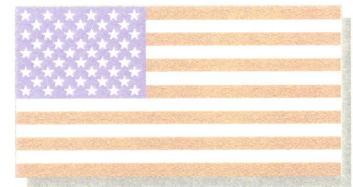


Second Quarterly Report of the Independent Monitor for the Metropolitan Police Department

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Executive Summary

OVERVIEW

This report is the second quarterly report of the Office of the Independent Monitor (“OIM”). The OIM was established at the end of March 2002 to monitor compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they entered into with the Department of Justice (“DOJ”) on June 13, 2001. 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.

As discussed in our first quarterly report, these reports will provide a summary of the activities undertaken during the quarter and MPD’s and the City’s compliance with the MOA. This second quarterly report covers the time period from July 1, 2002 to September 30, 2002 although, at times, we mention activities outside that time period if that information is necessary to place events in proper context.

This report details MPD’s current state of compliance in the following areas:

MOA Renegotiation

On September 30, 2002, the City, MPD, and DOJ negotiated a modification to the MOA, significantly revising many of its timelines. As a result of the modification, the City and MPD are no longer out of compliance with most of the deadlines established in the MOA, but the City’s and MPD’s movement toward full MOA compliance is due to more than a revised implementation schedule. Over the past quarter year, MPD has undertaken significant compliance-related activities that have produced significant results. The positive consequences of these activities are demonstrated in many new or revised policies and procedures that were approved by DOJ prior to the end of this quarter. Indeed, it is the discernible progress reflected in these activities that prompted DOJ to agree to the modifications of the deadlines.

Use of Force Policy

DOJ approved MPD's revised Use of Force General Order on September 17, 2002. MPD committed to begin implementing the new policy during the week of October 6, 2002.¹ Due to the renegotiation of the timelines set forth in the MOA, MPD is no longer out of compliance with this requirement.

Use of Firearms Policy

DOJ approved MPD's revised Use of Firearms Policy -- entitled "Handling of Service Weapons General Order" -- on August 19, 2002. MPD committed to begin implementing the new policy during the week of October 6, 2002. Due to the renegotiation of the timelines set forth in the MOA, MPD is no longer out of compliance with this requirement.

Other Use of Force Policies

DOJ approved MPD's revised Canine Teams General Order and Oleoresin Capsicum (OC) Spray General Order in September 2002. MPD committed to begin implementing the new policies during the week of October 6, 2002. Due to the renegotiation of the timelines set forth in the MOA, MPD is no longer out of compliance with these requirements.

Also, in September 2002, DOJ approved MPD's Use of Force Incident Report ("UFIR") form. MPD has committed to begin implementing the new UFIR form by the week of October 6, 2002 and an automated, on-line UFIR form by the week of December 29, 2002.

Use of Force Investigations

During this quarter, the OIM reviewed 11 FIT II use of force investigations and 33 chain of command use of force investigations. As we reported in our first quarterly report, MPD has made substantial progress in the manner in which it investigates use of force complaints and allegations, yet it still is not in full compliance with all of the requirements of the MOA.

In addition, we experienced some problems obtaining accurate data regarding the number of use of force complaints MPD has received

¹ The OIM's next quarterly report will assess MPD's compliance with the October 6, 2002 implementation commitment.

since June 13, 2001, which, according to MPD, was attributable to the manner in which the data were entered into the Performance Assessment Management System (“PAMS”).

Receipt, Investigation, and Review of Misconduct Allegations

On September 28, 2002, MPD and the Office of Citizen Complaint Review (“OCCR”) entered into a Memorandum of Understanding (“MOU”) that was designed to comply with the requirement in paragraph 85 of the MOA that MPD and OCCR develop a “written plan” to define the roles and responsibilities of the two agencies in handling complaints against MPD officers. Due to the renegotiation of the timelines set forth in the MOA, this written plan was due by September 30, 2002. As such, the timeliness element of this requirement has been met.

The MOU, however, falls short of total compliance with the MOA. In particular, the MOU allows ten business days for the Office of Professional Responsibility to notify OCCR about certain complaints, yet the MOA requires that this task be accomplished within twenty-four hours or the next business day. The MOU also provides little or no information about the community outreach and education requirements and the role and responsibility of the MPD official on the Citizen Complaint Review Board.

