

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

Michael R. Bromwich
Independent Monitor



Office of the Independent Monitor
Fried, Frank, Harris, Shriver & Jacobson
Suite 900
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
202.639.7472
mpdmonitor@ffhsj.com
<http://www.policemonitor.org>



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Independent Monitoring Team

Independent Monitor

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

Deputy Independent Monitor

Jonathan S. Aronie
Fried, Frank, Harris, Shriver & Jacobson

Fried Frank Monitoring Team

Melissa E. Lamb
Ngoc D. Pham
John E. Sedlak

Police Practices Experts

Chief Mitchell W. Brown
Raleigh Police Department (retired)

Captain Ronald L. Davis
Oakland Police Department

Chief Dennis E. Nowicki
Charlotte-Mecklenburg Police Department (retired)

Statistical and Data Analysis Consultants

Dr. Jessica Pollner
PricewaterhouseCoopers LLP

Arthur P. Baines
PricewaterhouseCoopers LLP

Monitoring Team Staff

Elizabeth Avery
Mary Ferguson
Angela Robinson

Executive Summary

OVERVIEW

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

This report summarizes the OIM’s monitoring activities undertaken from January 1, 2003 through March 31, 2003 and MPD’s and the City’s compliance activities undertaken during that same period, although, at times, we refer to activities outside that period if necessary to place events and developments in proper context.

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

Use of Force and Use of Force Incident Report Policies

During the last quarter of 2002, MPD began implementing its Use of Force General Order. We noted in our Third Quarterly Report the successes and failures of MPD’s implementation activities, focusing on the training of rank and file MPD personnel on the new use of force policies. MPD made significant improvements in its training efforts this quarter, substantially remedying some of the prior shortcomings by addressing use of force training to MPD supervisors at the rank of sergeant and above, who are best positioned to correct confusion or misunderstanding that exists among rank and file officers regarding the use of force policies and related issues. We found this training program to be generally well designed and properly implemented. While our monitoring revealed some continued confusion and concern among a significant number of MPD officers regarding the Use of Force Incident Report (“UFIR”), which continues to cause some officers not to complete

UFIRs in circumstances where MPD policy requires that they do so, we found that MPD has taken steps to address this situation. The result, according to statistics provided by MPD, has been that the number of uncompleted UFIRs has been dramatically reduced from 70 to 6. Our continuing interviews with MPD officers and supervisors also indicated that they have increasingly become fully aware of --and more comfortable with -- MPD's UFIR requirements.

Other Use of Force Policies

During this quarter, the OIM focused special attention on MPD's Canine Unit. At the same time, MPD's Force Investigation Team ("FIT") conducted its own independent review of canine operations. FIT's preliminary review found that 11 of 17 canine bites that occurred in 2002 came from one canine unit, 7 bites occurred during "on-lead tracks,"¹ and 6 bites occurred without the canine handlers giving a warning. In light of these findings and on its own initiative, MPD took corrective action, including reorganizing the canine unit and referring one handler to the Institute of Police Science for additional training.

Our initial review of MPD's canine program found that the small number of bites that occurred in 2002 is a marked and significant improvement in the operation of the program, but that there still is significant opportunity -- and need -- for further improvement. While MPD's 15.5 percent bite/apprehension ratio² is not inconsistent with the data recorded by other major city police departments³ and is a significant improvement of the MPD bite ratio prior to the execution of the MOA, we did identify certain problems within the Canine Unit. These problems emerged during the course of our general monitoring activities and came

¹ The phrase "on-lead track" refers to a situation where a canine is deployed to locate a suspect without being removed from its leash.

² A bite/apprehension ratio is the number of bites that occurred during an apprehension divided by the total number of apprehensions involving a police canine.

³ We recognize that, because the policies, practices, and procedures of canine programs vary widely, the use of such data should not replace individualized analyses of each canine program. We provide such comparative information on bite/apprehension ratios simply to give context to the MPD statistics. We do not suggest that what is an appropriate ratio in one city necessarily would be appropriate in another city with different policies, practices, and enforcement issues.

even more clearly into focus as a result of our interviews with canine officers and command staff and our reviews of the FIT investigations of canine bites.

One problem area relates to the meaning of “Handler-Controlled Alert Methodology” -- the phrase the MOA uses to define how MPD’s canines are trained to behave upon locating a suspect. Despite extensive negotiations before this phrase was adopted, MPD and DOJ have different, and somewhat conflicting, understandings of MPD’s canine methodology. MPD personnel seem to view the phrase as meaning something different from the “find and bark” policy that DOJ understood was embodied in the MOA. We find there is a pressing need for MPD and DOJ to clarify the meaning of “Handler-Controlled Alert Methodology” and the obligations that this phrase creates for canine handlers. Our review of canine-related reports and interviews suggests that MPD’s canines appear not to be consistently handled in conformity with a methodology that seeks to reduce, to the maximum extent possible, the number of bites by MPD canines -- whether that methodology is called “Handler-Controlled Alert Methodology,” which MPD believes is distinct from “find and bark,” or “find and bark.” More specifically, in some cases, handlers have allowed bites in circumstances where the bite might have been avoided had other, more modulated approaches been considered.

Use of Force Investigations

As of the close of this reporting period, we had reviewed all preliminary and final FIT reports. Once again, the investigations were of high quality and, with minor exceptions, well done. We continue to be favorably impressed with the quality, thoroughness, and consistency of FIT’s investigations. As we have noted in previous reports, FIT still needs to assess, or report, whether officers immediately contacted their supervisor following any use of force and whether the involved officer was impaired by drugs or alcohol. In addition, a few of the final FIT reports we reviewed were not completed promptly enough and there were no documented special circumstances to justify the delay.

We also continued to review a random sample of misconduct investigations conducted by the Office of Professional Responsibility and by chain of command officials. Overall, the quality of these investigations was not of the same high quality as the FIT investigations; in fact, as to a small number of these investigations that we reviewed, which are more specifically described in the body of the report, we need to conduct further reviews during this coming quarter to determine

whether the flaws in the investigation are so serious as to warrant that they be reopened and reinvestigated.

Among the problems we identified were failures to interview all persons with information related to the complaint and failures to comply with the requirement that MPD consider all available evidence and make credibility determinations without giving an automatic preference to police officers when the statements of officers and civilians conflict.

Various manuals and General Orders related to use of force investigations were worked on and/or approved this quarter. DOJ approved MPD's Use of Force Review Board General Order on January 31, 2003 (which MPD reported distributing on February 21, 2003) and MPD's Office of Internal Affairs Operational Manual on March 26, 2003.

Receipt, Investigation, and Review of Misconduct Allegations

MPD, the Office of Citizen Complaint Review ("OCCR"), and DOJ have been working to address certain unresolved issues contained in the Memorandum of Understanding ("MOU") previously negotiated by MPD and OCCR. They expect to sign a revised MOU during the next quarter.

During this quarter, we continued monitoring MPD's and OCCR's compliance with the terms of the MOU as currently drafted. After reviewing OCCR investigation files and interviewing OCCR executive personnel, we found that OCCR appears generally to be complying with the MOA and the MOU and that MPD has made significant improvements in terms of its compliance with OCCR-related matters. While MPD timely responds to OCCR document requests and MPD witnesses generally attend OCCR interviews, MPD does not comply with most of the notification requirements.

MPD and OCCR submitted and received comments on several draft orders, policies, and manuals, including MPD's Community Outreach Program for Filing Citizen Complaint Special Order, MPD's Citizen Complaint General Order, and OCCR's draft investigation manual.

Discipline and Non-Disciplinary Actions

MPD's Disciplinary General Order was due on October 11, 2001, but that deadline was extended to the week of November 17, 2002 by the MOA Modification, agreed to on September 30, 2002. Thereafter, MPD advised DOJ that it was unable to meet that deadline and committed to

submitting the draft order by December 31, 2002. Again, MPD advised DOJ that it was unable to meet the deadline and has not yet committed to another date. MPD has explained that the multiple delays have been attributable to its efforts to work with the Fraternal Order of Police on issues addressed in the draft order. MPD now expects to submit to DOJ a revised General Order before the end of April, along with a list of any unresolved issues.

Personnel Performance Management System (“PPMS”)

As of the end of this quarter, MPD and DOJ still had not negotiated a new timeline for the development of PPMS. While MPD has committed to develop a project plan and a staffing plan by May 15, 2003, DOJ had not yet commented on this proposed timeline by the end of this reporting period. As part of its effort to make progress on the PPMS project, MPD reorganized its Information Technology Division and appointed personnel specifically responsible for the PPMS project. MPD faces enormous challenges in moving forward with the PPMS project. MPD needs substantially to increase its efforts to formulate an acceptable schedule for the development, implementation, and testing of the PPMS that approaches the issues of funding and resources in a way that reflects a realistic view of the commitment necessary to complete this massive project promptly and without sacrificing quality.

Training

As noted above, MPD implemented during the last quarter a specialized training program for supervisors at the rank of sergeant or above, which consisted of intensive training in each district regarding MPD’s new use of force policies. Overall, we were impressed with the program and the resources that MPD dedicated to it. The one consistent flaw was that instructors repeatedly referred to the new policies and procedures as “works in progress” and subject to change, which tended to undercut the importance of the information being conveyed.

OIM also met with and “rode along” with officers and supervisors in a continuing effort to monitor the rank and file’s understanding of the MOA. While the level of comprehension varied by district, the officers generally had a good working knowledge of the MOA.

Monitoring, Reporting, and Implementation

On April 7, 2003, MPD published its quarterly MOA progress report. We continue to find that these reports are of a high quality. We

also continue to be impressed with MPD's responsiveness to requests and their willingness to provide us with access to records, personnel, and facilities.

Conclusion

Now that most of the use of force policies have been approved and initial implementation has occurred, MPD has focused on increasing understanding of the policies and conducting other compliance-related activities. The quality of MPD's compliance-related efforts are particularly noteworthy this quarter given the demands on its personnel because of the state of emergency MPD declared in connection with the war in Iraq, the MPD resources devoted to dealing with war-related demonstrations in the City, and the heightened concern over possible acts of terrorism in the area. Nevertheless, there still are fundamental MOA-related issues that MPD -- as well as the City, and OCCR -- must address.

During this quarter, and throughout the past year since the OIM began its work, MPD has demonstrated a sustained and substantial commitment to complying with the MOA's requirements. We fully appreciate the magnitude of the compliance-related activities undertaken by MPD, as well as by other City agencies -- most notably, OCCR. MPD has made excellent progress in many of the most significant areas covered by the MOA. This progress has brought MPD and the City in some cases into full compliance with certain central MOA provisions -- particularly with regard to the formulation of approved policies, procedures, and manuals -- and significantly closer to complying with a broad range of MOA provisions than was the case a year ago. For progress of the magnitude we have observed over the past year to continue, MPD and the City will need to sustain the same level of commitment they have demonstrated during the past year.

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Appendix A: Acronyms

Introduction

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

This report covers the period January 1, 2003 through March 31, 2003, during which MPD engaged in a broad array of MOA-related compliance activities. MPD submitted multiple revised policies to DOJ, planned and implemented a comprehensive MOA training program for officers and commanders at the rank of sergeant and above, renewed its efforts to comply with the MOA requirements regarding the implementation of a Personnel Performance Management System (“PPMS”), worked closely with the Office of Citizen Complaint Review (“OCCR”) to resolve problems with a previously executed Memorandum of Understanding (“MOU”), and conducted an independent analysis of its canine program. At the same time, MPD’s Compliance Monitoring Team (“CMT”) met frequently with, arranged interviews for, and responded to numerous document requests from the OIM and DOJ.

Our observations over the past quarter confirm our general experience over the past year that MPD has been working in good faith to comply with the requirements of the MOA and has made significant progress toward MOA compliance.

MPD’s commitment to MOA compliance is especially notable when considered against the backdrop of current world events. During this quarter, the United States went to war with Iraq. As a result of this war and the consequent heightened threat of domestic terrorism against the United States and specifically against potential targets in the D.C. area, on March 19, 2003, Police Chief Charles H. Ramsey issued a declaration

of emergency, which, among other things, required officers to work extended shifts and resulted in the deployment of many officers performing administrative and support functions into the field.⁴ MPD is to be commended for the efforts it took to ensure that its MOA compliance activities did not suffer during this difficult period.

The OIM engaged in a wide range of monitoring activities during this quarter. In addition to our recurring monthly monitoring activities (e.g., Force Investigation Team (“FIT”), Office of Professional Responsibility (“OPR”), chain of command, and OCCR investigation reviews), we conducted an in-depth review of MPD’s canine unit, attended a number of MPD training programs, met with a wide range of MPD officers and supervisors, and monitored a number of MPD activities “in the field,” including two Focus Mission Unit (“FMU”) deployments.⁵

This report marks the conclusion of the first year of the OIM. In our first twelve months of operation, we have enjoyed an exceptionally positive working relationship with MPD, OCCR, and DOJ. Despite the long road ahead in achieving full compliance with the MOA, we consistently have been impressed with the commitment of all of the participants to making this project a model for undertaking and implementing significant reforms in policing. We look forward to continuing to work together with MPD, DOJ, and the other participants in this process during the coming year.

⁴ MPD rescinded the declaration of emergency on April 15, 2003.

⁵ We also experienced some significant staffing and administrative changes. Jonathan Aronie was named Deputy Monitor in recognition of the central contribution he has made to the monitoring effort since its inception. Jacqueline Stephens Eggert left Fried Frank and the OIM monitoring team to accept a job with the United States Securities and Exchange Commission as an attorney in its Enforcement Division. We want to express our gratitude and appreciation for the significant contributions Ms. Eggert made to the OIM over the past year. Finally, Ngoc Pham, a litigator who joined Fried Frank in 2002 following her graduation from the University of North Carolina School of Law, has joined the monitoring team.

Compliance Assessment

This report is organized in a manner consistent with the structure of the MOA, but with a variation in structure compared with our prior reports. As in prior reports, we first summarize the requirements imposed by each section of the MOA; then we provide the current status of MPD's progress toward compliance with those requirements. Unlike in prior reports, however, we have incorporated our analysis and assessment of factors that have impeded or advanced MPD's progress, along with additional information we believe relevant, into this "Status" section. We have added a new "Recommendations" section following each Status section. While our previous reports included recommendations where appropriate, they were combined within our overall analysis and assessment of each issue. We believe that this new structure will make our reports more accessible and useful to MPD and the other participants in this process.

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.⁶

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;

⁶ MOA at ¶ 169.

