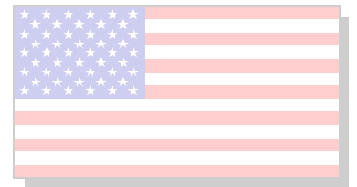


# Summary of Metropolitan Police Department Compliance Activities Reported by the Office of Independent Monitor, June 2002-January 2003

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# Introduction

This special report of the Office of the Independent Monitor (“OIM”), which has been prepared at the request of the Chair of the Committee on the Judiciary of the Council of the District of Columbia, summarizes the compliance activities of the Metropolitan Police Department (“MPD”) from June 2001 to February 2003. The OIM was established at the end of March 2002 to monitor compliance by the District of Columbia (“the City”) and MPD with the Memorandum of Agreement (“MOA”) they entered into with the Department of Justice (“DOJ”) on June 13, 2001.<sup>1</sup> Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports as necessary.

During the past eleven months, MPD has engaged in a significant amount of activity addressed to the many requirements of the MOA. MPD has drafted -- and DOJ has approved -- eight new or revised policies, including seminal policies governing how MPD uses force. MPD also substantially has revised its internal training program, including its new recruit training, its regular “in-service” training, and its specialized training for canine officers to incorporate the new use of force policies. MPD is in the process of creating specialized use of force training for sergeants and above.

Despite these significant accomplishments, MPD, from time to time, has come up short in its MOA compliance efforts. During the first twelve months of the MOA, as we noted in our first Special Report, MPD “failed to accomplish virtually all of the milestones identified in the MOA within the time periods specified.” More recently, we noted problems with MPD’s revised in-service training program, a failure on the part of MPD officers to complete Use of Force Incident Report (“UFIR”) forms as required by the MOA, and a significant delay in the creation of the MOA-

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<sup>1</sup> Our previous reports have reported on the compliance efforts of the MPD and other City agencies, including most specifically the Office of Citizen Complaint Review. Responding to the specific request of the City Council, this special report addresses only the compliance efforts of MPD.

mandated Personnel Performance Management System (“PPMS”). On the whole, we have found MPD to be working hard to meet the requirements of the MOA in a timely fashion. We note with approval the level of effort that we are seeing from MPD, and especially from MPD’s Compliance Monitoring Team (“CMT”), a special organization within MPD created by Chief Charles H. Ramsey to coordinate and facilitate the Department’s efforts to achieve compliance with the MOA.

As noted above, this report summarizes MPD’s record since it entered into the MOA with DOJ. Obviously, this special report will not cover every issue that we have examined in our previous four reports, all of which are available on our Web site at [www.policemonitor.org](http://www.policemonitor.org). It will, however, provide a useful overview of MPD’s activities in order to facilitate the City Council’s review of those activities.

# Compliance Assessment

This report is organized in a manner somewhat different from our prior reports. We first summarize the requirements imposed by each section of the MOA; then we comment on MPD’s current state of compliance. Summarizing the requirements imposed by the MOA makes this report, like its predecessors, somewhat lengthy, but we feel the discussion is necessary in order to promote a full understanding of the requirements of the MOA and is consistent with the requirement that we monitor “each substantive provision” of the MOA.<sup>2</sup>

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

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

#### **1. Requirements**

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

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

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<sup>2</sup> MOA at ¶ 169.



- Require that, immediately following the use of force, officers must examine persons who have been subjected to the use of force and obtain medical care for them, if necessary; and
- Provide specific advice to officers that the use of excessive force will subject them to MPD disciplinary action and potential civil liability and criminal prosecution.

## **2. Status**

The MOA requires that MPD prepare and implement a new Use of Force Policy that meets specific requirements outlined in the MOA. Prior to its revision in September 2002, the MOA required that this policy be implemented by July 13, 2001. MPD failed to meet this deadline. After various false starts and delays, however, MPD produced an acceptable policy to DOJ in mid-2002. DOJ approved the policy on September 17, 2002. MPD committed to begin implementing that new policy during the week of October 6, 2002.

While MPD subsequently missed its implementation goal of October 6, 2002, it did undertake, soon thereafter, significant activities designed to implement the new policy. Although the implementation process was initially hampered by a false start in the training area, to its credit, MPD addressed these problems swiftly and effectively once they were brought to its attention. Currently, MPD is working to ensure that all officers understand and comply with the new Use of Force General Order.

