations. The Inspections Section review found that “all documents, taped interviews, and final reports were in compliance with the policies, procedures and standards of the Cincinnati Police Department.”

### **3. Assessment**

Based on the information available, the CPD is in compliance with these requirements. We would note, however, that CPD’s audits of its CCRP and IIS investigations apparently did not reveal any of the issues we found in our review of a sample of cases from the same time period. In this next quarter, we will meet with the CPD staff conducting audits to discuss their audit procedures.

#### **C. Video Cameras [MOA ¶¶ 70-72]**

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

The MOA requires that all patrol cars be equipped with mobile video recorders (MVR). These MVRs are to be used in the following situations:

- Mandatory activation of MVR for all traffic stops
- Recording of consent to search, deployment of drug sniffing canines, and vehicle searches
- Recording of violent prisoner transport, where possible
- Supervisors to review all tapes where there are injuries to prisoners, uses of force, vehicle pursuits, citizen complaints
- CPD to retain and preserve tapes for 90 days, or as long as investigation is open
- If stop is not recorded, officer to notify shift supervisor

- Periodic random reviews of videotapes for training and integrity purposes; supervisors are to keep a log book of these reviews
- Random surveys of equipment are to be conducted

## **2. Status**

The CPD is in the process of purchasing digital camera equipment to supplement and then replace the current video camera equipment in its police cars. The CPD has received \$371,000 in federal funding to purchase 62 Digital Video Data (DVD) units with the supporting hardware and equipment. CPD believes these units can be installed by the end of the first quarter of 2004. The Department is also working on finalizing funding and the development of a purchase order for the remaining 178 units required to digitally equip the entire cruiser fleet. The CPD hopes to have those units purchased and installed by the end of 2004.

## **3. Assessment**

The CPD is in partial compliance with these provisions of the MOA.

- Not all vehicles have cameras yet; complete outfitting of police vehicles with MVRs will depend on additional digital camera purchases.
- The CPD appears to be following its procedures for supervisory random review of videotapes. The Monitor has reviewed logs of these reviews from the various Districts. What is not evident from these logs is whether the random reviews have prompted any substantive outcomes – changes in tactics, training, counseling of officers, or other results.

As we noted in our last Report, officers are required to activate the MVR “to the extent practical” when transporting violent prisoners. In our review of cases where chemical irritant is used on arrested individuals in back of the police car, only a few of these incidents have been captured on the MVR tapes, and those have only captured the audio of the incident. We recognize that many of these situations are rapidly evolving, with little time for the officer to stop and consider turning on the MVR and rotating it so that it captures images from the back seat of the police car. That is why both the MOA and CPD policy state that videotaping is to be done “to the extent practical.” We believe that both officers and supervisors will benefit from documentation of these

incidents, and encourage the CPD to emphasize the value of the MVR in these situations.

**D. Police Communications Section [MOA ¶¶ 73-74]**

The City of Cincinnati is moving forward with its project to construct an 800 MHz radio communications system. Replacement of the City's current 911 phone system is also underway. In addition, the CPD has requested that the City allocate funds to upgrade the current CAD system. \$2.49 million has been allocated for this project.

The CPD is in compliance with these provisions.

**E. Discipline Matrix [MOA ¶¶ 75-76]**

**1. Requirements**

- CPD to revise disciplinary matrix to increase penalties for serious misconduct violations, such as excessive use of force and discrimination.
- Where matrix indicates discipline, it should be imposed absent exceptional circumstances. The CPD shall also consider non-disciplinary corrective action, even where discipline is imposed.

**2. Status**

In 2002, the CPD adopted a revised discipline matrix. The DOJ approved the revised discipline matrix, but stated that compliance would depend on actual implementation of discipline. In its letter to the City of Cincinnati, the DOJ stated:

“For the CPD to satisfy the increased penalty requirement of the MOA also depends on the exercise of considerable discretion. In response to the requirement to increase penalties for certain types of infractions, the CPD raised the maximum penalty that can be imposed for certain infractions, but has not changed the minimum sanction that can be imposed. Thus, the CPD will not have actually increased the penalty for these offenses if it habitually imposes the minimum disciplinary action allowed under the matrix.”

**3. Assessment**

The CPD currently does not have the capabilities to track electronically the disciplinary penalties imposed in each case where a violation of policy has been sustained. Rather, a review of discipline would have to be accomplished manually, case-by-case. Once the ETS system is implemented, however, the CPD will be able to compile aggregate reports of discipline imposed.

In the investigations we reviewed this quarter, we identified at least one situation where we believe the discipline imposed would not meet the MOA requirements. At the same time, we also reviewed a use of force investigation initiated internally by the CPD that resulted in a seven day suspension. Rather than base a compliance assessment on these individual cases, we will defer our determination until the next quarter, when the ETS system may be able to provide more comprehensive data.

## **VI. Training**

### **A. Use of Force—Management Oversight and Curriculum [MOA ¶¶ 77-81]**

#### **1. Requirements**

This section of the MOA requires the CPD to:

- Coordinate and oversee use of force training to ensure that it complies with applicable laws and CPD policies
- Designate the Academy Director with responsibility for
  - the quality of training
  - the development of the curriculum
  - the selection and training of instructors and trainers
  - establishing evaluation procedures
  - conducting regular (semi-annual) assessments to ensure that the training remains responsive to the organization's needs
- Provide annual use of force training for all recruits, sworn officers, supervisors and managers
- Have the curriculum and policy committee regularly review use of force training and policies to ensure compliance with laws and policies

## **2. Status**

During this quarter, the Monitor Team met with training staff and instructors, reviewed Training Committee minutes and curriculum materials involving use of force training, and observed recruit and annual in-service training activities.

The CPD Training Committee met on December 11, 2003, to view presentations on the Taser training scheduled for January 2004. They also reviewed a power point presentation relating to a 2003 critical incident (a fatal officer-involved shooting) presented in November's Management Training session. In addition, they reviewed the summary of training activities for 2003 along with recommendations for in-service training activities for 2004. The topics scheduled included Taser Training, Critical Incident Review, Legal Issue Update, Crime Scene Preservation and Tactical Skills training. As a result of the Nathaniel Jones incident, committee members also expect CPR re-certification and MHRT training will require further attention. Academy staff advised the committee that a new MHRT training class will likely be scheduled this summer.

During the fourth quarter of 2003, 537 officers participated in annual firearms qualifications at the Target Range. Additionally, the first training session for deployment of the new Taser X26 was conducted in December 2003, with 28 officers participating. All CPD officers will undergo Taser training in 2004. CPD officers also participated in short use of force training sessions and discussions led by field supervisors during specified roll call sessions each month. These sessions most often involve scenarios based on CPD incidents or the experiences of other agencies and case law (See Section VII.E, below, for additional information about the content of this training).

The Monitor Team observed defensive tactics training conducted at the Training Academy for in-service personnel and recruit officers in January of 2004. In particular, we focused our attention and evaluation efforts on the range of tactics covered, the content and quality of the training, and consistency of the training with the provisions of the MOA, the CA and Department policies.

The defensive tactics training stressed adherence to Department policies and best practices through constant reinforcement of critical thinking skills. Participants were encouraged and challenged to remain mindful about what it was "they were doing and why they are doing it," as they practiced the techniques and refined their skills. The training covered the full range of use of force options to be employed - including

disengagement, voice commands, verbal warning of impending force, and force options ranging from restraint holds and the application of chemical irritants up to deadly force.

With respect to chemical irritant use, the instructor discussed disengagement, voice commands, verbal warnings of impending force, appropriate distance and target areas, and decontamination requirements. The PR-24 training including discussion of disengagement, voice commands, strike areas, distance, the importance of being able to articulate decision-making, objective reasonableness of the force used, and other force options on the continuum.

In addition to instruction on the importance of safety for both the officers and subjects involved, the instructors discussed physical conditioning and its relationship to stress and how this affects one's ability to control and properly respond to the hazards involved in these situations. The training was physically taxing and the scenarios and situations presented were constructed to induce stresses that are likely to be experienced in the field. A videotape was also used to help officers better understand and appreciate how their training prepares them to effectively respond during a time of crisis. This tape was of a recent CPD incident involving a suspect pulling and firing a weapon at the time of an arrest. The subject was quickly controlled and subdued without harm to anyone due to the rapid and effective response of the officers involved. The officers involved attributed this to their prior training.

Throughout the training, the Monitor Team noted the consistent emphasis by the instructors on the use of reasonable and appropriate force by officers. They spent a great deal of time clarifying what use of force is reasonable under what circumstances, and also on the importance of officers accurately documenting in their reports what force was used. Appropriate distinctions were made between "escort holds" and actions that are merely incidental to an arrest versus levels of force that require more formal documentation vis-à-vis the Use of Force Reports.

### **3. Assessment**

The CPD is in compliance with this provision. The quality and content of the use of force training provided has been consistent with and responsive to the provisions of the MOA. The trainers on staff at the Academy have shown themselves to be highly skilled and effective in dealing with the needs and abilities of the individual officers and trainees. In future quarters, the Monitor will also devote time to

assessing the evaluation procedures established by the CPD to comply with MOA requirements.

**B. Handling Citizen Complaints [MOA ¶82]**

**1. Requirements**

The MOA requires the CPD to provide training on the handling of citizen complaints for all officers charged with accepting these complaints. The training must emphasize interpersonal skills so that citizen concerns and fears are treated seriously and respectfully. This training must address the roles of the CCRP, IIS, CCA and CPRP so that complaint takers know how and where to make referrals. For the supervisors who investigate and determine outcomes of citizen complaints, their training must include how to establish appropriate burdens of proof and evaluate factors related to establishing complainant and witness credibility. The objective is to ensure that their recommendations regarding the disposition of complaints are unbiased, uniform, and legally appropriate.

**2. Status**

Nothing to report this quarter

**C. Leadership/Command Accountability [MOA ¶83]**

**1. Requirements**

The MOA requires that CPD Supervisors will continue to receive training in leadership, command accountability and techniques designed to promote proper police practices. Within 30 days of assuming supervisory responsibilities, all CPD sergeants are to receive this training, and it will be made part of the annual in-service training. This requirement acknowledges the important role leaders at all supervisory levels play in ensuring that an appropriate demeanor, behaviors, and tactics are used in the operations of the agency.

**2. Status**

The CPD conducted an eight-hour Management Training session during the autumn of 2003. Training records reflected 203 supervisors or managers, out of 209 scheduled, attended that training. During the 4th quarter of 2003, 194 additional supervisors attended the eight-hour Management Training session. An eight-hour Sergeants' training program was also held in the fourth quarter, with 25 officers attending that course.

The CPD is considering a proposal to expand its Supervisors' Training Course from two weeks to three weeks in duration to accommodate the increased training requirements and expectations of first-line supervisors.

### **3. Assessment**

When possible, the CPD has been providing leadership and supervisory training for new supervisors in advance of their actual appointment to the position, rather than waiting until after the official appointment has taken place.

The CPD's interest in expanding the Supervisors' Training Course also reflects its desire to ensure that future supervisors are well trained and prepared to carry out their duties and obligations. The revised curriculum for the expanded training is not yet complete. The Monitor Team requested an opportunity to review the curriculum before the training is implemented, and Academy staff will be providing us with the curriculum in the coming months.

The CPD is in compliance with this MOA provision.

## **D. Canine Training [MOA ¶ 84]**

### **1. Requirements**

The MOA requires the CPD to modify and augment its training program. This includes the complete development and implementation of a canine training curricula and lesson plans that identify goals, objectives and the mission of the Canine Unit specified in the MOA. Formal training on an annual basis for all canines, handlers, and supervisors is also required, as is annual re-certification and periodic refresher training with de-certification resulting when the requirements are not met. Within 180 days of the MOA, the CPD was required to certify all in-house canine trainers.

### **2. Status**

While the Monitor Team did not have an opportunity to observe CPD Canine training this quarter, members of the Monitor Team did attend Canine refresher training at the Metropolitan Police Department (MPD), District of Columbia. The MPD canine training regimen is also called a "handler control alert" curriculum, and the term in the Cincinnati MOA was based on its use in the MOA in Washington, DC. The handler teams we observed performed on-lead tracking (with a 12

foot harness), article searches (off lead), handler control and obedience (off lead), handler protection, running apprehensions and building searches.

MPD makes a distinction between tracking and searching. Tracking is always performed on lead with the Canine in clear sight of the handler, except when going around corners or crossing thresholds. The tracking exercise is a passive exercise for the canine and is not intended to result in an engagement (i.e., a bite) of a suspect. Thus, the tracking training exercise ends with a toy rather than a bite to a bite sleeve. The rationale is that a canine will sometimes be used to track a missing child or vulnerable adult (e.g., an Alzheimer patient). For MPD, a search, on the other hand, is conducted off lead and is specific to finding a criminal suspect. These deployments are limited to crimes against persons and situations where the subject is known to pose a threat to the officer or others. Thus, when an MPD canine on track of a criminal suspect alerts on that suspect, or the handler becomes concerned about officer safety, the handler will “transition” to an off-lead search. The Monitor will discuss with the DOJ and the CPD how the experience of MPD canine training and the results of its deployments may be relevant to the CPD.

## **E. Scenario Based Training [MOA ¶85]**

### **1. Requirements**

The CPD is required to ensure that training instructors engage students in meaningful dialogue regarding particular scenarios, preferably taken from actual incidents involving CPD officers. The goal is to educate students regarding legal and tactical issues raised by the scenarios.

### **2. Status**

Scenario-based training that promotes examination of legal and tactical issues is routinely conducted in roll call sessions in each of the Districts. An examination of the training schedule and records showed the sessions in the fourth quarter addressed use of force issues, courtesy and profiling, and foot pursuits. The training scenarios employed this quarter were numbers 2003-18 through 2003-23.

At the time of the site visit, new scenarios had been developed and were being discussed in the January roll calls. Work was also underway on the development of additional scenarios to be used in February and March. The majority of the scenarios developed for these training sessions are based on actual incidents involving Cincinnati police

officers. Three of the recently developed scenarios were drawn from incidents that had been presented to the Firearms Discharge Review Board, and two were developed out of recent foot pursuits.

### **3. Assessment**

Based on our observations of the roll call sessions and training records provided, the CPD continues to demonstrate compliance with this provision of the MOA.

#### **F. Revised Training Based on Review of Civil Lawsuits Pertaining to Officer Misconduct [MOA ¶ 86]**

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

The MOA requires that the CPD periodically meet with the Solicitor's Office to glean information from the conclusion of civil lawsuits alleging officer misconduct with the purpose of using the information to develop or revise training. This requirement is related to Paragraph 85.

##### **2. Status**

Nothing to report

#### **G. Orientation to the MOA [MOA ¶ 87]**

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

The MOA requires the City and the CPD to:

- Provide copies of the MOA and explain it to all CPD and relevant City employees
- Provide training for employees affected by the MOA within 120 days of each provision's implementation
- Continue to provide training to meet this requirement during subsequent in-service training

##### **2. Status**

As noted in previous reports, MOA-related training was provided for all employees in 2002 and this included the dissemination of the MOA. When new policies have been developed and adopted, or existing

ones modified to comply with the MOA, the CPD includes these in Staff Notes and incorporates them into in-service training sessions.

### **3. Assessment**

The City remains in compliance with this provision. We will continue to assess compliance with such ongoing training requirements as part of our regular review of training activities involving new or revised policies.

## **H. FTO Program [MOA ¶ 88-89]**

### **1. Requirements**

The MOA requires the CPD to develop a protocol to enhance the FTO program to include:

- The criteria and method for selecting FTOs
- Setting standards that require appropriate assessment of an officer's past complaint and disciplinary history prior to selection
- Procedures for reappointment and termination of FTOs at the Training Academy Director's discretion
- Reviewing FTOs at least bi-annually with recertification dependent on satisfactory prior performance and feedback from the Training Academy

### **2. Status**

A new selection process for Field Training Officers (FTOs) was developed in recent months and has now been implemented. During the fourth quarter, 38 officers applied to become FTOs. Following an assessment of each officer by the Training Academy and the FTO Panel, 19 officers were selected to participate in the FTO orientation course. The criteria utilized included the following: a review of each officer's written FTO application, their supervisory recommendation, past complaint and disciplinary history, and a recommendation for approval to the Training Academy Director with final approval being made by the Chief of Police.

The selection standards and process that were recently developed yielded a diverse group of officers who were all volunteers for this assignment. This was the first time officers seeking to become FTOs were required to complete a formal application and participate in a selection process designed specifically for this position. Some of the criteria for selection, such as what constitutes an acceptable complaint and disciplinary history, are yet to be finalized, so more work remains to be done in this area.

Between February 9-13, 2004, the CPD conducted a 40-hour orientation course for new FTOs. A member of the Monitor team attended most of this course and noted a high level of participation, commitment and enthusiasm among all the attendees. Of particular note were the many informal conversations with individual FTOs in which they talked freely about their understanding of the FTO's role as a trainer and evaluator, and their commitment to serving as positive leaders and role models for the probationary police officers (PPOs). Training Academy staff and the FTOs also expressed satisfaction with the changes made to elevate this program and the status of FTOs in the CPD.

The Training Academy staff, senior command staff, and the FTO Panel are demonstrating and emphasizing the importance the FTO plays in the training, development and acculturation of new CPD officers. One message that was reinforced repeatedly during the 40 hour FTO course was that "the FTO is the most important leadership role in the Department." A second equally important message was that the standards have now been raised for becoming an FTO, and the CPD wants its best people to serve in this capacity.

A significant, recent addition to the FTO course is the introduction of a "Beat Profile" to be completed by each of the PPOs under the supervision of their FTO. The Beat Profile form was developed by the Training Academy and Xavier University to provide a tool to help the PPOs better understand beat problems, meet community and organizational expectations in effectively dealing with these issues, engage the FTOs in a structured problem-solving activity with their PPOs, and require ongoing supervisory oversight of problem-solving activities by the FTO sergeants. The Training Academy considers the Beat Profile project a "work-in-progress" which will be evaluated and revised after this first application.

### **3. Assessment**

The recent actions taken and the progress achieved in the FTO program are noteworthy and to be commended. This program serves a significant function and marks a critical transition point for new officers. Some of the first and most lasting impressions of the PPOs about police work, and the behaviors they choose to adopt, are influenced to a great extent by their FTO's. Integrating CPOP into all elements of the FTO program will be another critical step for the CPD in clarifying future expectations and agency priorities. The FTOs will play an important role in redefining police practices so that CPOP ultimately becomes an operational reality for all CPD officers.

While there are still changes to be made in the FTO program as it is refined and implemented, the CPD is in compliance with the MOA requirement that it develop a protocol for enhancing the FTO program. Continued compliance will require that the progress made so far is maintained, and that FTOs are reviewed regularly, with re-certification dependent on good performance.

#### **I. Firearms Training [MOA ¶¶ 90-91]**

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

The MOA requires all CPD sworn personnel to complete mandatory annual re-qualification firearms training to include: satisfactorily completing all re-qualification courses plus achieving a passing score on the target shooting trials, professional night training and stress training to prepare for real-life scenarios. The CPD is required to revoke the police powers of those officers who fail to satisfactorily complete the re-certification.

The MOA also requires firearms instructors to critically observe students and provide corrective instruction regarding deficient firearm techniques and failure to utilize safe gun handling procedures at all times. The CPD is required to create and implement an evaluation criteria checklist to determine satisfactory completion of recruit and in-service firearms training. For each student, the firearms instructors will complete and sign a checklist verifying satisfactory review of the evaluation criteria.

## **2. Status**

Training records reflect that 537 officers participated in annual firearms qualification at the Target Range in the final quarter of 2003. No firearms training was being conducted at the time of the site visits in January and February. Annual training is scheduled to begin again in late February and will run through May and possibly into June. An effort will be made to schedule a Monitor Team site visit to coincide with this training.

The Monitor Team reviewed training materials and discussed with the Training Academy staff what administrative actions are taken when employees do not satisfactorily complete their annual re-qualification in firearms proficiency. Our review revealed that 20 officers failed to attend the firearms re-qualification course and had their police officer powers suspended as a result. Of those who did not attend the re-qualification, seven were under administrative suspension at the time of the training, seven others were on light duty status, two were on extended sick leave and four were on military leave.

We examined the records of administrative actions that result when an individual fails to re-qualify. Our review showed that the documentation involved was clear and that the actions taken were timely and consistent with MOA requirements and Department policy. The Firearms Training Unit served notice of the suspension of police powers for the individuals failing to qualify, initiated the notification to appropriate staff, scheduled follow-up training and re-testing, and ensured that the necessary documentation was in order. When the individual does re-qualify, the documentation is completed to show the officer has qualified and his or her police powers are reinstated.

## **3. Assessment**

The CPD is in compliance with those elements of ¶¶ 90-91 that the Monitor Team has observed or documented through training records. We have not yet been able to observe other aspects of this training.

## **CHAPTER THREE. COLLABORATIVE AGREEMENT**

Through the Collaborative Agreement (CA), the Parties endorsed community problem-oriented policing (CPOP) as the framework for policing in the City of Cincinnati. The Parties are jointly accountable under the CA for implementing CPOP.<sup>8</sup>

### **I. Implementation of CPOP [CA ¶29]**

#### **1. Requirement 29(a)**

The City, in consultation with the Parties, shall develop and implement a plan to coordinate the work of City departments in the delivery of services under CPOP.

#### **2. Status**

In the second quarter of 2003, the Parties formally adopted a CPOP coordination plan, entitled the “City of Cincinnati Plan for Community Problem Oriented Policing.” Since then, liaisons from the Departments of Buildings and Inspections, Public Services, Community Development and Planning and Health, Parks and Recreation, Fire, Water Works, and Metropolitan Sewer District received training on their roles and responsibilities as resources to the Problem Coordinators (the CPD member or Partnering Center staff assigned to a CPOP team).

#### **3. Assessment**

As noted in our prior report, the City continues to make progress in this area and is in partial compliance with this section of the CA. As all departments and agencies are now on-line, we expect the Parties to report on the quality, timeliness, and results of inter-agency collaboration vis-à-vis the projects undertaken by the pilot CPOP teams (e.g., Are inter-agency liaisons responding in a timely way? How long does it take to board up a problem property? Has the Health Department been responsive in a timely way to problem properties with health code violations? In what ways have CPD officers relied on the Community Development and Planning Agency?). The Parties are in partial compliance with this section of the CA.