The City is already out of compliance with the requirement to institute a 24-hour toll-free citizen complaint hotline by September 30, 2002. It appears this delay is because of funding issues relating to OCCR.

Discipline and Non-Disciplinary Actions

Due to the renegotiation of the timelines set forth in the MOA, the deadline for MPD’s new disciplinary policy is November 22, 2002. This change in deadline means that MPD is no longer out of compliance with this requirement.

Personnel Performance Management System (“PPMS”)

Although MPD and DOJ renegotiated several of the MOA deadlines, the parties have not yet reached agreement regarding the deadlines for the development and implementation of PPMS. MPD is out of compliance with this requirement.

Also, during this quarter, we tested the sufficiency and quality of the data in PAMS.² We compared the data in 72 initial MPD complaint forms with the data entered into PAMS. The focus of this comparison was to identify whether there were data entry errors that resulted in material information being omitted or entered incorrectly into PAMS. While we found material errors in half of the 72 files we reviewed, we also noticed that the later files -- particularly the 2002 files -- showed a marked improvement over the earlier files.

Training

MPD has submitted fifteen new or revised lesson plans to DOJ for approval. As of September 30, 2002, DOJ had not yet approved (or rejected) the training materials.

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

Monitoring, Reporting, and Implementation

On October 4, 2002, the Compliance Monitoring Team issued its quarterly report. This very useful report included a matrix that detailed MPD's status on all the MOA provisions as required by paragraph 175 of the MOA.

Although there have been instances where MPD has not been able to respond promptly to certain questions and document requests from the OIM, we have been extremely satisfied with the open and professional

² MPD's Performance Assessment Management System, or "PAMS," is an interim system intended to meet the MOA's PPMS requirements during the creation of the PPMS.

manner in which MPD has made its staff, facilities, and files available to the OIM.

Conclusion

Significant progress has been made during this second quarter: MPD and DOJ jointly modified the MOA thereby removing MPD from being out of compliance with significant timeliness requirements contained in the MOA; MPD and OCCR entered into an MOU; and MPD received DOJ approval on seven General Orders relating to uses of force. However, there still is much that needs to be accomplished. This next quarter will present many challenges as MPD moves to implement the newly approved General Orders and otherwise seeks to satisfy the various requirements of the MOA.

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Introduction

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

This report covers the period July 1, 2002 to September 30, 2002. This quarter saw significant activity on the part of MPD in terms of MOA compliance. MPD prepared and submitted to DOJ a number of new or revised policies, procedures, forms, and training curricula. Several of these items -- specifically, the Use of Force General Order, Use of Force Investigations General Order, Use of Force Incident Report, Handling of Service Weapons General Order, Canine Teams General Order, and Oleoresin Capsicum (OC) Spray General Order -- were approved by DOJ prior to the end of September 2002.³ As of the end of the reporting period, MPD was awaiting comment from DOJ with respect to an Office of Internal Affairs Operational Manual previously submitted to DOJ and was incorporating DOJ’s comments into its Serious Misconduct Investigations Policy.

In addition to the development and submission of new or revised policies, MPD worked closely with DOJ throughout this quarter to modify the due dates in the MOA in such a way that prevented MPD, for the most part at least, from being in violation of many of the provisions of the agreement due to the failure to meet the MOA’s various deadlines that already had passed. As a result of the cooperation between MPD and DOJ in seeking to agree on a fair and appropriate set of adjustments to these due dates, Joint Modification No. 1 to the June 13, 2001 Memorandum of Agreement (the “MOA Modification”) was entered into on

³ DOJ previously approved MPD’s Carrying Weapons and Transporting Prisoners Aboard Aircraft General Order on May 28, 2002 and MPD’s Force-Related Duty Status Determination General Order on July 1, 2002.

September 30, 2002.⁴ MPD's compliance efforts now will be measured against the revised deadlines established by the MOA Modification.

MPD also has been working closely with other City agencies to comply with the MOA. For example, MPD and the City's Office of Citizen Complaint Review ("OCCR") worked together to negotiate and execute a Memorandum of Understanding ("MOU") prior to the end of the current quarter, on September 28, 2002. The MOU addresses information sharing, training, and complaint processing, among other important MOA-related subjects.