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

### **1. Requirements**

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

- Prohibit officers from possessing or using unauthorized ammunition and require officers to obtain service ammunition through official MPD channels;
- Specify the number of rounds that officers are authorized to carry;

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

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

## **2. Status**

After significant delays on the part of MPD, DOJ approved MPD's revised Use of Firearms Policy -- entitled "Handling of Service Weapons General Order" -- on August 19, 2002. MPD committed to begin implementing the new policy during the week of October 6, 2002. While MPD did not meet this commitment, it did begin implementing the new policy soon thereafter. We monitored the implementation primarily through our review of MPD's training program.

In addition to our review of MPD's general in-service use of force training, which, as we described above, has improved dramatically over the past few months, we also reviewed MPD's firearms training on several occasions. We are pleased to report that we were impressed by the instructors and the quality of their instruction.

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

### **1. Requirements**

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

- Limits the high-risk deployment of canines -- off-leash deployments, use during searches, and other situations where there is a significant risk of a canine biting a suspect -- to cases where the suspect is either wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed;
- Requires supervisory approval for all canine deployments -- either a canine unit supervisor or a field supervisor;<sup>3</sup>
- Ensures that suspects are advised through a loud and clear announcement that a canine will be deployed, that the suspect should surrender, and that the suspect should remain still when approached by a canine; and
- Ensures that, in all circumstances where a canine is permitted to bite or apprehend a suspect,
  - The handler calls the canine off as soon as the canine can be safely released, and
  - MPD ensures that any individual bitten by a canine receives immediate and appropriate medical treatment.

### **2. Status**

DOJ approved MPD's Canine Teams General Order on September 17, 2002, and MPD took steps to implement that General Order in October 2002. We have engaged in three primary activities since then to monitor MPD's compliance with the MOA's canine requirements. First, we attended the Institute of Police Science's in-service canine training. Second, we met -- and on one occasion rode along -- with several canine officers and supervisors to discuss the implementation of MPD's new canine policies and procedures. Third, we

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<sup>3</sup> The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.

requested, were given access to, and began analyzing MPD's entire database of canine incidents.

Although early indications are that MPD is moving toward meeting the MOA's requirements affecting canine operations, as we have advised DOJ and MPD, we plan to focus special attention on MPD's compliance with those requirements in the near future. This special attention will involve a quantitative analysis of the canine incident database as well as a qualitative analysis of the incidents that resulted in a canine bite. Furthermore, we will be examining the Canine Unit's implementation of its Handler-Controlled Alert Methodology as well as its compliance with the handler certification requirements set forth in the MOA. Finally, we also will assess MPD's compliance with its recently-submitted 43-page Canine Operations Manual once that manual has been approved by DOJ.

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

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

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

- Prohibit officers from using OC spray unless the officer has legal cause to detain the suspect, take the suspect into custody, or maintain the suspect in custody and unless the suspect is actively resisting the officer;
- Prohibit officers from using OC spray to disperse crowds or smaller groups of people, including its use to prevent property damage, unless the acts being committed endanger public safety and security;
- Prohibit the use of OC spray on children and the elderly, except in exceptional circumstances;
- Require that officers provide a verbal warning prior to the use of OC spray, unless such warning would endanger the officer or others, stating that its use is imminent unless the resistance ends; and, whenever feasible, permit a reasonable period for the warning to be heeded;

- Limit the use of OC spray to a person's head and torso; prohibit spraying from less than three feet away (except in exceptional circumstances); and limit the spray to two, one-second bursts; and
- Decontaminate persons sprayed with OC spray within twenty minutes after spraying, and transport them to a hospital for treatment if they complain of continuing adverse effects or state that they have a pre-existing medical condition that may be aggravated by the spray.

## **2. Status**

After a lengthy process in which MPD developed and revised drafts of its Oleoresin Capsicum (OC) Spray Policy in response to rounds of comments from DOJ, DOJ approved MPD's revised Oleoresin Capsicum (OC) Spray General Order on September 17, 2002. MPD circulated the new policy throughout MPD in conjunction with the circulation of its other new use of force orders and policies during late October and early November 2002. With respect to the implementation of the OC Spray General Order, we have not yet monitored MPD's compliance in detail. We plan to do so in the near future.

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

The implementation schedule set forth in the MOA required MPD to complete development of the policies and procedures relating to use of force, use of firearms, canines, and OC spray by July 13, 2001. While MPD provided various drafts of all of these policies to DOJ prior to that date, MPD candidly acknowledges that those original drafts were inadequate and that insufficient quality control was exercised in submitting them to DOJ. These deficiencies caused serious and preventable delays in MPD's compliance with the terms of the MOA. Even though it is undeniable that MPD made substantial progress toward compliance during the early stages of the MOA, none of the due dates set forth in the MOA were met. Moreover, our prior reviews revealed that the top leadership within MPD was not advised that the process for developing these drafts was inadequate and that the quality of the drafts submitted to DOJ made it inevitable that they would be rejected, which they subsequently were.