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<sup>8</sup> Late last summer, the CPD sought clarification from the Monitor on CA section 29 deliverables and outcomes. The CPD proposed a list of deliverables and Plaintiffs submitted their response in late February. There are significant differences in two proposals, and the Parties will be meeting in April to discuss them.

### **1. Requirement 29(b)**

The Parties will develop a system for regularly researching and making publicly available a comprehensive library of best practices related to CPOP.

### **2. Status**

The Parties report in their March 5, 2004, CA Status Report, that the CPOP committee expects in the coming quarter to focus on developing a best practices library for use by officers, outreach workers, and the community.

### **3. Assessment**

As we noted in past Reports, compliance with this CA section depends on use of the CPOP website system and other best practices research as a tool in effective problem solving. Presently, while the website contains links to a number of other sites relating to community oriented policing, it does not compile best practices research (by crime type for instance) in one easily accessible place. Moreover, the problem-solving cases included on the website to date (CPOP cases, District Commander cases, COP Coordinator cases) do not appear to reflect best practices research. (See discussion of paragraphs 29k and 29m, below). The Parties are not yet in compliance with this section of the CA.

### **1. Requirement 29(c)**

The City, in consultation with the Parties, shall develop a continuous learning process through the CPD. Experiences with problem-solving efforts in the field will be documented and disseminated throughout the CPD and made available to the public. Problem solving will continue to be emphasized in (but not be limited to) academy training, in-service training, and field officer training.

### **2. Status**

The CPOP committee established a Human Relations subcommittee to evaluate which aspects of CPD training can be enhanced by additional emphasis on problem solving. In Section VII.H, we discuss the introduction of a “beat profile” to the responsibilities of probationary police officers during their time with an FTO. We believe this is a positive example of incorporating problem solving techniques in CPD training. There are a number of additional steps that can and should be taken to integrate CPOP and problem solving training into the FTO program and into other aspects of CPD’s training program.

### **3. Assessment**

The Monitor looks forward to seeing progress in this area in the next quarter. The Plaintiffs, FOP and the Partnering Center should each be involved in reviewing CPD's training efforts and helping identify opportunities to incorporate additional problem solving emphasis. The Parties are in partial compliance with this section of the CA.

#### **1. Requirement 29(d)**

The Parties will research information on how problem-solving is conducted in other police agencies and disseminate research and best practices on successful and unsuccessful methods for tackling problems. The Parties will also disseminate information on analogous problem-solving processes used by other professions.

#### **2. Status**

The CPOP Committee expects to begin work on this subsection in the upcoming quarter.

#### **3. Assessment**

We have recommended that the CPOP Committee develop a research and best practices plan with the assistance of appropriate experts in the field. We encourage the Parties to refine their collection of best practices to those that have been evaluated. It is these that will most assist the CPOP website's users in tackling specific crime and safety problems. In the interim, the CPD and the Parties can cull other websites for specific, successful approaches that show quality analysis, tailored responses, and valid assessments.<sup>9</sup> These "best practices" should then be cited on the CPOP website (perhaps under a "best practices" heading). It would then be clear to users that these should be reviewed when engaging in problem-solving.<sup>10</sup> The Parties are not yet in compliance with this section of the CA.

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<sup>9</sup> A good place to start is the Herman Goldstein International Award in problem-solving winners and finalists, all available free from [www.popcenter.org](http://www.popcenter.org).

<sup>10</sup> Another way to encourage users to look at best practices is to add a field in the analysis section of the website's problem tracking system with a prompt that reads "Have you researched best practices for this type of problem?"

## **1. Requirement 29(e)**

The Parties, consistent with the Community Partnering Center, will conduct CPOP training for the community and jointly promote CPOP.

## **2. Status**

In January 2004, the Community Partnering Center Board, after an extensive national search, selected Cincinnati Assistant Police Chief Richard Biehl as its new executive director. Mr. Biehl will be leaving the CPD in the upcoming quarter to begin his full-time work with the Partnering Center. In the interim, while still employed by the CPD, Mr. Biehl has begun to direct the Partnering Center's operations.

The Parties have made progress this quarter towards rolling out joint CPOP training. The Parties' Curriculum Workgroup, a subgroup of the CPOP Committee, further refined its CPOP curriculum and was scheduled to meet in March to establish a training schedule. One of the issues under consideration was the neighborhood selection process for rolling out the new joint training. In addition, the Neighborhood officers and the Partnering Center outreach staff were also scheduled to meet to discuss how the training would be conducted and who would be doing which parts of the training.

The Partnering Center has made a great deal of progress this quarter in promoting CPOP. In late January, the Partnering Center launched the "Friends of the Collaborative" to introduce Cincinnatians to the Center, its mission, staff and new executive director. This initiative is an effort to include other community, business and charitable organizations in supporting CPOP and community dialogue. The Center now has four interim community outreach workers (hired in late January on a 3.5 month contract) participating with 13 Cincinnati neighborhoods, some of which already have active CPOP teams in their neighborhoods. The outreach workers are scheduled to be trained in the new joint CPOP curriculum, along with neighborhood officers, in mid-March. Currently, the outreach workers engage in a mix of activities, including:

- Information gathering and dissemination of information about CPOP (as with residents of St. Anthony's Village in Over-the-Rhine)
- Problem-solving (e.g., preparations for surveying Washington Park Elementary students about safety to and from school; reviewing research with the Evanston CPOP team on the

effect of improved outdoor lighting on crime; assisting in surveying Bramble and Madison street area residents)

- Developing new partners (e.g., the Cincinnati Public Schools and the Local Initiatives Support Corporation)
- Recruiting stakeholders to participate in CPOP efforts (e.g., Mt. Auburn and Lower Price Hill)
- Disseminating information (such as starting a CPOP newsletter in Evanston)
- Planning the formation of new CPOP teams (in Mt. Washington, Westwood and Lower Price Hill)

### **3. Assessment**

Progress is apparent on many fronts. The major milestone, hiring of an executive director, will put Cincinnati's communities on track to meet the challenges of police reform under the CA. We particularly would like to commend the leadership of the search committee.

The Parties are now deciding which neighborhoods should be among the first to receive the joint CPOP training. In assigning outreach workers, the Partnering Center considered neighborhood crime statistics, crime trends, hotspots, and level of community engagement. For prioritizing neighborhoods for the joint CPOP training, we suggest that the Parties look at the number and extent of open-air drug markets on streets, corners, and in apartment complexes in each neighborhood.<sup>11</sup>

Open-air drug markets attract an array of crime and safety problems to a street and block. They are "snowball" crimes, bringing with them a concentration of other harms (see Figure 1). The closing of drug markets can have a diffusion of anti-crime benefits. Once the market is closed, reductions in other crimes often follow at and around the market's location, since these accompanying crimes and safety problems were brought in by the drug market. In other cities, community and police collaboration in closing drug markets solidified their partnership, building success through hard work, creative thinking, cooperation and teamwork.

With the joint training and the roll out of CPOP to Cincinnati's neighborhoods, we expect there will be an accelerated pace of activity

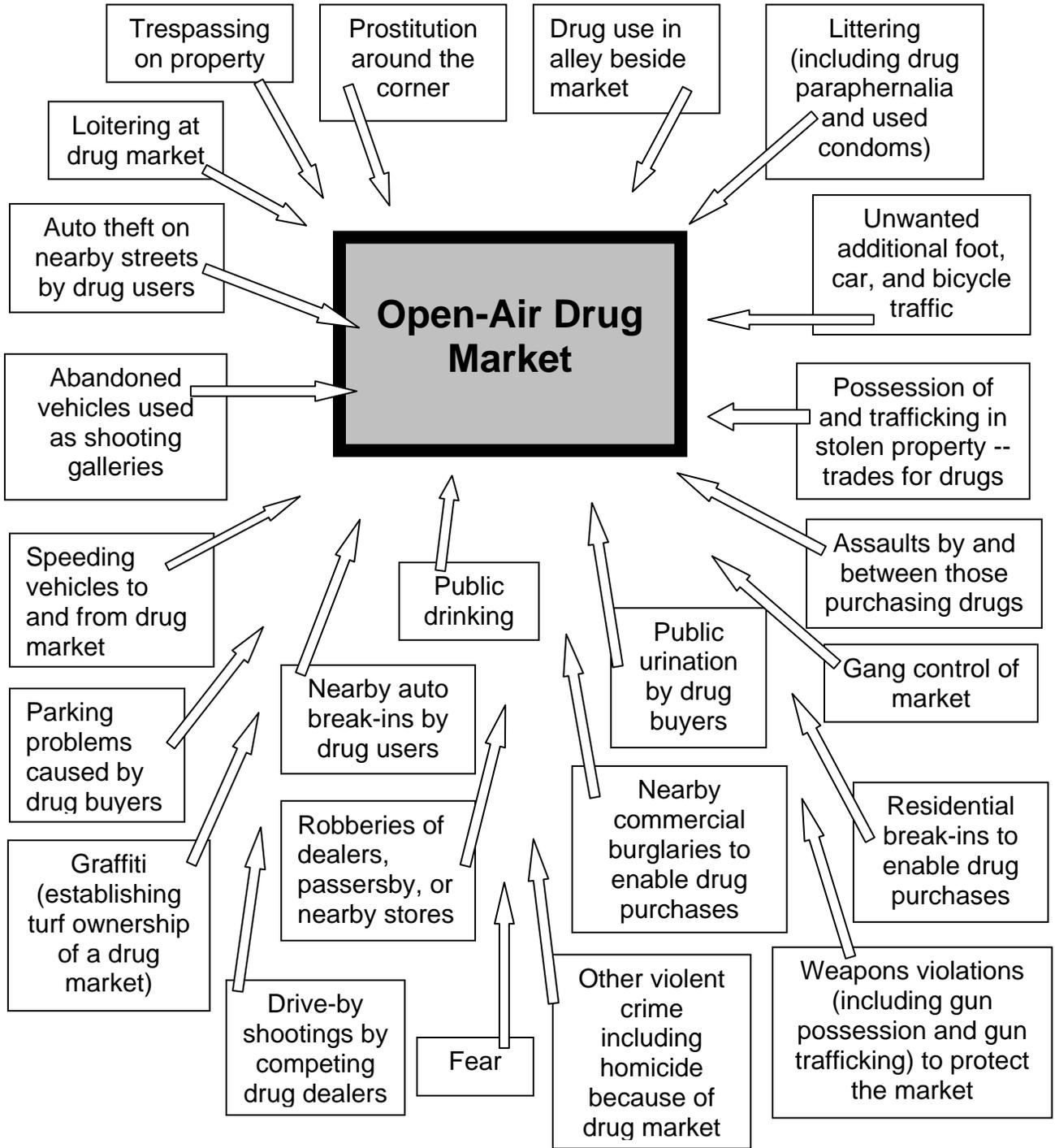
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<sup>11</sup> The Parties can identify and map these markets using one year's worth of call for service and drug hot-line call data.

related to problem-solving and community engagement. The Partnering Center will be an integral part of this process and will need to ramp up its activities to meet what will likely be a growing demand from Cincinnati's neighborhoods.

Delivery of high quality training, and evidence of consistent, quality problem-solving has not yet fully occurred, although we anticipate significant progress in the coming quarter. Thus, the Parties are not yet in compliance with this section of the CA.

**Figure 1: An Open-Air Drug Market Brings Other Crime and Disorder to It**



**1. Requirement 29(f)**

The Parties shall establish on-going community dialogue and structured involvement by the CPD with segments of the community, including youth, property owners, businesses, tenants, community and faith-based organizations, motorists, low income residents, and other city residents on the purposes and practices of CPOP.

**2. Status**

In late Fall, the Parties tasked the CPOP Committee with developing a community dialogue/interaction plan, with implementation beginning June 2004.

**3. Assessment**

The Monitor looks forward to seeing a plan in the coming quarter. As part of the Parties' efforts at trust-building, we understand the Parties have agreed to forums on the UC Traffic Stop Study and the issue of fair and equitable policing. As we noted in Monitor's Fourth Quarterly Report, we believe the forums should include discussions about police use of force, the revised Use of Force policies under the MOA, alternatives to use of force, police response to the mentally ill, and police response to those under the influence of drugs or alcohol. The Parties are not yet in compliance with this section of the CA.

**1. Requirement 29(g)**

The Parties shall establish an annual award recognizing CPOP efforts of citizens, police, and other public officials.

**2. Status**

In August, the Parties discussed a framework for an Annual CPOP award. These preliminary discussions focused on the roles and responsibilities of each Party and a timetable for steps towards implementation. The anticipated award categories are for Leadership, Team, Corporate and Citizens. The Partnering Center will host the awards, although funding for the ceremony still remains an outstanding issue.

### **3. Assessment**

We expect that by late summer 2004, 18 months from the approval of the CA, there will be enough progress for a celebration of successes. Currently, the Parties are not in compliance with this section of the CA.

#### **1. Requirement 29(h)**

The City, in consultation with the Parties, shall develop and implement a communications system for informing the public about police policies and procedures. In addition, the City will conduct a communications audit and a plan for improved external communications. The communications strategy must be consistent with Ohio Law.

#### **2. Status**

As we noted in prior reports, CPD policies and procedures are accessible from the City website and will be available on the CPOP website. The Parties, through its CPOP Committee, will develop a communications plan with a target timeline of early spring. The communications strategy can be coordinated with, and is related to, the community interaction discussed in paragraph 29(f).

### **3. Assessment**

The City is in partial compliance with this section of the CA, as policies and procedures are available to the public on CPD's new website <http://www.cincinnati-oh.gov/cpd>. We recommend, as noted in 29(f), that the Parties host community meetings on use of force issues in Cincinnati's neighborhoods, as these are among a police agency's most important policies and procedures, and one of the causes, in many cities, of police-community tensions.

The Monitor and the Plaintiffs still await (after four requests) a copy of the communications audit, a draft of which was completed early in 2003.

#### **1. Requirement 29(i)**

The CPD will create and staff a Community Relations Office to coordinate the CPD's CA implementation.

## **2. Status**

The CPD has established and staffed a Community Relations Unit (CRU). The CRU is a division of the Police Relations Section and the CRU Manager reports to the Executive Manager of Police Relations, Gregory Baker. Mr. Baker's responsibilities include being the Compliance Coordinator for the MOA and for implementation of the CA. The CRU Manager assists Mr. Baker in coordinating the implementation of the CA.

## **3. Assessment**

We understand that the former CRU Manager has been appointed to direct CPD's Records Division. The Monitor requests an update on the status of the CRU and its role in ensuring CA compliance.

### **1. Requirement 29(j)**

The Parties shall describe the current status of problem solving throughout the CPD through an annual report. Each Party shall provide information detailing its contribution to CPOP implementation. The CPD submitted its status report for 2003 last year.

## **2. Status**

The 2004 annual status report is due August 5, 2004.

## **3. Assessment**

The Parties are in compliance with this provision. We would like to see the Parties work collaboratively on the next annual CPOP report.

### **1. Requirement 29(k)**

CPD District Commanders and special unit commanders or officials at comparable levels shall prepare quarterly reports detailing problem-solving activities, including specific problems addressed, steps towards their resolution, obstacles faced and recommendations for future improvements.

## **2. Status**

This quarter, the CPD issued the following quarterly reports: the District Commander reports; the CPOP Coordinator's Community Involvement Report; and the Planning Section and Crime Analysis Unit's report. The District Commander and the CPOP Coordinator reports are both posted on the CPD's draft CPOP website, while the Planning

Section's report was included with the Parties' March 5, 2004, Status Report.

This is the second quarter that District Commanders submitted problem-solving reports. The District Commander quarterly reports follow the SARA format (Scanning, Analysis, Response, and Assessment). The District Commander reports contain 27 individual descriptions of problems and responses to them.

The Community Involvement Report is described as a "quarterly report to the Police Chief describing current concerns voiced by the community, potential problems that have a bearing on law enforcement activities, and recommended actions that address previously identified concerns and problems." This report lists, by neighborhood, community concerns and district neighborhood officers responses to these concerns. The problems described in the neighborhoods are myriad, ranging from speeding vehicles to drug-related homicides. Some of the problems listed reiterate those mentioned in the District Commander reports and others appear identical to CPOP cases in the CPOP tracking system. However, there are other problems that are not listed in either of the other two reports.

This quarter, the CPD's Planning Section and Crime Analysis Unit issued its first quarterly report under this section of the CA, documenting activities in support of problem-solving for the fourth quarter of 2003. The Crime Analysis Unit circulated repeat call location addresses, as well as crime data in and around schools and alcohol establishments. In addition, the unit provided neighborhood officers with information to aid in identifying or better understanding problems, such as thefts from auto data for Mt. Adams, drug arrests and drug call data for an apartment complex in Pleasant Ridge, vice arrests and gun recoveries and call data for East and West Price Hill, comparisons of Part I and Part II crime trend data for Walnut Hills, and call data and vice arrests in Clifton/University Heights/Fairview (CUF).

### **3. Assessment**

Overall, this second series of district commander reports are improved in quality from the first. The reports generally contain more information than the prior reports submitted, although the Monitor would like to see even greater detail in these reports. The CPD is in partial compliance with this section of the CA.

We believe the following types of information would be helpful:

- Each report should contain a start date so readers will know when an individual problem-solving project commenced.
- The reports should be in-depth with specific addresses of problem locations and detailed descriptions of problems that are undertaken (for instance, rather than “disorderly behavior,” reports should describe the exact types of disorderly behavior encountered), how many people have reported it, what types of reports have been taken at that location in the past year, how many and what types of calls for service have drawn police to the location, and information about the origin of the project, i.e., what alerted the officer to the problem?
- If the problem was identified by community residents, the report should include information on the number of community residents who voiced concern about the problem and in what venue those concerns were raised, and whether police data (or additional information collected) supported, altered, or refined the officer’s view of the problem.
- The report should detail what additional information was collected to help the officer and those concerned about the problem better understand the specifics of the problem. For instance, if an officer met with a business owner about a problem on the property, the report should include information from that discussion. Contact names and phone numbers should be included in these reports, as they provide additional documentation, especially if in future years, these individuals need to be recontacted for additional efforts.
- The report should make reference to any research conducted on similar problems and what was gleaned from the research.

We do not expect that all problem-solving efforts will be resolved immediately; many will not be resolved within the same quarter. As a result, we believe it is important to include updates on problems started in prior quarters so that progress in a project can be tracked over time.<sup>12</sup>

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<sup>12</sup> By example, the District 5 problem-solving report provides an update on the problem of homeless encampments under the Mitchell Avenue/I-75 overpass and the green space nearby. While this project write-up is a good example of an update, it does not

Also, when other city agencies are engaged, it will be helpful to have the date the city agency was contacted, the contact information for the agency liaison, and the agency's response to the requested service.

As Cincinnati's problem solving efforts continue, the CPD and the CPOP teams will also be able to provide additional information regarding the assessment of whether the problem solving effort was successful. These assessments should be quantitative, not just qualitative, comparing baseline measures from the Scanning and Analysis stages to post-implementation data.

We continue to believe it is important for the Parties to have an agreed understanding of what kinds of efforts should be characterized as "problem solving" for purposes of the District Commander reports. While some of the reports clearly describe distinct crime or safety problems, others do not. A project that seems to involve problem-solving is the 3724 Reading Road project.<sup>13</sup> In this project, an apartment building with criminal and civil violations (prostitution, building code violations, junk cars, health code violations, and drug activity) came to the attention of the police; several city agencies assisted on the project, resulting in closure and emergency boarding up of the building. The property may ultimately be acquired by Xavier University. This may be a good example of problem-solving and inter-agency collaboration that could be used in the joint CPD/Partnering Center CPOP training (although a fuller description would be needed before determining the quality of problem solving efforts). Another example of an on-going project that may be worth including in the CPOP training (depending upon review of the details of the project) is the effort at 2525 Victory Parkway.

Other projects contained in the reports, however, do not describe problem-solving. For instance, curfew sweeps by themselves do not constitute problem-solving, especially without more specifically defining the problem.

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contain information on whether Tender Mercies, the social service agency, made inroads with any of the homeless, nor if there was resolution to the complaints from the homeless advocacy groups.

<sup>13</sup> In the District 4 Commander's problem-solving report, the project address is listed as 3724 Reading Road (it does not have a CPOP case number). In the CPOP tracking system there is a project with case number CPOP030145, by the same officer, but with an address listed as 3725 Reading Road. These two projects appear very similar and may be the same project. Another of the District 4 Commander reports describing a Mitchell Street Corridor disorder problem may be the same as CPOP case #CPOP040001, with the address of 700 E. Mitchell Street. For tracking and recordkeeping purposes it is important for projects to have consistent address and case numbers.

<sup>14</sup> As well, establishing basketball teams does not by itself constitute problem-solving to address an at-risk youth problem.

<sup>15</sup> With respect to the CPOP Coordinator report, the Plaintiffs and the FOP should review this neighborhood-by-neighborhood description of community problems and share these with the Partnering Center's outreach workers to see if work should or could be coordinated.

The Planning Section and Crime Analysis Unit report provides a good description of the types of information being shared with neighborhood officers. What is needed now is the Planning Section's views on what the data suggests. If theft from auto data is provided, what if any pattern(s) emerged from the information and what responses does the Planning Section suggest the officers try to counter the problem? Engagement of the Planning Section in recommending countermeasures will require a good working knowledge of what approaches work under what conditions. As many of the efforts of the neighborhood officers involved traditional and short-term responses (preventive patrol, directed patrol, increased enforcement), CPD's Planning Section and Crime Analysis Unit can provide information and education about strategies that are more long term and effective.

Finally, this CA section also requires problem-solving reports from other Commanders within the CPD. These reports remain overdue.

### **1. Requirement 29(l)**

The Parties will review and identify additional courses for recruits, officers and supervisors about the urban environment in which they are working.

### **2. Status**

The Parties propose a timeline beginning in May 2004 for review and implementation of additional Academy courses. Plaintiffs agree to meet with District Commanders and audit some of the current training to see what changes or additions are advisable.

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<sup>14</sup> or a problem-solving project involving daytime curfew issues see [http://www.popcenter.org/library/goldstein/1999/99-57\(F\).pdf](http://www.popcenter.org/library/goldstein/1999/99-57(F).pdf).