The approval by DOJ of the various new MPD policies relating to use of force and the development of the MOU with OCCR are significant steps toward achieving some of the central objectives of the MOA. They reflect the sustained hard work of the MPD's Compliance Monitoring Team ("CMT") and its commitment to comply with the MOA. Even so, it is important to note the areas in which we have noted deficiencies or problems. As described in this quarterly report, MPD and DOJ have not yet negotiated a new timeline for the implementation of the Personnel Performance Management System ("PPMS") required by the MOA. Even in some areas where MPD and DOJ were able to agree upon a revised implementation schedule in the MOA Modification, the City and MPD already have missed new deadlines. For example, the MOA Modification required the City, by September 30, 2002, to institute a toll-free hotline for reporting citizen complaints. As of the publication of this report, however, no such hotline has been instituted.

While this quarter (July-September) was a busy one for MPD, we expect the next quarter (October-December) to include substantial implementation efforts consistent with the new timelines negotiated by MPD and DOJ. MPD has committed to the prompt implementation of and training on the policies and procedures recently approved by DOJ. According to MPD, the new policies and procedures were to be distributed to all officers during the week of October 6, 2002, presented (with an explanatory video) at all roll calls during the week of October 14, 2002, and incorporated into all in-service training beginning the week of October 14, 2002. Additionally, MPD advised the OIM that it has established plans to conduct comprehensive training on the new policies and procedures for all supervisors and managers (at the rank of sergeant and above) beginning the week of October 21, 2002.

⁴ The MOA Modification is attached hereto as Appendix B.

Compliance Assessment

This report is organized in a manner consistent with the structure of the MOA and with the structure of our prior reports. Within this framework, we first summarize the requirements imposed by each section of the MOA; then we provide the current status of progress toward compliance with those requirements; and, finally, we offer our analysis and assessment of factors that have impeded or advanced MPD's progress toward compliance, along with additional information we believe relevant. Summarizing the requirements imposed by the MOA makes this 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.⁵

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

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

1. Requirements

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

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

⁵

MOA at ¶ 169.

- 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

After a lengthy process in which MPD developed and revised drafts of its Use of Force General Order in response to rounds of comments from DOJ, DOJ approved MPD's revised Use of Force General Order on September 17, 2002. MPD has committed to begin implementing the new policy during the week of October 6, 2002, with intensive training to follow immediately thereafter.⁶ Because the Use of Force General Order is a keystone of the MOA, we already have begun intensive monitoring activities relating to the implementation of the policy that will continue over the course of the coming weeks and months. Our next report will describe MPD's implementation activities, including, among other things, the timeliness of the implementation, the scope of the circulation, the effectiveness of the roll-out, and the quality of the training on its new Use of Force General Order.

3. Assessment and Analysis

Due to the renegotiation of the timelines set forth in the MOA, MPD no longer is in violation of the deadlines governing the development of its Use of Force General Order. MPD now must ensure that the new Use of Force General Order is implemented in a timely fashion and in an appropriate manner. As noted above, we will monitor closely MPD's implementation of this policy.

⁶ Memorandum of Agreement Progress Report, dated October 4, 2002 ("MPD October 2002 Progress Report") at 6; see also MOA Modification, Joint DOJ/MPD MOA Modification Chart.

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 Columbia⁷ 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

⁷

The submission to the City Council takes the form of an amendment to Section 206.1 of Title 6A of the District of Columbia Municipal Regulations. The City Council's Judiciary Committee recently held a hearing on the amendment. According to Judiciary Committee staff, the amendment likely will not be voted on this session and will have to be reintroduced next session.

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

2. Status

After a lengthy process in which MPD developed and revised drafts of its Use of Firearms Policy in response to rounds of comments from DOJ, DOJ approved MPD's revised (and renamed) Handling of Service Weapons General Order on September 17, 2002. MPD has committed to begin implementing the new policy during the week of October 6, 2002, with intensive training to follow immediately thereafter.⁸ We already have begun intensive monitoring activities relating to the implementation of the policy that will continue over the course of the coming weeks and months. Our next report will describe MPD's implementation activities, including, among other things, the timeliness of the implementation, the scope of the circulation, the effectiveness of the roll-out, and the quality of the training of its new Handling of Service Weapons General Order.