On September 30, 2002, the City, MPD, and DOJ negotiated Joint Modification No. 1 to the June 13, 2001 Memorandum of Agreement (the "MOA Modification"), significantly revising many of its timelines. As a

result of MOA Modification, the City and MPD were no longer out of compliance with most of the deadlines established in the MOA. At the same time, the City and MPD undertook significant compliance-related activities that have produced significant results. The positive consequences of these activities were demonstrated in many new or revised policies and procedures that were approved by DOJ in late 2002. Indeed, it is the substantial and meaningful progress reflected in these activities that prompted DOJ to agree to the modifications of the deadlines.

Despite its significant progress, MPD's implementation activities again were delayed in several instances during the most recent reporting quarter. As an initial matter, MPD committed to implement and disseminate its new use of force-related General Orders throughout MPD during the week of October 6, 2002.<sup>4</sup> While MPD appears to have made the new General Orders available to its officers on Friday, October 11, 2002, in actuality, the orders were not circulated to officers until the following week, and some officers did not receive their copies until late October or even early November.<sup>5</sup>

In addition to the delay in circulating the General Orders, MPD's efforts to train its personnel in the new policies also were delayed. Initially, MPD advised the OIM that it intended to hold special use of force training for all supervisors (sergeants and above) within twenty-four days of the circulation of the Use of Force General Order. As of the close

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<sup>4</sup> There exists some evidence that MPD actually committed to distribute the new orders by October 7, 2002. See Letter from Shanetta Y. Brown Cutlar to Inspector Joshua Ederheimer (Sept. 26, 2002) ("We write to memorialize our agreement from September 19 that the roll-out date for these GOs and form will be the week of October 6, with the distribution date for the GOs and form being October 7."). The revised deadline reflected in the MOA Modification, however, calls for the issuance of the orders "the week of October 6, 2002." MOA Modification at 2 n.1; see Appendix B to OIM's Second Quarterly Report. Even under the most generous interpretation of the due dates established by these documents, it is clear that MPD did not issue and roll out the Use of Force Policy and related orders in a meaningful way until they were circulated to officers the following week. Thus, MPD's circulation of these materials, whose original due date under the MOA was July 13, 2001, did not occur until the week of October 14, 2002.

<sup>5</sup> While the dissemination of these materials was delayed, it should be recognized that the task of reproducing, organizing, and distributing more than 575,000 pages of new policies and related materials is a massive undertaking.

of the prior quarter, MPD still had not conducted that training. Currently, the training is scheduled to start in March 2003.

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

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

#### **1. Requirements**

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

- Notification of an officer's supervisor immediately following any use of force or after the lodging of any allegation of excessive use of force;
- An officer to fill out a UFIR immediately after he or she uses force, including the drawing and pointing of a firearm at another person or in such a person's direction;
- An officer's supervisor to respond to the scene upon receiving notification that force has been used or that an allegation of excessive force has been received;
- Immediate notification to the Force Investigation Team ("FIT") in every instance involving deadly force,<sup>6</sup> the serious use of force,<sup>7</sup>

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<sup>6</sup> "Deadly force" is defined in paragraph 15 of the MOA as "any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object."

<sup>7</sup> "Serious use of force" is defined in paragraph 33 of the MOA as "lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine."

or any use of force potentially reflecting criminal conduct by an officer;<sup>8</sup>

- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on UFIRs into MPD's PPMS.

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

In all uses of force requiring a Use of Force Incident Report, the member shall immediately notify his/her supervisor of the use of force, intentional or unintentional, exercised by the member, any accusation of excessive force made against the member, or immediately following the drawing of and pointing a firearm at or in the direction of another person, and shall promptly complete the Use of Force Incident Report.<sup>9</sup>

The parties also agreed upon certain language regarding the process of compelling an officer to complete a UFIR following a decision by the United States Attorney's Office ("USAO") not to prosecute the officer for the use of force (*i.e.*, a declination) and/or issuance of an authorized Reverse-Garrity warning.<sup>10</sup> A "Reverse-Garrity" warning is a statement

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<sup>8</sup> "Use of force indicating potential criminal conduct by an officer" is defined in paragraph 35 of the MOA to include "strikes, blows, kicks or other similar uses of force against a handcuffed subject."

<sup>9</sup> Memorandum of Agreement Progress Report, dated January 7, 2003 ("MPD January 2003 Progress Report"), at 9.