<sup>15</sup> In addition, establishing teams often takes a great deal of time to do and manage, and the games are not frequent enough to deter young people from crime.

### 3. Assessment

While the Parties are not yet in compliance with this section of the CA, the Monitor expects Plaintiffs and the FOP to meet with District Commanders to discuss training needs, as well as audit some courses in the first quarter of 2004. As we noted in prior reports, Plaintiffs' Advisory Board would like to participate in this process.

#### 1. Requirement 29(m)

The Parties, in conjunction with the Monitor, shall develop and implement a problem tracking system for problem-solving efforts.

#### 2. Status

Eighteen problem-solving reports are now in the CPOP tracking system, up from thirteen last quarter, and available for review at <http://cagisperm.hamiltonco.org/cpop/default.aspx>. From the last quarter, only Districts 1 and 4 have entered new reports.

District	Reports in September 2003	COP Reports added in January 2004	New Reports as of March 2003	Total # of CPOP Case Reports Since August 2003 by District
District 1	1	1	2	4
District 2	2	0	0	2
District 3	1	0	0	1
District 4	3	2	3	8
District 5	1	2	0	3
				<b>18 total CPOP cases</b>

### 3. Assessment

As we have in previous Reports, we commend the CPD for developing the CPOP draft website. For the system to be as useful as possible, the Parties need to improve the tracking system and increase the level of detail of each project entered into the system.

In prior Reports, we made a number of suggestions for changing the tracking system to improve the quality and usefulness of the reports.

The Parties have not yet incorporated those suggested changes, nor did the Parties address these recommendations in their December 5, 2003, or March 5, 2004, Status Reports. Plaintiffs have stated they are eager to meet with the CPD about the tracking system this quarter. We recommend that the Parties review our previous comments, as we believe they offer useful improvements to the problem tracking and documentation system.<sup>16</sup>

The reports currently contained in the tracking system do not provide enough information for readers to ascertain if any analysis is occurring. Moreover, we expect that reports in the system will be updated to reflect progress on problem solving projects. For example, several of the projects in the tracking system have been in the system since September 2003. Any progress on these cases should be incorporated in the reports for the next quarter.

We also note that CPOP officers for Evanston, Mount Washington, Westwood, Mount Auburn, or College Hill do not have active CPOP cases in the tracking system.<sup>17</sup> Conversely, it appears that some officers in neighborhoods other than those noted in the Parties' Status Report are working on CPOP cases (Corryville, CUF, Carthage, Mount Airy, and Pendleton). If this is the case, perhaps an additional consideration in prioritizing neighborhoods for rolling out joint CPOP training should be whether CPOP cases have already been initiated in the neighborhood.

The Parties are in partial compliance with this section of the CA.

### **1. Requirement 29(n)**

The City shall periodically review staffing in light of CPOP. The CA requires ongoing review of staffing rather than a review by a certain deadline.

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<sup>16</sup> A further suggestion is that once inside the tracking system and viewing a case, the reader should be able to go directly from one part of a CPOP case section to another. For instance, when the reader reaches the end of the scanning section in a CPOP case, the reader should be able to click on a tab to immediately take the reader to Analysis 1; when in Analysis 1 the reader should be able to click a tab to go to Analysis 2; when in Analysis 2 there should be a clickable tab to Response, and so on. As currently formatted, the reader must click back to the original case each time and then click to the next part of SARAA (Scanning, Analysis, Response, Assessment, Agency Information).

<sup>17</sup> In the March 5, 2004, Status report, the Parties stated that there were active CPOP teams in 13 neighborhoods (Avondale, Cincinnati Business District – Downtown, College Hill, Evanston, Lower Price Hill, Madisonville, Mount Auburn, Mount Washington, Northside, Over-the-Rhine, Walnut Hills, West End, and Westwood).

## **2. Status**

The CPD has stated that it regularly reviews staffing to match workload requirements with resources. The CPD has not provided the Monitor with details of how it does these reviews or the results of these reviews. We again request that the CPD share the current formula and underlying data it uses to determine District staffing.

In the current Status Report, the Parties state that the CPOP Committee's Human Resources Workgroup will review staffing and other personnel matters, such as revised job descriptions.

## **3. Assessment**

To assess compliance with this paragraph of the CA, the Monitor needs the current staffing formula (Personnel Deployment Reports, or PDRs), and copies of the material the Human Resources Workgroup will consider in assessing staffing alignment.

The City is not in compliance with this section of the CA.

### **1. Requirement 29(o)**

The City shall review, and where appropriate, revise police department policies, procedures, organizational plans, job descriptions, and performance evaluation standards consistent with CPOP.

## **2. Status**

The new CPOP Human Relations subcommittee will review CPD policies and personnel evaluations and will make changes in support of problem solving.

## **3. Assessment**

While the Parties are in the early stages of evaluating CPD's job descriptions, departmental policies, and the personnel evaluation system, coordination among the FOP, the CPD and the Plaintiffs will be essential to any of these reforms. The Parties are not in compliance with this section of the CA.

### **1. Requirement 29(p)**

The City shall design and implement a system to easily retrieve and routinely search (consistent with Ohio law) information on repeat victims, repeat locations, and repeat offenders. The system shall also

include information necessary to comply with nondiscrimination in policing and early warning requirements.

## **2. Status**

The City states that it expects to meet this provision through the acquisition of a new Records Management System (RMS) and Computer Aided Dispatch (CAD) system, as the current systems cannot produce repeat offender, victim and location information. The City contracted with Gartner Consulting and in late 2003 began reviewing design specifications for a Request for Proposal (RFP).

The CPD had previously stated that it would provide the Monitor with a list of system capabilities this quarter, as well as a draft RFP for a new system. Once the Monitor provides feedback, the City will issue the RFP. In its December 5, 2003, Status Report the City believed that it would issue the RFP this quarter.

### **3. Assessment**

The City has not reported any progress this quarter, and the draft RFP has not yet been completed. As we have mentioned previously, a new system is unlikely to be in place for some time, so the CPD must make the most of current systems. It is clear that the CPD should use its existing analytical tools to identify and begin analysis of the hundreds of repeat locations already identifiable in its current systems. The City is not in compliance with this section of the CA.

#### **1. Requirement 29(q)**

The City shall secure appropriate information technology so that police and city personnel can access timely, useful information to problem-solve (detect, analyze, respond, and assess) effectively. The CA established February 5, 2003, as the deadline for development of a procurement plan, April 5, 2003, to secure funding, August 5, 2003, to procure systems, and August 2004 to implement any new purchases.

#### **2. Status**

We refer the Parties to the Status section of 29(p) of this report.

#### **3. Assessment**

The City has not met the deadlines in the CA for compliance with this requirement.

## **II. Evaluation Protocol [CA ¶¶ 30-46]**

### **1. Requirements**

The CA calls for a system of evaluation to track attainment of CA goals. This tracking serves as a “mutual accountability plan.” According to the CA, “[t]he term ‘mutual accountability plan’ is defined as a plan that ensures that the conduct of the City, the police administration, members of the Cincinnati Police Department and members of the general public [is] closely monitored so that the favorable and unfavorable conduct of all is fully documented and thereby available as a tool for improving police-community relations under the Agreement.”

The Evaluation Protocol must include the following components:

- Surveys
  - of citizens, for satisfaction and attitudes
  - of citizens with police encounters (neighborhood meetings, stops, arrests, problem-solving interactions), for responsiveness, effectiveness, demeanor
  - of officers and families, for perceptions and attitudes
  - of officers and citizens in complaint process, on fairness and satisfaction with complaint process
- Periodic observations of meetings, problem-solving projects, complaint process; with description of activity and effectiveness
- Periodic reporting of data to public, without individual ID, but by age, race, gender, rank, assignment and other characteristics. The data, to be compiled by the City's 52 neighborhoods, are to include arrests; crimes; citations; stops; use of force; positive interactions; reports of unfavorable interactions; injuries to citizens; complaints
- Sampling of in-car camera and audio recordings; database of sampled recordings; study of how people are treated by police
- Examination of hiring, promotion and transfer process
- Periodic reports that answer a number of questions, including:
  - Is use of force declining, and is it distributed equally?
  - Is the complaint process fair?
  - Do officers feel supported?
  - Is problem solving successful?
  - Are police-community relations improving?
  - Is progress being made on issues of respect, equity and safety?
  - Is safety improving?

## **2. Status**

After an extensive process of soliciting bids for evaluation services involving all of the Parties and the Monitor, the Parties selected the RAND Corporation as the preferred vendor for the Evaluation contract. This selection was based on RAND's references, recognized capabilities to perform the work envisioned by the Evaluation Protocol, the quality of their proposal, and the enhancements they offered in their proposal.

Because the cost of RAND's last proposal still exceeded the City's budgeted funds for this work, several conference calls were held between RAND and the Parties regarding the scope of the project. Additional efforts were also made to increase the funds available for the Evaluation Protocol. The Monitor has agreed to reduce the escrow paid into the Court for Monitor expenses to approximately 10% of the original bid price. This provides an additional \$1.12 million to be applied to the evaluation contract over the five year projected duration.

RAND has been asked to provide a revised Scope of Services to be reviewed by the Parties and the Monitor by the beginning of April 2004. The goal is to have a contract executed within 45 days and work to commence soon thereafter.

### **3. Assessment**

The Parties have reached a significant milestone in selecting the RAND corporation as the Evaluator, and in agreeing in general terms on the scope of services to be provided. The Monitor will work closely with RAND to ensure the evaluation provides adequate assessment of progress towards achieving the goals of the CA. However, a contract with RAND has not been negotiated, and work on the Evaluation Protocol has not yet started.

The Parties are not yet in compliance with the Evaluation Protocol provisions of the CA.

### **III. Pointing Firearms Complaints [CA ¶48]**

The investigations of complaints of improper pointing of firearms from March 2000 to November 2002 were forwarded to the Conciliator, Judge Michael Merz in July 2003. The Parties also submitted supplementary materials to Judge Merz for his review in making his decision under Paragraph 48. On November 14, 2003, Judge Merz issued his decision. Judge Merz determined that there has not been a pattern of improper pointing of firearms by CPD officers. Therefore, CPD officers will not be required to complete a report when they point their weapon at a person. The Parties are in compliance with the provisions of Paragraph 48.

#### **IV. Fair, Equitable and Courteous Treatment**

The CA requires the Parties to collaborate in ensuring fair, equitable and courteous treatment for all, and the implementation of bias-free policing. Data collection and analysis are pivotal to tracking compliance, and training is essential to inculcate bias-free policing throughout the ranks of the CPD. The Monitor, in consultation with the Parties, is required to include detailed information regarding bias-free policing in all public reports. The collection and analysis of data to allow reporting on bias-free policing is to be part of an Evaluation Protocol developed with the advice of expert consultants.

##### **A. Data Collection and Analysis [CA ¶¶ 38-41, 51, 53]**

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

As part of the Evaluation Protocol, the CPD is required to compile the following data to be analyzed, by percentage attributable to each of the City's fifty-two neighborhoods:

- Arrests
- Reported crimes and drug complaints
- Citations of vehicles and pedestrians
- Stops of vehicles and pedestrians without arrest or issuance of citation
- Use of force
- Citizen reports of positive interaction with members of the CPD by assignments, location, and nature of circumstance
- Reports by members of the CPD of unfavorable conduct by citizens in encounters with the police
- Injuries to officers during police interventions
- Injuries to citizens during arrests and while in police custody
- Citizen complaints against members of the CPD

Paragraph 40 requires that the City provide to the Monitor incident-based data so that the nature, circumstances and results of the events can be examined.

Paragraph 51 references Ordinance 88-2001, which identifies required data to be reported and analyzed to measure whether there is any racial disparity present in motor vehicle stops by CPD. The local ordinance requires the following information be gathered:

- The number of vehicle occupants
- Characteristics of race, color, ethnicity, gender and age of such persons (based on the officer's perception)
- Nature of the stop
- Location of the stop
- If an arrest was made and crime charged
- Search, consent to search, probable cause for the search; if property was searched, the duration of search
- Contraband and type found and
- Any additional information

Paragraph 53 of the Collaborative Agreement requires the Monitor, in consultation with the Parties, to include in all public reports, detailed information of the following:

- Racial composition of those persons stopped (whether in a motor vehicle or not), detained, searched, arrested, or involved in a use of force with a member of the CPD
- Racial composition of the officers stopping these persons

## **2. Status**

### **a. Traffic Stop Data**

In its February 12, 2004 Status Report, the CPD states that it has made enhancements to the Contact Card and revisions to Procedure 12.554, Investigatory Stops. The significant revisions include:

- A Contact Card must be completed for all vehicle stops
- A Contact Card must be completed for any vehicle passenger detention which meets the definition of a "Terry" stop
- An officer may complete a Contact Card for any consensual citizen contact when the officer believes completing the card will provide intelligence information and the information is provided voluntarily by the citizen
- Contact Cards completed as a result of a vehicle stop (where a citation is issued) will be submitted with the citation for processing. A Contact Card is not required when a citation is issued as a result of an automobile accident
- All other Contact Cards will be submitted with the officer's Daily Activity Sheet
- Supervisors will review and approve all Contact Cards
- In all incidents where a Contact Card is required, all fields on the front of the card must be completed

- All Contact Cards will be forwarded to the Records Section once approved by the supervisors
- All Contact Cards will be entered by the Records Section personnel into the Contact Card Database
- Contact Cards will be filed by the date of contact after entry into the database

To ensure uniform completion and review of the Contact Cards, the CPD conducted training sessions for supervisory personnel on December 17 and 18, 2003.

#### **b. Pedestrian Stop Data**

The CPD has revised its Investigatory Stops Policy, Procedure 12.554, to require a contact card be filled out for (1) all vehicle stops, and for (2) any vehicle passenger detention that meets the definition of a Terry stop.<sup>18</sup> For consensual citizen contacts, the policy **may** complete a contact card, if the officer believes the card will provide intelligence information and the information is provided voluntarily. However, the procedure is silent on whether officers are required to complete contact cards for Terry stops stemming from pedestrian encounters. Current practice leaves this up to the discretion of the officer.

#### **c. Use of Force Racial Data**

The CPD provided statistics for the fourth quarter of 2003 along with the aggregate statistics for the entire year of 2003. The reports forwarded to the Monitor included the following information:

- Number of use of force incidents and race of citizens involved in the use of force by quarter and year.
- Number and race of officers involved in use of force incidents by quarter and year.
- Type of force used including race of citizen involved.
- Total number of arrests [Part I & Part II offenses] by race of offender by quarter.
- Number and race of offenders arrested for offenses which are indicative of offender noncompliance with arrest efforts (Assault on a Police Officer, Resisting Arrest, and Obstructing Official Business).
- Racial composition of personnel assigned to the Patrol Bureau.

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<sup>18</sup> A Terry stop is one where the officer has reasonable suspicion to believe the person is committing or has committed a crime.

The CPD also provided a memorandum to the City Manager comparing the number of incidents requiring the use of force to the total number of arrests and the number of calls for service. This data will be analyzed by the Evaluator when the Evaluation Protocol gets under way.

#### **d. Data on Positive Police-Citizen Interactions**

The Parties have agreed on a form for reporting favorable police conduct. The Favorable Police Conduct form is available at the CPD and public facilities, on the CPD website, and is kept in CPD vehicles. To ensure an adequate supply, the CPD has initiated inspection processes for the following areas:

- CPD Facilities
- CPD Neighborhood Substations
- Designated Public Facilities (e.g., Libraries, Recreation Centers)
- Designated CPD Vehicles

The FOP is working with the collaborative partners to develop a public campaign to encourage citizens to report such conduct.

#### **e. Data on Unfavorable Citizen Interactions**

The Parties are still working to create a final version of the report on Unfavorable Citizen Interactions. The FOP has also agreed to research the costs of lockboxes in CPD facilities to ensure the security of these reports.

### **3. Assessment**

#### **a. Traffic-Stop Data Collection**

The CPD is collecting traffic stop data on its contact cards, but the data is not being analyzed. The Parties are not yet in compliance with this requirement.

#### **b. Data Collection on Pedestrian Stops.**

The Parties are not in compliance with this requirement of the CA.

#### **c. Favorable Interactions**

The Parties are in compliance with this CA requirement, although the public campaign to document favorable police interactions has not yet been developed.

**d. Unfavorable Interactions**

The Parties essentially have agreed on the form to be used to collect this information and on a protective order to ensure confidentiality. Minor holdups appear to have hindered the Parties from implementing this data collection. The Parties need to resolve any remaining issues and begin collecting the data. While progress has been made, the Parties are not in compliance with this requirement.

## **B. Training and Dissemination of Information [CA ¶ 52]**

### **1. Requirement**

The Collaborative Agreement requires that all Parties cooperate in the ongoing training and dissemination of information regarding the Professional Traffic Stops/Bias-Free Policing Training Program.

### **2. Status**

According to CPD's Status Report, the Training Section is exploring ongoing Professional Traffic Stop/Bias-Free Policing training. The CPD is making efforts to identify a suitable curriculum and vendor.

### **3. Assessment**

Based on the information reviewed by the Monitor, the Parties are in compliance with this provision. However, we plan on evaluating the CPD's continuing efforts on Bias-Free Policing training, and look forward to working with the Parties on this issue.

## **C. Professional Conduct [CA ¶ 54]**

### **1. Requirement**

Paragraph 54 of the CA requires that when providing police services, officers conduct themselves in a professional, courteous manner, consistent with professional standards. Except in exigent circumstances, when a citizen is stopped or detained and then released as a part of an investigation, the officer must explain to the citizen in a professional, courteous manner why he or she was stopped or detained. An officer must always display his/her badge on request and must never retaliate or express disapproval if a citizen seeks to record an officer's badge number. These provisions are to be incorporated into written CPD policies.

### **2. Status**

This provision has now been incorporated into procedures 12.205 and 12.554, and put into effect. The CPD's Manual of Rules and Regulations also generally mandates courteous, fair treatment of all.

### **3. Assessment**

In addition to reviewing the CPD's procedures, the Monitor has reviewed a number of CCRP complaints alleging discourtesy over the last four quarters. While it is certainly true that there have been incidents where officers have not conducted themselves "in a professional, courteous manner," we have found that the CPD has sustained the complaints in those instances and taken appropriate action. Another method of evaluating compliance with this provision would be a random review of MVR tapes of traffic stops. The Monitor has not yet undertaken such a study. However, review of videotapes is one of the components of the Evaluation Protocol that the Parties will use to measure progress on the Agreements. Once the Evaluation Protocol gets underway, the Monitor will have additional sources upon which to base our compliance assessment.

Based on the information we have to date, the City is in compliance with the professional conduct provision of the CA.

## **V. Citizen Complaint Authority**

### **A. Establishment of CCA and CCA Board [CA ¶55-64]**

#### **1. Requirements**

- City will establish Citizen Complaint Authority
- CA will replace CPRP and investigative functions of OMI. CCA will investigate serious interventions by police including shots fired, deaths in custody, major uses of force; and will review and resolve citizen complaints
- Board of seven citizens; Executive Director; and professional investigators; board to be diverse
- Board and Executive Director to develop standards for board members, and training program, including Academy session and ride-along
- Board and Executive Director will develop procedures for CCA
- CCA to examine complaint patterns

- CCA to develop a complaint brochure, as well as information plan to explain CCA workings to officers and public
- CCA to issue annual reports
- City Council to allocate sufficient funds for CCA

## **2. Status**

As noted in Chapter Two, the CCA has been operating and investigating complaints since January 6, 2003. A CCA board of seven members is in place, having undergone a training program before beginning work and reviewing complaints. The CCA has also established procedures for its board meetings, appeal hearings, and its investigations.

The Monitor met with several of the CCA board members during our site visit in February, 2004. We were impressed with the board members' sincerity and desire to fulfill the mission of the CCA impartially and carefully. We believe that it is important for the Parties to provide support to the CCA and CCA board, to further enhance public confidence in their complaint review and oversight function.

## **3. Assessment**

The City is in compliance with the provisions relating to establishing the CCA and CCA board. At the February all-Party meeting, the Parties discussed providing additional training for CCA board members and staff. While the Parties have complied with the CA requirement that CCA board members undergo a basic course of training before assuming office, board members expressed an interest in ongoing training, including additional training from the CPD and the Academy, training on review of investigations, and on police management and oversight. We believe such training can be very beneficial. We note that the National Association for Civilian Oversight of Law Enforcement (NACOLE) has arranged for training of civilian review bodies in other jurisdictions.

## **B. Executive Director and Staff [CA ¶¶ 65-67]**

### **1. Status**

#### **a. Executive Director**

The CCA has been without a full time Executive Director since June 2003. The Parties are now in the final stages of a search process. Representatives from the FOP and Plaintiffs were consulted in the development of a profile for the search, and have participated in the selection committee. The following outlines the Selection Process:

- Pre-screen of candidates identified by the search firm
- Conduct the telephone interviews of those candidates
- Select two to four candidates for in-person interviews
- Selection Committee to conduct the in-person interviews
- Selection Committee will recommend two to three candidates to the City Manager
- City Manager and CCA Board Chairperson will interview candidates
- City Manager and Selection Committee meet to finalize selection

The search firm reviewed over 110 resumes of respondents and narrowed that group to approximately 10 individuals. The two interview teams (City officials, and Party representatives) completed an in depth review of the potential candidates. Both have completed telephone interviews of those candidates to select individuals for in-person interviews. As a result, the teams have agreed upon four candidates. The Parties anticipate that a selection can be made in March 2004.

#### **b. Investigator Position**

The Parties have completed the selection process for the fifth investigator position. A new investigator began work on March 15, 2004.

### **2. Assessment**

It is clear that the lack of a full time executive director has hindered the CCA's activities. All aspects of the CCA have been impacted, from direction to the investigators, complaint review, preparation for and conduct of CCA board meetings, analysis of complaint patterns, and preparation of a CCA annual report. That being said, the CCA staff and board are to be commended for the work they have done in the absence of a full time executive director.

The Parties are now in compliance with the CA requirement that the CCA be staffed by a minimum of five investigators. However, because a permanent executive director has not been selected, the Parties are not in compliance with the CA provisions relating to the executive director.

**C. CCA Investigations and Findings [CA ¶¶ 68-89]**

The findings of our review of CCA investigations are discussed in Chapter Two, Section IV.D.