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

2. Status And Assessment

In our last quarterly report, we devoted substantial attention to discussing the successes and failures of the implementation activities associated with MPD's Use of Force General Order. Among other things, we concluded that "MPD's roll-out of the Use of Force General Order was not as effective as it could have been primarily because MPD's initial efforts to train its officers were poorly coordinated and executed."⁷ Based on our observations over the past quarter, MPD has made significant progress on the implementation of the Use of Force General Order and related matters.

In an effort to remedy the deficiencies in its initial training effort, MPD created and conducted a special training program for supervisors at the rank of sergeant and above. This program, which was conducted by the Institute for Police Science ("IPS") and FIT, involved a detailed lecture, practical questions and answers, and a very clear and effective 18-minute video presentation featuring Chief Ramsey. While we discuss the details of this training program later in this report, our monitoring

⁷ OIM Third Quarterly Report at 5.

suggests that this program has played a significant role in remedying some of MPD's prior implementation failures. Indeed, had this higher-level training been conducted earlier, before the training was rolled out to rank and file officers in MPD's in-service training program, some of the problems associated with that training -- and some of the confusion in particular relating to the Use of Force Incident Report ("UFIR") -- might have been significantly reduced.

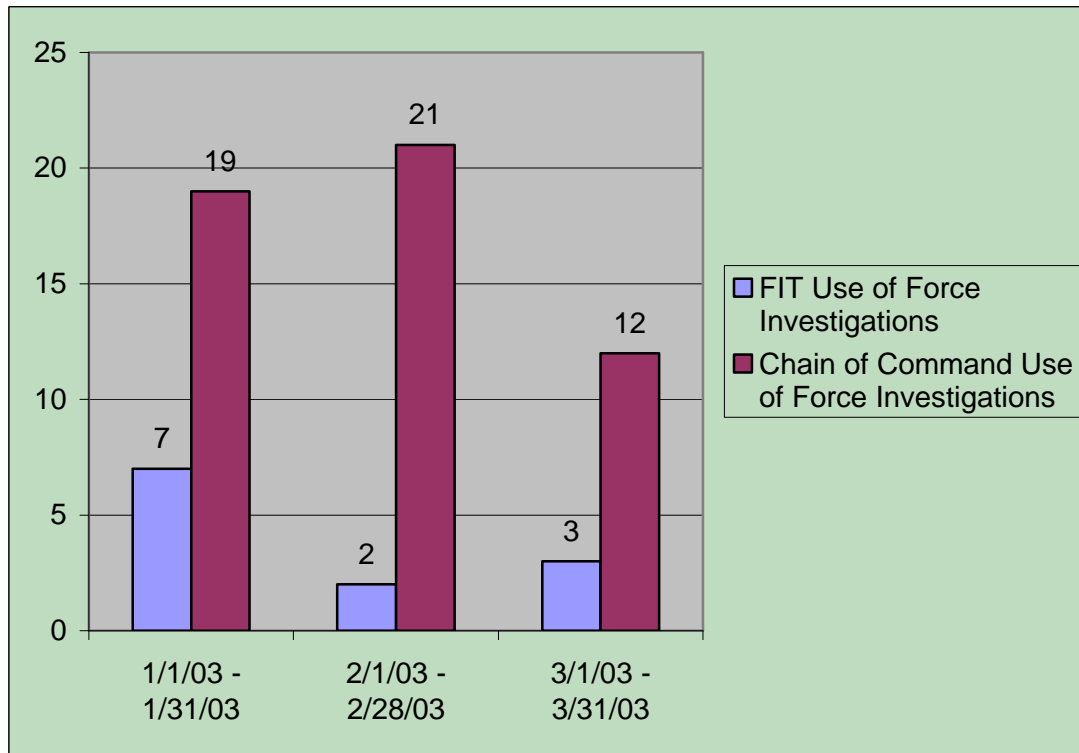
In addition to monitoring this use of force training, the OIM also spent significant time this quarter meeting with officers and assessing their understanding of (and willingness to comply with) the requirements of the MOA. As part of this effort, we participated in a series of "ride-alongs" with MPD specialized mission units ("SMUs") -- specifically, the Focus Mission Units ("FMUs") of the Third and Seventh Districts. We chose to monitor the activities of the FMUs because the nature of their activities makes it relatively likely that they will use force in the performance of their duties.

Both of our FMU ride-alongs involved narcotics "buy-bust" operations, using an undercover officer to purchase drugs from drug dealers with "marked" money, and then arresting those dealers. In total, we monitored three buy-bust operations this quarter.

We observed a high level of planning for each of the operations we witnessed. The quality of the preparation plainly played a large part in the success of the operations. In this context, we define success as meaning that no officers were hurt, many suspects were arrested, and *not a single use of force or pointing of a firearm occurred*. Once the undercover officer purchased the drugs using the marked money, a signal was given for the other officers to emerge from their hiding places, approach the suspects, and make arrests. On one occasion, as the officers approached the suspect, the suspect began to run. Upon discovering that his avenues of exit were blocked, he surrendered without incident. On another occasion, the suspect initially retreated into his residence, but then surrendered to MPD at his door without incident.

While these observations of the two SMUs obviously do not demonstrate that MPD, as a whole, has cured its prior use of force problems, they certainly are relevant to an overall assessment and suggest positive movement along the path to compliance with the terms

of the MOA.⁸ MPD’s use of force statistics reflect similar positive movement. In February 2003, FIT reported that MPD investigated 23 uses of force. As the following chart illustrates, this figure is approximately equal to the number of uses of force investigated by MPD in January.⁹ In March, however, MPD’s uses of force declined to only 15.



Source: FIT Monthly UFIR Report to OIM.

The foregoing data were obtained from FIT; therefore, their accuracy depends upon the quality of MPD’s use of force reporting

⁸ As discussed in our Special Report, dated June 10, 2002, MPD has acknowledged its prior use of force-related problems on several occasions. The Organizational Plan and Operations Manual of MPD’s Force Investigations Team (“FIT”), published in December 2001, for example, notes that, “[i]n the past, it had become clear that the Metropolitan Police Department had not met community expectations, nor police industry standards, as it related to use of force and subsequent use of force investigations.” FIT Organizational Plan and Operations Manual at 1.

⁹ In January 2003, the OIM requested and began receiving monthly reports from MPD setting forth the number of reported MPD uses of force for the preceding month and the number of UFIRs completed during the same period.

practices. A use of force about which FIT is unaware will not be reflected in the table shown above. While we have not yet assessed the accuracy of FIT's statistics, we intend to do so in the near future. Specifically, in order to ensure that all uses of force are being reported to FIT (whether or not FIT ultimately investigates the use of force), we intend to conduct the following activities:

- We currently are in the process of reviewing 50 citizen complaint investigations selected at random. We intend to compare those complaints alleging a use of force by MPD to the data maintained by FIT.
- As described later in this report, over the course of the next quarter, we will be reviewing a stratified sample of 240 misconduct investigations, many of which will involve the use of force or an allegation of the use of force.¹⁰ Again, we intend to compare these investigations to the data compiled and maintained by FIT.
- Later this year, we intend to review a sample of arrest reports (*i.e.*, PD-163s). We will use this review to identify those arrests that involved the use of force. We then will compare those incidents to the data maintained by FIT.

In the end, we hope to determine the reliability of the use of force figures reported quarterly by FIT and whether, in fact, they encompass all MPD uses of force.¹¹

Finally, it should be noted that, since MPD only began reporting use of force data in this fashion to the OIM in January 2003, it still is too early to draw any conclusions regarding a trend. Likewise, since use of force statistics on a national level are not readily available, it also is

¹⁰ With the cooperation of MPD and DOJ, PricewaterhouseCoopers has designed a sampling methodology and is in the process of selecting the actual sample of investigations for our review.

¹¹ We note that, during this quarter, we attempted to compare the FIT use of force data to the use of force data maintained by MPD in its Performance Assessment Management System ("PAMS") database. Because PAMS tracks allegations of uses of force as well as actual uses of force, this comparison proved impracticable. We recommend that MPD evaluate whether it has the capability of using PAMS in some way to track actual uses of force.

premature to assess whether MPD's statistics are equivalent to those that might be expected in a major agency of a similar size. The OIM plans to evaluate this issue in greater detail in a coming quarter. This evaluation, where possible, will take advantage of use of force data maintained by the International Association of Chiefs of Police and the DOJ Bureau of Justice statistics.

3. Recommendations

Our discussions with FMU officers during our ride-alongs suggest that SMU officers are afforded no specialized training. Paragraph 156 of the MOA, however, states that

MPD shall continue to provide specialized pre-service training to specialized mission unit participants to ensure compliance with current Fourth Amendment, Equal Protection law, and address the desired knowledge, skills, and abilities of the officers participating in the program.¹²

We recommend that MPD take steps to assess the level of specialized training offered to all of its SMUs and implement such additional training if necessary. We plan to monitor MPD's compliance with this requirement in greater depth following DOJ's approval of MPD's Special Mission Unit General Order.¹³

We further recommend that MPD take steps to ensure that its SMUs are adequately staffed. One FMU supervisor we interviewed explained that his unit's sergeant has been on leave for over one year. Due to the high-risk nature of these job assignments, adequate supervision is a necessity. Although the units we monitored performed extremely well, operating under the experienced eye of a supervisor is not only advisable but necessary. Indeed, this is precisely why the MOA requires that MPD provide a "sufficient number of skilled supervisors to

¹² MOA at ¶ 156.

¹³ As discussed more fully at page 73, DOJ provided comments on MPD's draft SMU General Order on January 31, 2003 and currently is awaiting MPD's response to those comments.

ensure adequate supervision of officers assigned to a specialized mission unit.”¹⁴

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

¹⁴ MOA at ¶ 154.

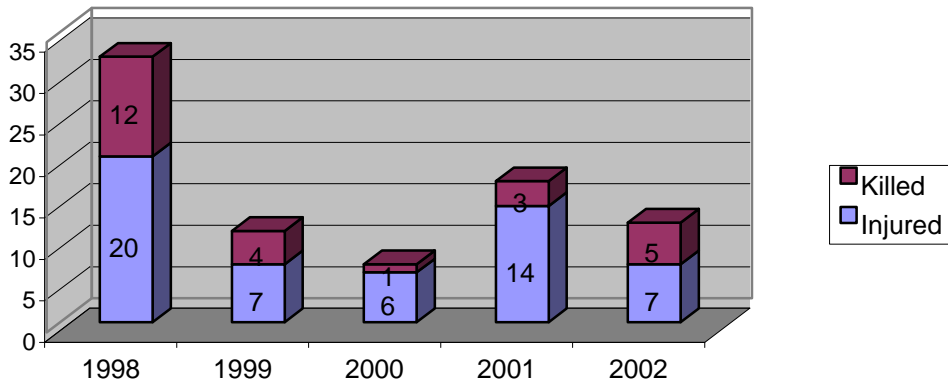
restrictions applicable to situations in which an officer’s performance may be impaired.

2. Status And Assessment

a. Use of Firearms Generally

The truest measure of a successful use of firearms policy would be an actual decline in the number of police shootings without a corresponding decline in apprehensions or officer safety. We intend to undertake such a statistical evaluation in a future quarter. For now, however, it is useful to consider the statistics reported by FIT regarding intentional firearms discharges at people by members of MPD.

MPD Police Shootings



Source: Force Investigation Team 2002 Annual Report.

These statistics -- at least subsequent to 1998 -- are encouraging, in part because of the declining numbers since 1998. Twelve police shootings during 2002 in a city the size of Washington, D.C. is not a large number in absolute terms. Additionally, we believe that these statistics must be considered in the context of the number of MPD apprehensions that took place during the same time period. The following table illustrates this relationship:

Year	MPD Discharge of Firearm	MPD Apprehensions	% of Apprehensions Involving Discharge
1998	32	59802	0.05%
1999	11	56091	0.02%
2000	7	54481	0.01%
2001	17	47376	0.04%
2002	12	43345	0.03%

Source: MPD Force Investigation Team 2002 Annual Report and Office of Professional Responsibility letter to OIM dated April 17, 2003.

While we recognize that other relevant issues must be considered in order to evaluate fully MPD's firearms discharge statistics (such as discharges per felony arrests or discharges compared to arrests of armed suspects), this table provides useful information to begin that assessment.

Finally, it should be noted that FIT conducted a thorough review of each of the 2002 police shootings and determined that all were within MPD policy. More recently, the OIM independently reviewed each FIT shooting investigation and found no need to require any to be reinvestigated.¹⁵

b. Handling of Service Weapons Policy

DOJ approved MPD's Handling of Service Weapons General Order in September 2002. MPD circulated the new policy throughout MPD in conjunction with the circulation of its new Use of Force General Order during late October and early November 2002. With respect to the implementation of the Handling of Service Weapons General Order, we so far have limited our activities to reviewing MPD's firearms training program. We intend to monitor MPD's compliance with this General Order in greater detail during a future quarter.

¹⁵ Pursuant to paragraph 172 of the MOA, "MPD shall reopen for further investigation any misconduct investigation the Monitor determines to be incomplete."

c. Off-Duty Service Pistol Authorization Amendment

On June 4, 2002, the District of Columbia City Council approved an amendment that permits MPD's Chief of Police to designate his own policy as to when off-duty officers are required to carry their service pistols in the City. The amendment, entitled the "Off-Duty Service Pistol Authorization Amendment Act of 2002," was contained in the Fiscal Year 2003 Budget Support Act of 2002.¹⁶ Mayor Anthony Williams signed the bill on July 3, 2002, and it became law on October 1, 2002. While MPD states that it is "working on the development of a policy to address the amendment,"¹⁷ as of the end of the current reporting quarter, MPD had not issued an order specifying circumstances under which off-duty officers are required to carry their service weapons.

3. Recommendations

We recommend that MPD expedite its efforts to craft an acceptable policy regarding the carrying of service weapons while off duty. Such policies exist in most modern police departments across the country. Examples of model policies are available through the IACP and other large city departments.

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;

¹⁶ D.C. Council Legislation Number B14-0609.

¹⁷ Memorandum of Agreement Progress Report, dated April 7, 2003 ("MPD April 2003 Progress Report"), at 8.

- Requires supervisory approval for all canine deployments -- either a canine unit supervisor or a field supervisor;¹⁸
- Ensures that suspects are advised through a loud and clear announcement that a canine will be deployed, that the suspect should surrender, and that the suspect should remain still when approached by a canine; and
- Ensures that, in all circumstances where a canine is permitted to bite or apprehend a suspect,
 - The handler calls the canine off as soon as the canine can be safely released, and
 - MPD ensures that any individual bitten by a canine receives immediate and appropriate medical treatment.