3. Assessment and Analysis

Due to the renegotiation of the timelines set forth in the MOA, MPD no longer is in violation of the deadlines governing its Handling of Service Weapons General Order with respect to this element of the MOA. MPD now must ensure that the new Handling of Service Weapons General Order is implemented in a timely fashion and in an appropriate manner. As noted above, we will monitor closely MPD's implementation of this policy.

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;

⁸ MPD October 2002 Progress Report at 6; *see also* MOA Modification, Joint DOJ/MPD MOA Modification Chart.

- Requires supervisory approval for all canine deployments -- either a canine unit supervisor or a field supervisor;⁹
- 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

After a lengthy process in which MPD developed and revised drafts of its Canine Teams General Order in response to rounds of comments from DOJ, DOJ approved MPD's revised Canine Teams General Order on September 17, 2002. MPD has committed to begin implementing the new policy during the week of October 6, 2002, with intensive training to follow immediately thereafter.¹⁰ We already have begun intensive monitoring activities relating to the implementation of the policy that will continue over the course of the coming weeks and months. Our next report will describe MPD's implementation activities, including, among other things, the timeliness of the implementation, the scope of the circulation, the effectiveness of the roll-out, and the quality of the training on its new Canine Team General Order.

3. Assessment and Analysis

Due to the renegotiation of the timelines set forth in the MOA, MPD no longer is in violation of the deadlines governing its Canine Teams General Order with respect to this element of the MOA. MPD now must

⁹ The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.

¹⁰ MPD October 2002 Progress Report at 6; *see also* MOA Modification, Joint DOJ/MPD MOA Modification Chart.

ensure that the new Canine Teams General Order is implemented in a timely fashion and in an appropriate manner. As noted above, we will monitor closely MPD's implementation of this policy.

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

1. Requirements

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

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

2. Status

After a lengthy process in which MPD developed and revised drafts of its Oleoresin Capsicum (OC) Spray Policy in response to rounds of comments from DOJ, DOJ approved MPD's revised Oleoresin Capsicum (OC) Spray General Order on September 17, 2002. MPD has committed to begin implementing the new policy during the week of October 6, 2002, with intensive training to follow immediately thereafter.¹¹ We already have begun intensive monitoring activities relating to the implementation of the policy that will continue over the course of the coming weeks and months. Our next report will describe MPD's implementation activities, including, among other things, the timeliness of the implementation, the scope of the circulation, the effectiveness of the roll-out, and the quality of the training on its new Oleoresin Capsicum (OC) Spray General Order.

3. Assessment and Analysis

Due to the renegotiation of the timelines set forth in the MOA, MPD no longer is in violation of the deadlines governing its Oleoresin Capsicum (OC) Spray General Order with respect to this element of the MOA. MPD now must ensure that the new Oleoresin Capsicum (OC) Spray General Order is implemented in a timely fashion and in an appropriate manner. As noted above, we will monitor closely MPD's implementation of this policy.

E. Implementation Schedule (§§ 51-52)

In the August 1, 2002 Quarterly Report of the Independent Monitor for the Metropolitan Police Department ("First Quarterly Report"), we noted that MPD had failed to meet all of the deadlines established by the MOA. On September 30, 2002, MPD and DOJ executed the MOA Modification to address this situation, and, in this modification, they agreed that "MPD has failed to meet the timelines identified in the MOA."¹² The parties also agreed, however, that "MPD has made significant strides to satisfy many of its obligations under the MOA -- consistently improving both the quality and the timeliness of deliverables

¹¹ MPD October 2002 Progress Report at 6; *see also* MOA Modification, Joint DOJ/MPD MOA Modification Chart.

¹² MOA Modification at ¶ 2.

in the last several months.”¹³ As a result of MPD’s “renewed commitment” toward compliance, DOJ agreed to modify the deadlines set forth in the initial MOA.¹⁴

The MOA Modification incorporates new deadlines for all major MOA-related tasks and projects with the exception of PPMS. In addition to identifying new deadlines, the MOA Modification also requires that all DOJ approved policies and procedures be implemented within fourteen business days of approval.¹⁵

We commend MPD and DOJ for their success in renegotiating a new timetable for the creation, approval, and implementation of the many policies and procedures encompassed by the MOA. We already have begun monitoring MPD’s compliance with the new implementation schedule and will describe its compliance activities in our next quarterly report.