In addition to the review of individual complaints, paragraph 83 of the CA calls on the CCA to examine complaint patterns that might provide opportunities for the CPD and community to reduce complaints. Following the identification of such patterns, the CCA and the CPD are to jointly undertake a problem solving project to address the issues raised. To date, most of the CCA's activities have been limited to complaint investigation and review. The CCA board has made some policy recommendations to the CPD, however, based on its review of complaint. Once an executive director is selected and working, and now that the CCA has a more complete complement of investigators, it is expected that the CCA can devote greater attention to the analysis of complaint patterns and trends.

Finally, the CA requires that the CCA issue public, annual reports summarizing its activities in the previous year. The CCA is currently preparing the annual report summarizing its activities for 2003.

# **CHAPTER FOUR. INVESTIGATIONS**

## **I. Use of Force Investigations**

During this quarter, the Monitor Team reviewed 45 investigative files depicting Use of Force incidents. These incidents were broken down into the following categories.

- 2 Pepperball Launcher
- 3 Canine Bites
- 6 Physical Force
- 9 Chemical Spray
- 10 Chemical Spray involving restrained subjects
- 3 Takedowns with Injury
- 12 Non-compliant Suspects (“hard hands” used)

Review of these incidents involved a thorough reading of the facts as depicted in the departmental records and related information provided to the Monitor. As part of the Monitor’s review of these incidents, we also evaluated the following options outlined in the Use of Force provisions of the MOA and CPD policy, to the extent that they were applicable to a particular scenario.

- Disengagement
- Area Containment
- Surveillance
- Waiting out the subject
- Summoning reinforcements where appropriate
- Calling in specialized units to assist
- Warnings given and opportunity for submission prior to the application of force

### **A. Pepperball, Beanbag Weapons**

1. Tracking Number: 2003-0779  
Date and Time: 10/9/03, 0439 hours

Summary: Officers were responding to a call for domestic violence when the subject ran into his house in an effort to avoid apprehension. The officers (one of whom was an MHRT officer) determined that the subject was hiding in an attic crawl space. After numerous requests to surrender, a decision was made to deploy the pepperball launcher.

Initially, 6-8 rounds were deployed into the attic area (some of which hit the subject) causing the subject to relocate to another part of

the crawl space area. Nine additional rounds were deployed into the area that resulted in the subject coming out of the attic, only to struggle as officers attempted to apply handcuffs.

The subject was escorted to the police vehicle and refused to get inside while kicking and spitting at the officers. Chemical irritant was deployed and the subject was secured in the vehicle.

CPD Review: Command review included interviews and review of required reporting. Command raised the issue as to why the subject was struck in the neck with the pepperball rounds. It was concluded that the subject's frequent movement inside the crawl space may have resulted in one of the rounds striking the subject in the neck. Command counseled the involved officers to anticipate movement to avoid future strikes to the neck area when deploying the pepperball launcher. Command failed to address the absence of a warning of impending force as it relates to the chemical irritant.

Monitor's Assessment: The pepperball deployment appears consistent with MOA provisions. Because of the limited space in the crawl space, other options, such as trying to swarm the subject, were impractical. Command addressed the pepperball targeting. While Command failed to address the absence of a warning of impending use of chemical irritant, it appears that the deployment was a reaction to the subject spitting at the officer and his violent kicking. Therefore, the actions of the subject may not have afforded a practical opportunity to provide a warning.

2. Tracking Number: 2003-0915  
Date and Time: 12/14/03, 2216 hours

Summary: Officers responded to a call of a man standing in a roadway and aggressively swinging a golf club. They encountered the subject who was carrying and swinging a large cane with a metal handle. The subject attempted to strike officers when they approached. A pepperball gun was deployed and numerous rounds (15) were fired, repeatedly hitting subject's upper torso. This was not effective because he was wearing a leather trench coat and numerous layers of clothing. Subject continued to advance on officers, who displayed considerable restraint in not resorting to lethal force. Chemical spray was used, again without significant effect, but did distract the subject momentarily and officers were able to rush him, take him down and successfully restrain him. During the efforts to subdue him, subject bit one officer, spat blood on three of them and attempted to scratch them. A state mental hold was placed on subject and he was arrested for assault on a police officer and resisting arrest.

CPD Review: Command found the use of force complied with Department policies and procedures. The review included all required reports and forms, interviews with officers and an effort to interview the subject (who refused). Command's review was extremely thorough and, in addition to meeting all policy and MOA requirements, thoroughly assessed strategies, tactical considerations, evidentiary issues, officer safety, execution of best practices during such incidents, and the commendable actions of the officers involved in resolving this situation without resorting to deadly force.

Monitor's Assessment: The deployment of the pepperball gun, use of chemical spray and use of physical force were all consistent with policy and MOA provisions. The officers displayed extraordinary restraint and exercised caution in resolving this incident without resorting to deadly force.

## **B. Canine Investigations**

1. Tracking Number: 2003-0471  
Date and Time: 6/3/03, 1841 hours

Summary: Earlier in the day an officer observed the subject engaged in a felony drug offense. The officer began to make the arrest, but the subject resisted and managed to escape. Warrants were obtained and a BOLO (Be On The Lookout) was given informing officers of the subject's wanted status. Later in the day, an officer observed the subject and initiated contact. The subject ran into a series of yards in a residential area. A canine unit responded, an assessment was made, supervisory authority was granted for deployment, and a canine announcement was given.

The Canine officer received permission from two residential property owners to conduct a search of their backyard for the subject. Because of sheds, decorative objects and other obstacles that could be used for hiding and that made it difficult for the canine officer to see the whole yard, he decided to conduct an off-leash deployment. He then made two more canine announcements. At no point was the canine more than 10-12 feet away from the officer. The search failed to find the subject, but the officer was advised that the subject ran into an area a few houses away. The officer responded to the street and saw the subject about 100 feet away. He ordered the subject to surrender, but the subject began to run. The officer ordered the subject to stop or he would release the dog. The subject continued to run. The officer did a quick assessment of the area and seeing no civilians at risk of harm, he released the dog. The subject was apprehended after a short distance.

CPD Review: Special Services Command conducted a series of interviews and reviewed all relevant reports relating to this incident. Command concluded that the initial canine deployment was consistent with Department policy and that the warnings given were sufficient in number (three separate warnings were given). However, the officer's first-line supervisor expressed concern regarding the running apprehension. While the officer stated that he conducted a quick assessment of the area prior to the release of the dog, the subject was in close proximity to a large business and an intersection where civilians could not be seen easily by the officer. While the offense of resisting arrest is within the scope of a violent felony, it is not in a higher tier of violent offenses. The officer was counseled by his supervisor as to balancing the level of the offense with the risk involved in an off-lead deployment.

Monitor's Assessment: The Monitor concurs with Command's assessment of the incident. While the initial deployment and the procedures as it relates to announcement were consistent with the MOA, it is unclear whether the offense of resisting arrest is sufficient to warrant an off-lead deployment or running apprehension. While the Special Services Command mentions that the subject had a long history of violence against the police, the substance of that history is not stated, nor is it clear that the officer was aware of that history and considered it in his immediate decision making.

2. Tracking Number: 2003-0469  
Date and Time: 5/24/03, 0129 hours

Summary: Officers observed a single-car accident and went to investigate. As they approached, the driver of the vehicle got out and ran from the scene. Although damage to the steering column was consistent with a theft, the car had not been reported stolen. The owner was contacted, confirmed that the car was missing, and stated no one had permission to be driving it. A canine unit was called to the scene, an assessment done, supervisory authorization was given for deployment, and a canine announcement was made.

The officer began a deployment through several residential yards using a 30-foot lead at half-position (i.e., 15 feet). Upon reaching a privacy fence that had been damaged (as though someone broke through it), the officer elected to go around the fence line and reinitiate the track. The officer did so and came to an area of a detached garage. During the search, the subject jumped out from behind a garbage can, startling the canine. The dog reacted by biting the suspect. The officer ordered the

dog to disengage and there was immediate compliance. The subject was then arrested.

CPD Review: Special Services Command conducted several interviews and reviewed all reporting relevant to this incident. It concluded the initial deployment was consistent with policy, but raised concerns on the following issues.

- The lapse in time between the original warning and the subsequent search of the shed area where the suspect was located
- The officer's tactical decision to walk the suspect out from the location where he was found, as opposed to securing and searching him there
- Whether a parent was contacted before the juvenile subject was questioned, and the absence of clarity in the reporting as to this issue.

Command concluded that because of the time between the initial warning and apprehension, plus the distance traveled in that time, the officer should have made additional warnings as the track progressed. This would have increased the likelihood of surrender, as well as warn innocent bystanders about the canine search. This issue will be incorporated into training.

On the officer's decision to walk the suspect out from behind the garbage cans to another area where he was searched and then handcuffed, Command points out that this could have created an opportunity for escape and escalation in force. A better tact would have been to secure the subject, request assistance, and conduct the search and detention at the point where he was initially contacted.

Last, the reporting was unclear as to whether the juvenile subject's parent had been contacted before his interview. It was recommended that this be clearly articulated in future supervisory reporting of an incident involving a juvenile suspect.

Monitor's Assessment: Command properly raised and resolved all issues relevant to this incident. Notwithstanding the points raised by Special Services Command, the incident is in compliance with the MOA. The subject's sudden action and attempt to escape resulted in the canine bite. The duration of the engagement also appears reasonable due to the subject's resistant movements. Once the subject ceased his resistance, the dog disengaged and returned to his handler.

3. Tracking Number: 2003-0470  
Date and Time: 5/28/03, 0520 hours

Summary: A suspect was being pursued by the police and was believed to be in possession of a hammer that was used in an assault that had occurred earlier in the day. The subject was wanted on multiple warrants, including felony escape and resisting arrest. He also had a criminal history involving assaults on police and resisting arrest. The officers knew this information at the time of this incident.

A canine was called to the scene, an assessment was conducted, supervisory authority for deployment was given, but no announcements were made due to the violent nature of the subject. The canine partner was placed on a thirty-foot lead and was deployed into thick underbrush. The subject was located attempting to hide in the weeds. Due to the thickness of the brush, the handler was not in a position to see the subject until after engagement. The handler immediately ordered the subject to show his hands. The subject complied and the dog disengaged and returned to the handler. The subject received minor scrapes, although his injuries may have been from the underbrush.

CPD Review: Command conducted several interviews and reviewed all relevant reporting. Special Services Command concluded that the initial deployment was consistent with Department policy based on the subject's wanted status, the relevant offenses for which he was wanted, and his prior criminal history. Command did note that the authorizing sergeant needs to better articulate in his reporting the rationale behind the decision making.

As to the tactical decision not to make the announcement, Command concluded this was justified and consistent with policy and training because of the subject's violent history against the police, the belief that he may have been armed, and his continued efforts to escape custody. Notwithstanding the failure to warn, the subject did indicate in his interview that he was fully aware that he was being tracked by a canine, as he heard the animal approaching.

Last, Command felt that the duration of the engagement was reasonable in light of the fact that the handler had difficulty seeing due to the thick underbrush. Once recalled, the canine quickly disengaged and returned to the handler.

Monitor's Assessment: CPD canine policy calls for a canine announcement when a canine is used for tracking, "unless the authorizing supervisor reasonably believes the suspect is armed and/or an announcement would jeopardize the safety of the officers or others."

While it appears from the reporting that the officers on scene and making the decision to deploy knew of the subject's behavior (i.e. violent past, armed with a hammer), the first line supervisor should have stated this directly in his reports. This would make decisions regarding deployment, failure to announce, etc., less likely to be deemed unreasonable in light of the circumstances.

As to whether the subject had a fair opportunity to surrender, he acknowledged that he knew the canine was pursuing him before engagement took place, thus giving him an opportunity to surrender. The fact that he failed to do so and his continued efforts to escape evidence his intent to evade apprehension.

### **C. Physical Force**

The MOA defines "force" as "any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person." The term also includes, but is not limited to, "the use of firearms, chemical spray, choke holds or hard hands; the taking of a subject to the ground; or the deployment of a canine." The following cases of physical force fall within the meaning of that definition.

1. Tracking Number: 2003-0639  
Date and Time: 6/17/03

Summary: Officers observed a motorist driving recklessly and initiated a car stop. The driver initially failed to respond to the lights and siren, but eventually stopped the car and fled on foot. The officers pursued and apprehended the subject as he attempted to scale a fence. The fence collapsed and one of the officers and subject fell to the ground. A struggle ensued and the officer delivered two palm strikes to the back area to bring the subject into compliance, to no avail.

Upon the arrival of the second officer, the officers leveraged their combined strength to bring the subject into compliance. The subject was handcuffed and brought to the transport vehicle. The subject refused to get in, turned, and spat at one of the officers. Chemical irritant was deployed and the subject complied.

The incident generated a citizen complaint by the subject alleging strikes (fist) to the head, and unwarranted spray of chemical irritant to the face.

CPD Review: Command review included interviews and a review of required reporting. The CPD concluded that the officers'

actions were consistent with Department policy and state law. Notwithstanding, District Two Command noted that chemical irritant should be the initial response to resistant behavior (as opposed to a palm strike).

IIS concluded that the allegation regarding the strikes to the head was “not sustained” based on the conflicting accounts offered by the complainant and the officer, with no independent corroboration to confirm or dispel the allegation. With respect to the deployment of chemical irritant, the allegation was determined to be “exonerated.”

Monitor’s Assessment: There is no indication in either the Form 18F or the Command review reporting what, if any, assessment the officer conducted before engaging in the foot pursuit. Nor was there any discussion regarding whether the appropriate information was provided to Police Communications Section as required by policy. With regard to the use of force, the strikes appear in compliance with the MOA, but we note an absence of warning with respect to the chemical spray.

- 2. Tracking Number: 2003-0691  
Date and Time: 7/26/03, 1730 hours

Summary: Uniformed patrol officers observed a vehicle stopped in the road, and the vehicle’s driver engaged in what officers believed to be a drug transaction with a subject standing outside the vehicle, by the driver’s side window. The officers turned their vehicle around to contact the driver when the subject outside the vehicle quickly left the area. The officers got behind the subject vehicle and activated their emergency equipment. Upon the officers’ approach, they observed the driver making furtive motions. One of the officers drew her weapon, but quickly reholstered when she further assessed the situation. The officer observed the subject with what appeared to be crack cocaine. The driver attempted to swallow the substance. The officer deployed a short burst of chemical irritant to the face to get the subject to spit out the substance.

The subject did not spit out the substance, and the officers attempted to forcibly extract the driver from the car. The driver refused orders to place his hands behind his back. The officers saw that the subject was attempting to conceal crack cocaine in a clenched fist. They ordered him to drop it and he refused. One of the officers struck the subject twice in the hand with a PR-24, to get him to drop the substance. The subject threw the substance in the street, where it was recovered, and he was arrested without further struggle. The subject was placed in the patrol vehicle.

Meanwhile, a crowd had begun to form and became vocal. One of the officers drew his service pistol, assumed a low ready position, and directed the crowd to disperse. Additional officers responded to assist in dispersing the vocal crowd. The display of the firearm resulted in a citizen complaint.

During the subject's detention on the scene, he complained of difficulty breathing. His requests were multiple and not immediately acted upon by the arresting officer. He was transported to District One where a medic unit was eventually called and responded. The subject was transported to the hospital where he was released and taken to detention.

CPD Review: Command review involved interviews of witnesses and review of required reporting. Several issues were determined to be relevant. Those issues and Command's conclusions are as follows.

- The subject's lengthy detention on the scene and his numerous requests for medical attention (i.e., couldn't breath, was suspected to have ingested evidence or contraband) before medics were requested.

Command determined the officers had violated Department policy by not immediately responding to requests for medical attention, and for transporting the subject away from the scene (prisoners who are the subject of a use of force are supposed to be transported by officers other than those involved in the use of force).

- The second officer's display of a firearm to the crowd, as well as the first officer's display of a firearm during the initial approach of the vehicle.

Command's investigation of this incident determined the officer's action regarding her initial approach of the vehicle to be consistent with Department policy. The officer observed overt acts and perceived a threat of harm to herself and her partner. Once her assessment of the situation resolved that threat, she holstered her weapon and transitioned to chemical irritant. The IIS investigation of the weapon display before the crowd was pending investigation at the time of Command's initial review of this incident.

- Failure of the MVR microphone to be activated at the time of the incident, and the failure of the MVR to properly record the incident date.

Command's investigation revealed that the involved officer failed to properly inspect the equipment prior to beginning tour, and failed to manually activate the microphone per existing policy.

- Use of derogatory language following the subject's arrest.

During Command's review of this incident, it became clear that the arresting officers made profane and derogatory remarks to the subject. Such actions are inconsistent with the Department's policies.

Command also noted a number of deficiencies with respect to the supervisor's response to this incident. Those deficiencies and Command's conclusions are as follows.

- The supervisors failed to inspect the subject's condition on the scene, and direct medical treatment due to the ingestion of suspected contraband.
- The supervisor failed to ensure that a neutral officer transported the subject from the scene of this incident.
- The supervisor failed to review all of the MVR tapes, which would have revealed procedural and tactical deficiencies, discovered by Command's review.
- The supervisor failed to wear his uniform hat.
- The documentation and investigation of the incident was inadequate (to include scene management, use of force requirements, delegation of assignments, and attention to overall detail).

These issues, other than the pending IIS matter, were addressed at the Patrol Command level through supervisory counseling for both the supervising investigator and the officers involved. On the use of force itself, Command concluded it to be consistent with Department policy and state law.

Monitor's Assessment: Notwithstanding the thorough analysis of the incident by CPD's Command, we have two concerns regarding the investigation. First, there was no documentation of a warning regarding the use of chemical irritant. While there may have been exigent circumstances warranting the absence of a warning, this was not

documented nor discussed in the supervisory and Command review of the incident.<sup>19</sup>

Second, the behavior of the officers and the performance of the supervisor fall below the standards of the Department and the spirit of the MOA. The MOA requires that appropriate non-disciplinary corrective action and/or discipline be taken when a supervisor fails to conduct a thorough investigation, fails to properly adjudicate an incident, or neglects to recommend appropriate corrective action. The Monitor is not convinced that the supervisory counseling and ESL notations that CPD has chosen to address the policy violations revealed in its review sufficiently meet this standard.

3. Tracking Number: 2003-0772  
Date and time: 10/9/03, 2038 hours

Summary: Officers were part of a saturation deployment to an area to restore order after a large crowd responded to a less-than-lethal deployment and arrest occurring earlier in the day. During the course of their tour, the officers observed an individual “jay-walking.” They stopped their vehicle, approached the subject to provide a verbal warning, and subsequently requested identification. The subject hesitated, ran, and during the course of his flight discarded suspected crack cocaine.

During the course of the chase, one of the officers fell and his PR-24 holder broke, causing the baton to drop to the ground. He picked up his PR-24 and continued the pursuit. Meanwhile, the other officer had caught up with the subject and the two fell to the ground. The subject resisted the officer and chemical irritant was deployed, unsuccessfully. The second officer arrived on the scene, saw the subject’s resistance, smelled chemical irritant, and delivered one forward-spin strike with his PR-24 to the subject’s arm. The subject then complied and was arrested without incident.

CPD Review: Command’s review is based on interviews and review of required reporting, and concludes that the use of force is consistent with Department policy. Command properly states that consideration must be given prior to engaging in a foot pursuit, and

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<sup>19</sup> Ingesting evidence or contraband, in itself, does not constitute exigent circumstances justifying the lack of a warning. CPD just reiterated in its Use of Force policy that “[t]he use of chemical irritant on an individual attempting to swallow evidence or contraband is only permitted when ... [t]he officer has issued, and the subject refused to comply with a verbal command to spit out any contraband.” Procedure 12.545

notes that the investigating supervisor's Form 18F states that the pursuit was consistent with Department policy.

Command's analysis cites several aspects of the subject's behavior:

- Subject's admission to the current and previous criminal acts
- Sale of marijuana moments before his encounter with the officers
- His knowledge that he was wanted on numerous open warrants
- His admission that he ran from the police because he didn't want to go to jail
- The fact that he became "wild" in his resistance to avoid apprehension and detention.

Command presumably raises these issues to reveal the subject's state of mind at the time of his contact and subsequent apprehension by the police.

Monitor's Assessment: While the 18F Report states that the decision to engage in a foot pursuit of the subject was tactically sound and in compliance with Department policy, it is unclear from the reporting what, if any, criminal offense the subject may have committed other than a pedestrian "jay-walking" violation. The MOA and CPD policy require the officer to consider such factors as the offense committed and the need to apprehend the subject balanced against the degree of risk to which the officer and others may be exposed. The rationale for engaging in a foot pursuit with a suspected "jaywalker" would be enhanced by a greater explanation of what suspicion the officer may have had based on his observations and experience. The subject's motivation to flee the police become clear when he throws contraband, but a more thorough articulation as to the officer's actions would be helpful in fairly evaluating MOA compliance.

Also, while it appears that the circumstances evolved rapidly, and may have precluded a warning of impending force, this issue should have been raised and resolved by the investigating supervisor and Command in their review.

The PR-24 strike appears consistent with the MOA, as it was reasonable for the second officer to conclude that chemical irritant was deployed and was ineffective in bringing the subject into submission. Additionally, the fact that the PR-24 was in the officer's hand made it the most readily available and most effective tool to bring the subject into compliance with the direction that he was being given by the officers.

4. Tracking Number: 2003-0826  
Date and time: 11/30/03, 2208 hours

Summary: Officers responded to a call regarding persons breaking into parked vehicles and, upon arrival, observed two subjects who fit the description provided. One of the subjects attempted to flee and was taken to the ground by the pursuing officer. He refused to submit to arrest and chemical irritant was applied to his face, but had little effect. The subject continued resisting, so a second officer came to assist and employed closed fist and elbow strikes in an effort to overcome the subject's resistance. These efforts were not successful in subduing the subject either and by that time, additional officers who had been requested arrived and assisted. Collectively, they were successful in subduing the arrestee.

CPD Review: The command review of this incident included an assessment of the brief foot pursuit, the appropriateness and effectiveness of the tactics employed, and issues concerning the use of leading questions in the administrative interviews. The determination by command staff was that the use of force was appropriate and consistent with policy.

The foot pursuit was also considered to be within policy and the initial tactics employed by the officers were viewed as sound. However, officers were counseled about using closed-fist strikes due to personal risk of injury. They were encouraged to instead use their impact weapons (PR-24 baton) in the future.