<sup>10</sup> MPD initially proposed a statement that placed the declination language immediately following the notification and reporting language. DOJ strongly objected to MPD's placement of the declination language because, while substantially accurate, that placement might well discourage officers from promptly filling out UFIRs. In response, MPD agreed to relocate the declination language to a separate "Supervisor Responsibilities" section of the applicable



given to an officer, typically following a declination, requiring the officer to answer questions relating to his or her official duties.

## 2. Status

The creation of a UFIR that is acceptable to DOJ and to MPD rank and file and management has been one of the most difficult issues faced by the parties to the MOA. In September 2002, MPD and DOJ finally agreed upon a form, which MPD began implementing soon thereafter. In our Third Quarterly Report, however, we noted significant confusion among MPD officers regarding the UFIR. We noted also that few officers are completing the UFIR when a reportable incident occurs. For example, although there were 69 documented uses of force from October 7, 2002, through December 2002, only 13 UFIRs were completed. Furthermore, the UFIRs that have been completed, in some cases, have not been completed properly.

MPD and DOJ both have recognized that a process must be developed to facilitate the proper and consistent use of the UFIR among MPD officers. MPD and DOJ also have recognized that a process must be developed to facilitate MPD's required consultation with the USAO prescribed by paragraph 54 of the MOA. In light of the unwillingness of many officers to complete a UFIR prior to the issuance of a USAO declination, the ability to devise a mutually acceptable consultation process seems to have become a critical element -- and potentially a critical bottleneck -- in creating a workable UFIR process.<sup>11</sup> MPD, DOJ, and the USAO currently are engaged in discussions on this topic. We plan to monitor those discussions in the near future.

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### Footnote continued from previous page

orders. However, the declination language was not also moved on the MPD Circular introducing the UFIR.

<sup>11</sup> According to MPD, "[t]he USAO had initially agreed to telephone consultations in these cases, but has subsequently declined to incorporate that system." MPD January 2003 Progress Report at 10.

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

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

**a. Requirements**

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

The provisions of the MOA that address use of force investigations take as their point of departure the January 1999 creation of FIT as the entity within MPD charged with investigating all firearms discharges by MPD. The MOA creates a protocol for handling the investigation of use of force by MPD and the manner in which such investigations are to be coordinated. At the core of the protocol is the requirement to transfer responsibility for MPD criminal investigations involving officer use of force from MPD district violent crime units or other MPD district supervisors to FIT.<sup>12</sup>

MPD is required to notify and consult with the USAO -- and vice versa -- in each instance in which there is an incident involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are handled by FIT rather than by any other unit of MPD. Even while the criminal investigation is pending, the MOA requires FIT's investigation of the officer's use of force to proceed in all such cases, although the compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.<sup>13</sup>

FIT is required to respond to the scene of every such incident described above and to conduct all such investigations, whether the investigation results in criminal charges, administrative sanctions, or both. No officers from any unit other than FIT are permitted to participate in the investigation. The MOA requires FIT's administrative (non-criminal) use of force investigations to be completed within ninety

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<sup>12</sup> Consistent with this approach, the MOA requires that MPD train and assign a sufficient number of personnel to FIT to fulfill the duties and responsibilities assigned to it under the MOA. MOA at ¶ 63.

<sup>13</sup> This deferral of the interview of subject officers is designed to avoid the risk that such compelled interviews might taint the criminal investigation. See *Garrity v. State of New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

days of a decision by the USAO not to prosecute, unless special circumstances prevent their timely completion.<sup>14</sup>

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

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

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

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

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<sup>14</sup> In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

the investigation file is forwarded to the Use of Force Review Board (“UFRB”).<sup>15</sup>

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

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

- Ensure that the UFRB conducts prompt reviews of all use of force investigations;<sup>16</sup>
- Establish the membership of the UFRB;
- Establish timeliness rules for the review of investigations;
- Authorize the UFRB to recommend discipline for violations of MPD policies, recommend further training where appropriate, and authorize the UFRB to direct City supervisors to take non-disciplinary action to encourage officers to modify their behavior;
- Require the UFRB to assign to FIT or return to the original investigating unit any incomplete or improperly conducted use of force investigations; and
- Empower the UFRB to recommend to the Chief of Police investigative standards and protocols for all use of force investigations.

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

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<sup>15</sup> In the event there is evidence of criminal misconduct, the Unit Commander must suspend the use of force investigation and notify FIT and the USAO.

<sup>16</sup> Recognizing that the UFRB might be overwhelmed by reviewing all use of force investigations, DOJ and MPD agreed to modify the MOA to require the UFRB to conduct timely reviews only of use of force investigations investigated by FIT I or FIT II. Additionally, according to DOJ, it agreed to allow non-FIT force reviews, with some exceptions, to be conducted by chain of command officers (and conclude at the Assistant Chief level) so long as FIT continues to review all non-FIT use of force incidents in an effort to identify incidents that should be referred to the UFRB.

in such investigations. The UFRB must issue a report summarizing the findings of its review to the Chief of Police.