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;

¹³ *Id.*

¹⁴ *Id.* at ¶¶ 2, 6.

¹⁵ *Id.* at ¶ 6.

- An officer's supervisor to respond to the scene upon receiving notification that force has been used or that an allegation of excessive force has been received;
- Immediate notification to FIT in every instance involving deadly force,¹⁶ the serious use of force,¹⁷ or any use of force potentially reflecting criminal conduct by an officer;¹⁸
- 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").

2. Status

DOJ and MPD have agreed to treat the Use of Force Reporting Policy described in paragraph 53 of the MOA as an element of the overall Use of Force Policy described in paragraph 37 of the MOA. As noted previously, DOJ approved the Use of Force General Order on September 17, 2002 after reviews of various drafts and the incorporation of various substantive revisions. MPD has committed to begin implementing the new policy during the week of October 6, 2002, with intensive training to follow immediately thereafter.¹⁹ We already have

¹⁶ "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."

¹⁷ "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."

¹⁸ "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."

¹⁹ MPD October 2002 Progress Report at 6; *see also* MOA Modification, Joint DOJ/MPD MOA Modification Chart.

begun intensive monitoring activities relating to the implementation of the policy that will continue over the course of the coming weeks and months. As stated previously, our next report will give an account of MPD's implementation activities, including, among other things, the timeliness of the implementation, the scope of the circulation, the effectiveness of the roll-out, and the quality of the training on its new Use of Force General Order.

Also in September 2002, DOJ approved a new Use of Force Incident Report ("UFIR") form. DOJ's approval followed lengthy negotiations between MPD and DOJ regarding the form and the protocol for completing it (*i.e.*, whether the reporting officer or his/her supervisor should complete the form²⁰). MPD has committed to implementing the new UFIR form during the week of October 6, 2002 and transition to an automated, on-line UFIR form by the week of December 29, 2002. We will report on the implementation of the UFIR form and the subsequent on-line UFIR form in our next quarterly report.

3. Assessment and Analysis

Due to the renegotiation of the timelines set forth in the MOA, MPD no longer is in violation of the deadlines governing its Use of Force Reporting Policy with respect to this element of the MOA. MPD now must ensure that the new UFIR form is implemented in a timely fashion and in an appropriate manner. As noted above, we will closely monitor MPD's implementation of this policy.

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 the Force Investigation Team ("FIT") as the entity within MPD charged with investigating all firearms discharges by MPD. The MOA creates a

²⁰ According to DOJ, these negotiations were resolved in favor of having officers complete the UFIR.

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.²¹

MPD is required to notify and consult with the United States Attorney's Office ("USAO") -- and vice versa -- in each instance in which there is an incident involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are handled by FIT rather than by any other unit of MPD. Even while the criminal investigation is pending, the MOA requires FIT's investigation of the officer's use of force to proceed in all such cases, although the compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.²²

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.²³

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

²¹ 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.

²² 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).

²³ In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

- Proposed findings, which include:
 - A determination of whether the use of force under investigation was consistent with MPD policy and training;
 - A determination of whether proper tactics were used; and
 - A determination of whether alternatives requiring lesser uses of force were reasonably available.

(2) Other Use of Force Investigations

All use of force investigations, other than those specifically assigned to FIT, may be investigated by chain of command supervisors in MPD districts. In the alternative, the Chief of Police or his designee may assign investigations to chain of command supervisors from another district. In the absence of special circumstances, these use of force investigations, like FIT's investigations, must be completed within ninety days and must contain all of the elements prescribed above for FIT investigation reports. Once such investigations are complete, the investigation report must be submitted to the Unit Commander, who will review it to ensure completeness and to ensure that its findings are supported by the evidence. The Unit Commander has the power to order additional investigation if necessary. Once the investigation is complete, the investigation file is forwarded to the Use of Force Review Board ("UFRB").²⁴

(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;²⁵

²⁴ 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.

²⁵ 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

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

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

b. Status

(1) FIT Manual

Paragraph 57 of the MOA requires MPD to develop and implement a “plan, subject to approval of DOJ,” governing FIT investigations. MPD intends, with the knowledge and approval of DOJ, to meet this requirement by revising its “FIT Manual.”²⁶ Pursuant to the revised schedule set forth in the MOA Modification, the revised FIT Manual must be submitted to DOJ on or before October 27, 2002. MPD then must implement the manual within fourteen days of DOJ’s approval. We will

Footnote continued from previous page

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.