The supervisor who conducted the administrative interviews was counseled regarding the use of inappropriate or leading questions during these interviews. The sergeant was supplied with material that has been designed to assist in conducting appropriate administrative interviews in the future.

Monitor's Assessment: This incident and use of force appear consistent with the MOA provisions. In regard to the quality of the investigation, Command staff identified and took appropriate corrective action with the supervisor regarding the use of leading questions.

5. Tracking Number: 2003-0842  
Date and Time: 10/30/03, 1533 hours

Summary: While conducting an investigative stop related to neighborhood complaints, a CPD sergeant was engaged in conversation with a pedestrian. Subject approached and began to interfere in this matter by telling the pedestrian he did not have to answer the sergeant's

questions. The sergeant told subject he was interfering and to leave. Because of statements by subject that the sergeant considered to be menacing, he decided to arrest subject and requested assistance. He waited for assisting officers to arrive due to the presence of other individuals with the subject before making the arrest. Upon arrival of other officers, the sergeant re-contacted the subject, told him he was under arrest and placed his hand on subject's arm to lead him to the police car. Subject pulled back and raised his arm, which the Sergeant took as an indication of intent to attack him so he struck subject immediately with an open hand blow, and took him to the ground. Subject complied after some initial resistance and was then taken into custody.

CPD Review: Command concluded the initial contact was within Department guidelines and the use of force was reasonable and consistent with policy. The failure to use chemical irritant before physically engaging the subject was raised by command staff and the sergeant was counseled regarding his tactics.

Monitor's Assessment: We concur with the Command's concerns regarding the failure to use chemical spray. In addition, statements made by the sergeant and witness officers refer to other individuals being present with the subject, but no effort was made to identify or interview anyone other than the officers. Additionally, the interview of the subject was very brief and superficial. No effort was made to inquire about any inconsistencies between the sergeant's statements and those made by the subject. Some of the questions posed to witness officers were leading in nature. This investigation was not in compliance with the MOA.

6. Tracking Number            2003-0844  
Date and Time:                11/22/03 0327 hours

Summary: Officers responded to a radio run of a fight involving multiple subjects where a large crowd of intoxicated subjects was present. Officers attempted to assist a woman who had been assaulted and the subject interfered with the officers when they were attempting to provide assistance to the assault victim. Subject, a friend of the woman, was told to step back several times and when he didn't do so, an officer placed his hand on subject's chest and pushed him back. Subject shoved the officer in response, so the officer grabbed his arm and attempted to take him to the ground. Subject resisted and took a fighting stance. Other officers intervened. One officer used a PR-24 to strike the subject on the legs and another officer used chemical irritant. The subject was subdued, handcuffed and arrested.

CPD Review: Following review of the recorded statements, Use of Force Report and photographs, Command concluded that the actions of the officers were justified and consistent with Department policy and state law. The command review did raise an issue regarding the interview techniques and skills of the investigating supervisor.

Monitor's Assessment: The MOA and department policy calls for officers, whenever possible, to allow subjects to submit to arrest before force is used. In this instance, it not clear whether the subject was ever advised that he was interfering with the officers, that he could or would be arrested if he did not comply with officers' instructions, or that force would be used.

Although the Command review did address the need for the supervisor to improve the thoroughness of the investigation and employ better interview techniques, it did not address whether this investigation was consistent with MOA and policy requirements. The Monitor finds that the investigation falls below these standards. The interviews of the civilian witnesses and subject were superficial. The interviews with the officers were filled with leading questions, repeated interruptions where the supervisor was providing his comments or filling in gaps, and left an impression that he had already drawn his conclusions. Obvious follow-up questions that were pertinent to this investigation were not posed to either the civilian witnesses or the officers.

Neither did the investigation address the tactics employed by the officer, the initiation of force by the officer, or the decision to make the arrest. The arresting officer acknowledged pushing the subject when he did not comply with instructions but the investigation does not clarify at what point the officer intended to make the arrest (before or after he pushed the subject?). While the circumstances may have warranted rapid action, the questions raised here should have been addressed and resolved during the investigation and the subsequent review.

#### **D. Chemical Irritant**

Departmental policy and the MOA outline the issues that are relevant to the use of chemical irritant. These issues include:

- Use of chemical irritant in crowd situations
- Use which is necessary to protect officer, the subject, or others from harm
- Use which is necessary to affect the arrest of an actively resistant subject
- Use which is necessary to prevent the escape of a subject

- Use of verbal warnings prior to use and the practicality of such a warning under the circumstances
- Target area limited to torso and face
- Duration of use and the distance of deployment
- Decontamination of subject and area
- Use of chemical irritant on a restrained subject (use of restraining equipment, whether subject presents a risk of escape, or poses a threat)

For cases involving the use of chemical irritant on a restrained subject, the following issues are relevant.

- Was the subject properly restrained in the vehicle?
- Did the subject pose an escape risk or pose a threat to the officer or others?
- Was the requisite warning of an impending use of force given?
- Did the investigation include taped statements of officers, witnesses and the subject?
- Was there a critical review of the investigation by the Inspections Section?
- Did the officers use the MVR where practical?

In reviewing the nine chemical spray reports this quarter there was no indication of a verbal warning that force would be used, in either the “verbalization” field or the narrative portion of the report, in six (6) of these nine (9) incidents. While exigent circumstances may have been present in some or all of these cases, this fact must be documented in the Use of Force Report. The narrative section of the report is the best place to address these issues so that the Chain of Command (and the Monitor Team) can ensure that appropriate tactics and procedures were followed. In the remaining three incidents, a verbal warning was documented in either the verbalization field or the narrative, or both. In all the cases, the reporting reflects proper target area, duration of deployment, and in all but one cases, proper decontamination procedures. There was one incident in which the subject was uncooperative and refused decontamination efforts.

#### **E. Chemical Spray on Restrained Persons**

1. Tracking Number: 2003-0660  
Date and Time: 9/16/03 2003 hours

Summary: The subject, a 15-year-old juvenile, was arrested on a domestic violence charge. She had been handcuffed and was being escorted to a police unit in the rear lot of District 5 for transport to the

Juvenile Detention facility. The subject was being physically uncooperative throughout this process and repeatedly attempted to pull away from the officers. She became more physically uncooperative as they attempted to pat her down before placing her in the police vehicle. She was told several times by the officers to cooperate, however refused to do so. She was then advised that if she did not cooperate she would be maced. She continued physically resisting and kicked the officers. A short burst of chemical irritant was applied to her face, at which time she settled down and did comply.

CPD Review: Command reviewed the Chemical Irritant Report and taped statements. The actions of the officers were deemed justified and consistent with Department policies, procedures and state laws. However, the officers were counseled about their failure to file additional criminal charges against the subject based on her disorderly conduct.

Monitor's Assessment: This incident was handled consistent with the MOA and policy. The chemical irritant was used only after the subject had been warned and requested to cooperate with the officers. The interviews of all parties involved, including the arrestee, corroborated the facts described in the report. The reports were complete and the application of the chemical irritant was appropriate in terms of the target, duration of the burst and decontamination procedures.

2. Tracking Number: 2003-0704  
Date and time: 9/2/03, 0115 hours

Summary: Subject was being transported to the detention center in a scout car, restrained on a stretcher, when she broke free from restraints. The subject had been previously combative and had to be sprayed with chemical irritant before coming into compliance. When she sat up in the vehicle, she was ordered to lie back down and stop moving around in the vehicle or she would be sprayed again. She failed to comply.

The scout car was stopped and the officers attempted to re-apply the restraints. The subject became resistant and the two officers simultaneously deployed irritant, bringing the subject into sufficient compliance that the restraints could be reapplied.

CPD Review: Command's review was based on interviews and review of required reporting. They determined the officers' actions to be consistent with Department policy, but counseled the officers on developing a plan in the future designating which officer would deploy chemical irritant in such a situation (as opposed to a simultaneous deployment).

Monitor's Assessment: We concur with Command's comments regarding a plan of action that would prevent simultaneous deployment of chemical spray. Efforts were presumably made to secure and restrain the subject during transport, but those efforts were thwarted by the subject's ability to break free of the restraints. It is unclear, however, as to whether the restraints were properly applied and whether the officers were properly trained in using those restraints.

While the Form 18CI states that the subject was sprayed to prevent harm to another, it is unclear what she was doing to present a risk of harm. Because of a lack of articulation, we are unable to say whether this incident complied with MOA requirements. While it appears that the target area, duration, and decontamination procedures used were consistent with the MOA, the basis for the deployment remains unclear.

3. Tracking Number: 2003-0706  
Date and time: 9/26/03, 2226 hours

Summary: An officer was attempting to arrest a female subject for assault when the subject attempted to escape the officer's hold. A brief struggle ensued which resulted in the subject being taken to the ground. A backup unit arrived and assisted the primary officer in placing the subject in handcuffs.

While being escorted to the transport vehicle, the subject attempted to pull away from the officers. After several warnings of impending force to no avail, chemical irritant was deployed, resulting in compliance.

CPD Review: Command concluded the officer's actions to be consistent with Department policy and state law. The subject indicated that during the course of the arrest, officers used profanity and deployed chemical irritant twice prior to her being handcuffed. The officers deny using profanity and there is no independent corroboration of the subject's assertion.

A review of independent witness statements support the officer's account of the incident, thus disputing the subject's assertion that she was sprayed prior to being handcuffed. These interviews also confirm that the subject was sprayed only one time.

Command also addressed the issue that, during the course of the subsequent interview of the officer, the tape recorder was set on the wrong speed. Guidance and counseling was provided as to this issue.

Monitor's Assessment: All relevant issues were raised and resolved by Command. The matter appears in compliance with the Agreement.

4. Tracking Number: 2003-0723  
Date and time: 10/16/03, 0102 hours

Summary: Subject was arrested for assault. While being placed inside the cruiser, the subject became violent. Attempts were made to put the lap bar in place and the subject was given a warning of impending force. The subject failed to comply and a three second burst of irritant to the facial area was deployed. The subject came into compliance and was transported to the detention center without further incident.

CPD Review: Command concluded the incident to be within Department policy. It was determined, however, that there was another prisoner secured in the patrol vehicle when the officers tried to put the subject in the car. This is contrary to Department policy. Guidance and counseling was provided to the involved officers.

Monitor's Assessment: Chemical irritant was deployed after a warning of impending force to prevent harm to the officer due to the subject's violent and resistant behavior. Proper target area, duration, and decontamination procedures were utilized. The incident appears consistent with the Agreement.

5. Tracking Number: 2003-0773  
Date and time: 10/6/03, 0220 hours

Summary: Subject had been arrested for domestic violence, was handcuffed, and placed in the rear of a scout car while the officers completed the investigation on scene. Subject began hitting his head on the window and was advised that if he did not stop he would be maced. Subject settled down for several minutes but then began kicking the left rear window and knocked it off-track. He was not restrained by the seatbelt so the officer opened the door to put the seatbelt on him. As the officer opened the door and reached in, the subject kicked the officer twice and when he attempted to do so a third time, the officer applied a short burst of the chemical irritant. The subject settled down so the officers put the seatbelt on, used water to wash his face off and then transported him.

CPD Review: The command review was based on the interviews and required reports. The use of the chemical irritant was determined to be consistent with CPD policies and state law.

Monitor's Assessment: The chemical irritant was applied after the subject had been warned it would be used. Further, the chemical irritant was used only after the subject damaged the police vehicle and assaulted the officer. The irritant was applied to the subject's face, the duration was appropriate and immediate decontamination procedures were employed as soon as the subject became compliant.

Notwithstanding the appropriate use of the chemical irritant, the investigation did not address why the subject was not restrained with the seat belt when he was placed in the scout car. It is possible that doing so might have prevented the subject from damaging the vehicle and kept the officer from possibly subjecting himself to injury when he had to intervene.

6. Tracking Number: 2003-0776  
Date and time: 10/27/03, 1258 hours

Summary: Female subject was arrested on a felony theft warrant. Once secured in the cruiser, the subject slipped free of the restraining device and began hitting her head on the Plexiglas partition and kicking the windows. The officers gave a warning of impending force and directed her to stop her behavior. The subject continued and chemical irritant was deployed. The subject complied for a very brief time and then continued her behavior. She was given a warning of impending force again to no avail. Chemical irritant was again applied and the subject became compliant. A scout car was called to the scene and the subject was restrained on a stretcher for her own safety.

Command Analysis: Command review included interviews and review of the required reporting. The incident was found to be consistent with Department policy and state law.

Monitor's Assessment: Chemical irritant was deployed after a warning of impending force was given and the subject failed to comply. Command examined how the subject could become unsecured, and determined that because of her small build she was able to slip through the handcuffs, thus coming free of the restraints. According to the reporting, proper duration, target area, and decontamination procedures were followed. The incident appears consistent with the MOA.

7. Tracking Number: 2003-0809  
Date and time: 11/6/03, 1107 hours

Summary: Officers were escorting a psychiatric patient to the hospital when she became combative towards the officers, suddenly kicking an officer in the torso three times. The officer immediately deployed chemical irritant and the subject's behavior ceased. She was transported to the hospital for treatment without further incident.

CPD Review: Command review included officer interviews and review of required reporting. The subject refused to cooperate and was not interviewed. A refusal on tape was not provided due to the subject's agitated state. Command determined the officer's actions to be consistent with Department policy and state law.

Monitor's Assessment: Chemical irritant was deployed against a violent and combative subject. The sudden nature of the attack on the officer precluded a warning of impending force. A review of the reporting indicates that proper duration, target area, and decontamination procedures were used. The incident appears consistent with the MOA.

8. Tracking Number: 2003-0813  
Date and Time: 11/14/03, 1745 hours

Summary: The subject, a 10 year-old who suffers from mental illness, was threatening to harm himself and others. CPD dispatched MHRT officers to respond to the call. The subject was taken into custody to transport him to Children's Hospital for a psychological evaluation. He was handcuffed and placed in a police unit, and the lap bar was secured over him. However, due to his small size and his efforts to squirm out from beneath the lap bar, the officers decided to also secure him with the use of the shoulder-strap seatbelt. Upon reaching in to secure the seatbelt, the subject attempted to bite the officer and then spat on him. The officer immediately applied a short burst of chemical irritant. Following that, the subject became compliant, so decontamination procedures were followed.

CPD Review: The command review conducted was based on the required reports and the tape-recorded interviews of the involved parties. Command concluded that the officer's actions were consistent with policy.

A notation was made that some leading questions were used in the taped interview of the subject; however, this was necessary because of his age and difficulty in drawing him out.

Monitor's Assessment: The chemical irritant was deployed without any warning of impending force. Given the subject's age, apparent immaturity and mental illness, it would seem prudent and appropriate to have exercised more caution in the course of securing him in the vehicle. Although the subject did attempt to bite the officer and then spat on him, he was already secured by the lap bar and handcuffed. The description of the incident provided by the officers does not appear to have required an immediate use of chemical spray. Instead, the mere act of stepping back and advising the child of the actions that would be taken if he continued his efforts to bite or spit on the officers could have eliminated any possible threat. This would have allowed the subject an opportunity to comply or, alternatively, for the officers to work together in controlling him while they secured him with the shoulder strap. This incident does not appear to be entirely consistent with the MOA requirement for use of chemical spray and verbal warnings, unless the situation presents a danger to officers or others. Consideration of this issue appears to have been overlooked in the internal review.

9. Tracking Number: 2003-0832  
Date and time: 11/20/03, 0212 hours

Summary: Gunshot wound victim arrested for disorderly conduct and resisting arrest was being transported to the hospital and became violent, kicking at the rear window of the cruiser. The transporting officer advised the subject to stop his actions and provided a warning of impending force. The subject continued and chemical irritant was deployed.

CPD Review: Command's analysis included interviews and a review of required reporting. It was determined that the subject had somehow managed to free himself from lap bar restraints and that chemical irritant was deployed to prevent further injury to the subject, in compliance with Department policy.

Monitor's Assessment: Chemical irritant was deployed after a warning of impending force to prevent an already injured subject from further injuring himself. According to reporting, proper duration, target, and decontamination procedures were followed. The incident appears consistent with the Agreement. What is unclear, however, is why a gunshot wound victim is being transported to the hospital by the police as opposed to a medic unit.

10. Tracking Number: 2003-0841  
Time and Date: 11/16/03, 0240 hours

Summary: Subject was initially contacted by officers who observed him and other individuals engaged in suspicious activity. As the officers approached, the subject fled and a foot pursuit ensued. Subject was caught, forced to the ground, subdued and arrested. A search of the area led to the recovery of drugs that appeared to have been discarded by the suspect. He was removed from the police vehicle in which he had been placed for a more thorough search of his person. After the search, he was instructed to get back into the vehicle. He refused and resisted, kicking the officer and the vehicle. He was advised he would be maced unless he cooperated, but continued resisting and striking at the officer. He was subjected to a 3-second burst of chemical irritant and then complied.

The subject refused to provide a statement to the investigating supervisor about this incident. The subject did not provide his refusal on tape, but the supervisor documented it at the time of the request.

CPD Review: Command review consisted of officer interviews and the required reports. Command concluded that this incident was within Department policy.

Monitor's Assessment: The chemical irritant was deployed after a warning and sufficient opportunity to comply was given. The subject consistently refused to comply with the officer's requests and directions and became increasingly combative. The use of the chemical irritant was appropriate based on the subject's actions, and the target and duration of the burst were consistent with policy.

#### **F. Takedowns Reported in Injury-To-Prisoner Reports**

1. Tracking Number: 2003-0754  
Date and time: 10/1/03, 2208 hours

Summary: Officer responding to an aggravated robbery call observed a subject standing on the corner. The officer attempted to contact the subject and the subject ran. The officer pursued the subject on foot, apprehended him, and took him to the ground causing injury to the subject's palms. A struggle ensued and the officer deployed chemical irritant resulting in compliance.

CPD Review: Supervisory review of the incident reveals a review as to the foot pursuit and compliance with policy, but fails to address the absence of a warning before deploying chemical irritant and the appropriateness of its use.

Monitor Assessment: This incident involves the use of chemical irritant, as well as an "injury to prisoner." Although a Form 18ITP was prepared and subsequently reviewed by supervision and Command, the investigative protocol required by the MOA calls for the completion of a Use of Force Report with taped statements. Therefore, the investigation of the incident is not in compliance with the MOA.

2. Tracking Number: 2003-0892  
Date and time: 12/7/03, 0050 hours

Summary: A CPD officer attempted to stop a subject wanted on a misdemeanor warrant, when the subject fled on foot. The officer gave repeated orders to stop to no avail. The officer caught up with the subject and took him to the ground. The subject received a minor injury to the head and was taken into custody without further incident.

CPD Review: The incident was determined to be within policy. An analysis of the foot pursuit and policy compliance was reviewed by Command and included in its analysis.

Monitor's Assessment: Other than the use of an Injury to Prisoner form rather than a complete Use of Force Report with a taped statement, this incident appears to be in compliance with the MOA.

3. Tracking Number: 2003-0822  
Date and Time: 11/9/03, 0245 hours

Summary: Subject was observed by officer behaving in a disorderly fashion. The officer approached to investigate and requested that the subject stop his behavior. In doing so, the officer placed his hand on the subject's back. The subject cursed at the officer and took a step toward the officer. The officer took the subject to the ground and placed him in handcuffs. The subject stated that he twisted his ankle in the process of being taken down.

CPD Review: Command found the matter to be consistent with Department policy.

Monitor's Assessment: Under the general Use of Force provisions of the MOA, Command's review of this incident could have included issues such as disengagement and use of chemical irritant as viable next steps in the escalation of force after the officer's command to desist. In addition, the Injury to Prisoner Report was used rather than a complete Use of Force Report with taped statements.

## **G. Non-Compliant Suspect Forms**

The Monitor reviewed 12 “Non-Compliant Suspect/Arrestee” reports this quarter. The majority of these reports involved restraining holds and takedown techniques that were used to control resistant suspects and take them into custody. Although the use of force in these incidents did not extend beyond “hard-hands” as defined by the MOA and CPD policy, such conduct is a use of force under the MOA. Therefore, documentation and investigation of the incidents is required. Last quarter, we noted the absence of narrative accounts specifically describing the facts and circumstances leading up to the use of force, and particularly the actions of the suspect that gave rise to the necessity to use force.

The incidents reviewed this quarter reflected a great deal more documentation. In six of the 12 reports, there were narratives, and in several cases additional supervisory reports that discussed aspects of the incident. In one case, the officer’s MVR microphone was malfunctioning, and in another, a subject was given a citation rather than arrested after a use of force. In both cases, the supervisor reviewed and addressed the specific issues. In several cases, CAD reports were also attached for supervisory review.

In the remaining six incidents, however, officer and supervisor narratives were absent. In two of the six, the attached Arrest and Investigation reports were illegible due to poor copies. These factors made it difficult for the monitor to discern compliance. It should be noted, however, that in four of the six incidents, the facts contained in the Arrest and Investigation Report are sufficient for the monitor to determine compliance.

## **II. Citizen Complaints**

### **A. IIS Citizen Complaints**

1. Tracking Number 03017  
Date: 1/4/03

Summary: Complainant alleges that he was visiting an apartment building to see if his aunt was there. While waiting for her in the lobby of the apartment and talking to a friend of his aunt’s, two men came into the building as he was leaving, and grabbed him. They did not identify themselves as police officers, and were not wearing their uniforms. He thought they were trying to rob him, so he tried to run. The men then hit him and kicked him, and then a uniformed officer arrived. He was then arrested.

A second complaint arose from this same incident. This woman alleges that she was coming down the stairs to the lobby area and began talking to the complainant, when the officers came in and grabbed complainant. She states that they “tussled” and slammed him to the ground. She told the investigating supervisor that she saw the officers hit and kick the complainant, but did not see the complainant hit the officers. When they were “done wrestling” with complainant, one of the officers turned to her and told her “Don’t move Ma’am.” She didn’t move, but the officer reached towards his gun. She alleges that the officer kicked her legs from under her and “flipped” her on the floor. She was arrested for obstruction of justice and drug paraphernalia. She alleges that the officer found a crack pipe on the cement outside the apartment and improperly claimed that it was hers.