### **b. Status**

MPD has made significant progress in the area of use of force investigations since the execution of the MOA. As noted in our first report, the creation of FIT to review serious uses of force is a reflection of this progress. Our monitoring activities reveal that the work of FIT is of high quality and reflects substantial improvement in the way MPD investigates such matters since DOJ's investigation began in 1999.

Over the course of the past eleven months, we have reviewed almost one hundred FIT I and FIT II investigations. We have found the investigations to be of high quality and, with minor exceptions, well done. We also have found that MPD improved over the course of that time period in notifying FIT about uses of force. Despite their overall high quality, however, many FIT investigations still do not contain an inventory of all officers who were involved in responding to the incident leading to the use of force. This has made it difficult to ascertain whether interviews were conducted with all of the appropriate officers. We also noted some issues regarding the prompt completion of the final investigation report that typically must occur within ninety days of the USAO's decision not to prosecute the officer involved in the use of force. A number of the investigations we reviewed did not meet that timeline, and there was no information in the file to indicate the reasons for the delay.

In addition to FIT investigations, we reviewed many chain of command investigations of uses of force. We found that most of these investigations also were conducted thoroughly and sufficiently. We did note a few common deficiencies, however. For example, none of the investigations included an assessment of whether the officer was impaired during the use of force incident. We expect that MPD will take steps to remedy this shortcoming in the near future.

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

### **a. Requirements**

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

- Allegations for which an officer has been arrested or charged criminally;
- Allegations where an officer has been named as a party in a civil lawsuit
  - relating to the officer’s conduct while on duty or otherwise acting in an official capacity; or
  - relating to the officer’s conduct while off duty, and otherwise not acting in an official capacity, where allegations against the officer involve physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
- Allegations of unlawful discrimination;
- Allegations of unlawful searches and stops;
- Allegations of unlawful seizures;
- Allegations of retaliation or retribution against officers or other persons; and
- Allegations of all uses of physical violence -- including but not limited to strikes, blows, and kicks -- that is engaged in for a punitive purpose or that is perpetrated against a subject who is not offering resistance.<sup>17</sup>

With respect to allegations in the above categories that are criminal, MPD’s Office of Professional Responsibility (“OPR”) is required to conduct the investigation rather than chain of command supervisors in MPD’s districts. In these categories of cases, MPD is required to notify the USAO within twenty-four hours of the receipt of such allegations, and MPD and the USAO are required, in the absence of extraordinary circumstances, to consult with each other following such notification.<sup>18</sup>

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<sup>17</sup> The same procedures apply whatever the source of the information to MPD -- whether by self-referral from the officer, reporting by other MPD personnel, or complaint from a source outside MPD.

<sup>18</sup> The MOA makes clear that a key reason for this consultation requirement is to avoid potential complications for a criminal investigation and potential prosecution posed by administratively-compelled interviews of officers. MOA at ¶ 71.

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

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

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

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

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

- MPD must develop a plan (subject to approval by DOJ) under which OPR would become responsible for the *criminal misconduct* allegations described in the bulleted points listed at the beginning of this section, which would include provision for

sufficient personnel and adequate procedures to implement this objective;

- MPD must develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint investigations* from chain of command supervisors to MPD's OPR;<sup>19</sup>
- The District of Columbia is required to provide the funds necessary to provide for the full implementation of these plans and sufficient resources for administrative complaint investigations to be completed within ninety days of the receipt of a complaint by MPD;<sup>20</sup>
- MPD must develop a plan (subject to DOJ approval) to ensure that all MPD officers responsible for conducting investigations receive adequate training in a wide range of subjects;
- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- MPD must develop a manual (subject to DOJ approval) for conducting all MPD misconduct investigations.

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

## **b. Status**

In addition to the FIT I, FIT II, and chain of command investigations discussed above, we have reviewed a number of randomly selected OPR misconduct investigations over the course of the past eleven months. All of the files we reviewed generally were comprehensive and contained appropriate and detailed information. In general, we feel that the investigations conducted by OPR appear to be sufficient and

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<sup>19</sup> See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

<sup>20</sup> In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.



complete. As with the chain of command investigations described earlier in this report, however, timeliness seems to be a significant issue.<sup>21</sup>

Additionally, due to the widespread publicity it has received, the OIM requested and received a special briefing on OPR's "Mobile Digital Terminal instant-message misconduct investigation." This MPD investigation focused on the inappropriate use of MPD's in-squad car e-mail system. The briefing, presented by Inspector Stanley Wigenton and Inspector Joshua Ederheimer, was very informative. While we did not conduct any investigation of our own on this topic or conduct any independent assessment of OPR's investigation beyond requesting this briefing, our brief review of this matter suggests that MPD has taken significant efforts to conduct a thorough and well-documented investigation into this matter.