²⁶ The Joint DOJ/MPD MOA Modification Chart, negotiated and executed by both MPD and DOJ, refers to the FIT Manual as the plan to satisfy paragraph 57 of the MOA.

report on MPD compliance with this revised requirement in our next quarterly report.

(2) FIT Use of Force Investigations

In our First Quarterly Report, we provided a substantive analysis and status report on FIT investigations involving use of deadly force. In the weeks since that report, we have undertaken a review of MPD's policies and practices for responding to and investigating all other serious use of force incidents.²⁷ Since January 2002, as required by the MOA, MPD has assigned FIT to investigate all incidents involving deadly force, serious uses of force, and other uses of force suggesting potential criminal misconduct by an officer, as defined by the MOA. In addition to deadly force, FIT now investigates uses of force resulting in broken bones, hospitalization, head strikes, loss of consciousness, police dog bites, and criminal referrals from OCCR. In order to respond to this increased workload, on January 1, 2002, a second FIT team, designated FIT II, began investigating these additional use of force categories.

During this quarter, we reviewed eleven FIT II investigations involving five canine bites, four head strikes with a hard object, and two incidents where excessive force is alleged but the exact nature of the force could not be determined because the complainants refused to cooperate with the investigators beyond making an initial general complaint of excessive force.²⁸ Based on our review of these eleven FIT II investigations involving less than deadly force, we believe that the investigations into serious use of force conducted by FIT II achieve a high standard in terms of quality and comprehensiveness. With minor exceptions, we found the FIT II investigations of serious use of force to be conducted properly and the investigation reports to be prepared consistent with professional standards applicable to such investigations. We did, however, find certain elements of the FIT II reports not to be compliant with MOA requirements.

²⁷ See note 15, *supra*.

²⁸ Only eleven investigations were available for our review because the USAO was concerned about the OIM reviewing files for incidents that were still pending at the USAO.

- Exclusivity of Investigation (MOA ¶¶ 61, 64)

Since our review to date has focused only on FIT case files, we could make only a preliminary determination regarding whether FIT -- as opposed to an officer from the subject officer's own district -- exclusively investigated the deadly and serious uses of force as required by paragraph 64 of the MOA. Our preliminary review suggests that MPD is in compliance with this requirement. We note, however, that this issue was not always clear from the face of the documents because some witness statements failed to identify the officer taking the statement or the officer's unit.

- Timeliness of Notification (MOA ¶¶ 53, 61)

Our review reflected that, in four instances, FIT was not timely notified of an MPD officer's use of force.²⁹ The MOA mandates that MPD require officers to notify their supervisor immediately following any use of force, and the officer's supervisor to notify FIT immediately thereafter. Upon such notification, FIT is required to respond to the scene of such incidents and commence its investigation.

In one investigation we reviewed, a district supervisor recorded the complaint and forwarded it to MPD's Office of Internal Affairs ("OIA"). OIA received it two days later. The case was finally assigned to a FIT II investigator two months after the date of the incident. The investigation file does not explain the delay in notifying FIT.

In the second incident, a subject received a laceration to the side of his left eye from a ballistic shield³⁰ being used by an officer who was part of an entry team serving a drug search warrant. Although the officer's supervisor conducted a preliminary investigation into the injury to the arrestee, he failed to notify FIT, resulting in a five-day delay in the

²⁹ The first incident was reported to MPD on January 7, 2002; the second, on February 27, 2002; the third, on June 2, 2002; and the fourth, on February 6, 2002. FIT II came into existence in January 2002. In its comments on the draft of this report, MPD noted that these notification delays were due to the "implementation of new protocols." In its comments, DOJ commented that "FIT II is modeled on FIT I and therefore should not have experienced the same start-up delays."

³⁰ A ballistic shield is a shield used by officers to provide protection from projectiles, such as bullets, when conducting high risk entries into a home or building.

commencement of FIT II's investigation. The FIT II investigator reported counseling the field supervisor of the requirement that FIT be notified, but made no recommendation for further corrective action.