Three officers were involved in the arrests. According to the officers, two of the three officers were wearing their full uniforms, with hats, while the other one was in plainclothes with a SWAT windbreaker that said “Police” and his badge on a string around his neck. The officers were on a secondary detail for the management company that manages the apartment building, which is known for drug activity. According to the officers, they entered the building one at a time. The first officer was in his full uniform. He states that as he entered the building, he saw complainant and a female engaged in a drug transaction. He told complainant to “Hold it right there.” Complainant hesitated for a moment, and then ran towards the door. The officer grabbed complainant’s hand and then his belt from behind. In an effort to escape, complainant then took a swing at the officer and hit him in the neck.

The second officer to go into the building was the plainclothes officer. He stated that as he entered the building, he saw the female throw down a glass crack pipe, which broke. At the same time, complainant tried to run by the first officer. According to the second officer, after the complainant took a swing at the first officer, he continued toward the door, directly at the officer. Complainant swung at the second officer, but the officer partially blocked it with his left hand and with his right hand hit complainant in the head with his police radio. Complainant still tried to move forward toward the door, and the complainant and the two officers, and the third officer behind them fell to the ground. According to the officers, the complainant’s head hit the doorframe, which caused a gash to the back of his head.

Even on the ground, complainant tried to continue towards the door. The second officer deployed chemical spray, which did not have an effect. He then stood up and kicked complainant 3-4 times in the

shoulder. At the same time the third officer, who was by complainant's legs, kned complainant in the legs three times. The officers were then able to get complainant's arms from beneath his body and handcuff him. Complainant was charged with Tampering with Evidence (officer could not find crack cocaine allegedly in complainant's hands when they entered building); Assault of Police Officer, Resisting Arrest, Criminal Trespass. Only the Tampering charge was returned by the Grand Jury.

CPD Review: A responding sergeant interviewed the three officers and the two complainants. He concluded that the use of force was within policy; that the complaints of force by both the male and female complainant were unfounded. The District lieutenant concurred. IIS conducted additional investigation on the force complaint made by the male complainant. IIS interviewed the officers, the complainant and complainant's cousin, who stated she was on a cell phone call with complainant at time of the incident. IIS determined that the complaint was not sustained.

Monitor's Assessment. Both the IIS investigator and the investigating supervisor asked extensive and fairly thorough questions of the officers. The IIS investigator asked specific questions of the officers regarding the basis for the tampering with evidence charge, although this issue was not discussed in the IIS report. The complainant version of the incident had clear inconsistencies, while officers' statements were consistent with respect to the male complainant. The "not sustained" finding appears appropriate. There was, however, a significant and material inconsistency in the officers' statements with respect to the female complainant. The second officer states that he saw her throw down a crack pipe, and his interview suggests that she is the female who was engaged in the initial drug transaction with male complainant. However, the first officer does not mention seeing her throw the crack pipe, and in fact, states explicitly that the female complainant was not the woman who was engaged in the initial drug transaction. This gives rise to a question regarding whether she was improperly charged, one of the bases of her complaint.

2. Tracking Number: 03073  
Date: 2/10/03

Summary: Nineteen year-old female complainant alleged that she was standing in the hallway of the Life Skills School speaking with two teachers when an officer came up to her, grabbed her arm, and told her she needed to go to class. The two exchanged words and the officer began to escort the complainant from the building. (Complainant told the officer she was a "grown ass woman" and could get to class without the officer placing his hands on her; the officer responded that he could

take “her grown ass” to jail). The complainant further alleged that when the two arrived to the rear of the school, the officer threw her to the ground, handcuffed, and arrested her for Disorderly Conduct, Obstructing, and Resisting. The basis of the complaint was excessive force.

CPD Review: IIS conducted nine witness interviews, including interviews of the complainant and the accused officer. All interviews were taped and a synopsis of those interviews was reduced to writing. Based on the interviews, there was no basis to conclude that the officer engaged in excessive force. Two independent witness interviews confirm the officer’s account that he and the complainant fell to the ground when she attempted to pull away from the officer causing the two to slip on the icy sidewalk. In the subject officer’s interview, he admits to using profanity toward the complainant, resulting in a “sustained-other” finding for violation of Department policy.

Additionally, the subject officer’s Command addressed the request of the Life Skills School that the officer not be permitted to work at the site in the future because he did not fit in with the school’s policies, referencing the matter which is the subject of this investigation. The officer’s lieutenant, after speaking with the school, concurred with the recommendation.

Monitor’s Assessment: The Monitor concurs with the IIS findings based on the information provided. However, the actions that led to the officer’s initial encounter with the complainant remain in dispute. The officer indicated that the complainant immediately began cursing at him when he approached her in an effort to get her to go to class. The complainant and other witnesses state that the complainant told the officer that she was not aware that he was talking to her and that she did not react aggressively toward the officer until he placed his hand on her arm.

3. Tracking Number: 03126  
Date: 7/6/03

Summary: Officers were dispatched to a disturbance call where there was a crowd fighting. While a number of the officers were dealing with the crowd, the involved officer was directed to watch the police cars in which several arrested persons had been placed. A male subject approached one of the cars where his girlfriend had been placed after being arrested. His head was bent down to talk to her, but he was not close enough to open the door. At that point, the officer came up and shouted “Get the fuck away from the car.” At the same time, he pushed the subject back. [Some witnesses say this first push was with the

officer's hands, others say it was with his PR24.] According to the subject and the witnesses, including officer witnesses, the subject did not advance on the officer or make any threatening moves; he stood still. The officer pushed him again with his PR24 (described by the officer as "shading"). According to a sergeant on the scene, the officer then began to swing the PR24 a third time but the subject was bear hugged and pulled away by his mother. The subject was then handcuffed by other officers who had come to the area; he was subsequently released after further investigation.

CPD Review: The sergeant on the scene who witnessed incident conducted the initial use of force investigation. He interviewed the subject, civilian witnesses, including the girlfriend, and officers on the scene. A Use of Force Report was completed by a District 3 Lieutenant, who concluded that the use of force was not in compliance with Department policy. The sergeant also authored a supplemental memo concluding that the officer's use of force was not reasonable and necessary. The District 3 Commander concurred, found the officer in violation of CPD rules and recommended a Department Level Hearing. IIS also reviewed the investigation and sustained the violation

At the Department Level Hearing, the officer stated he thought the subject was reaching for the door. He also stated that he was not intending to cause the subject harm, but just trying to get him away from the car. The hearing resulted in a sustained finding, and a seven-day suspension was imposed. In addition, the officer was sent for corrective training at the Academy, where the incident was reviewed and other options for resolving incidents discussed. The officer stated that he agreed more time should have been provided for the subject to comply, and that verbal commands should have been used.

Monitor's Assessment: This investigation is an example of a straightforward application of CPD's policies, consistent with the MOA provisions. The excessive force was identified by CPD supervisors on the scene and recognized as such. The investigation was thorough, and the findings and discipline imposed sound.

4. Tracking Number: 03130  
Date: 5/13/03

Summary: Complainant alleged she was harassed and assaulted by a sergeant who also threatened to remove her children from her custody. She alleged he punched both her and her son. The complainant had been contacted by the sergeant regarding the conduct of her son (approximately four years old), who was observed by the sergeant hitting his sister (approximately 5 or 6 years old). The sergeant

did not know the relationship between the two children at the time of the initial contact. Other adults were present and observed the assault of the young girl by the boy, as well as the encounter between the sergeant and the complainant. These witnesses confirmed the actions by the boy were very aggressive and unprovoked.

The sergeant attempted to get the complainant to cooperate with his investigation but she refused to do so and repeatedly tried to walk away. She became increasingly hostile and uncooperative, used profane language, and then ignored the sergeant's instructions to remain at the location so that he could discuss what had occurred. She was arrested for disorderly conduct and, as the sergeant tried to handcuff her, she attempted to pull away from him. He did manage to complete the handcuffing process without further incident.

CPD Review: IIS interviewed the complainant, numerous independent witnesses, the sergeant and the transporting officer. The independent witnesses commented that the officer did nothing inappropriate, was quite patient in dealing with the complainant – even to the point of being described as “lenient” by one witness. Their statements were consistent in describing the sergeant as very patient, calm and professional throughout the encounter. They described the complainant's conduct as being needlessly unreasonable, hostile and irrational.

Based on the witness statements and consistency with the sergeant's statements, this complaint was determined to be unfounded.

Monitor's Assessment: The investigation conducted by IIS was thorough and consistent with the MOA. All appropriate individuals were contacted in an effort to obtain a complete picture and their statements recorded. The questioning of the witnesses, the complainant and officers was objective and appropriate.

5. Tracking Number: 03198  
Date: 7/3/03

Summary: Complainant alleges that he was sitting in front of a property when a police officer drove up, exited the vehicle, and looked into a nearby alley. When the officer came out of the alley, he pointed his gun at complainant and told him to “Freeze” and then made him lay on the ground and handcuffed him. The officer then pulled complainant up by the handcuffs causing him to scrape his mouth on the concrete. When another officer arrived, complainant was placed in his police car, while the first officer looked in the alley for drugs. When none were found, complainant says that the second officer was going to let him go,

but the officer put him in his police car, and said “you ain’t goin’ nowhere.” Complainant alleges that the first officer took over \$300 from his pocket and kept it. When he asked the officer “What you doin’ with my money?” the officer answered “What money? You didn’t have any money.” The officer also cursed at him and called him names, telling complainant that he would “lock [his] black ass” up every chance he gets. The officer also cursed at his sisters when they came by and wanted to know why their brother was arrested. The sisters confirm complainant’s version of events, although one of the sisters stated that the officer did not search complainant before placing him in the police car, and the other sister stated that her brother was not injured.

The officer states that he saw complainant sitting in front of a building that had a “no trespassing sign,” and advised complainant he needed to leave. The officer circled block and complainant had not moved. As the officer exited his vehicle, complainant ran into an alley. The officer ordered complainant to stop, but he did not do so. The officer ran into a parallel alley and saw complainant counting money and putting it in his pocket. He walked back up the alley. The officer followed and ordered complainant to the ground when he appeared ready to run. He arrested complainant for criminal trespass and handcuffed him. He denies taking complainant’s money or cursing at him or his sisters.

CPD Review: IIS interviewed the officers, complainant and his family members. IIS determined that the allegations of cursing at complainant and sisters and calling them derogatory names were not sustained because one of the sisters did not mention the officer cursing in her statement (although one sister did, and the other did confirm some of the statements made by the officer). IIS determined the allegation of stealing money was not sustained because one of the sisters stated she did not see her brother being searched, there was no evidence that complainant mentioned he was missing money when he was processed at the Justice Center, and there was no way to reconcile the competing versions of the incident. IIS ‘unfounded’ the allegation that complainant was dragged on the ground because the photo taken at the Justice Center did not show injuries to his lip, and one of the sisters stated that her brother was not injured.

Monitor’s Assessment: The investigator asked the officer probing questions regarding the money that the officer acknowledges complainant had when he was first approached, but then did not have when he was processed at the Justice Center. She was also persistent in the several attempts it took to reach complainant and complainant’s sisters. However, she missed the opportunity to ask the witness officer follow-up questions (about whether he was willing to let the complainant

go, but the accused officer was not, and about the officer's demeanor). Also, the inconsistencies cited in the sisters' statements could have been reconciled (for example, although one of the sisters did not mention that the officer cursed at them or their brother, the investigator did not ask her either). While a "not sustained" determination was reasonable, a greater effort could have been made to assess credibility.

6. Tracking Number: 03260  
Date: 11/10/03

Summary: Complainant alleged he was the subject of excessive force in the course of an arrest for fleeing from the officers. He acknowledged having been in a fight with an unknown male immediately prior to his arrest. An unknown female had informed the officers of the fight and when they responded to the location of the incident, the complainant fled. Officers followed the suspect/complainant in their vehicles but he was momentarily successful in evading capture. He was seen shortly after near the original scene and fled again. After another short pursuit he complied with orders to stop. He was ordered to the ground by the officer, handcuffed and arrested.

Complainant stated the officer slammed him to the ground and pushed his face into the ground at the time of his arrest. The officer stated he ordered complainant to lay prone on the ground and as he began to do so, the officer grasped him by placing one hand on his arm and the other on his opposing shoulder, controlling him as he went into the prone position. He then used his body weight to control him by placing his knee on the complainant's back while he secured and handcuffed him. The officer denies forcing the complainant's face into the ground or striking him in any manner.

CPD Review: Photographs of the complainant immediately following the arrest do not depict any injuries to his face that would be consistent with having been pushed into the ground by the officer. These photos do show injuries to the complainant's lip, which he acknowledges were the result of the fight he had immediately prior to his arrest.

Other officers did not observe the arrest. The area was canvassed in an effort to locate possible witnesses and two uninvolved civilian witnesses were identified. Those individuals observed part of the contact and the arrest from their residence. There were some minor discrepancies in one of their statements regarding how the officer physically contacted or controlled the subject; however, both felt the arrest was handled professionally and nothing out of the ordinary took place during the arrest.

The investigation resulted in a finding of “not sustained” regarding the allegation that the complainant was slammed into the ground by the officer. There were insufficient facts to support or refute this allegation. As for the allegation that the officer pushed the complainant’s face into the ground, this was unfounded based on the independent witness statements and the lack of any physical evidence to support that charge.

Monitor’s Assessment: The interviews conducted were professional and objective. Leading questions were not used and those interviewed were skillfully questioned, with appropriate follow up questions used to clarify outstanding issues. The findings and recommendations were consistent with policy and the facts present. This investigation was thorough and consistent with the MOA.

7. Tracking Number : 03265  
Date: 9/28/2003

Summary: Complainant and a passenger were riding in a stolen car. Police had received reports of shots fired from a vehicle with a black driver and a white passenger, and had a description of the car, and stopped complainant and the passenger.

Complainant alleges that as he was driving he saw the officer’s flashing lights, signaled, and then pulled over. The officer told him to get out of the car; the officer then approached him, put him in handcuffs, and called him a “stupid nigger.” He then walked complainant back to the police car, and when complainant said “Why did you have to do that,” the officer hit his head into the outside doorframe of the car. He then called him a “stupid nigger” again. The reason why complainant states he kicked out the window of the police car after he was put in the car was because he was mad about how he was treated. When he kicked the window out, he was maced by two officers at the same time.

CPD Review: The supervising investigator began the investigation as a chemical spray on a restrained person. He interviewed the complainant and both of the officers who deployed chemical spray. Both officers had arrived on the scene after stop had been made and the complainant was in custody. One of the officers assisted in the search and then placed complainant in the back of his police car. When complainant kicked out the window, both officers deployed chemical spray. The supervisor also interviewed the officers that made the initial stop and arrest. These officers deny pushing complainant’s head into the car or using any racial slurs, and state they did not witness any other officers using force or hear any racial slurs. The investigating supervisor also reviewed the MVR tape of the stop. He stated that the tape did not show officers violating any Department procedures.

The supervising investigator states that when he arrived at the scene, complainant wanted to reduce the charges, as he stated his friend let him drive the car and he did not realize the car was stolen. Only after complainant could not get the charges reduced did he complain of the injury and language. The supervisor interviewed the passenger the next day at the Justice Center.<sup>20</sup> He corroborated complainant's allegations, but the investigator discounts his statement because the passenger was in the back of a police car at the time and had only a limited view, and also because the passenger and complainant shared the holding tank at the Justice Center, and thus had an opportunity to coordinate stories. He recommended a not sustained finding, and IIS concurred when it reviewed the file.

Monitor Assessment: The MVR was not included in the Monitor's investigative file, and the audiotape of interviews in the file did not include the interview of the officers making the initial stop, or the passenger. It is not clear from the reporting whether these interviews were taped or not. With respect to the use of spray, the investigator asked about warnings in the interviews, but did not reflect that in the reports.

8. Tracking Number: 03266  
Date: 9/15/03

Summary: Officers responded to a call for Domestic Violence and violation of a protective order. Upon their arrival they encountered a violent subject who began throwing household objects at the officers, striking one of them in the leg and head. The subject "charged" at the officers and a violent struggle ensued, at which time chemical irritant and multiple defensive tactics and strikes with the officer's PR-24 were used. The initial defensive tactics by the officers did not result in compliance. After an additional officer arrived and used a pressure point control technique with his PR-24, the subject came into compliance and was arrested. The subject's wife made a complaint that the officers used excessive force by kicking the subject.

CPD Review: IIS review of this matter included a review of the Use of Force reporting, NIBRS reporting and supplements, as well as the audio taped statements of all witnesses. It was determined that the complainant's view of the incident was obstructed. The involved officers deny delivering any kicks to the subject, and the arrestee himself did not

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<sup>20</sup> Although the label on the tape containing interviews for this investigation lists the passenger's statement and all of the officers, the passenger's statement and one of the arresting officer's statement are not contained on the tape.

complain of any such strikes. Based on this information, the matter was deemed unfounded.

Monitor's Assessment: Several issues were raised by Command regarding the tactics used by the officers during the initial stages of their encounter with the subject (disengagement, non-use of chemical irritant to thwart off initial attack). The Use of Force Addendum by the District Three supervisor thoroughly reviewed the actions that led to the encounter and the use of force that resulted, and resolved the issues raised. This report provides the basis on which the matter was deemed unfounded. The investigation was thorough and consistent with the MOA.

9. Tracking Number: 03267  
Date: 10/19/03

Summary: Officers responded to a call that was determined to be the result of an assault. During the course of the investigation, the complainant was contacted by the officers. Complainant was arrested for assault and aggravated menacing when he made threats to the victim in the presence of the officers. The officers advised the complainant he was under arrest, at which time he complied with their instructions to place his hands behind his back so that he could be handcuffed. Officers proceeded to search complainant's pockets, but he told them they could not do this. He began to curse and attempted to pull away from the officers. They controlled him by using their weight to pin him against the vehicle and ordered him to quit resisting. He continued resisting and in the course of trying to pull away from them he caused all of them to fall onto the adjacent sidewalk. Complainant was told he would be sprayed with chemical irritant if he continued resisting. He continued to resist and was sprayed in the face with a short burst of chemical irritant. At that time he complied and was placed in the cruiser.

Complainant alleges he was never told he was under arrest, he was arrested for no reason, and he was thrown to the ground for no reason.

CPD Review: District Three Command conducted the investigation of this incident. Recorded statements were obtained from the complainant, officers and all witnesses present at the time of the incident. The witness statements contradicted the complainant's allegations and were consistent with the officers' statements. The witnesses and officers confirmed the complainant was advised he was under arrest and cooperated initially, but began physically resisting once they started to search him. The interview of the complainant and witness statements reflect the complainant was under the influence of alcohol and may have a substance abuse problem.

IIS reviewed the use of force and arrest reports, photographs and audio-taped interviews. That review resulted in an “unfounded” finding.

Monitor’s Assessment: Other than the complainant’s statements, all others interviewed were consistent in their description of the incident. The finding of “unfounded” was appropriate and the investigation was consistent with MOA requirements.

10. Tracking Number: 03268  
Date: 9/7/03

Summary: The complainant alleged injury when he was arrested for assault and resisting arrest. Complainant had been involved in a physical altercation with other individuals and officers were dispatched to a call regarding this matter. The complainant and another suspect fled the scene when the officers arrived. Officers were able to later contact the complainant while in the area and informed him he was under arrest for assault. Complainant told officers “No one is going to arrest me” and again fled. After a foot pursuit that involved going over several fences, including a barbed wire fence, he surrendered. He was handcuffed and transported to the Justice Center without further incident.

Complainant alleged he was mistreated by the arresting officers. Throughout the interview, the complainant expressed his dissatisfaction over being handcuffed and left face down. He claimed he was left in a prone position on the ground for “over 30 minutes,” despite repeatedly asking for assistance in getting up.

CPD Review: This investigation was handled by District Three Command. Taped statements were obtained from the complainant and involved officers. The complainant’s statement contained a number of inconsistencies regarding the arrest and his ensuing interaction with the officers and Fire Department. He was initially unable or unwilling to provide specifics regarding the allegation of mistreatment. After repeated efforts by the investigator to obtain specific information, complainant alleged the arresting officer kned him in the head. However, he continued to focus his comments and attention on officers refusing to help him to his feet.

The investigation revealed the Complainant was kept in a prone position after being handcuffed because he initially complained of a leg injury. Medical assistance was requested immediately so that he could be physically examined before bringing him to his feet. The CAD records, as well as the Complainant’s statements concerning the sequence of

events reflect he was most likely left in a prone position for approximately 6 minutes.

IIS Analysis: IIS reviewed the NIBRS<sup>21</sup> Reports and supplements, CAD printout, Injury to Prisoner Report, Addendum report by the Investigating Sergeant, the audio statements, photographs and the Arrest report. The allegation that complainant was kneed in the head could not be sustained or unfounded, as there were no independent witnesses to either corroborate or contradict this allegation. Therefore, IIS recommended the investigation be closed with a finding of “not sustained.”

Monitor’s Assessment: The question arose in reviewing this case whether complainant’s real objection was his perception of mistreatment based on being kept in a prone position until medical assistance arrived, rather than being “kneed in the head.” This issue was not identified or dealt with during the investigation or the review process. It appears the investigation became overly complicated and possibly misdirected when the investigating supervisor sought to have the complainant identify a very specific act of alleged misconduct. The complainant kept referring to being “mistreated” by the officers, while the interview tapes show the supervisor was focused on narrowing the allegation down to a specific act. After much verbal tug-of-war, the complainant stated he was kneed in the head, but there was virtually no effort to then pursue this and obtain more specific information to support that allegation. From complainant’s interview, it appears his primary complaint was over having been left on the ground and then ignored when he requested help in either sitting or standing up. This observation appears to be supported by the statements of one of the officers at the scene.

It may be that this complaint could have been fully resolved had the investigation focused on the complainant’s perception of mistreatment stemming from being left handcuffed in a prone position while awaiting medical attention.

11. Tracking Number: 03273  
Date: 6/18/03

Summary: Undercover officers engaged in a “buy/bust” operation. After an undercover officer bought drugs from complainant, other officers approached in an unmarked van. Complainant fled, but was caught after a short foot pursuit and handcuffed without incident. At that point complainant’s mother arrived on the scene and complainant became upset. The officer called for a uniformed car to transport complainant.