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

#### **A. Requirements**

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

More specifically, the MOA requires the following:

- The development of a plan, in consultation with DOJ, that defines the roles and responsibilities of -- and the relationship between -- MPD and OCCR with regard to
  - Receiving, recording, investigating, and tracking complaints;

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<sup>21</sup> To facilitate our future reviews in this area, PricewaterhouseCoopers ("PwC") recently selected a partial sample of misconduct investigations that will be reviewed early in the next quarter. Concurrently, PwC will undertake a statistical analysis that will complete the sample and that will permit a thorough examination of OPR's misconduct investigation procedures.

- Conducting community outreach and education regarding making complaints against officers;
- Exchanging information between MPD and OCCR; and
- Defining the responsibilities of the MPD official who serves on the Citizen Complaint Review Board (“CCRB”).
- The provision of adequate funding and resources for OCCR to carry out its responsibilities as defined both by the MOA and the law creating OCCR;<sup>22</sup>
- The development of a plan to ensure that the investigative staff of OCCR is adequately trained, including training in a wide range of MPD policies and procedures;
- The development of a manual, in consultation with DOJ, for conducting OCCR complaint investigations, which should include timelines and investigative templates;
- The development and implementation of an effective program to inform citizens of their right to lodge complaints against MPD officers, which must include, among other things, the distribution of complaint forms, facts sheets, informational posters, and public service announcements, in English, Spanish, and any other languages appropriate for particular areas, which describe MPD and OCCR complaint processes;
- The broad availability of complaint forms and informational materials at OCCR, MPD headquarters, and various other MPD locations; through the Internet; and to community groups and community centers; and
- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.<sup>23</sup>

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<sup>22</sup> District of Columbia Law 12-208.

<sup>23</sup> The program must include at least the following elements: one open meeting per quarter in each of the patrol service areas for the first year of the MOA and one meeting in each patrol service area semi-annually in subsequent years. The purpose of these meetings is to inform the public about the provisions of the

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

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

In addition, the MOA sets forth a series of requirements for evaluating and resolving allegations of misconduct against MPD officers. These include establishing that a preponderance of the evidence standard should be applied in such investigations; that all relevant evidence should be considered and weighed, including the credibility of various witnesses;<sup>24</sup> and that the cases be resolved in one of several prescribed ways. Based on the investigation, the possible dispositions are “unfounded,” “sustained,” “insufficient facts,” or “exonerated.”<sup>25</sup>

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MOA and the various methods of filing a complaint against an officer. At least one week before such meetings, the City shall publish notice of the meeting as follows: (i) in public areas, including libraries, schools, grocery stores, and community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD Web sites; and (iv) in the primary languages spoken by the communities located in such areas. In order to enhance interaction between officers and community members in daily policing activities, the open public meetings must include presentations and information on MPD and its operations.

<sup>24</sup> The MOA makes clear that there should be no presumption that an officer's statement is entitled to greater weight than the statement of a civilian. MOA at ¶ 99.

<sup>25</sup> Although the meanings of “sustained” and “insufficient facts” are self-evident, the other dispositions may not be. “Unfounded” refers to cases in which the investigation found no facts to support the allegation; “exonerated” refers to

**Footnote continued**

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

## **B. Status**

Among other activities, we have monitored closely the interaction between MPD and OCCR over the course of the past eleven months. On September 28, 2002, MPD and OCCR entered into a Memorandum of Understanding (“MOU”) that was designed to comply with the requirement in paragraph 85 of the MOA that MPD and OCCR develop a “written plan” to define the roles and responsibilities of the two agencies in handling complaints against MPD officers. Due to the renegotiation of the timelines set forth in the MOA, this written plan was due by September 30, 2002.

The MOU, while a significant step forward for both parties, fell short of total compliance with the MOA. In particular, the MOU allows ten business days for OPR to notify OCCR about certain complaints, yet the MOA requires that this task be accomplished within twenty-four hours or the next business day. The MOU also provides little or no information about the community outreach and education requirements and the role and responsibility of the MPD official on the CCRB.