2. Status And Assessment

During this quarter, the OIM focused special attention on MPD's canine unit. In conjunction with this review, FIT conducted its own independent review of MPD's canine operations. By FIT's own admission, the preliminary results of its review were troubling.

According to FIT, 17 canine bites occurred during 2002. While this figure does not by itself constitute an alarmingly high number of bites when compared to the number of deployments and apprehensions during the same period (see table later in this section), FIT's (and our) review of the MPD canine program found other causes for concern. Specifically, 11 of the 17 bites occurred within a single canine unit, 7 of the 17 bites occurred during "on-lead tracks," and 6 of the 17 bites occurred without a warning being given by the canine handler.¹⁹

¹⁸ The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.

¹⁹ An "on-lead track" is a canine deployment where a canine is used to locate a suspect without being removed from its leash. According to the Canine Teams General Order approved by DOJ in accordance with the MOA, an on-lead track is a "non-aggressive," "non-tactical" use of a canine. Canine Teams General Order (GO-RAR-306.01) at 4.

In light of these findings, and prior to the conclusion of the OIM's independent review, MPD took corrective action. Among other things, the commander of the Special Operations Division ("SOD") reorganized the entire Canine Unit to enhance supervision, equalize workload of canine teams, and reduce overexposure of certain teams to high risk canine activities. Additionally, the SOD commander also referred one canine handler to IPS for additional training. Notably, these actions were taken at MPD's own initiative -- the OIM had reached no conclusion regarding the Canine Unit at the time these actions were taken by the SOD commander.

Having completed our initial review of MPD's canine program, we can draw our own conclusions regarding that program. In short, while we find that the small number of canine bites occurring in 2002 reflects marked and commendable improvement in the operation of MPD's Canine Unit, we also find that MPD's canine program has some issues -- both definitional and operational -- that need to be addressed. We note in this regard that a central issue is the confusion regarding the meaning of the term "Handler-Controlled Alert Methodology" -- the methodology identified in the MOA in which all MPD canine handlers should be trained.

a. Statistics

From the third quarter of 2001 through the end of March 2003, MPD had 17 canine bites out of 110 canine apprehensions. The following chart illustrates these figures and shows the bite/apprehension ratio for each quarter since late 2001.²⁰

²⁰ It is generally accepted that a "bite to apprehension ratio" is the appropriate standard to measure the level of force used by a police canine. See, e.g., *Kerr v. City of West Palm Beach*, 875 F.2d 1546 (11th Cir. 1989).

Quarter	Apprehensions	Bites	Bites as % of Apps.
2001_3	1	0	0.0%
2001_4	19	1	5.3%
2002_1	18	3	16.7%
2002_2	11	3	27.3%
2002_3	18	3	16.7%
2002_4	22	2	9.1%
2003_1	19	5	26.3%
2003_2	2	0	0.0%
Total	110	17	15.5%

Source: MPD Canine Unit

While there obviously was some variance between the number of bites in the various calendar quarters we reviewed, a 15.5 percent bite/apprehension ratio is not a disturbingly high number and is generally consistent with the ratio experienced in other major city police departments.²¹ Police experts generally agree that a bite/apprehension ratio of less than 30 percent is acceptable²² (although, as DOJ has pointed out, many tightly run canine programs have a bite ratio of no more than 10 percent.²³) Moreover, a 15.5 percent bite ratio represents a significant improvement over MPD's bite ratio prior to the execution of the MOA, as reflected in DOJ's Findings Letter to Chief Ramsey:

In response to our recommendations, MPD has initiated ambitious reforms to its canine program, including adopting a “find and bark” program, purchasing new canines, limiting the circumstances in which it allows deployment,

²¹ As noted in the Executive Summary of this report, since canine programs and the environment in which those programs are run vary from city to city, we do not mean to suggest that there is a single “appropriate” national bite/apprehension ratio. The use of such data should not replace individualized analyses of each canine program. We provide such comparative information on bite/apprehension ratios simply to give context to the MPD statistics. We do not suggest that what is an appropriate bite ratio in one city necessarily would be appropriate in another city with different policies, practices, and enforcement issues.

²² See, e.g., *Kerr v. City of West Palm Beach*, 875 F.2d 1546 (11th Cir. 1989) (“These experts indicated that less than thirty percent of apprehensions should, on average, result in a bite.”).

²³ Letter from William R. Yeomans to Charles H. Ramsey (June 13, 2001) (“DOJ Findings Letter”).

requiring supervisory approval prior to deployment, and providing enhanced training to handlers and canines. As a result of this work, MPD's bite ratio has decreased from nearly 70 percent to slightly over 21 percent. If MPD continues with planned reforms in its canine operations, the ratio should continue to decline.²⁴

The data reflect the accuracy of this prediction.

The decline in the bite ratio, however, does not tell the entire story. Our review revealed certain systemic problems within the MPD Canine Unit that warrant MPD's immediate attention. These problems are discussed below.

b. Confusion Regarding Canine Methodology

Prior to the issuance of the MOA, DOJ identified the following deficiencies regarding MPD's use of canines to Chief Ramsey:

Our investigation revealed that MPD's policies and practices related to deployment of canine units resulted in bites nearly 70 percent of the time the canines were deployed between 1996 and 1999. By comparison, in tightly run police canine programs, bites occur in only about 10 percent of deployments. At MPD, the bites resulted from a "find and bite" policy, allowing dogs to bite the subject upon locating him or her. The bites also resulted from inadequate training for canine handlers regarding appropriate control of the dogs.²⁵

At the same time, DOJ made the following recommendation:

We recommended that MPD adopt a "find and bark" policy, requiring the dog to bark, rather than bite, upon locating the subject. We also

²⁴ *Id.*

²⁵ *Id.*

recommended that MPD limit the circumstances in which canines may be deployed; to require supervisory approval prior to deployment; to require greater handler control of the dogs; to improve its practices related to verbal warnings prior to deployment; to prohibit biting passive resisters; and to require handlers to order the dog to release a bite as soon as possible.

In addition, we recommended improvements in the manner in which MPD reviews and investigates canine bites to ensure that they are treated as serious uses of force and receive heightened scrutiny.²⁶

DOJ's concerns regarding MPD's Canine Unit and its desire that a "find and bark" methodology be adopted by MPD are reflected in the spirit of the MOA ultimately negotiated and executed by both parties. Instead of incorporating the phrase "find and bark," however, the parties agreed to use the phrase "Handler-Controlled Alert Methodology." In correspondence between DOJ and then-Assistant Chief Terrance W. Gainer, MPD assured DOJ that there was no substantive difference between the two designations.²⁷ The MOA contains no discussion regarding the meaning of the phrase or the relationship between the two policy labels, *i.e.*, "find and bark" and "handler-controlled alert methodology."

²⁶ *Id.*

²⁷ *See, e.g.*, letter from Terrance W. Gainer to Steven Rosenbaum (Dec. 4, 2000), noting that MPD's approach actually "exceed[s] the benefits of bark and bay. Our new approach put the canine under total control of the handler. The canine is never out of the handler's vision; if while unleashed the canine gets ahead or around a corner -- the canine is recalled. Under this regimen the canine would not attack even if the subject runs or moves unless ordered, or the handler is attacked." In its comments on the draft of this report, however, MPD states emphatically that, in its view, there "is a distinction between 'bark and guard' and 'handler-controlled alert methodology.'" ("Bark and guard" and "bark and bay" are equivalent to "find and bark.") The particular substance of this difference still is unclear to the OIM. Whatever the difference, however, it is clear to us that neither the "find and bark" approach nor the "Handler-Controlled Alert Methodology" approach permits a canine to bite a suspect without explicit direction from the handler except in exceptional cases.

During the course of our work this quarter, the OIM became aware that MPD and DOJ had different -- and, in some cases, conflicting -- understandings of MPD's canine methodology. We also became aware that there appear to be significant differences between MPD's new canine policy and DOJ's understanding of a "find and bark" policy.

MPD's Canine Teams General Order (GO-RAR-306.01), issued October 7, 2002, defines "handler-controlled alert methodology" as follows:

Handler-Controlled Alert Methodology – The training methodology employed by MPD that results in both the canine and handler being trained to the point that the handler has demonstrated total control over the canine's actions. The canine will only engage upon handler command except under two very limited circumstances: protecting the canine handler from possible attack and gunfire.

When questioned about this definition, several members of the Canine Unit asserted that MPD's current methodology is no different from the methodology employed prior to the adoption of the new policy. "It was just a change in label," said one.²⁸ When presented with DOJ's understanding that the term "handler-controlled alert methodology" was equivalent to the term "bark and bay" or "find and bark," other handlers objected to the suggested equivalency. One handler protested that such a policy would put officers at risk "since canines trained like that are unable to be aggressive [*i.e.*, to bite] when necessary to protect the handler."

In light of the apparent confusion regarding the Handler-Controlled Alert Methodology, the OIM invited MPD's SOD commander to attend the the OIM's monthly MOA meeting on April 7. Prior to the meeting, we requested clarification from DOJ regarding its understanding of the

²⁸ This statement, while apparently reflecting the views of at least one canine handler, is not what DOJ thought was the case when it commended MPD for initiating "significant improvements in its canine operations, including the introduction of a new handler-controlled alert curriculum. . . ." MOD at ¶ 44. This perception, shared by at least some participants in MPD's canine program, further illustrates the confusion that exists regarding the meaning of Handler-Controlled Alert Methodology.

meaning of Handler-Controlled Alert Methodology. DOJ explained that it agreed to accept MPD's phrase only because MPD represented it to be a synonym for the term "find and bark." This understanding is reflected in contemporaneous correspondence.²⁹

From our observations, we find that there is a substantial need for further discussions between MPD and DOJ to clarify the meaning of the phrase "Handler-Controlled Alert Methodology" and the requirements that phrase creates for MPD's canine handlers. MPD and DOJ have agreed to schedule such a meeting, which will include representatives from our office.

According to DOJ, a canine trained in "find and bark" should not bite a suspect unless the suspect assaults the dog or the handler or is ordered to do so by the handler. According to MPD, a canine trained in Handler-Controlled Alert Methodology will bite a suspect only when ordered to do so by the handler.³⁰ Our review of canine incidents, however, suggests that MPD canines do not consistently adhere to either methodology, whatever the differences that may exist between them. Additionally, our review reveals that handlers have allowed bites (indeed, in some instances, have commanded bites) in circumstances where the bites might have been avoided had other, more flexible approaches been considered. The following two situations highlight the most problematic areas we observed involving MPD canines:

1. A canine locates a suspect, alerts the handler to the suspect's presence without biting, and then is commanded to bite the suspect by the handler in an effort to extricate the suspect from a hiding place.

²⁹ See, e.g., letter from Terrance W. Gainer to Steven H. Rosenbaum (undated) (describing MPD's approach as "Bark and Guard"); letter from Terrance W. Gainer to Steven Rosenbaum (July 18, 2000) (describing MPD's canine training as "bark and hold"); letter from Terrance W. Gainer to Steven Rosenbaum (Dec. 4, 2000) (noting that MPD's canine approach "exceeds the benefits of bark and bay" and "holds the handler responsible").

³⁰ Letter from Terrance W. Gainer to Steven Rosenbaum (Dec. 4, 2000) ("Under this regimen the canine would not attack even if the subject runs or moves unless ordered, or the handler is attacked.").

2. A canine locates a suspect and bites the suspect without alerting the handler and without awaiting the handler's direction.

We recommend that MPD and DOJ focus their attention on the issues raised by these two situations during their forthcoming canine meeting.

With respect to the first issue, we recommend that, in addition to discussing whether the practice is consistent with the MOA, the parties also consider whether the practice is necessary and appropriate from a best practices standpoint. In cases where a canine handler faces a suspect who refuses to come out of hiding, best police practices would seem to dictate that, except in a narrow set of circumstances, other options at least be considered to extricate the suspect from his/her hiding place before ordering the canine to bite.³¹ Our review suggests that canine handlers do not routinely consider employing less severe uses of force.

With respect to the second issue, we recommend that MPD and DOJ discuss, among other things, the reasons for, and the significance of, the several "on-lead" canine bites that occurred during the past year. Of the 17 dog bites that we reviewed this quarter, 7 occurred while the dog was "on lead." As noted above, these bites are especially problematic because an "on-lead" use of a canine is supposed to be non-aggressive and non-tactical.³² The reasons for these bites might be due to a lack of training of the canine or lack of control by the handler. Based on our

³¹ See MPD Use of Force General Order (GO-RAR-901.07), Section V.B, Use of Force Continuum ("In determining what level of force to use, it is important to consider the seriousness of the crime, the level of resistance presented by the suspect, [and] the imminence of danger All members who encounter a situation where the possibility of violence or resistance to lawful arrest is present should, if possible, diffuse [sic] the situation through advice, warning and verbal persuasion."). We note also in this regard the words of the Independent Monitor for the Los Angeles Sheriff Department on this same point: "[P]olice dogs give law enforcement the ability to search for and locate suspects in a manner less likely to imperil the officer. But dogs are tools for *search*, and, except in the rarest circumstances, dogs are not tools for *seizure*. Other less harmful means for apprehension should be exhausted or futile before a canine is permitted to apprehend a suspect by biting." Fifteenth Report of the Independent Monitor for the Los Angeles Sheriff Department at 5-6 (emphasis in original).

³² Canine Teams General Order (GO-RAR-306.01).

review of the canine bite cases, it would appear to be some combination of both. On the training issue, we recommend that MPD assess whether its process of rewarding the dog during training by letting it “bite the rag”³³ is contributing to the dog’s willingness to bite a suspect during an on-lead track. On the handler control issue, we recommend that MPD reinforce its requirement that a canine never be out of contact with its handler.³⁴

In addition to confusion regarding the meaning of Handler-Controlled Alert Methodology, we also noted confusion regarding the requirement to give a verbal warning prior to the deployment of a canine. The MPD canine handlers we interviewed told us that they never give an announcement during an on-lead deployment. Indeed, this no-warning approach apparently is taught during canine basic training. According to the handlers, an announcement in such a situation would excite the dog and distract it from its primary “seek and find” mission. The Canines Teams General Order, however, requires an announcement *before any* canine deployment except in certain exigent circumstances. With respect to those exigent circumstances, the General Order provides that

[t]he warning announcement . . . may be omitted from a search in those exigent circumstances where specific articulated facts demonstrate the need for complete surprise or where the announcement may place the handler in imminent danger. In such a case, the on-scene supervisor must approve the omission.³⁵

In our judgment, none of the on-lead deployments without warnings that we reviewed demonstrated the existence of “exigent circumstances.” Moreover, none of the reports prepared in the aftermath of any of these deployments provides “articulated facts” that “demonstrate the need for complete surprise.” Finally, none of these cases documents that the

³³ MPD trains its dogs to follow a scent using a rag. If the dog finds the rag then the handler allows the dog to bite the rag and tugs and pulls on the rag in a game-like fashion at the same time.