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<sup>21</sup> National Incident-Based Reporting System

Complainant broke free and was caught and taken to the ground. Complainant alleges that he was kicked and that dirt was kicked in his face while he was on the ground, and that he was sprayed with chemical irritant three to four times unnecessarily. The undercover officer states that complainant continued to struggle with him after he was taken to the ground. A uniformed officer approached and when the undercover officer said to “mace him,” both the undercover and uniformed officer deployed their chemical spray. The officers deny kicking complainant.

CPD Review: The responding sergeant conducted taped interviews with the subject, the undercover officer who deployed chemical spray, the uniformed officer who deployed spray, and a second undercover officer who assisted in arresting complainant. The investigating supervisor also states that after the taped interview with the complainant, the complainant changed his allegation and stated that the officers didn’t kick dirt in his face. He declined to go on tape with this new statement, however. The investigating supervisor determined that the use of force was in policy and recommended that the complaint be unfounded. IIS reviewed the Form 18CI, the complaint form, arrest form and taped interviews and determined that the complaint should be closed as not sustained.

Monitor’s Analysis: While this investigation was fairly straightforward, the investigating supervisor was not particularly thorough in his investigation. There were additional officers on scene who do not appear to have been interviewed. Although there is a Form 18 Supplemental Witness form that lists an additional officer as being interviewed, on tape, the officer’s statement is not included in the investigative file or referenced in the investigator’s report. The form also lists a “friend” as being interviewed on tape, but there is no name or address listed, nor is that tape in the file. Also, complainant’s mother was not interviewed.

12. Tracking Number: 03277  
Date: 11/17/03

Summary: Complainant arrestee alleged having his head “rammed” into the pavement during the course of his arrest. The officers deny the allegations but admit to holding the subject’s head to the ground to keep him from biting one of the officers. A civilian witness reports seeing the officers “slam” the subject’s head into a rear passenger window of the police vehicle. The officers deny those actions as well, but do admit to pushing the subject toward the police vehicle after he attempted to bite one of the officers. The subject’s injuries (a small bump on his forehead) are not consistent with the nature of the allegations.

CPD Review: IIS analysis included review of the relevant use of force reporting and addendums, NIBRS reporting and supplements, the CAD records, photographs, and audio taped interviews of the involved officers and identified witnesses. The complainant declined to have his interview taped.

District Four Command conducted the investigation with respect to this matter. The conflicting accounts offered by the officers and the civilian witness resulted in a not sustained finding. District Four did raise concern regarding the subject's ingestion of suspected cocaine that was not properly secured by the arresting officer and was placed on the rear of the police vehicle.

Monitor's Assessment: Inasmuch as this incident occurred outdoors and in a residential area, an area canvass to locate other witnesses may have served to reconcile the not sustained finding and could have unfounded or corroborated the complaint.

## **B. Citizen Complaint Authority (CCA) Investigations**

1. CCA Tracking Number: 03090  
Date: 3/24/03

Summary: Complainants alleged that a CPD officer abused his authority by being discourteous and physically shoving them. Complainants state that they were attempting to enter an apartment building because their daughter had asked them to come and assist her in a custody matter. When they got to the apartment, they were met by an officer at the door. Complainants allege that the officer shoved them out of the way and was verbally abusive to them.

The complainants contacted the officer's supervisor, who came to the scene. The officer's supervisor observed the officer engaging in inappropriate behavior by being verbally abusive. Complainants requested that the supervisor accept their complaint. They allege that the supervisor discouraged them from filing a formal complaint and indicated he would counsel the officer back at the District. After they insisted, the supervisor provided the proper complaint forms to the complainants.

CCA Investigation: The complaint was properly routed and the investigation was conducted by the CCA. The CCA report includes a summary and analysis of the evidence and a determination whether or not the officer's actions complied with CPD standards. CCA sustained the allegations of abuse of authority and demeanor, and recommended a

written reprimand for each violation. The CCA sustained a violation of Section 1.23b of the Police Manual. The City Manager agreed with the CCA determination.

In addition to the CCA investigation, the CPD conducted a CCRP review of this complaint. The alleged actions of the officer and the supervisor were investigated prior to the resolution meeting. The CPD sustained the demeanor allegation against the officer and counseled the officer. It concluded that the allegation that the supervisor would not accept the complaint was unfounded. There were two resolution meetings, one involving the officer accused of the abusive actions, and the second involving the supervisor for not providing the proper complaint forms immediately. According to the lieutenant who conducted the resolution meetings, both of the complaints were satisfactorily resolved. After the resolution meetings, he recommended that no further action be taken.

Monitor's Assessment: The CCA investigator interviewed all of the available witnesses and attempted to resolve any material inconsistencies among their statements. The interviews were evenhanded and did not involve leading questions. The investigator also made appropriate efforts to contact other witnesses. The officer's prior history regarding citizen complaints was also reviewed. Thus, the investigation appears to have met both the CA and MOA requirements. Given the City Manager's concurrence with the CCA findings, and the fact that the CCA findings are different than those of the CPD, follow-up is necessary to determine whether appropriate disciplinary action was taken.

2. CCA Tracking Number: 3093  
Date : 4/2/03

Summary: A uniformed officer driving a marked patrol car observed two males sitting on a porch engaged in suspected drug activity. The officer got out of his vehicle to further investigate when the subjects fled in opposite directions. The officer pursued one of the subjects on foot. At some point during the pursuit, the officer unholstered his weapon because he observed the subject pulling at the front of his waistband, indicating the possibility of a weapon. The subject tripped and fell, at which time the officer catches up and grabs on to the subject. During the course of a brief struggle, the officer determined that the subject was not armed. He began to holster his weapon, at which time the weapon discharged. The subject was not struck, and the struggle stopped, at which time the subject was handcuffed.

Command Analysis: District Four Command conducted the initial use of force review. It was determined that the officer did not use his chemical irritant as he believed the subject was going for a weapon. However, the officer was counseled for not advising Police Communications of his initial contact with the subject, as well as the subsequent foot pursuit.

The CPD's Firearms Discharge Board further determined that the discharge was in violation of Department policy, and a recommendation for discipline was made consistent with the Departmental disciplinary matrix. (The FDB's report was reviewed in the Monitor's Fourth Quarterly Report.)

CCA Review: A CCA investigation was conducted. The CCA Board concluded the incident to be inconsistent with Department policy and sustained findings as to improper handling of a firearm and failure to follow the Department's foot pursuit policy. The City Manager concurred with the disposition.

Monitor's Assessment: Both Command and the subsequent CCA investigation resolved all relevant issues during the course of their review.<sup>22</sup>

With regard to the interview of the involved subject, the interview was conducted by telephone. An in-person interview is preferable, as the investigator can verify the subject's identity and better assess credibility. The CCA investigator failed to resolve disparities between the involved officer's statement and the subject's statement. The officer states that the gun did not discharge until he made contact with the subject, while the subject states that the gun fired before the officer grabbed him. The subject's statement that the officer approached with the gun in hand also is inconsistent with his prior recorded statement to the homicide investigators, when he indicated that he did not see the officer approach as he was looking in the other direction. There are also unresolved inconsistencies relating to when the officer pulled his weapon. (At least one witness indicates the officer's gun was out as he was pursuing the subject; this is inconsistent with the officer's account.) These points do not appear material to the investigator's conclusions, but they do relate to the thoroughness of the investigative process.

3. CCA Tracking Number: 03053  
Date: 2/18/03

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<sup>22</sup> The CCA characterizes this matter as "shots fired." It may be more appropriate to classify this incident as an "accidental discharge."

Summary: Officers had previously responded to a fire call. As they were leaving, they were flagged down by a resident and told that someone was breaking into his home. They responded to the house through the rear yard. As they were approaching, the complainant's wife exited through the rear and indicated that the subjects were still inside. One officer covered the rear point of entry, and the other proceeded to the front with the complainant. A scream from the front of the property caused the officer stationed in the rear to leave his post and respond to the front. At this time, a subject ran out of the back door. One of the officers pursued the subject on foot. During the course of the pursuit, the officer tripped and his weapon discharged. The subject was not struck and eluded apprehension.

CCA Investigation: The CCA investigation of this incident involved interview of the involved officers, potential sworn and civilian witnesses, review of Department records and reports, and attempts to identify independent witnesses with an area canvass. The investigative analysis focused on the following issues:

- The weapons discharge: The officer was pursuing two subjects wanted for burglary. He states his weapon was out of his holster because he did not want to be surprised and attacked by the subjects as he pursued them. The officer states that during the course of his pursuit, he kept his finger outside the trigger guard. He attributes his change in finger position to a natural reaction to a fall on a snowy surface and his efforts to retain control of his firearm.

The CCA concluded that the evidence supported the officer's contention that the discharge of his firearm was accidental. Further, the manner in which he describes how he was holding the weapon during the pursuit is not disputed by available evidence. For these reasons, the CCA "exonerated" his action on the firearms discharge.

- Whether or not the officer followed appropriate procedure after his weapon discharged: He did not immediately report the discharge to his supervisors, although there was ample time to report the incident to supervisors during their initial response. Therefore, CCA "sustained" a procedural violation.

Monitor's Assessment: The CCA findings on the notification issue are consistent with the MOA. With regard to the discharge itself, however, Department policy requires that the officer's finger be inside the trigger guard only when on target and ready to engage a threat. Further, there must be an apprehension of real and immediate danger. While it

was reasonable for the officer to have his weapon drawn and ready to confront a potentially dangerous person, the facts fail to support the presence of an identifiable target and immediate threat justifying the officer having his finger inside the trigger guard. The fact that the weapon discharged indicates that the officer's finger must have been inside the trigger guard at the time he gripped the weapon to prevent losing it when he fell. Such factors should have resulted in a "sustained" finding of a violation. Accidental discharges, by their very nature, should not be exonerated. (The CPD's Firearms Discharge Board had earlier determined that the discharge and the notification were both in violation of CPD policy.)

4. CCA Tracking Number: 03105  
Date: 4/9/03

Summary: Officers arrested the complainants' 16-year old daughter for felony assault and menacing following a physical altercation with a 21-year old female. Based on a police report filed and a statement provided by the other combatant (the victim in the crime report), officers contacted the daughter and arrested her for the above charges.

At the time of the arrest, one of the officers made a comment to the arrestee that was perceived by her parents and some witnesses as a taunt or challenge to the arrestee to fight the officer (complaint issue #1 – demeanor). The parents felt the CPD was not responsive and the officers involved rebuffed them in their efforts to pursue charges ("obtain a referral") against the other combatant. As a result, they viewed the refusal by the CPD as racial discrimination or profiling since the victim and officers are white, while the arrestee is black (complaint issue #2 – abuse of authority). The parents also alleged discourtesy (complaint issue #3) by the arresting officers or supervisor because they requested to speak with each of them at various times, but they were not available.

CCA Investigation: The CCA investigation included interviews with the arrestee, the arrestee's parents (complainants), witnesses and both officers. Audio recordings were made of all interviews (however, the recording of the interview with the primary officer was not included in the Monitor's package).

In the course of this investigation, the CCA learned the other combatant in the original incident (listed as the victim in the crime report) was quite emphatic when she spoke with the officers, telling them she did not wish to file a complaint or pursue charges against the arrestee. No mention was made of this in the report or in the statements obtained from the officers. Nor was there any effort to discern why she was so resistant to filing a report. She stated she only spoke to the

officers because she was with her cousin, who was driving, and her cousin insisted on taking her to District 3 to file a report. She also did not seek medical attention, stating she was fine but the officers insisted on calling for an ambulance and having her transported for medical attention.

The CCA interviews conducted with the other witnesses present during the fight revealed that the alleged victim in this incident was actually the instigator of the fight. These witnesses were never identified in the reports or interviewed by the officers, although they were all present at the time of the arrest.

The CCA concluded that the allegation of a demeanor violation (section 1.06 of the CPD Rules and Regulations) was sustained, the charge of racial profiling or abuse of authority was unfounded, and the discourtesy allegation could not be sustained.

Monitor's Assessment: The CCA investigation was not consistent with the MOA and CA requirements. It did not include an analysis or discussion of additional relevant evidence identified in the course of this investigation. It did not raise any questions regarding the failure of the officers to conduct a thorough criminal investigation, even though the CCA investigation revealed that witnesses were available who may have been able to exonerate the arrestee. At the very least, these witnesses and a more thorough interview with the "victim" may have established that this was a case of mutual combat. No effort was made to conduct credibility determinations in this investigation and that may have been beneficial.

In addition, while the investigation did contain a written summary of the primary officer's statement, there was no audio recording of that officer's statement submitted for review by the Monitor.

5. CCA Tracking Number: 03106  
Date: 4/1/03

Summary: Complainant was outside his house when four plainclothes officers driving an unmarked van drove up. Complainant alleges the officers questioned whether he lived there, but did not identify themselves as police officers and that he did not know they were police at that time. After about 3-4 minutes of questioning him, his mother (also a complainant) leaned out the second floor window to say that this was her house and that he belonged there. When complainant stepped out of the yard to start to go into the house, the officers jumped out of the van. Complainant tried to close the gate on his fence, but one of the officers stuck his foot into the gate so he could not close it. By this time, his

mother had come down to the front of the house. The mother alleges that she told the officers that her son lived there, that he was not a burglar (they told her he looked like a burglar, according to her). One of the officers started pushing her, so she pushed back, and then she states they “got into a wrestling match” and the officer “manhandled” her. When complainant saw his mother being pushed, he started yelling at the officers and he was arrested. Complainant was arrested for disorderly conduct and his mother was arrested for assault on a police officer and both were transported to the Justice Center.

The officers state they saw complainant just inside the yard of a property that had a “no trespassing” sign on it. They asked whether he lived there, but complainant refused to answer. They were concerned that he might be trying to break in the building, and when it appeared to them that he might run, they exited the van. One of the officers pushed the gate open to talk to complainant, and complainant pushed it back closed. The officers state that they did identify themselves as police officers. Complainant’s mother was yelling out the window, and when she came down to the front of the house, she yelled at the officers to get out of her yard. When one of the officers tried to calm her down, she pushed the officer. The officer grabbed her arms. According to the officers, complainant’s mother bit the officer on the arm. Complainant saw his mother being grabbed, and he became irate. The officer talking to complainant placed him against the wall of the building. Complainant was yelling and screaming, and “tussling.” At that point the officer decided to place complainant under arrest and handcuffed him. He at first stiffened his body and wouldn’t put his hands behind his back. Complainant’s mother was also arrested.

The grand jury did not indict complainant’s mother on the assault on a police officer charge. However, she was charged with resisting arrest and obstructing official business. The disorderly conduct charges against complainant were dismissed, with permission for the officers to refile charges of obstructing official business and resisting arrest.

CCA Investigation: The CCA investigator interviewed complainants and all of the involved officers. The investigator states that complainant’s actions in failing to respond to the officers’ questions and failing to comply with verbal commands constituted “conspicuously ignoring.” The actions of complainant’s mother were “combative/assaultive” based on her biting the officer. The investigator concluded that there is not enough evidence to verify the complainants’ allegations of excessive force.

The CCA interim executive director concluded that events moved rapidly from a field inquiry to physical contact. He determined that

complainant's mother interfered with the officer's investigation, and that once physical contact was made, the officers were justified in taking immediate action to bring the situation under control and make the arrests. Because he concludes that the officers did not use more force than was necessary to effect the arrests, he exonerated the allegation of excessive use of force. He does note that undercover/plainclothes officers have an extra burden to assess the situation before taking action, especially as their identity as police officers may not be as obvious as they believe. He therefore recommends that CPD re-emphasize the responsibility of plainclothes officers to clearly identify themselves in investigative situations such as this case.

Monitor's Assessment: The investigative file and report in this case is well-organized and complete. The interviews of complainants and officers were evenhanded and did not include leading questions. While the CCA investigation concluded that once physical contact was made, the force used was not excessive and was necessary to make the arrest, the investigation did not appear to sufficiently assess the officers' initial decisions to approach complainant, enter the property and make the arrests. The investigation also did not attempt to reconcile the difference between complainant and the officers regarding who initiated the physical contact. In addition, to the extent that the investigation credited the officers' version of events, the disposition should be an unfounded finding rather than an exonerated finding. Finally, with respect to the underlying incident, it appears to the Monitor that this was a situation that called for more disengagement and de-escalation.

6. CCA Tracking Number: 03109  
Date: 2/11/03

Summary: Officers responded to a domestic violence that resulted in the arrest of both parties involved in the incident. After handcuffing the complainant, officers noted his thumb was bleeding and they requested assistance from fire rescue to treat the injury. The complainant told fire personnel that the "officers did it". This resulted in an immediate investigation being launched by CPD regarding the injury sustained by the complainant. It was initially investigated as an injury to a prisoner. However, the complainant refused to discuss the matter with the sergeant who conducted the investigation.

The complainant's live-in girlfriend (and mother of his children) did speak to a CPD supervisor about the injury to her boyfriend. She told the supervisor that the injury resulted from the altercation between the two of them when they were wrestling with one another before the arrival of the officers. She stated he had cut his thumb on a glass vase inside the home. At the time the officers responded to their home, there was

blood on her from her boyfriend's cut and the officers thought she was the person who was injured.

CCA Investigation: A citizen complaint form was completed but this investigation remained at the CPD for approximately 3 weeks before it was forwarded to the CCA. The completed CPD investigation was submitted to the CCA Board with a notation that no CCA investigation was done. The CCA Board directed a review of the original complaint, along with an investigation into additional allegations of discourtesy that were subsequently made by the complainant.

The CCA investigator conducted a thorough review, including interviews with the complainant, his girlfriend, and the officers present at the home. All reports and forms were included in this review.

The investigation showed that the officers complied with all CPD policies relative to the arrest and transport of the complainant. The girlfriend's statement to CCA regarding the origin of the injury was consistent with her prior statement. It was determined that there was no basis for the original allegation made by the complainant regarding excessive force. The review concluded that the investigation regarding the injury to prisoner was correctly classified as "Unfounded" and any further investigation by CCA would arrive at the same disposition.

The additional allegation of discourtesy was also investigated by the CCA. That allegation related to the complainant suffering a seizure while in custody at the District Station. He complained that he was kept handcuffed at the police station even though he tried to explain that he has a medical condition and suffers seizures. While in custody he had a seizure, fell off a chair and hit his head on a cabinet. The fire department was called to provide medical assistance and transport him to the hospital. There was no evidence any officer acted improperly and the CCA investigator determined there was no basis for the allegations.

Monitor's Assessment: The original complaint form should have been forwarded to the CCA at the time it was completed, rather than being held at CPD for 3 weeks. This would have enabled the CCA to begin their investigation into this matter sooner. With respect to the CCA investigation, the investigation appears consistent with all MOA and CA requirements.

7. CCA Tracking Number: 03118  
Date: 4/01/03

Summary: Complainant alleged discourtesy and racial profiling. Complainant was issued a parking ticket for parking in a fire zone.

Before the officer issued the ticket, complainant tried to convince him to issue a warning instead of the citation. Complainant told the officer that it was her understanding from talking to employees of the shop in front of the fire zone that the officer was giving whites warnings as opposed to citations. According to the complainant, this angered the officer and he became belligerent and abusive, demanded that complainant address him as “sir,” “officer,” “yes sir,” or “Mr.” Complainant states that she refused to do so and this further angered the officer. Complainant alleges that other vehicles committed the same offence as she did, while the officer was processing the citation, and they were not cited. The other vehicles were driven by whites and the officer did not issue a warning or a ticket to either of those offenders.

The officer stated that the only people who pulled up in violation of the fire zone were an elderly couple, and the man pulled out of the fire lane after dropping his wife. According to the complainant, when she complained that the ticket was being issued because of her race, the officer informed her that he would cite her for disorderly conduct for using such racial slurs. The officer alleges that he told complainant he could cite her for disorderly conduct if she continued to be loud and abusive in her attempts to draw a crowd. The officer said there were many onlookers and the incident occurred near a bus stop.

CCA Investigation: The CCA report includes a summary and analysis and a determination whether or not the officer complied with CPD standards. The CCA investigator interviewed various family members who either witnessed the citation being written or heard certain aspects of the conversation by listening in on a cell phone. The complainant admits to the parking violation. There is a dispute as to whether or not the ticket was already being written up before the complainant approached the officer and requested a warning. The shop owners who allegedly told complainant that the officer was issuing warnings to whites deny that they gave this information to complainant. However, one of the owners admits he told the complainant that if she were fast enough to catch the officer, he might give her a warning.

The evidence showed that during the officer’s three hour shift, he issued eleven citations. Five of those citations were to cars owned by whites. CCA determined that the discourtesy allegation was not sustained and racial profiling allegation was unfounded.

As a result of this incident, the complainant tried to talk with the officer’s supervisor and left several messages for the supervisor to get in touch with her, but the messages were not conveyed to the supervisor. Complainant also went to the District and requested to see a supervisor, but her request was unsuccessful. As a result, the officer at the desk

was counseled about proper procedure to follow regarding a request to speak to with a supervisor.

Monitor's Assessment: The CCA investigation met the CA and MOA requirements. The only question we have is whether or not there were surveillance tapes available of the mall parking area; if so, such tapes might have been helpful in giving the CCA a better idea of the traffic flow and how the officer responded to other individuals.

On a separate note, because this was a discrimination allegation, the complaint should have been handled by CPD as an IIS investigation instead of a CCRP investigation. However, the allegations of the complaint were investigated prior to the resolution meeting, and were closed as unfounded. The complainant did not participate in the resolution meeting.

8. CCA Tracking Number: 03129  
Date: 3/22/03

Summary: Officers made a traffic stop of a car with a female driver turning into a parking lot for failure to use a turn signal. Complainant was in the front passenger seat and two males were in the back seat. When they approached the car, the officers stated they smelled marijuana. They asked the driver for consent to search the car and after initially declining, she agreed. The officer on the passenger side of the car told complainant to exit the car and move to the back of the car. According to the officer, when complainant exited the car, he faced the officer and then tried to push past him and break away. The officer states that he grabbed complainant by the back of his sweatshirt and pulled him back. Complainant swung his elbows and tried to flee. The second officer, by this time, had moved to the passenger side to try to assist his partner. Both officers tried to apply control holds unsuccessfully, and complainant was pushed up against the car with his back to the trunk.