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

### **A. Requirements**

The MOA, as modified by the MOA Modification, requires that, by the week of November 17, 2002, subject to approval by DOJ, MPD must

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

revise and update its policy governing officer discipline.<sup>26</sup> Specifically, the policy must:

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

#### **B. Status**

As part of the revised deadlines negotiated by MPD and DOJ, the due date for MPD's Disciplinary General Order was revised to November 22, 2002. On that day, MPD stated it was unable to meet the deadline and committed to submit an order to DOJ by December 31, 2002. No order was submitted on that date either. According to MPD, the delay was due to a desire to engage the Fraternal Order of Police in a dialogue regarding the draft order before it is submitted to DOJ.

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

#### **A. Requirements**

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

- Promote civil rights integrity and best professional police practices;

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<sup>26</sup> MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

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

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

- All uses of force that must be reported on MPD's UFIR forms or that are the subject of an MPD criminal or administrative investigation;
- All police canine deployments;
- All officer-involved shootings and firearms discharge, whether on or off duty, and all other lethal uses of force;
- All reviews of use of force, including all decisions on whether the use of force was within MPD policy;
- All vehicle pursuits and traffic collisions;
- All complaints regarding MPD officers, whether made to MPD or OCCR;
- Chronologies and results of investigations, adjudications, and discipline relating to any of these matters;
- All commendations received by MPD about an officer's performance;
- All criminal, civil, and administrative proceedings initiated on the basis of MPD operations and the actions of MPD personnel; and
- With respect to each MPD officer, that officer's:
  - Educational history,

- Military service and discharge status,
- Assignment and rank history,
- Training history,
- All management and supervisory actions taken pursuant to review of PPMS information, and
- All instances in which a prosecution declination or a motion to suppress was based upon concerns about the officer's credibility or on evidence of a Constitutional violation by the officer.

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

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

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

## **B. Status**

MPD has made less progress in this area than in other areas of the MOA. In part, this lack of progress has been due to the City's delay in preparing and publishing a solicitation for a developer for the PPMS. MPD informed the OIM some time ago that it is working closely with the City's Office of Contracting and Procurement in order to select a developer. In the meantime, we have reviewed MPD's Performance

Assessment Management System (“PAMS”)<sup>27</sup> to determine the extent to which it meets the requirements set forth in the MOA. Our preliminary review of PAMS revealed a system that, while an improvement over past systems, fell far short of meeting the PPMS requirements of the MOA. PAMS does not capture the complete range of information required of PPMS, and, without some significant upgrades, PAMS will not attain the level of functionality required by the MOA.

We also tested the sufficiency and quality of the data in PAMS. We compared the data in 72 initial MPD complaint forms with the data entered into PAMS. The focus of this comparison was to identify whether there were data entry errors that resulted in material information being omitted or entered incorrectly into PAMS. While we found material errors in half of the files we reviewed, we also noticed that the later files -- particularly the 2002 files -- showed a marked improvement over the earlier files.

As of the end of the most recent reporting quarter, MPD and DOJ still had not negotiated a new timeline for the development of PPMS. MPD did, however, submit a draft Enhanced Performance Evaluation System protocol to DOJ in early November 2002;<sup>28</sup> and, as part of the negotiations for the PPMS deadline, MPD has submitted a proposed PPMS plan, estimated budget, and technical specification. DOJ has not yet commented on the draft. MPD also has stated its intent to implement a special order designed to enhance PAMS during the next quarter.

## **VI. Training (MOA ¶¶ 119-148)**

### **A. Requirements**

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

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<sup>27</sup> PAMS is an interim system intended to meet the MOA’s PPMS requirements during the creation of the PPMS.

<sup>28</sup> MPD has stated that it submitted the protocol to DOJ on November 8, 2002, although it acknowledges that it has no documentation to substantiate delivery on that date. DOJ represents that it received the protocol from MPD on November 12, 2002. The difference in dates is material in that the MOA Modification required MPD to submit the protocol by November 8, 2002.



## 1. Management Oversight

Regarding management oversight, MPD is required to have centrally coordinated the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.<sup>29</sup> MPD's Director of Training is responsible for overseeing the full scope of MPD's training program as it relates to the terms of the MOA, including:

- Ensuring the quality of all use of force training across MPD;
- Developing and implementing appropriate use of force training curricula;
- Selecting and training MPD trainers;
- Developing and implementing all in-service training and roll call curricula;
- Developing tools to evaluate all training;
- Developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;<sup>30</sup> and
- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

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

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<sup>29</sup> To ensure compliance with applicable law, training materials are to be reviewed by MPD's General Counsel or some other appropriate legal advisor. MOA at ¶ 120.

<sup>30</sup> The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

and to maintain updated and complete training records as to every MPD officer.

## **2. Curriculum**

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

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

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

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

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

Play training exercises to better focus discussions during the critique portion of the course.