³⁴ Letter from Terrance W. Gainer to Steven Rosenbaum (December 4, 2000).

³⁵ Canine Teams General Order (GO-RAR-306.01), Section V.F.4.

omission of a warning was approved by an on-scene supervisor as required by the Canine Teams General Order.

We recommend that MPD and DOJ come to an understanding regarding the need to issue a warning during an on-lead deployment.

Additionally, we recommend that MPD and DOJ discuss the content of the warning that is given by MPD during off-lead deployments. Canine handlers clearly are required to give a loud verbal warning prior to deployment of a canine.³⁶ Our review reveals that MPD complies with this requirement in off-lead deployments. Canine handlers, however, also are required to advise suspects prior to the release of a canine to “surrender and remain still if approached by a canine.”³⁷ It does not appear that this warning is given consistently. Indeed, during canine training, we noticed that a “remain still” instruction was not given by the instructors or the students. This omission is particularly significant in that many of the canine handlers we interviewed indicated that their dogs likely would bite an individual who moved -- in any way -- upon being approached by a canine.

c. FIT Reviews

As part of our special focus this quarter on MPD’s Canine Unit, we re-reviewed every FIT investigation of a canine bite. Of these 17 investigations, 15 were final and 2 were preliminary. Since we previously have reviewed FIT’s investigations to assess FIT’s compliance with the MOA, the discussion that follows focuses only on those Canine Unit requirements not previously discussed.

Off-Lead Deployments (MOA ¶ 45)

Paragraph 45 of the MOA requires that off-lead canine deployments be limited to instances in which the suspect is wanted for a serious felony or is wanted for a misdemeanor and is reasonably

³⁶ MPD Canine Teams General Order (GO-RAR-306.01), Section V.F, Warning Announcements (“Issue a loud and clear announcement prior to deploying the assigned canine: **‘Warning, a police canine will be used to search this (area to be searched), if you don’t come out, I will release my dog.’** The suspect shall be further advised to surrender and remain still if approached by a canine.”). (Emphasis in original.)

³⁷ Canine Teams General Order (GO-RAR-306.01), at 8.

suspected to be armed. Of the off-lead deployments we reviewed, 2 involved an armed suspect, 1 involved a stolen vehicle, and 4 involved burglaries. Based on our review, we found that each of these deployments met the requirements of paragraph 45 of the MOA for an off-lead deployment.

Supervisor Approval (MOA ¶ 45)

Paragraph 45 of the MOA also requires canine officers to obtain approval from an immediate supervisor before a canine is deployed. In 2 out of the 17 canine deployments we reviewed, prior official authorization was not obtained. The FIT investigation reports, however, satisfactorily document the existence of exigent circumstances, as required in the MOA and the Canine Teams General Order, for canine deployments without prior official authorization.

Canine Call Off (MOA ¶¶ 40 & 46)

Paragraph 46 of the MOA requires that, in all circumstance where a canine is permitted to bite a suspect, the handler call off the dog at the first possible opportunity that the canine can be released safely. The MOA further requires that, whenever a canine-related injury occurs, immediate medical treatment must be sought either by rescue ambulance, transportation to an emergency room, or admission to a hospital. With minor exceptions, MPD is in compliance with these requirements. In all but one case, the canine handler appeared to call off the canine in a timely manner. Additionally, in all but one case, prompt medical attention appears to have been afforded the victim of the dog bite if necessary. In the one case where prompt medical attention was not provided, the FIT investigation notes that an MPD supervisor corrected the situation immediately after the suspect was transported to the district.

d. Tactical Field Reports

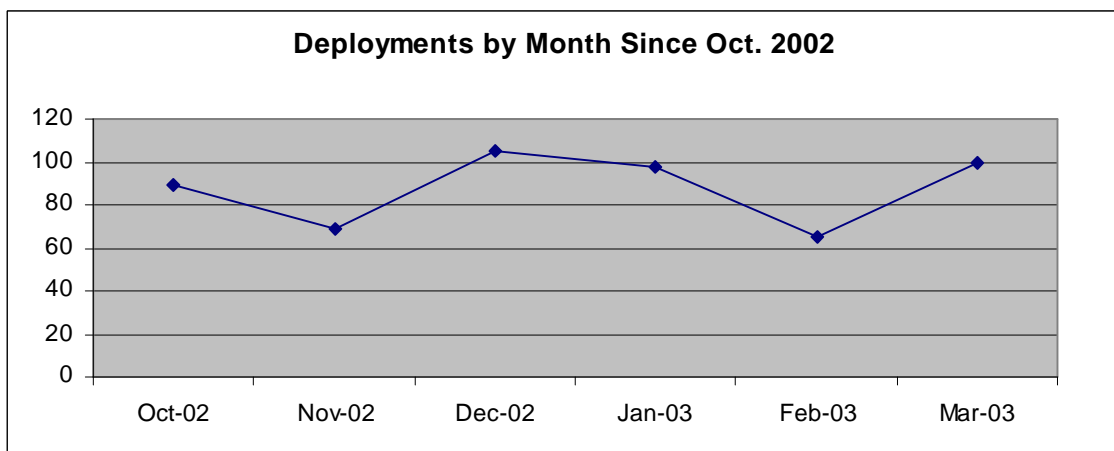
In addition to the FIT reports, we also reviewed the Tactical Field Report for each canine bite occurring during 2002. Following every canine deployment, the canine handler must complete such a report setting forth the basic facts relating to the deployment. These reports are maintained by the Canine Unit. Due to the brevity of these reports, however, we gained little information that was not already contained in the FIT reports.

e. Handler Interviews

In an effort to supplement our document review (*i.e.*, our review of the FIT Reports and Canine Tactical Field Reports), we held discussions and conducted interviews with two shifts of canine officers at canine headquarters to discuss the MOA and MPD's Canine Teams General Order. These discussions proved extremely valuable, and we commend the officers who spoke with us for their candor and patience.

While our discussions provided us with answers to important questions regarding the Canine Unit's standard practices, they also proved valuable because they gave the canine handlers an opportunity to express their concerns regarding the MOA and the Canine Teams General Order. Many of these concerns relate to issues previously negotiated and agreed upon by DOJ and MPD management. We have summarized below (and commented upon, where appropriate) the principal concerns that were shared with us by members of the Canine Unit.

- Many handlers noted that the removal of a canine officer from active duty for three days following a use of force by dog bite creates a hardship on the unit, reduces essential manpower, and creates an officer safety issue.
- Many handlers expressed a belief that patrol officers are less willing to call for canine assistance in high-risk situations, such as building searches, for fear of having to "spend the night meeting with the Force Investigation Team if there is a bite." While the data do not support any significant decline in canine deployments over the past six months, it is clear that there is such a perception within the canine unit.



- Several handlers feel that MPD drafted the Canine Teams General Order with insufficient input from the Canine Unit. Consequently, these handlers believe that the General Order contains several practical flaws.
- Several handlers expressed the view the FIT is insufficiently trained in canine procedures to conduct reviews of canine bite incidents. When pressed, most officers conceded that a non-canine team review served a useful purpose, but maintained that the entity that conducts the review should be well trained in canine procedures. There was general agreement that FIT would benefit from being required to attend one or more canine training sessions/demonstrations.
- Several officers expressed the belief that a dog-bite should not be classified as a “serious use of force.”
- All officers agreed that an “on-lead track” should be classified as a tactical deployment. (In subsequent interviews with the lieutenant managing of the Canine Unit and the commander of the SOD, these officers took the same position. Based upon our discussions with the canine officers and managers, we recommend that MPD and DOJ work together to clarify the difference between a tactical and a non-tactical deployment.)
- Most officers agreed that the Canine Unit is suffering from the absence of a full-time lieutenant. (The lieutenant currently assigned to the Canine Unit also is responsible for MPD’s Air Support Unit, Mounted Unit, and Marine Unit.)

Following our general discussions with the two canine squads, we conducted a series of brief interviews with individual officers. We also, at a later date, held a series of less formal discussions with a number of additional canine officers during canine training. As noted above, we were impressed with the candor of all the officers with whom we met. The following summarizes the results of our interviews and our informal discussions.

Handler-Controlled Alert Methodology

There was general confusion among the officers we interviewed regarding the meaning of Handler-Controlled Alert Methodology. One officer had never heard the term before. Several of the officers had heard

the term and knew it was used in the MOA, but stated they had no idea what the term meant. Several other officers claimed to understand the term, but could not explain it when asked.

Tactical Use of Canine

Almost universally, the canine officers we interviewed had a common understanding of this phrase. To the Canine Unit, a tactical use of a canine occurs every time a canine is used to search for a suspect (*i.e.*, in all cases except an article search or a missing person search). As noted above, the officers all agreed that all on-lead tracks are tactical deployments of the canine.

Find and Bite vs. Find and Bark

Many canine unit members stated that their dogs would bite a person once found if the person make any movement at all. According to these officers, it does not matter whether the movement is aggressive or not. This fact, if true, suggests that MPD's canines are not being trained in the methodology that was intended by DOJ when it negotiated the MOA. We will continue to monitor MPD canine training in an effort to draw additional conclusions in this regard in the near future. In the meantime, there is clearly an urgent need for MPD and DOJ to work together to reach a common understanding regarding the meaning of Handler-Controlled Alert Methodology.

Announcement Before Tactical Deployment

Every handler indicated that he would not give an announcement before an on-lead track because it would "excite" the dog, put the dog into an "aggressive mode," and interfere with the dog's ability to track. Apparently, this is taught in MPD training. While we are not in a position to controvert the Canine Unit's position regarding the effect of an announcement on the canines, we simply note that the MOA and Canine Teams General Order require an announcement to be given "prior to any canine deployment."³⁸ We recommend that MPD and DOJ discuss this issue and attempt to come to agreement regarding the propriety of making a verbal announcement prior to an on-lead track. In doing so, we recommend that MPD and DOJ keep in mind that of the 17 bites that occurred during 2002, 11 were during an on-lead track.

³⁸ Canine Teams General Order (GO-RAR-306.01), at 8.

f. Command Staff Interviews

In addition to meeting with the canine handlers, we also met with a number of canine supervisors, including Sergeant Duane Bueth, MPD's lead canine trainer; Lt. Scott Osterhuber, the manager of the Canine, Air Support, and Mounted Patrol divisions; Captain Regis Bryant, Lt. Osterhuber's direct supervisor; and Commander Cathy Lanier, the commander of SOD. These meetings proved extremely valuable in gaining a working understanding of the Canine Unit and its organizational structure. The results of these meetings have been incorporated throughout this report.

g. Canine Operations Manual

MPD submitted a draft Canine Operations Manual to DOJ on November 27, 2002. In our prior report, we committed to "assess MPD's compliance with its recently-submitted 43-page Canine Operations Manual once that manual has been approved by DOJ." As of the end of this reporting period, DOJ had not yet approved the draft manual.

3. Recommendations

While most of our recommendations with respect to the MPD Canine Unit have been incorporated into the status section above, we offer the following two additional recommendations:

First, we recommend that FIT evaluate its internal procedures to ensure that it evaluates the practices of the Canine Unit at the squad level as well as the individual handler level. Following its recent review of the 2002 canine bites, FIT determined that 11 of the 17 bites occurred within the same squad. While FIT had investigated each one of the bites over the course of the year -- and had found each one justified, a determination with which we do not disagree -- it had not noticed that the majority of the bites had occurred as a result of the activities of a single squad. While the fact that 11 bites came from the same squad may prove to be pure coincidence or due to wholly legitimate law enforcement reasons (for example, perhaps more violent crime occurs during that squad's shift), it is a connection that should have been reviewed and considered.

Second, we recommend that MPD consider the wisdom of engaging its Emergency Response Team ("ERT") to extricate certain suspects that have been located by a canine but continue to resist arrest. When asked about the practicality of this approach, one ERT supervisor indicated

that he believed using ERT in this fashion would reduce serious uses of force (*i.e.*, dog bites) “because suspects speak a language that is not dog.” This supervisor felt that ERT frequently is able to talk suspects out of hiding or, when necessary, extricate them without using serious force. We agree with this supervisor’s position. Many departments throughout the country engage their SWAT teams in this fashion and have had great success. We recommend that MPD consider employing this approach in appropriate situations.

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

1. Requirements

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

- Prohibit officers from using OC spray unless the officer has legal cause to detain the suspect, take the suspect into custody, or maintain the suspect in custody and unless the suspect is actively resisting the officer;
- Prohibit officers from using OC spray to disperse crowds or smaller groups of people, including its use to prevent property damage, unless the acts being committed endanger public safety and security;
- Prohibit the use of OC spray on children and the elderly, except in exceptional circumstances;
- Require that officers provide a verbal warning prior to the use of OC spray, unless such warning would endanger the officer or others, stating that its use is imminent unless the resistance ends; and, whenever feasible, permit a reasonable period for the warning to be heeded;
- Limit the use of OC spray to a person’s head and torso; prohibit spraying from less than three feet away (except in exceptional circumstances); and limit the spray to two, one-second bursts; and
- Decontaminate persons sprayed with OC spray within twenty minutes after spraying, and transport them to a hospital for

treatment if they complain of continuing adverse effects or state that they have a pre-existing medical condition that may be aggravated by the spray.

2. Status And Assessment

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 limited our activities during this quarter, as we did last quarter, to reviewing MPD's overall use of force training program.

3. Recommendations

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

E. Implementation Schedule (§§ 51-52)

While not flawless, MPD's implementation efforts relating to its use of force policies appear to be on track. We commend MPD for maintaining its high level of commitment to fulfilling its obligations under the MOA during a period of significant stress and resource reallocation due to the United States war with Iraq.

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

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

1. Requirements

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

- Notification of an officer's supervisor immediately following any use of force or after the lodging of any allegation of excessive use of force;
- An officer to fill out a Use of Force Incident Report immediately after he or she 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,³⁹ the serious use of force,⁴⁰ or any use of force potentially reflecting criminal conduct by an officer;⁴¹
- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on Use of Force Incident Reports into MPD’s Personnel Performance Management System (“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

³⁹ “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.”