According to complainant, when he got out of the car, the officer tried to search him and pat him down. He then turned around to face the officer to see why he was searching him. He alleges that the officer grabbed him by the throat. He told the officer to let go of him but the officer tried to throw him down. The driver of the car states that when complainant got out of the car, the officer said to him "you better not run" and complainant responded "I ain't running." She then heard the complainant being thrown onto the back of the car and she heard them slam into her trunk.

The MVR does not show the initial interaction, but does show the officers struggling with complainant as they move to the back of the car. Complainant is thrown against the trunk of the car, and then the two officers struggle to get him on the ground. Although out of the MVR view, the struggle then continues next to the police car. One of the officers kned complainant to get him under control and on the ground. The officers state that while they were on the ground with complainant, he hit one of them in the head with his elbow. The officers sprayed him and when he tried to put his arm under his body, which the officer interpreted as an attempt to escape and also as an effort to reach for a potential weapon, one of the officers delivered three hand strikes (punches) to complainant's face. Complainant alleged that he was punched and maced and kned in the back and neck. He also alleged that the officers called him a "punk" and a "bitch." He acknowledges resisting arrest, but denied punching or hitting the officers.

CCA Investigation: The CCA investigator obtained the CAD printout, Arrest reports, medical records, the Use of Force Report (Form 18F), taped statements, photos, the MVR tape, and supplemental CPD memos and the IIS memo closing case. In addition, the investigator interviewed two additional witnesses, the officers, the complainant, and conducted an area canvass. The witnesses state that they saw the officers pull complainant out of the car and that they saw the officers hit and mace complainant (although one witness states that complainant was pulled out of the back seat). One of the witnesses confirms complainant's allegation that the officer used profanity.

The CPD had concluded that the force allegation was exonerated based on the MVR, "which corroborates [the officers'] statements." The CCA investigator correctly noted that the MVR tape (on which only part of the struggle could be seen) showed the officers trying to gain control of complainant, but did not show complainant striking the officers, or the officers striking complainant. The CCA concluded that because of the conflicting statements of the witnesses and those involved, that there were insufficient facts to determine whether excessive force was used. The CCA also concluded that because of the combative situation, the officers did not have an opportunity to provide a warning before deploying chemical spray. The CCA recommended closing the case as not sustained, and the City Manager agreed.

Monitor: The CCA investigation appears to be consistent with MOA and CA requirements. Although the CCA interviews of the involved officers were not as detailed as they could have been, the investigator also had the benefit of the earlier IIS interviews and the interviews of the sergeant who responded to the use of force. In addition, the CCA investigation did not address the allegation of profanity.

9. CCA Tracking Number: 03139  
Date: 2/21/03

Summary: Complainant alleged that officers used excessive force when arresting him on drug charges by taking him to the ground, striking his face on the pavement, spraying him with chemical irritant, and kicking him in the back of the head when he was on the ground. The Use of Force Report and photographs of complainant reflect a 2" abrasion to his forehead and a bloody nose.

The officers were working in plainclothes as part of an "arrest team" at a downtown concert. They obtained a description of the complainant and the location (in a parking garage) from undercover officers who had observed complainant engage in a drug transaction. According to the officers, two officers approached him from behind, each took an arm, and they told him he was being arrested. Complainant broke free and began running. The officers caught complainant and took him to the ground with their momentum and weight. The officers stated that complainant would not take his hands from under his body, and, after refusing to comply with the officer's orders to stop resisting, was sprayed with chemical irritant by the third officer in the unit. He complied with the officers' orders only when the officer told complainant that he would be sprayed again if he did not stop resisting.

CCA Investigation: The CCA investigator interviewed the three officers involved, and obtained the use of force investigation, arrest reports, complaint forms and taped statements taken by the CPD. The CCA was unable to interview complainant because he lives in Connecticut and neither he nor his local attorney responded to phone calls or letters. In statements he made to the CPD, complainant stated that he "kinda resisting but not really." The CCA investigator credited the officer's version of the incident, and he concluded that the force used was not within the limits of CPD's use of force policies. The CCA closed the complaint as exonerated.

Monitor's Analysis: The basic facts of the incident are not in dispute: complainant resisted in breaking free of the officers and not putting his hands behind his back when he was on the ground. He was taken to the ground, and he was sprayed. What is disputed is the level of force used, as complainant alleges being kicked in the head twice and having his face pushed into the concrete, while the officers deny this. In determining that the officers used a reasonable amount of force, the CCA made a credibility determination, as it is charged to do. However, because the incident did not occur as described by complainant, the complaint should be closed as "unfounded" rather than "exonerated."

10. CCA Tracking Number: 03148  
Date: 4/24/03

Summary: Complainant alleged improper demeanor stemming from a citation for jay-walking. According to the complainant, while issuing the jay-walking ticket, the officer referred to her by the N-word and allegedly called her a bitch.

CCA Investigation: The report includes an analysis of the evidence and a determination whether or not the officer's actions complied with CPD standards. Two other officers who were on routine patrol witnessed the officer coming into initial contact with complainant. According to these officers, the involved officer at all times conducted herself appropriately and they did not hear the use of the N-word, nor did they witness any discourteous conduct. The two officers are African American, and they stated that they would be sensitive to that type of language being used. There were no civilian witnesses to the incident.

Monitor's Assessment: The CCA investigation appears to meet the requirements of the MOA and CA. There was a slight factual dispute as to whether complainant was warned previously not to jaywalk, but this dispute did not impact the disposition of the demeanor complaint. While the officer told the witness officers that she had previously warned the complainant, she stated in her CCA interview that she drove by and saw complainant jaywalking but didn't cite her, nor did she warn her. She gave the complainant a citation when she drove by a second time and saw complainant jaywalking again.

11. CCA Tracking Number: 03195  
Date: 4/2/03

Summary: Complainant alleged excessive force was used on him when he was arrested for criminal trespass and resisting arrest during a baseball game at the Great American Ball Park. CPD officers apprehended him after he ran onto the field during the game. During the arrest, he sustained an abrasion to his forehead. He claimed the abrasion resulted from an unknown officer putting his knee on the back of his neck and face.

CCA Investigation: The CCA received the CPD form 648, Citizen Complaint, on this incident and began a "limited" investigation based on the interviews and investigation already conducted by the CPD. The CCA investigation included a review of the interviews of the complainant and

officers involved, the photos taken of the subject immediately following his arrest, and a video tape recording that captured part of the arrest.

The investigation found the complainant ran from officers after he jumped onto the field, and then struggled with the two officers who initially apprehended him. This continued until a third officer arrived and he was handcuffed. He was then brought to his feet and removed from the playing field. The video tape recording substantiated the struggle and the complainant's efforts to resist after being caught on the playing field. Force was used to take the subject down but this was reasonable and consistent with policy.

The recommended disposition on the allegation of excessive force was "Exonerated" since the force was reasonable and incidental to a lawful arrest.

Monitor's Assessment: The CCA investigation was thorough and well documented. All possible resources and materials were used to fully investigate the matter, which resulted in a clear determination as to the truth and accuracy of the witness statements. As a result, credibility determinations were possible. The investigation meets the requirements of the MOA and CA.

12. CCA Tracking Number: 03198  
Date: 7/10/02

Summary: Complainant was stopped for a traffic violation. He alleges that when he attempted to exit his car to tell the officer that his window was broken and couldn't roll down, the officer unholstered his weapon and pointed it at the ground and told him to get back in the car. He alleges that a second officer approached the passenger side, had the passengers get out of the car, conducted an illegal search of the car, and then poured out a full bottle of vodka that was in the car. He also alleges that since he filed the original complaint at the police District, he has been stopped and ticketed several times, and he believes that is because the first officer is harassing him and having other officers ticket him.

CCA Investigation: The CCA investigator reviewed the MVR tape of the incident, as well as the CPD investigation of the incident. He also conducted interviews of the first officer (the second officer is on extended leave in Iraq), and attempted to interview complainant. Complainant gave a statement to the CCA when he first filed his complaint, but then declined to be interviewed later in the investigation. The MVR showed that the first officer did not unholster his weapon and was not discourteous. The tape also shows that the passenger gave the second officer a bottle that was open and  $\frac{3}{4}$  full. In his CPD interview, the officer

stated that the passenger gave permission to pour out the contents. As to the harassment allegation, the CCA reviewed the complainant's driving record. Complainant had fourteen citations before he was stopped by this officer, and was given seven citations in the year since.

The CCA unfounded the harassment allegation, unfounded the allegation of an improper show of force, and exonerated the allegation of an improper search against the second officer.

Monitor's Assessment: The CCA investigation appears to meet the CA and MOA requirements. As required by the Agreements, CCA continued the investigation even though the complainant declined to further participate in the investigation.

13. CCA Tracking Number: 03280  
Date: 7/09/03

Summary: Complainant alleges that the officer improperly pointed a firearm at him. The officer noticed a wanted individual entering into a Super America service station. The complainant let the officer into the Speedway, and the officer had his firearm in a low ready position when he entered. After he entered the Speedway, the officer raised his firearm and instructed the suspect to get down on the floor. The suspect complied and the officer made the arrest. The complainant was between the officer and the suspect. The complainant initially thought the officer was pointing his weapon at him, but he then realized that he was addressing another male customer behind him. Complainant was frightened when the gun was pointed at him, and believes the officer was wrong to point the gun when he was between the officer and the suspect.

CCA Investigation: Witnesses verified the officer's statement that the gun was at a low ready position and that he had not at any time pointed it at the complainant. These witnesses were independent; they were employees of the service station. In addition, the CCA reviewed videotape from the service station's video camera. The videotape indicated that the officer's explanation of how and when the gun was pointed was proper. The CCA report includes a summary and analysis of the evidence and a determination that the officer's actions complied with CPD Standards. The CCA exonerated the complaint relating to improper pointing of the firearm.

Monitor's Assessment: The CCA investigation was thorough and appears to meet the MOA and CA provisions. Separately, the CPD handled this complaint through the CCRP process. Because this was an allegation involving the improper pointing of a firearm, it should have been referred to IIS for an investigation.

### **C. CCRP Investigations**

1. Tracking Number: 03179,  
Date: 6/15/03

Summary: Complainant alleges that when he was going to pick up his son from the son's mother, a person threatened him by pointing a gun at him and telling his dog to "get him." Complainant called 911 and talked to a CPD officer. Complainant alleges that when the officer responded to the scene, he told complainant it was not illegal to have a gun, threatened to arrest complainant and refused to fill out a report. The officer states that complainant's allegations about the gun and dog were not corroborated by witnesses, and that complainant was trying to use the police to get his son for the day. The supervisory investigator sustained the complaint for failure to author an offense report, and counseled the officer. The counseling was reflected on the officer's ESL. The complainant was invited for a resolution meeting, but did not respond; he also was asked to make a NIBRS report, but later informed the District that he no longer wanted to make a NIBRS report.

2. Tracking Number 03218,  
Date: 7/27/03

Summary: Complainant alleges that a CPD officer harassed him when he visited an apartment complex by following him out to the complex, following his car when complainant pulled into a store parking lot, issuing complainant two parking tickets, waiting and watching complainant while he was waiting for his girlfriend, telling him he would be arrested if he visited the apartment complex again, and using profanity. These same officer four days later stopped complainant for failing to use a turn signal, and cited him for a cracked windshield. In the following weeks, complainant was arrested twice for criminal trespassing at the apartment complex, even though complainant alleges he never received a written warning to stay away from the apartments. The officers state that the apartment complex is located in the area assigned for them to patrol, that they observed complainant in an area of the apartment complex known for drug sales, that he was not a resident, nor with a resident, and that an officer serving a detail at the apartment complex was called and gave complainant a written trespassing notice. The investigating supervisor was unable to locate the trespass form filled out by the officers, but did find an earlier trespass notice for complainant completed by a different officer. The investigating supervisor also reviewed the MVR tapes for the turn signal traffic stop (there was no MVR for the initial parking tickets, as the car had already pulled up on the sidewalk, and the officer did not activate his emergency lights).

The investigating supervisor determined that the officers did not use profanity and that their actions met department standards. The improper procedure allegation was not sustained, and the discourtesy allegation was unfounded. Complainant did attend a resolution meeting, but was not satisfied by the resolution.

3. Tracking Number: 03225  
Date: 8/10/03

Summary: Complainant alleges that he was sitting at a corner when an officer approached and said that someone called and reported he was selling drugs. The officer searched him and found no drugs. Complainant wanted to complain about the person who called the police, but was told he could not. The officer told complainant he would be watching him and would ticket him if he spit, littered or jaywalked. The officer then gave him a ticket for jaywalking. The officer states that he was dispatched to investigate a person selling drugs, and that he approached complainant, who was sitting on the porch of a vacant building, and asked for complainant's name, birthday and social security number. He told complainant that he could be cited for criminal trespass if the owners of the property wished to pursue charges, that there would be no problem if he wanted to sit in front of his own house across the street, and that he could be cited if he was seen spitting, jaywalking or littering. Complainant did cross the street, but later crossed back against the light. He was cited for jaywalking. The investigating supervisor interviewed both the officer and the complainant. According to the supervisor, the complainant's real concern was with the person that complains about him to the police. Complainant declined to participate in a resolution meeting.

4. Tracking Number: 03236,  
Date: 5/7/03

Summary: Complainant alleges officer harassed him over several months. On one occasion, the officer did not cite a person for jaywalking, while he had been cited by her the week before; when complainant asked the officer why, the officer replied: "he's a 12 year old boy, you're a grown man." The officer then allegedly stated "Your ass ain't even supposed to be in this park." [Complainant is supposed to stay away from a store that is close to the park as a condition of probation.] The officer states that she has always been courteous to complainant, who curses back at her. She also states that complainant has been involved in many of the problems in the area and that she does strictly enforce violations when she sees him. She did not cite the 12 year old because she was covering her partner at the time. The

investigating supervisor was unable to contact complainant, after both calls and a visit to the address listed on the complaint. He did interview the complainant's probation officer. The complaint was closed as unfounded.

5. Tracking Number: 03243  
Dare 8/27/04

Summary: Complainant alleges that a CPD officer has been harassing her on several occasions by: (1) when she was at her sister's house, the officer did a u-turn, asked her to come over, and then jumped out of his car with his hand on his weapon; (2) pulling her over when she was driving with her sister and checking the whole vehicle for a reason to write her a ticket; (3) as she drove past the officer, who was at a neighbor's, he jumped into his patrol car and pulled her over to see if she had a valid driver's license; (4) on a fourth occasion, the officer followed her car very closely for a long period, until she turned into a gas station; and (5) driving by her sister's house very slowly and winking and waving. The officer states that the complainant lives in his beat, and that he does drive slowly when he is patrolling, but he denies the harassment. The investigating officer reviewed worksheets and MVR tapes of the officer to try to find contact between the officer and the complainant. He also interviewed the complainant's sister, who does not recall the officer doing anything wrong. In a further contact with the complainant, the complainant told the investigating supervisor that she doesn't remember making the complaint, doesn't remember the incidents, and did not wish to participate in the resolution meeting. The complaint was closed as unfounded.

6. Tracking Number: 03252  
Date: 7/23/03

Summary: Complainant alleges that a CPD officer accused him of throwing fireworks at the police, and that since there was no evidence of his throwing fireworks, the officer improperly arrested him for disorderly conduct. Complainant also alleges the officer kicked in the door to his house and entered without a warrant. He further alleges the officer arrested his mother without probable cause. Complainant's mother alleges that the officer left footprints on her door from kicking it in, and that she was arrested for disorderly conduct and resisting arrest without probable cause, as she was not disorderly nor did she resist arrest. The officer states that he was investigating a report of a person throwing fireworks at police; that complainant approached him and became belligerent and that he then arrested complainant for disorderly conduct. The officer states that he knew complainant was not involved in the fireworks incident and did not accuse complainant of throwing them.

The officer stated that complainant's mother began screaming and cursing at the officer to get her son out of the police car. The officer cited complainant's mother for disorderly conduct. According to the officer, as he did so, she attempted to grab her purse from him. The officer then attempted to handcuff her. She refused to put her hands behind her back and she was charged with resisting arrest.

The investigating supervisor interviewed the involved officer, and interviewed the complainant and complainant's mother over the phone. However, the investigating supervisor did not appear to make efforts to resolve some of the material inconsistencies among the witness statements or assess credibility. He did not contact the witnesses listed by complainant's mother; he did not report asking the officer why complainant approached the officer and became belligerent; and he did not ask (or report asking) complainant about the officer's statement that he was belligerent and cursing at the officer. Complainant pled no contest to the disorderly conduct charge; complainant's mother pled guilty to the disorderly conduct charge; the resisting arrest charge was dismissed. The supervisor's conclusions that there was cause for the officer's arrests appear to be based on these outcomes. The illegal entry allegation was closed as not sustained; the allegations regarding improper arrest were closed as exonerated.

7. Tracking Number: 03257  
Date: various dates

Summary: Complainant alleges that a CPD officer has harassed him on the following occasions: (1) at a bar when plainclothes officers searched bar patrons for guns and drugs; the officer handcuffed him, put him in a police car and accused him of warning bar patrons that the police were coming; (2) at a Shell station, the officer, participating in a sweep, searched and handcuffed him and told him "I'll get something on you one day." (3) during a sweep of a parking lot of Walgreen's, the officer found crack under a car and told complainant that he saw complainant throw it and charged him with possession; (4) in court, this same officer asked about his "gun case" and told complainant he could probably help complainant with the charges against him. Complainant was not sure of the identity of the officer, but provided two names. One of the officer named did make the arrest at the Walgreen's and offered complainant the opportunity to work with District Four's Violent Crime Section, but he denies having any contact with complainant at the bar or at the Shell station.. The other officer denies any involvement with complainant on any of the four occasions. The investigating supervisor left message for complainant with his mother and girlfriend, but was not able to contact complainant. He determined that the arrest at Walgreen's was not

harassment and that the offer to work with the police was appropriate. The complaint was closed as unfounded.

8. Tracking Number: 03269  
Date: 9/12/03

Summary: Complainant alleges that when two officers responded to his house to investigate an assault, they used racial slurs. The officers state that they went to investigate an assault involving a woman at complainant's house. The woman had a head injury, but refused to tell officers how the injury occurred. Complainant said that the woman fell and hit her head, and was not assaulted. The officers denied making any racist remarks or using profanity. The investigating supervisor contacted the woman, who stated she did not hear the officers making any racist remarks or profanity, and that the officers were not discourteous. When complainant was contacted by the investigating supervisor, he stated that he remembered making the complaint but could not recall what racist remarks or profanity were used; he also stated that he did not have any problems with either officer during the incident. He also told the investigating supervisor that he had been drinking prior to the incident [the complaint form notes that complainant was still intoxicated and had slurred speech when he completed the complaint form, which was the next morning after the incident.] The complaint was closed as not sustained.

9. Tracking Number: 03290  
Date: 9/28/03

Summary: Officers were dispatched to complainant's home to investigate an alleged assault. When the first officer arrived, complainant told the officer to wait outside while he went to get his wife. The officer came in. When asked by complainant why he entered, the officer answered "because I can." The officer then used profanity and asked "What the hell is going on here?" The involved officer and a second responding officer confirmed the facts of the allegation. The investigating supervisor determined that the entry of the house was proper, because complainant's daughter had called in an assault. However, the supervisor sustained the discourtesy allegation for use of profanity and telling complainant he entered the house "because I can." The officer was counseled and an ESL was issued. Complainant was satisfied with the outcome of the investigation and did not wish to attend a resolution meeting.

10. Tracking Number: 03291  
Date: 9/9/03

Summary: Complainant states that he was driving down California Avenue when a police car began following him, but did not turn on its flashers or siren. He then went onto northbound 75 and noticed the officers behind him again; this time they shined the side light onto his car, but still did not use flashers or siren. He slowed down. When complainant went on to Ronald Reagan Highway, the flashing lights came on and he slowed to find a place to pull over. Two officers jumped out of the car with their guns drawn. Complainant states he put his hands out the window and was told to open the door. When he did, he states the officers shouted "Stop moving, motherfucker!" Other police cars had arrived and those officers also had their guns drawn. One officer finally told him to shut off his car and step out, which he did. He was placed in handcuffs, cited for traffic violations and minor misdemeanor drug possession and released. Complainant alleges harassment and racial profiling.

The officers state that they heard loud music coming from complainant's vehicle and turned around to attempt a vehicle stop. Complainant's car sped up, placing other cars between them. The officers located complainant's car on the highway and again attempted to initiate a traffic stop. [The officers do not state whether they turned on the police car's flashing lights, but they did not use the siren at this time.] Complainant did not stop and one of the officers activated the siren. Complainant then stopped the car, but did not turn it off when ordered. According to the officers, complainant tried to get out of the car, and both officers ordered him to stay in the car; at that point one of the officers radioed for assistance, and other officers responded. Complainant and his passenger were then ordered out of the car at gunpoint, and taken into custody.

The investigating supervisor interviewed complainant and both officers. The complainant's passenger was listed as a witness on the complaint form, but without a phone number or address. The investigating supervisor does not document any attempts to locate him. The investigating supervisor reviewed the MVR tape of the incident.<sup>23</sup> According to the supervisor, the tape shows that complainant committed traffic violations and was ordered to exit his vehicle at gunpoint because he did not comply with the officers' orders. The officers did not use profanity during the stop. Based on the MVR, the supervisor determined

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<sup>23</sup> According to the investigator, the MVR tape was audible inside the police car, but not when he attempted to make a copy of it. The CCRP investigatory file does not include a copy of the MVR tape.

that the officers did not harass or racially profile the complainant. The complaint was closed as unfounded.

11. Tracking Number: 03307  
Date: 11/04/03

Summary: Officers were dispatched regarding a fight involving several juveniles. When they arrived on scene, one of the officers ordered the three juveniles to stop fighting. When they did not do so, the officer deployed chemical spray, and the juveniles were arrested for disorderly conduct. The complainant, the father of one of the juveniles, alleged that the officer used profanity at the scene and when transporting the juvenile to District Two. The investigating supervisor interviewed the involved officer who denied using profanity; two other officers on the scene, who state they did not hear the officer use profanity; and the other two juveniles involved in the fight, who state they did not hear the officer use profanity, either at the scene of the arrest, during transport, or while at District Two during processing. The complainant and his daughter participated in a resolution meeting, and according to the supervisor, were satisfied with the results of the meeting and the opportunity to talk to the officer and “clear any misunderstandings between the two.” The complaint was closed as not sustained.

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