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

### **3. Instructors**

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

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

### **4. Firearms Training**

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

officer service weapons, to obtain the most current information on cleaning, maintenance, and other factors that may affect the proper use of the weapon.

## **5. Canine Training**

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

### **B. Status**

Training its officers in the newly issued use of force policies was a major focus of MPD during the second half of 2002. Its initial training efforts, however, were seriously flawed. In its rush to begin the process, MPD failed to appropriately train its trainers on the policies. This led to severe problems with the early training courses because the trainers did not have an adequate understanding of the policies and could not adequately respond to officers’ questions. To its substantial credit, when we brought these concerns to MPD’s attention, including to Chief Ramsey’s personal attention, MPD took immediate action to correct the deficiencies, including providing the instructors with additional training and requiring that command level officials be available and present to answer questions during training sessions. MPD’s changes resulted in a marked improvement in the training.

The OIM also monitored MPD’s firearms training program. We found the actual shooting exercises and qualification courses to be extremely comprehensive, but we had some concerns with the classroom instruction and the instructional staff’s knowledge and understanding of the MOA. In particular, we were concerned about the instruction provided regarding paragraph 53 of the MOA, which requires officers to complete a UFIR form following the drawing and pointing of a firearm at, or in the direction of, another person. We also had a concern about an instructor’s recitation of an outdated use of force theory during one class. MPD reacted promptly to the problems we identified and modified the presentation by the next training class we attended.

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

### **A. Requirements**

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

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

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

#### **B. Status**

We have not yet monitored MPD's compliance with the SMU provisions of the MOA because DOJ has not yet approved MPD's SMU General Order. MPD provided comments on MPD's SMU General Order on January 31, 2003. We will begin monitoring this area as soon as practicable.

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

#### **A. Requirements**

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

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

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

#### **B. Status**

The MOA requires that MPD prepare quarterly public reports setting forth statistics relating to the use of force by MPD officers. While MPD's FIT maintains such statistics, it did not report them on a quarterly basis until recently. In an effort to respond to issues raised in our prior reports, MPD now makes such statistics available on its Web site and is working to resolve the few deficient areas noted by the OIM in its prior reports.

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

### **A. Requirements**

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

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

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

### **B. Status**

We are impressed with the useful information included in MPD's quarterly progress reports. We also continue to be very pleased with MPD's consistent responsiveness to our requests for documentation and for access to its facilities.

## Conclusion

The past eleven months have seen both successes and failures on the part of MPD. Successes have included the further development and refinement of the work of FIT, the development of numerous DOJ-approved policies and procedures relating to use of force, and the implementation of a substantially revised training program designed to incorporate the new use of force policies and procedures. Failures have included an inability to meet any of the deadlines set forth in the original MOA, a poorly implemented UFIR policy, and several MOA requirements with which MPD still does not comply.

Without downplaying the seriousness of the deficiencies or overplaying the significance of the successes, we have been -- and continue to be -- impressed with the level of commitment we have seen from MPD with respect to MOA compliance. The CMT appointed by Chief Ramsey has worked tirelessly to foster Department-wide compliance and has done an excellent job in this regard. Its ability to coordinate the actions of a multitude of MPD personnel while interacting with DOJ and responding to repeated document requests from the OIM is commendable. Additionally, we have been impressed with the commitment that we have seen in MPD's top management, including Chief Ramsey and his command staff.

In addition to all the specific requirements imposed by the MOA, which we will continue to monitor and address in our quarterly reports, the critical issue is whether the reforms incorporated into the MOA have been sufficiently understood and accepted by the MPD rank and file and are having the desired effect on the way in which they approach situations that may call for the use of force. After eleven months of monitoring MPD and its compliance with the MOA, our experience is not yet sufficient to provide an answer to this complex and important question. That is the real test of the MOA's reforms and one of the core



questions to which our various monitoring activities will continue to be addressed.



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February 24, 2003

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# Appendix A

## (Acronyms)

CCRB	Citizen Complaint Review Board
CDS	Curriculum Development Specialist
CMT	Compliance Monitoring Team
DOJ	Department of Justice
FIT	Force Investigation Team
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding
MPD	Metropolitan Police Department
OC	Oleoresin Capsicum
OCCR	Office of Citizen Complaint Review
OIM	Office of the Independent Monitor
OPR	Office of Professional Responsibility
PAMS	Performance Assessment Management System
PPMS	Personnel Performance Management System
PwC	PricewaterhouseCoopers
SMU	specialized mission unit
UFIR	Use of Force Incident Report
UFRB	Use of Force Review Board
USAO	United States Attorney's Office