⁴⁰ “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.”

⁴¹ “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.”

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.⁴²

The parties also agreed upon certain language regarding the process of compelling an officer to complete a UFIR following a declination by the United States Attorney's Office ("USAO") and/or issuance of an authorized Reverse-Garrity warning.⁴³ A "Reverse-Garrity" warning is a statement given to an officer, typically following a declination to prosecute issued by the USAO, requiring the officer to answer questions relating to his or her official duties but precluding the use of statements made by the officer against him in any criminal prosecution.

2. Status And Assessment

While MPD's new UFIR requirements went into effect in early October 2002, there appears to be some confusion among MPD officers (and supervisors) about whether to complete a UFIR, when to complete a UFIR, how to complete a UFIR, and the consequences, if any, of completing a UFIR. MPD itself concedes this point, noting in its most recent progress report that "the UFIR form continues to raise numerous issues for the Metropolitan Police Department."⁴⁴

The effect of this apparent confusion is that officers are not completing UFIRs in circumstances where MPD policy provides that they should. The chart below suggests the scope of the problem:

⁴² Memorandum of Agreement Progress Report, dated January 7, 2003 ("MPD January 2003 Progress Report"), at 9.

⁴³ 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 orders. However, the declination language was not also moved on the MPD Circular introducing the UFIR.

⁴⁴ MPD April 2003 Progress Report at 9.

	Total uses of force investigated by FIT	Total uses of force investigated by Chain of Command	Subtotal uses of force as reported by FIT	Total number of UFIRs completed as reported by FIT	Percent of uses of force resulting in completion of UFIR
October 2002 - December 15, 2002	12	57	69	14	20.29%
January 1, 2003 - January 31, 2003	7	19	26	6	23.08%
February 1, 2003 - February 28, 2003	2	21	23	7	30.43%
March 1, 2003 - March 31, 2003	3	12	15	13	86.67%

These data illustrate the accuracy of MPD's statement that "most members involved in a force incident (or a pointing of a firearm at a person) declined to fill out the form until a declination was issued by the U.S. Attorney's Office for the District of Columbia (USAO) or a 'Reverse-Garrity' warning was authorized."⁴⁵

To its credit, as noted above, MPD has acknowledged and has taken steps to address the situation. Among other activities, MPD has engaged the USAO in discussions aimed at developing a new policy regarding declinations and authorization to issue "Reverse Garrity" warnings and issued a new declination policy regarding FIT managers on March 2, 2003. This policy permits FIT managers, in specified circumstances, to issue Reverse Garrity warnings, which enable MPD officers to complete UFIRS without taking the risk that information provided on the forms could be used against them in a criminal prosecution. MPD also has provided enhanced Reverse Garrity training to FIT managers and undertaken an internal effort to facilitate the completion of UFIRs relating to past uses of force. Indeed, with respect to this last activity, MPD reports that, over the course of this quarter, it has brought the number of outstanding UFIRs down from 70 to 6.⁴⁶

As we have done previously, we met this past quarter with a number of MPD officers and supervisors to assess their understanding of the MOA's UFIR requirements. While the results of these meetings are described in detail later in this report, we are observing an increased awareness among officers regarding MPD's UFIR requirements. The fact that UFIRs still are not being completed in the absence of a declination or Reverse Garrity warning, however, suggests that there exists significant room for continued improvement.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

3. Recommendations

In an effort to assess the validity of FIT's use of force data, we attempted to obtain data regarding MPD uses of force from the Performance Assessment Management System ("PAMS") database. The PAMS database, however, does not distinguish between use of force allegations and actual uses of force. We recommend that MPD consider whether it is able to modify the PAMS database in a manner that will enable the OIM (and, as importantly, MPD itself) to identify uses of force and determine whether a UFIR has been completed as required by the MOA.

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.⁴⁷

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

⁴⁷ 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.

compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.⁴⁸

FIT is required to respond to the scene of every such incident described above and to conduct all such investigations, whether the investigation results in criminal charges, administrative sanctions, or both. No officers from any unit other than FIT are permitted to participate in the investigation. The MOA requires FIT's administrative (non-criminal) use of force investigations to be completed within ninety days of a decision by the USAO not to prosecute, unless special circumstances prevent their timely completion.⁴⁹

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

⁴⁸ 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).

⁴⁹ In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

assign investigations to chain of command supervisors from another district. In the absence of special circumstances, these use of force investigations, like FIT's investigations, must be completed within ninety days and must contain all of the elements prescribed above for FIT investigation reports. Once such investigations are complete, the investigation report must be submitted to the Unit Commander, who will review it to ensure completeness and to ensure that its findings are supported by the evidence. The Unit Commander has the power to order additional investigation if necessary. Once the investigation is complete, the investigation file is forwarded to the Use of Force Review Board ("UFRB").⁵⁰

(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;⁵¹
- 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 MPD district supervisors to take non-disciplinary action to encourage officers to modify their behavior;

⁵⁰ 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.

⁵¹ 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.

- Require the UFRB to assign to FIT or return to the original investigating unit any incomplete or improperly conducted use of force investigations; and
- Empower the UFRB to recommend to the Chief of Police investigative standards and protocols for all use of force investigations.

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

b. Status And Assessment

(1) FIT Manual

MPD submitted the FIT manual required by paragraph 57 of the MOA to DOJ on February 5, 2002. DOJ subsequently responded with detailed comments to which MPD responded with a revised manual. On March 26, 2003, DOJ provided comments on the revised manual, noting that “[o]nce these changes are incorporated in the Manual, we anticipate providing our immediate final approval.”⁵² MPD expects to finalize the FIT manual during the coming quarter.

(2) FIT Use of Force Investigations

In addition to our re-review of every FIT case involving a canine bite, as described above, we also maintained our practice of reviewing all FIT cases regardless of subject matter. At the close of this reporting period, we had reviewed all preliminary and final FIT investigations. Once again, we found the investigations to be of high quality and, with minor exceptions, well done. This is not to say, however, that the investigations were flawless, as the following comments illustrate.

MOA ¶ 53 Notification of Supervisor

The MOA and MPD’s Use of Force General Order require officers to contact their supervisor immediately following any use of

⁵² Letter from Shanetta Y. Brown Cutlar to Inspector Joshua A. Ederheimer (March 26, 2003).

force. Our review of FIT investigations suggests that FIT frequently does not assess (or at least frequently does not document) officer compliance with this requirement. While FIT reports typically indicate whether or not a supervisor arrived on the scene of the incident, the reports do not indicate whether that supervisor was the supervisor of the officer involved in the incident. Moreover, the supervisor's time of arrival is not recorded consistently in the reports.

MOA ¶ 54 Notification of USAO

The MOA requires MPD to notify the USAO no later than the next business day following any serious use of force. Our review suggests that FIT does not document MPD compliance with this requirement in its FIT reports. FIT does, however, maintain a written log separate from the FIT reports identifying the date of notification to the USAO. We recommend that FIT begin specifically documenting such notification in its investigation reports.

MOA ¶ 42 Impairment

While we noted improvement in this area in our last quarterly report, we noted a reversion to prior practices during this quarter. We recommend that MPD recommit itself to ensuring that its FIT investigators assess whether the officers they investigate have been impaired by drugs or alcohol.

MOA ¶ 62 Timeliness

The MOA requires FIT to complete its investigation within ninety days of the USAO's decision not to prosecute the officer involved in the use of force (the USAO's "declination") in the absence of documented special circumstances. Three of the seven final reports we reviewed this quarter failed to meet this timeliness requirement.

Even considering the foregoing deficiencies, however, as noted above, we find the FIT investigations to be comprehensive and well done.⁵³

⁵³ In addition to reviewing the FIT written reports as described above, the OIM also participated in a FIT "roll-out" in an effort to observe FIT's investigative process

(3) Other Use of Force Investigations

As noted below, the OIM, MPD, and DOJ worked together this quarter to develop a sampling methodology to facilitate the OIM's review of MPD misconduct investigations, including non-FIT use of force investigations. We expect to select the review sample (which will involve 240 misconduct investigations) early in the coming quarter and begin reviewing the selected investigations immediately thereafter.

(4) Use of Force Review Board

DOJ approved MPD's Use of Force Review Board General Order on January 31, 2003. According to MPD, it distributed the General Order throughout MPD on February 21, 2003. The OIM will request a complete list of all cases heard by the MPD UFRB subsequent to the effective date of the new order. Over the course of the next several quarters, we plan to begin reviewing these cases to assess MPD's compliance with the newly-implemented General Order.

c. Recommendations

To facilitate the correction of the few deficiencies we continue to note in the FIT investigation reports, we recommend that MPD develop a checklist for use by FIT investigators. We believe that such a simple device would greatly enhance FIT's ability to meet all of the requirements of the MOA.

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;

Footnote continued from previous page

first hand. It is the OIM's standard practice to alert MPD whenever its policing experts are in town so that we can be notified of any FIT "roll-out" that occurs during their stay.

- 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.⁵⁴

With respect to allegations in the above categories that are criminal, MPD's OPR is required to conduct the investigation rather than chain of command supervisors in MPD's districts. In these categories of 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.⁵⁵ In addition to criminal allegations, the MOA requires that MPD assign for investigation outside the chain of command allegations involving:

⁵⁴ 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.

⁵⁵ The MOA makes clear that a key reason for this consultation requirement is to avoid potential complications for a criminal investigation and potential prosecution posed by administratively-compelled interviews of officers. MOA at ¶ 71.

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

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

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

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

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

- MPD must develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint investigations* from chain of command supervisors to MPD's OPR;⁵⁶
- 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;⁵⁷
- MPD must develop a plan (subject to DOJ approval) to ensure that all MPD officers responsible for conducting investigations receive adequate training in a wide range of subjects;
- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- MPD must develop a manual (subject to DOJ approval) for conducting all MPD misconduct investigations.

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

b. Status And Assessment

(1) Investigation Reviews

During this quarter, the OIM, MPD, and DOJ worked together to develop a sampling methodology to facilitate the OIM's review of MPD misconduct investigations. Once we have received DOJ's and MPD's final comments on that methodology, we will begin selecting our review sample (which will involve 240 misconduct investigations) and, soon thereafter, begin reviewing the selected investigations. Our sample will involve at least 30 investigations from every MPD district, which will

⁵⁶ See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

⁵⁷ In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

enable us to draw conclusions with a high degree of statistical confidence on an MPD-wide basis, as well as useful conclusions on a district-by-district basis as well.

In conjunction with efforts to develop the foregoing sampling methodology, the OIM continued its review of misconduct investigations selected at random from among MPD's various districts. The investigations we reviewed this quarter were conducted by OPR and chain of command officials. The underlying allegations included racial profiling, invalid arrest, unprofessional conduct, slow response, damage to property, illegal search, and excessive force.

Overall, we found that these misconduct investigations were less capably and competently handled than the FIT investigations discussed above, although we identified none that was so deficient as to prompt us to direct that the investigation be reopened.⁵⁸ Our specific comments follow:

MOA ¶ 42 Impairment

In none of these cases we reviewed did the investigator make a determination regarding whether the subject officer was impaired by drugs or alcohol.

MOA ¶ 81 Conduct of the Investigation

We noted deficiencies in the comprehensiveness of the interviews conducted by OPR and chain of command investigators. For example, in one case, an ERT officer served a search warrant for a murder suspect that apparently required the officer forcibly to enter a residence. The complainant alleged damage to property and improper police conduct. The investigators handling the allegation, however, did not interview members of the ERT squad that served the warrant. Further, two civilians in the residence at the time of the incident also were not interviewed.

The complainant in another case alleged that she requested assistance from MPD to stop an acquaintance from assaulting her.

⁵⁸ As noted previously, pursuant to paragraph 172 of the MOA, "MPD shall reopen for further investigation any misconduct investigation the Monitor determines to be incomplete."

The complainant alleged that she telephoned the police on two occasions without receiving any response. On a third occasion, the complainant alleged that she had a neighbor telephone MPD. Consequently, she filed a “slow response” complaint against MPD. The officer who investigated the allegation, however, interviewed neither the complainant nor the neighbor.

We plan to conduct further review of these two investigations (and other similar instances) over the course of the next quarter. If these further reviews reveal no persuasive reasons that explain these apparent investigative deficiencies, we may well request that the cases be reopened and reinvestigated.

MOA ¶ 99 All Relevant Evidence

In every misconduct investigation, the MOA requires MPD to consider “all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible.”⁵⁹ The MOA further requires that there be no automatic preference for an officer’s statement over a person’s statement.⁶⁰ It appears that MPD’s non-FIT misconduct investigations do not consistently meet this requirement.

In one case we reviewed, for example, there existed only two possible witnesses -- the subject officer and the complainant. The complainant alleged rude behavior on the part of the officer during a traffic stop. Despite the existence of only two witnesses, each offering a different story, the investigator “exonerated” the officer of any wrongdoing. This finding subsequently was sustained by the investigator’s supervisor. While the Assistant Chief of OPR ultimately changed the determination to “insufficient facts,” it is problematic that the flaw in the conclusion was not identified earlier in the process.

In another case, in which the investigation involved an alleged “unlawful arrest,” the investigator was faced with contradictory statements from two witnesses, both of whom were police officers. One officer maintained that “the complainant

59 MOA at ¶ 99.

60 *Id.*

slipped and fell to the ground,” while the other officer maintained that the incident was the result of a “controlled takedown.” The investigation file indicates no attempt to resolve this inconsistency.

In short, we believe that the quality of MPD’s non-FIT misconduct investigations requires improvement. While, as noted above, we have not yet identified any specific investigation that we have directed be reopened and reinvestigated, we have identified several that will require further review before we can make such a final determination. Even if these further reviews do not dictate that these investigations be reopened, the kinds of flaws that we identified in several of these investigations need to be remedied by MPD.

(2) Office of Internal Affairs Operational Manual

As noted above, paragraph 72 of the MOA requires MPD to develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint investigations* from chain of command supervisors to OPR. MPD submitted its plan to DOJ on July 26, 2002 in the form of an Office of Internal Affairs (“OIA”) Operational Manual. DOJ approved the OIA Manual on March 26, 2003, noting that “MPD did an exceptional job revising the Manual; it is extremely comprehensive and thorough.”⁶¹ We will assess MPD’s compliance with this manual in connection with our review of the 240 misconduct investigations described above.

(3) Serious Misconduct Investigations General Order

As a second element of its effort to comply with the requirements of paragraph 72 of the MOA, MPD submitted its Serious Misconduct Investigations General Order to DOJ on July 23, 2002. DOJ replied with detailed comments on September 13, 2002, to which MPD responded on November 22, 2002. On January 31, 2003, DOJ responded with a small number of additional comments, commending MPD “for its efforts to revise this MPD [General Order] consistent with the MOA and other

⁶¹ Letter from Shanetta Y. Brown Cutlar to Inspector Joshua A. Ederheimer (March 26, 2003).

applicable standards.”⁶² MPD submitted a revised draft to DOJ on March 7, 2003. As of the close of the current reporting period, DOJ had not yet approved MPD’s revised General Order.

(4) Administrative Investigations Manual

On October 25, 2002, MPD submitted a timely⁶³ draft “Misconduct Investigations Standard Operating Procedure Manual” to DOJ pursuant to paragraph 83 of the MOA. DOJ responded with significant comments on March 26, 2003. MPD expects to submit a revised manual to DOJ before the end of the coming quarter.

(5) Chain of Command Misconduct Investigations General Order

Pursuant to paragraph 83 of the MOA, MPD submitted its draft Chain of Command Misconduct Investigations General Order to DOJ on November 1, 2002. While this draft was submitted after the expiration of the October 25, 2002 deadline applicable to paragraph 83 of the MOA, DOJ responded with a number of substantive comments on January 31, 2003. In its response, DOJ noted that it “will be able to approve [the General Order], assuming the changes we identified are addressed, in the next draft.”⁶⁴ As of the close of this reporting period, MPD has not yet submitted a revised draft to DOJ.

c. Recommendations

As we have previously, we recommend that MPD take steps to improve the quality of its non-FIT misconduct investigations.

⁶² Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

⁶³ The manual required by paragraph 83 of the MOA originally was due within 120 of the execution of the MOA. Joint Modification No. 1 to the June 13, 2001 Memorandum of Agreement (the “MOA Modification”) (Appendix B to OIM’s Second Quarterly Report), however, extended this deadline to the “week of 10-20-02.”

⁶⁴ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

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

A. Requirements

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

More specifically, the MOA requires the following:

- The development of a plan, in consultation with DOJ, that defines the roles and responsibilities of -- and the relationship between -- MPD and OCCR with regard to
 - Receiving, recording, investigating, and tracking complaints;
 - Conducting community outreach and education regarding making complaints against officers;
 - Exchanging information between MPD and OCCR; and
 - Defining the responsibilities of the MPD official who serves on the Citizen Complaint Review Board.
- 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;⁶⁵
- 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;

⁶⁵ District of Columbia Law 12-208.

- 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.⁶⁶

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

⁶⁶ The program must include at least the following elements: one open meeting per quarter in each of the patrol service areas for the first year of the MOA and one meeting in each patrol service area semi-annually in subsequent years. The purpose of these meetings is to inform the public about the provisions of the MOA and the various methods of filing a complaint against an officer. At least one week before such meetings, the City shall publish notice of the meeting as follows: (i) in public areas, including libraries, schools, grocery stores, and community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD Web sites; and (iv) in the primary languages spoken by the communities located in such areas. In order to enhance interaction between officers and community members in daily policing activities, the open public meetings must include presentations and information on MPD and its operations.

- 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;⁶⁷ 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.”⁶⁸ Misconduct investigations require the preparation of a written report, which should include a description of the alleged misconduct, summary and analysis of all relevant evidence, and proposed findings and analysis. Except in cases of unusual complexity, such investigations must be completed within ninety days after the allegations have been received. Each investigation should be reviewed by Unit Commanders to determine the existence of any underlying problems and training needs, and the Unit Commanders shall implement any appropriate non-disciplinary actions.

B. Status And Assessment

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

As reported by all parties at the OIM’s monthly MOA meetings, MPD, OCCR, and DOJ worked together this past quarter to resolve certain MOA-related conflicts within the MOU previously negotiated by MPD and OCCR. According to MPD and OCCR, this interaction has been productive. MPD and OCCR have indicated that they have resolved several issues to date and intend to agree upon a revised MOU prior to

⁶⁷ 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.

⁶⁸ Although the meanings of “sustained” and “insufficient facts” are self-evident, the other dispositions may not be. “Unfounded” refers to cases in which the investigation found no facts to support the allegation; “exonerated” refers to cases where the conduct alleged took place but did not violate MPD policies, procedures, or training.

the end of the coming quarter. The OIM will stay apprised of MPD's and OCCR's progress in this regard.

In the meantime, we have continued monitoring MPD's and OCCR's compliance with the terms of the MOU as currently drafted. This quarter, we reviewed a number of additional OCCR investigation files and met on several occasions with the executive director, deputy director, and chief investigator of OCCR. Our review and interviews revealed the following:

- MPD Ten-Day Notification Requirement. Paragraph 3.B of the MOU requires that MPD notify OCCR “within ten (10) business days of any complaint” falling within OCCR’s jurisdiction. Importantly, this requirement is different and distinct from the MOU two-day “referral” requirement discussed below. As we noted last quarter, it appears that MPD is not complying with this notification requirement. In the files we reviewed, we did not identify a single instance of such a timely notification. Moreover, our meeting with OCCR’s executive director and MPD’s OCCR liaison suggests that MPD has not yet instituted a system to ensure that such notification is made.
- MPD Two-Day Referral Requirement. Paragraph 3.B of the MOU requires that MPD “refer” to OCCR any citizen complaint filed on an OCCR complaint form (*i.e.*, an OCCR-1) “within two (2) business days of the complaint being filed with the MPD” We will assess MPD’s compliance with this requirement in a future quarter.
- OCCR Ten-Day Referral Requirement. Paragraph 3.C of the MOU requires OCCR to refer all complaints received at OCCR that do not fall within OCCR’s statutory authority to MPD “within ten (10) business days of OCCR receiving the complaint” Our review revealed that OCCR complies with this requirement in most but not all circumstances.
- OCCR Prompt Notification Requirement. Paragraph 3.C of the MOU further requires OCCR promptly to notify MPD of complaints brought to its attention, which may require immediate action by MPD, regardless of whether the complaint falls under the jurisdiction of MPD or OCCR. The MOU, however, provides no guidance regarding when a complaint requires “immediate action by MPD.” While it appears that

OCCR notifies MPD of particularly high profile cases, it is unclear whether OCCR complies with this paragraph because it is unclear what this paragraph requires. OCCR and MPD are working together to develop a standard as to when OCCR should notify MPD pursuant to paragraph 3.C.

- MPD Prompt Disposition Notification Requirement. Paragraph 3.C of the MOU requires MPD to “provide OCCR [promptly] with the final disposition of each complaint that is referred to the MPD from the OCCR” Our review revealed that MPD does not comply with this MOU requirement. We will continue to monitor this issue over the course of the next quarter.
- OCCR Weekly Complaint Notification Requirement. Paragraph 3.C of the MOU requires OCCR to “notify MPD of all formal complaints filed with OCCR on a weekly basis.” We noted last quarter that OCCR does not maintain records sufficient to assess its compliance with this MOU requirement. Our review of the records available, however, suggested that OCCR does not comply consistently with this requirement. In response to our findings, OCCR committed to modifying its record keeping procedures in order to begin tracking all copies of formal complaint forms sent by OCCR to MPD. Our most recent review demonstrates that OCCR has made progress in this area. Of the 49 recent files we reviewed, OCCR met its timeliness obligation in more than half of the cases. Additionally -- and importantly -- during the month of March, OCCR met its obligations 100 percent of the time.
- MPD Witness Attendance Requirement. Paragraph 3.D of the MOU requires that MPD “make subject and witness police officers available for OCCR interviews when necessary to process a citizen complaint” and “ensure that the officer[s] arrive at the requested date and time” According to OCCR, MPD officers generally attend OCCR interviews when requested by OCCR. Our review of OCCR’s investigation files confirms this representation.

We reviewed 118 scheduled OCCR interviews of MPD officers. Because information either was missing or obviously in error in 27 of these cases, we focused our review on the remaining 89. We found only two instances where an MPD officer failed to

attend a scheduled OCCR interview (and one of those occasions might be excusable due to OCCR's failure to give the officer the required one-week notice). Additionally, we identified only two instances in which OCCR failed to provide an officer the required one-week pre-interview notice. Thus, both MPD and OCCR are complying with their respective requirements under paragraph 3.D of the MOU.

- MPD Document Production Requirement. Paragraph 3.E of the MOU requires MPD to respond to all OCCR document requests “no later than ten (10) days from the date of receipt by the OCCR Liaison Unit of the written request.” We reviewed 78 individual document requests from OCCR to MPD this quarter. MPD responded in a timely fashion to 63 of those 78 requests. We recommend that MPD take steps to ensure all OCCR document requests are responded to in a timely fashion.

In sum, based on our preliminary review, it appears that OCCR is generally complying with both the MOA and the MOU.⁶⁹ It also appears that MPD and OCCR have developed a constructive and cooperative relationship and are making substantial efforts to comply with the MOU.

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

MPD submitted a draft “Community Outreach Program for Filing Citizen Complaints Special Order (‘SO’)” to DOJ on September 28, 2002. DOJ’s comments on the draft SO, forwarded to MPD on January 31, 2003, commended MPD “for developing a SO to formalize its efforts to inform community members about how to file citizen complaints.”⁷⁰ According to DOJ, “[a]lthough there are some gaps in the SO . . . this is a significant step toward encouraging community trust in the MPD.”⁷¹ MPD expects to respond to DOJ’s comments on the draft SO prior to the end of the coming quarter.

⁶⁹ Problems with the OCCR hotline are described elsewhere in this report.

⁷⁰ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

⁷¹ *Id.*

3. Receipt of Complaints (§§ 92-95)

As noted in our Third Quarterly Report, on or about December 11, 2002, OCCR's hotline required by paragraph 93 of the MOA became operational. The hotline is toll-free and is operational 24 hours per day. During business hours, it is answered by a member of the OCCR investigation staff. During other hours, it is answered by a recording that prompts the caller to leave a message. OCCR reviews hotline messages, if any, each morning; and, according to OCCR, if a number has been provided by the caller, OCCR returns each call promptly. Each of our test calls to the hotline this quarter was answered professionally and promptly.

While OCCR does record calls as required by the MOA, as we noted in our prior report, it has not yet developed the necessary auditing procedures to ensure "that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained, although OCCR does check this last requirement through its general auditing of all complaints it receives."⁷² Thus, while OCCR has made significant progress in the last two quarters toward MOA compliance, it still has not complied with all relevant MOA requirements.

Pursuant to paragraph 94 of the MOA, MPD submitted a timely draft Citizen Complaint General Order to DOJ on October 4, 2002.⁷³ DOJ responded with detailed comments on November 25, 2002. Subsequently, MPD forwarded a copy of the General Order to OCCR, which, in turn, provided comments back to MPD. According to MPD, it currently is working to incorporate OCCR's comments into the draft General Order. MPD has offered no time frame for the submission of a revised draft to DOJ.

4. OCCR Complaint Investigation Manual (§ 97)

On November 15, 2002, OCCR submitted a draft of its complaint investigation manual to DOJ. DOJ forwarded its comments on the draft

⁷² *Id.*

⁷³ Pursuant to the MOA Modification, the Citizen Complaint General Order had to be submitted to DOJ by the "week of" September 29, 2002.

to OCCR in late March 2003. OCCR has not yet responded to DOJ's comments but has indicated its intent to do in the very near future.

C. Recommendations

We recommend that MPD and OCCR continue to work together to revise their MOU and resolve the compliance issues identified above.

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

A. Requirements

The MOA, as modified by the MOA Modification, requires that, by the week of November 17, 2002, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.⁷⁴ Specifically, the policy must:

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

B. Status And Assessment

As originally negotiated by MPD and DOJ, MPD's Disciplinary General Order was due to be completed by October 11, 2001. On September 30, 2002, as part of a major renegotiation of MOA deadlines, MPD and DOJ revised the due date of this General Order to November 22, 2002.⁷⁵ On November 22, 2002, MPD notified DOJ that it would not be able to meet the revised deadline and committed to submit

⁷⁴ MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

⁷⁵ See MOA Modification.

the General Order by December 31, 2002 -- the end of that quarter. On December 31, 2002, however, MPD again notified DOJ that it would not be able to meet that deadline either. MPD indicated that the reason for this missed deadline was its desire to engage the Fraternal Order of Police (“FOP”) in a dialogue regarding the draft order before its submission to DOJ.

On March 31, 2003, MPD notified DOJ that it “is continuing to finalize the draft disciplinary policy, and has been working with the FOP to address their concerns on various aspects of it.”⁷⁶ According to MPD, it still is negotiating with the FOP and, consequently, still is not prepared to submit a revised General Order to DOJ. MPD expects to be able to submit a revised General Order before the end of April 2003, “along with a listing of any unresolved issues, if applicable.”⁷⁷

C. Recommendations

We recommend that MPD accelerate its efforts to complete an acceptable Disciplinary General Order to DOJ in a timely fashion. The Disciplinary General Order is an important element of the MOA. We intend to begin monitoring MPD’s compliance with its terms following its completion by MPD and approval by 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;
- Manage the risks of police misconduct;

⁷⁶ Letter from Inspector Joshua A. Ederheimer to Shanetta Y. Brown Cutlar (March 31, 2003).

⁷⁷ *Id.*

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

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

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

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

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

B. Status And Assessment

1. PPMS

According to the MOA, the PPMS originally was scheduled to be completed by July 9, 2001, with a contractor having been selected by January 9, 2002 and a beta version ready for testing by January 9, 2003. As we noted in our Second and Third Quarterly Reports, while MPD, the City, and DOJ have negotiated a number of changes to the due dates set forth in the MOA, the parties could not agree upon a revised

schedule to govern the development and implementation of PPMS. Indeed, the MOA Modification, signed on September 30, 2002, explicitly provided that “MPD’s compliance with MOA provisions related to the Personnel Performance Management System (MOA paragraphs 106-117) was expressly excepted from this modification.”⁷⁸ As of the end of this quarter, MPD and DOJ still had not negotiated a new timeline. Thus, MPD remains out of compliance with respect to the PPMS provisions of the MOA.

In an effort to get MPD’s PPMS efforts back on track, MPD and DOJ met on March 11, 2003. Unfortunately, the parties’ expectations for this meeting were quite different. DOJ “expected the information presented at this meeting would form the basis for a second joint modification to the MOA with new deadlines for the PPMS, which would take MPD out of breach of the existing MOA.”⁷⁹ According to DOJ:

The PPMS staff were not prepared for our meeting. They did not have the requisite understanding of either the background information on MPD’s history with the PPMS over the last two years, or the requirements of the MOA for the PPMS. Both the budget plan and the staffing plan under which they are currently operating are wholly inadequate.⁸⁰

DOJ advised Chief Ramsey that it was “very concerned about MPD’s continuing breach of the MOA”⁸¹

In its response to DOJ’s concerns, MPD conceded the undisputed fact that it “has not met the original PPMS timetables set forth in the agreement.”⁸² It noted further that Chief Ramsey is “not satisfied with the progress made on the PPMS” and recognizes that MPD’s efforts need

⁷⁸ MOA Modification at ¶ 5.

⁷⁹ Letter from Shanetta Y. Brown Cutlar to Chief Charles Ramsey (March 26, 2003).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Letter from Inspector Joshua A. Ederheimer to Shanetta Y. Brown Cutlar (March 31, 2003).

to be enhanced. Accordingly, MPD has committed to develop by May 15, 2003 a project plan and a staffing plan that

will result in deployment and adoption of a PPMS system that will be technically sound and secure, and that will provide long-term value to this critical and important initiative.⁸³

As of the conclusion of this reporting period, DOJ had not commented on the acceptability of MPD's proposed target date for developing these PPMS-related materials.

In an effort to reinvigorate MPD's PPMS efforts and remedy its current state of noncompliance, Chief Ramsey has reorganized the MPD Information Technology Division. As part of this reorganization, Chief Ramsey has appointed a new IT director, Mr. Philip Graham, and a director responsible for the PPMS project, Ms. Mary Ellen Hanley. The OIM has met with both Mr. Graham and Ms. Hanley and is impressed by their credentials and their commitment to the PPMS project. We continue to question, however, whether MPD fully appreciates the scope of the project being undertaken. It appears to us, for example, that MPD still has not allocated sufficient funds or sufficient funds to the PPMS project.

We will continue to monitor the PPMS issue closely over the course of the coming quarter.

2. Performance Evaluation System

MPD submitted a draft Enhanced Performance Evaluation System protocol to DOJ on November 8, 2002. DOJ has not yet commented on the draft.

C. Recommendations

Our recommendation here follows directly from the description of the state of PPMS development described above. We recommend that MPD substantially increase its efforts to formulate an acceptable schedule for the development, implementation, and testing of the PPMS. Additionally, we recommend that MPD approach the question of funding

⁸³ *Id.*

and resources in a way that incorporates a realistic view of the commitment that will be necessary to complete such a massive project promptly and without sacrificing quality.

VI. Training (MOA ¶¶ 119-148)

A. Requirements

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

1. Management Oversight

Regarding management oversight, MPD is required to centrally coordinate the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.⁸⁴ 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;⁸⁵ and
- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

⁸⁴ 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.

⁸⁵ The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

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

2. Curriculum

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

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

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

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

investigations. Supervisory and leadership training on these issues is required, with re-training to take place on an annual basis.

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

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

3. Instructors

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

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

4. Firearms Training

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

5. Canine Training

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

B. Status And Assessment

1. Substantive Training Generally

a. Sergeants and Above Training

In response to shortcomings of MPD’s initial use of force training efforts and a desire within MPD to ensure future MOA compliance, MPD implemented a specialized training program this quarter for supervisors at or above the rank of sergeant. This “Sergeants & Above” training was created by IPS, with the involvement of DOJ. The program consisted of intensive training in MPD’s new use of force policies within each police district. Each training session began with an 18-minute video presentation featuring Chief Ramsey that summarized the key elements of MPD’s new policies and procedures and emphasized the importance MPD -- and Chief Ramsey personally -- attaches to these policies and procedures. The Sergeants & Above training is in addition to the 40-hour in-service training that all members of MPD are required to

attend. The premise of this special training is that proper training of the senior management of MPD is critical to understanding and acceptance of the new policies and procedures by the rank and file within MPD.

Members of FIT attended each training session to support the efforts of the normal IPS instructors. Additionally, each supervisor who attended the program received a Frequently Asked Questions memorandum that previously had been approved by DOJ.

The Sergeants & Above training began on March 3, 2003 and ran for two weeks. (The second week of training had to be delayed due to MPD's emergency mobilization in response to the war with Iraq.) We attended three different sessions in three different districts. Overall, we were impressed with the program and impressed with the resources that MPD has dedicated to ensure its success. Several of the classes included multiple instructors. Indeed, present at one class we attended were the primary instructor, an IPS supervisor, a second IPS instructor, and two members of FIT.

The instructors generally used adult learning principles and real life examples and encouraged the class to participate. The instructors also took time to review the frequently asked questions from the handout and the use of force policy.

With respect to the students, we noted that they generally were quite attentive throughout the instruction. Questions most often related to MPD's new UFIR, which often was criticized by the students as being too lengthy, complex, and not user-friendly.

Other common areas of student inquiry related to MPD's new OC spray and canine policies. Specifically, students asked the following questions:

- What is the age definition of a "juvenile" in the Canine Teams General Order?
- What is meant by "serious felony" in the Canine Teams General Order?
- Can a canine be used for a burglary assignment?
- What does "senior citizen" mean in terms of age for purposes of the OC Spray General Order?

- How will MPD view the fact that an officer moved up the Use of Force Continuum to a higher level of force without trying a lower level of force first because he or she had not been trained in that lower level of force?
- Does FIT consider training and lack of training when investigating a use of force incident?

Although, in general, the instructors' responses to these (and the other) questions asked during the training were accurate and clearly communicated, there were significant exceptions. The question regarding the age definitions of a juvenile and senior citizen, for example, was not answered clearly. We also witnessed an erroneous response to a question regarding the threshold of force used to determine when a UFIR is required. In this particular case, the instructor stated that the determining factor was whether or not an injury had occurred. To illustrate his point, the instructor made a distinction between pain and injury. The MOA contains no exception to the UFIR requirement simply because no injury occurs.

On the whole, we observed a commitment on the part of the officers being trained to understand the policies and procedures on which they were being trained so as to more effectively explain them to officers under their command. Again, there were some exceptions: a small number of supervisors, for example, demonstrated a lack of maturity and leadership during the training by finding fault in everything and value in nothing. These individuals were the exception and not the rule and were handled well by the instructors teaching the course.

The one significant flaw we noticed consistently throughout our reviews related to the tendency of the instructors to refer to the new policies and procedures as "works in progress," suggesting that these rules were in a constant state of evolution. One instructor, for example, frequently noted that "changes are being made to the policies, I just don't know when." We believe that such characterizations have the consequence of undermining the importance of the new policies and suggesting to officers that strict compliance is not as important because the rules are in flux. While policies always are subject to change, the policies on which these supervisors are being trained are the result of significant time and effort on the part of MPD and DOJ and have the full force and effect of any other policy adopted by MPD. This is the point that instructors should be making clear to students.

A second, less significant flaw we observed in the training is that no effort was made to ensure that officers arriving late to the training were given the opportunity to review the 18-minute Chief Ramsey video that was shown at the outset of each training session. This video presentation is an important element of the Sergeants & Above training in that it covers the key points of the MOA and demonstrates the Chief's commitment to MOA compliance. We recommend that, in future training, students who miss the video presentation be required to "stay after class" to ensure that they have a chance to view this important presentation.⁸⁶

b. In-Service Training

In light of our detailed focus on in-service training last quarter, we did not review additional in-service training this quarter. We will do so, however, in the near future.

c. Field Training Officer Program

MPD submitted a draft Field Training Program protocol to DOJ on December 6, 2002. MPD currently is awaiting DOJ's comments.

d. New Recruit Training

At the request of Chief Ramsey, the OIM monitored the use of force training that IPS gives its new recruits. Our primary goal in conducting this monitoring activity was to ensure that new recruits were receiving the same training -- in terms of substance and quality -- as is given to the rest of MPD's officers through the in-service training program.

We found the new recruit training that we monitored during this quarter to be of a very high quality. We found the instructor to be passionate and serious about the subject matter and committed to ensuring that his students understood the application of the Use of Force Policy to the performance of their job responsibilities. His delivery was extremely polished and positive. He took advantage of adult learning techniques and engaged the class in meaningful discussion. He posed

⁸⁶ On this topic, we note that this is precisely how an IPS instructor handled a new recruit who arrived late for an important use of force instruction class. The student was required to "stay after class" and make up the portion of the class that he missed. We believe that the same approach should be adopted here.

ethical dilemmas to the class and forced them to think about potential outcomes resulting from bad decisions. He made good use of real world examples and encouraged the class to ask questions. When the class did not have questions of their own, he would ask questions of them. The success of the instructor's approach clearly was reflected in the attitudes of the students, who listened intently throughout the training.

The instructor discussed the UFIR without many questions being asked from the class. We note that, unlike during MPD's in-service training program, the instructors' discussion of the UFIR requirement following the drawing and pointing of a firearm did not generate a single objection from the class.

We did notice one area that could have been handled better by the IPS instructor. In explaining MPD's policy that requires officers to carry their service weapons while in the City, whether on duty or off duty, the instructor properly discussed the importance of securing the weapon at home. In the course of this discussion, he explained to the new recruits that an automobile is not considered to be a secure place. This comment generated a number of questions from the class. "What do you do with your weapon if you are at the gym?" one student asked. Another asked, "What about traveling?" The instructor never provided answers to these legitimate questions. The recruits were left with a gap in their understanding of the policy.

In summary, we found that the information being taught to the new recruits is the same as the information being taught to the veteran officers. We also found that the new recruits seemed generally more receptive to that information than the veterans, as one might well expect from new officers eager to master all aspects of their craft. While, as discussed above, we did note one subject area in which the instruction could be improved -- the application of the requirement of securing service weapons to various real world settings -- we found the new recruit training program to be of a high quality in content and presentation.

2. Canine Training (MOA ¶¶ 145-148)

As part of our comprehensive focus on MPD's canine activities this quarter, we monitored a full day of canine basic training. On the day we visited, the Canine Unit was training six new dogs and one new canine handler. The MPD canine training program runs for fourteen weeks. We witnessed the sixth day of the fourteen-week program.

The canine instruction began with obedience training. The canine teams were put through what was described as simple obedience exercises such as walk, heel, stay, and come. The lead canine instructor, Sergeant Duane Bueth, informed us that the first two weeks of the fourteen-week program focused on obedience.

The obedience training was followed by training on tracking a scent, which MPD informally calls the “find the rag” exercise. This exercise works as follows: The instructor excites the dog by waving a rag at him. He then hides the rag at the end of the scent trail. The handler then orders the dog to follow the scent to find the rag.

Following additional obedience and agility training, the next portion of the program focused on searches of buildings. The canine instructor used an abandoned building on the training complex to conduct these exercises. We observed each dog/handler team conduct a search to locate a person concealed in the abandoned building. We were told that the primary objective of this training exercise was to teach the dog to search the building, locate the subject, bark when the subject is located, and refrain from biting when the suspect surrenders. Each search was conducted “on-lead.” Once the canine located the “suspect,” the canine and handler would follow him out of the building.

We also monitored the criminal apprehension and bite training. The canine instructor explained that canines must be taught to bite. MPD employs a three-pronged approach to this aspect of canine training. First, the dogs were taught to bite. This was done by an instructor wearing protective gear standing in front of and agitating the canine. The instructor would move his protected arm closer and closer to the dog until, eventually, the dog would bite the officer’s protected arm.

Second, the dogs are taught to pursue a subject only upon orders from the handler. This was done by placing an instructor in protective gear about fifteen yards from the dog team. The handler then would “put the dog at stay.” The instructor then would move away from the dog at a deliberate but slow pace. The purpose of the exercise was to train the dog not to pursue the instructor.

The third element of bite training was to teach the dogs not to chase after a running suspect without orders from the handler. Similar to the exercise described above, this was accomplished by having an instructor in protective gear run away from a canine that had been “put at stay.”

We found the opportunity to monitor canine training to be very helpful in understanding and assessing MPD's overall canine program. The instructor we observed was both experienced and knowledgeable and the quality of the instruction was very good. In light of the sequential and cumulative nature of the training program, it is premature to draw any conclusion as to whether MPD in fact is properly teaching the "handler-controlled alert methodology." As noted above, we monitored only the sixth day of a seventy-day program. According to MPD's lead canine instructor, police dogs first are taught how to bite and then taught when not to bite. The instructor explained that it is extremely difficult and counter-productive to try to teach a dog to bite a suspect while at the same time teaching the dog when not to bite a suspect or when to release a suspect.

We will continue to monitor MPD's canine training over the coming weeks and months. Specifically, we plan to attend the later portions of the training we began monitoring this quarter.

3. Professional Breeding (MOA ¶ 146)

The MOA requires that MPD purchase only "professionally-bred" canines. While that term is not defined in either the MOA or the Canine Teams General Order, MPD understands the term to mean a purebred canine. According to MPD, all of its new canines are purchased from a professional breeder in North Carolina and all are purebred German Shepherds, even though they have not been "registered" as such.

MPD has explained that its canines are not "registered" because many of the countries from which the North Carolina breeder purchases the canines lack an organized Kennel Club. Before the Canine Unit accepts a canine, however, we have been advised that an MPD veterinarian examines the canine to ensure its purebred status.

We have reviewed the documentation for each of MPD's canines. All of the files include documentation confirming that the canine came from Europe and/or that an MPD veterinarian checked and approved the canine. While we were unable to locate documentation for each canine, we did review the purchase orders for each of the Canine Unit's thirty-three canines. Currently, MPD continues to use two canines that have not been professionally-bred and may or may not be pure breeds. These canines belong to a handler who is retiring within months. MPD has determined that it would be inefficient to require the retiring handler to train and work with a new canine for such a short period of time.

4. Canine Training Records

As discussed previously in this report, the MOA requires that all MPD canines be trained in the Handler-Controlled Alert Methodology. This training takes place over the course of a 14-week training program, which culminates in a final test in which the canine must obtain an overall score of 70 percent in order to be placed into service. The skills tested include agility, obedience, tracking, criminal apprehension, and searching (article searching, boxes searching, etc.). All of the dogs that MPD currently uses for general police activities have passed the canine test. MPD maintains documentation sufficient to identify each dog's and handler's training, including the original scoring sheet completed by each judge showing the numerical score for each evaluation category.

Following a canine's initial certification, according to MPD's lead canine instructor, the Canine Unit conducts refresher training every six weeks. While this training is less comprehensive and less formal than the initial training, MPD represents that any canine that fails any of the subjects covered will be "decertified." Our review of the Canine Unit's training records, however, suggests either that canines are not consistently attending the refresher training or that the Unit's records are incomplete. All of the handler files we reviewed included one or more instance where more than six weeks had elapsed between documented training. Additionally, a few of the files we reviewed included a notation regarding the need for canine retraining, but included no indication as to whether that retraining ever occurred.

While we acknowledge that the Canine Unit relies on additional means to ensure that canine/handler team training is up to date (such as an electronic database and a board in the squad room that identifies the last training date of each canine/handler team),⁸⁷ a properly documented file (whether electronic or physical) is important because it would describe any legitimate reasons for missed training (such as sickness, temporary disability, etc.) and the existence of any retraining. The OIM raised this issue with the lead canine trainer, who committed to begin including sufficient documentation in each handler's file to identify

⁸⁷ An additional reason for keeping a comprehensive hard-copy database (or a comprehensive electronic database that includes scanned versions of all necessary documents) is reflected in the fact that our review identified discrepancies in the training dates listed in the hard copy files and in the electronic database.

all training and explain the reasons beyond any delay in certifications. This change will enable the OIM (and MPD) simply and accurately to determine exactly when each handler/canine team was trained and assess whether more than six weeks has elapsed between sessions.

Despite the lapses noted above, however, the canine files generally did document the training provided and did include information about the canines' performance during that training.

5. Personnel Training Records

MPD currently lacks a comprehensive, integrated, electronic training record keeping system. As a result, MPD cannot identify and track officers' training needs in an efficient fashion. The officer tasked with responding to the OIM's request for training records relating to canine officers, for example, had to contact the MPD Canine Unit to obtain a list of canine officers, contact another department to confirm the accuracy of that list, search one online database to identify training that occurred prior to 2000, search a second online database to identify training that occurred in and after 2000, and, where the resulting data appeared inaccurate, contact the IPS instructor responsible for the particular training course in question to assess the accuracy of the records. While we ultimately obtained the information we requested, the process seemed to us to be unduly burdensome and inefficient.

MPD has represented that it is in the process of centralizing its training records for all MPD personnel. Currently, many training records are housed only locally where the actual training occurs. Some information is entered into an electronic database, and some is not. In 1998, however, MPD began transitioning to a new online system called WISE. The WISE system will allow MPD to administer, score, and store the results of electronic tests given by IPS. Once fully implemented, MPD will be able to access a wealth of information in an efficient manner. While we only have reviewed MPD's use of the WISE system briefly on two occasions, it appears to us that MPD's use of the system is expanding and the data being entered into the system is becoming more accurate and comprehensive.

More recently, MPD has begun using a second computer system, called the "Compliance Suite," to store training-related information. This system includes capabilities not available through the WISE system, including the ability to schedule courses and track when officers are in need of re-certification. The information currently available through the WISE system and the Compliance Suite, however, is quite limited

because historical data has not yet been entered and IPS does not currently enter data for all IPS courses.

According to IPS, it is working to enhance its electronic training record keeping system. We plan to monitor this effort more closely in the near future.

6. MOA Training

As we have in each prior quarter, we continued to assess MPD rank and file understanding of the MOA over the course of the past three months by meeting with officers and supervisors throughout MPD's several police districts. Specifically, during this quarter, we met with and "rode along" with officers from the Fifth, Sixth, and Seventh Districts as well as with MPD's ERT. During the course of the past year, we have observed a growing appreciation of the existence and nature of the MOA and the newly modified policies and procedures issued pursuant to the MOA.

a. Fifth District

In the Fifth District, we conducted one-on-one interviews with a number of patrol officers. These officers were not made aware of our visit in advance. With some minor exceptions, the officers with whom we spoke during this visit were quite knowledgeable about the MOA. They generally had a good grasp of the various use of force issues relating to the MOA, the role of the Independent Monitor in monitoring those issues, and MPD's commitment to those issues. For the most part, the attitude of the officers with whom we spoke was extremely positive.

b. Sixth District

We interviewed eight patrol officers during our visit to the Sixth District followed by a ride-along with two patrol officers. Additionally, prior to the conclusion of our visit, we were able to interview four additional officers during responses to radio calls.

Our conversations with these 14 officers further support the conclusion that MPD has made significant advances in its efforts to educate its members on the MOA and the new use of force policies. All of the officers that we interviewed had been through MPD's revised 40-hour in-service training program and demonstrated a general working knowledge of the key elements of the MOA. Additionally, all officers acknowledged that they had received a copy of the MOA and had read at

least parts of it. All also had at least a basic understanding of the new use of force reporting requirements, as evidenced by the fact that they all knew that a UFIR need not be completed following the mere unholstering of a service weapon -- a frequent point of confusion noted in our prior reports.⁸⁸

c. Seventh District

Unlike in the Fifth District, we conducted our interview in the Seventh Districts during a series of sequential ride-alongs. This provided us with the opportunity to speak to officers in a one-on-one setting without causing those officers to be taken off the street.

The Seventh District officers with whom we spoke were less well versed in the MOA than the officers of the Fifth and Sixth Districts. None of the four officers with whom we met had read the MOA. Nonetheless, the officers did have a working understanding of MPD's new use of force policies. They also had strong feelings regarding those policies. One officer, for example, complained that officers would hesitate to engage in necessary and proper police conduct due to the new reporting requirements. While we have heard this comment from time to time, it should be noted that it almost always is described as how unidentified "other officers" will react to the new policies rather than the officer making the comments. Almost every officer with whom we have spoken acknowledged that he or she will not be deterred from performing his or her duties because of MPD's new reporting policy. Additionally, it should be noted that, while we have not specifically investigated the issue, we have seen no evidence that officers are less willing to draw and point a firearm, for example, where the situation warrants.

d. ERT

In addition to meeting with rank and file officers, we also met with members of the ERT, a unit of MPD's SOD. Our purpose of meeting with ERT was twofold. First, in light of ERT's specialized mission, we thought it important to assess its understanding of the MOA and MPD's new use of force policies. Second, during a prior meeting with ERT, we were

⁸⁸ However, there still seems to be some confusion about what level of force requires a UFIR. We recommend that MPD assess its IPS training to determine how best to remedy this confusion.

informed that that unit had incorporated explicit MOA-benchmarks into its formal officer evaluation process.

While we could find little evidence that explicit MOA benchmarks have been incorporated into the ERT review process, it is clear that ERT has done a remarkable job at ensuring that its members understand the MOA and the related use of force policies, including the UFIR policy. The commanding officer of ERT prepared a memo to all ERT officers mandating that they read and maintain a copy of the MOA; as far as we can tell, this order has been followed.

Every ERT member we interviewed was aware of the MOA and the use of force reporting requirements established by the recently issued MPD General Orders. None of the officers voiced resistance to the new policies or the new reporting requirements. To the contrary, some specifically commented that the new changes would be beneficial to MPD.

C. Recommendations

In light of our comments that officers are confused regarding what level of force requires the execution of a UFIR, we recommend that MPD supplement its IPS training program relating to the UFIR to provide additional guidance to officers regarding when a UFIR is required pursuant to MPD policy. On a different subject, our review of the canine training records also revealed occasional instances where a canine passed training but instructor comments raised questions about whether the canine performed adequately. In one instance from January 2003, for example, the training form noted that the handler “still needs to work with his assigned K-9 on a daily basis in regards to obedience. It is apparent that if [the officer] works with his K-9 between Re-Certifications, the dog will perform at an acceptable level.” While this canine received a passing training grade, the comment suggests that at best it was a minimally passing grade. While we are not in a position to pass judgment on whether any particular canine passed or failed its certification test, we do recommend that MPD take care to ensure that canines who receive passing training grades are in fact fully capable of performing their mission.

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

A. Requirements

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

- Pre-screening procedures must be employed to ensure that only officers suited to participate in such units are permitted to participate. Participating officers must
 - 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 And Assessment

MPD submitted its Specialized Mission Unit General Order to DOJ on October 4, 2002. DOJ provided comments to MPD on January 31, 2003.⁸⁹ DOJ currently is awaiting MPD's production of the revised General Order. To facilitate our review of MPD's compliance with this General Order once approved (as well as with the totality of the SMU requirements spelled out in the MOA), we have requested that MPD provide us with a list of all officers assigned to an SMU within one week of DOJ's final approval of the SMU General Order. This list will be extremely useful in facilitating our review of MPD's compliance with paragraphs 149 through 159 of the MOA when the time comes.

C. Recommendations

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

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.

⁸⁹ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

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

B. Status And Assessment

During this quarter, MPD released its 2002 FIT Annual Report in hard copy and through its official Web site. This release cures almost all of the deficiencies of its prior report. The 2002 FIT Annual Report includes statistics related to lethal and non-lethal uses of force; statistics for the number of uses of force (for each type of force) by month; the number of uses of force by district; the race or ethnicity of the subject of the use of force; the number of cases that FIT investigated; and the number of each type of disposition for the cases investigated.

One of the few areas not remedied by MPD involves its classification of uses of force. In our last report, we criticized MPD's classification of the types of force as confusing.⁹⁰ In particular, we noted that in a statistical table summarizing "Less Lethal Uses of Force," MPD used certain classifications (such as Administrative/Allegation or Civil Action), but did not indicate what types of force actually fell within those categories. MDP's current report does not cure this deficiency. To make the use of force statistics more understandable to the general public, we recommend that MPD either change the labels for these classifications to something that is more descriptive or explain what types of force fall within each category.

Although not required by the MOA, the 2002 FIT Annual Report includes descriptions of the uses of force cases investigated. For the incidents involving firearms, the description includes the disposition or status of each investigation. These summaries and the associated status of the investigation provide extremely useful information to the public by indicating determinations in particular cases. We commend FIT for this proactive approach that makes such a significant quantity of information available to the public. While summaries are provided for the investigations involving non-lethal uses of force, the disposition or status of the investigation is not listed. Providing the disposition or status of these investigations may be informative and helpful in the same way.

⁹⁰ Third Quarterly Report at 81.

C. Recommendations

MPD has made significant improvements in this area, and the 2002 FIT Annual Report meets almost all of the MOA's requirements. To fully comply with the purpose of having MPD publicly report statistics, MPD should clarify the different types of non-lethal force discussed above to provide statistics that the public can understand.

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

A. Requirements

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

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

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

B. Status And Assessment

1. Compliance Monitoring Team

As in the past, we remain very impressed by the professionalism, efficiency, and responsiveness of MPD's CMT.

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

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

3. MPD Quarterly MOA Progress Reports

MPD published its quarterly MOA Progress Report on April 7, 2003. As in the past, the report is well written, well organized, and generally informative. Once again, we found MPD's Progress Report to be extremely useful in preparing this quarterly report.

C. Recommendations

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

Conclusion

During this quarter, MPD engaged in a broad range of compliance activities. To its credit, it engaged in these activities in the face of a declaration of emergency (resulting from the United States war with Iraq) that required MPD personnel to work extended shifts and administrative and support personnel to be deployed into the field. These activities have brought about many positive results.

Now that MPD's new use of force policies have been approved by DOJ and circulated to all officers and supervisors, MPD has increased its activities in other areas. MPD created and implemented a sergeants and above training program designed to enhance supervisor understanding of the MOA and the related use of force policies, reduce confusion among officers regarding the UFIR (which has led to a decline in the number of uncompleted UFIRs); submitted many revised manuals and general orders for DOJ review; redirected its efforts to comply with the MOA's PPMS requirements; worked with OCCR to facilitate MOU compliance; and conducted an independent analysis of its canine program. Concurrent with these activities, CMT promptly and appropriately facilitated OIM's monitoring activities by responding to requests, answering questions, and arranging meetings at our request.

Despite all of these notable achievements, this report notes several significant deficiencies that MPD needs to address promptly. One such area relates to MPD's Canine Unit. As detailed in this report, confusion exists within MPD regarding the meaning of the phrase "Handler-Controlled Alert Methodology" -- a phrase that is at the core of the canine provisions of the MOA. We believe, however, that this confusion can be ameliorated through continued face-to-face discussions between DOJ and MPD that focus on this topic. At the same time, DOJ and MPD also should reach an understanding on other canine issues that have caused confusion, such as whether an on-lead track is a tactical deployment and whether a warning is required for an on-lead deployment.

MPD also remains out of compliance with regard to PPMS. Although MPD has reinvigorated its efforts, substantial progress is required before the PPMS project, which is so critical to overall compliance with the MOA, will be back on track.

During this quarter, and throughout the past year since the OIM began its work, MPD has demonstrated a sustained and substantial

commitment to complying with the MOA's requirements. We fully appreciate the magnitude of the compliance-related activities undertaken by MPD, as well as by other city agencies -- most notably, OCCR. MPD has made excellent progress in many of the most significant areas covered by the MOA. This progress has brought MPD and the City in some cases into full compliance with certain central MOA provisions -- particularly with regard to the formulation of approved policies, procedures, and manuals -- and significantly closer to complying with a broad range of MOA provisions than was the case a year ago. We look forward to working with all parties during the coming year as MPD and the City continue to take the steps necessary to achieve compliance with the full range of the MOA's requirements. For progress of the magnitude we have observed over the past year to continue, MPD and the City will need to sustain the same level of commitment they have demonstrated during the past year.



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

April 29, 2003

Principal Contributors

Jonathan S. Aronie
Mitchell W. Brown
Ronald L. Davis
Mary Ferguson
Melissa E. Lamb
Dennis E. Nowicki
Ngoc D. Pham
John E. Sedlak

Appendix A

(Acronyms)

CDS	Curriculum Development Specialist
CMT	Compliance Monitoring Team
DOJ	Department of Justice
ERT	Emergency Response Team
FIT	Force Investigation Team
FMU	Focus Mission Unit
FOP	Fraternal Order of Police
IPS	Institute of Police Science
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding between MPD and OCCR
MPD	Metropolitan Police Department
OC	Oleoresin Capsicum
OCCR	Office of Citizen Complaint Review
OIA	Office of Internal Affairs
OIM	Office of the Independent Monitor
OPR	Office of Professional Responsibility
PAMS	Performance Assessment Management System
PPMS	Personnel Performance Management System
SMU	Specialized Mission Unit
SO	Special Order
SOP	Special Operations Division
UFIR	Use of Force Incident Report
UFRB	Use of Force Review Board
USAO	United States Attorney's Office