In the third incident, involving a head strike with an Armament Systems and Procedures ("ASP") baton, the supervisor of the officer who used the force conducted a preliminary investigation and delayed notification to FIT by over four hours. The FIT II investigator did identify the delayed notification as a supervisor deficiency. The investigation was not finalized at the time of our review.

The fourth incident, also an alleged head strike with an ASP baton, was not brought to the attention of the officer's supervisor until the officer returned to the district station. The officer used force in the field, transported the arrestee to the district, and then notified his sergeant, who was present in the district, of the use of force. After being notified, the sergeant appears to have handled the investigation properly. He made an immediate notification to FIT and directed that the arrestee be transported to the hospital for medical attention. The FIT II investigation does not address the delayed notification to the supervisor by the officer.

In three of these incidents, the delay in notification adversely affected FIT II's ability to respond to the scene of the incident and potentially impaired its ability to gather physical evidence. More generally, such a failure of timely notification hampers FIT's ability to conduct its investigation in a timely and appropriate way and, if the failure is anything other than isolated, can threaten the integrity of the FIT investigation process. As indicated in our First Quarterly Report, we plan to conduct additional reviews to ensure that prompt reports are being made to FIT.

- Participation of Unit Supervisor (MOA ¶ 53)

Paragraph 53 of the MOA provides that the Use of Force Reporting Policy shall require that officers notify their supervisors immediately following any use of force and that the supervisors, upon notification, respond to the scene. The preliminary investigation reports prepared by FIT II identify the MPD officials who responded to the scene of the use of force. Thus, we were able to determine whether a supervisor from the officer's unit responded to the scene in every case, as required by the MOA. As we pointed out in our First Quarterly Report, the supervisor's presence also strongly suggests that the supervisor was notified of the use of force in some fashion. However, there was a lack of specific documentation of the date and time of the supervisor's notification and

his response to the scene of the incident. Our review of these cases found that the more recent investigations contained documentation of supervisor notifications. Nevertheless, with respect to at least three investigations (the first and fourth investigations described above, and another where a complaint was made by the alleged victim twenty-two days after the alleged incident), it is clear that the supervisors of the subject officers were not immediately notified of the use of force.

- USAO Notification (MOA ¶¶ 54, 58)

It is unclear if FIT promptly notified the USAO, as required by the MOA, in a majority of the investigations that we reviewed. Some of the FIT II preliminary investigation reports indicate the exact date on which the USAO was notified. More often than not, however, we had to infer notification based on the date of the FIT II report or from the date of the documented consultation between MPD and the USAO.³¹ We identified four investigations where we could not determine whether the USAO had been notified about the use of force within one business day as required by paragraph 54 of the MOA.³² In four other investigations, it appears that notification was delayed anywhere from two to seven days after the incidents. Based on our discussions with FIT management, it appears that this is more a problem with documentation than with compliance.

In all but one of the investigations we reviewed, we found evidence that FIT consulted with the USAO. The one case where we did not find any documentation of consultation with the USAO was not yet finalized. We have no way of knowing whether the consultation took place; our finding is that no such consultation was noted in the preliminary documentation we reviewed.

- Prompt Medical Attention (MOA ¶ 40)

In nine of the eleven investigations we reviewed, it appears that prompt medical attention was obtained for injured individuals. The other two investigations involve allegations of excessive force lodged by

³¹ For example, if the preliminary FIT II report was prepared within one business day of the incident and the report stated the notification had occurred, then we were able to infer that the notification occurred within one business day, as required by the MOA.

³² This count does not include investigations of accidental discharges since FIT is not always required to notify the USAO about such cases.

individuals days after the alleged excessive force took place, and there was no evidence that any medical attention was necessary.

- Officer Impairment (MOA ¶ 42)

We found no indication that any of the officers investigated by FIT II had been impaired by drugs or alcohol during their use of force, but we also did not find any information suggesting that FIT II typically focuses on this issue as part of its investigation.³³ While the FIT report forms contemplate a thorough physical description of the subject officer -- including age, height, weight, clothing type, and MPD equipment -- the forms lack a specific section calling for a discussion of whether the officer appeared impaired. Moreover, while it is possible that FIT II only records such information if it finds evidence of impairment, it seems that FIT II investigators do not typically question witnesses on this topic. Consequently, we have no basis to determine whether MPD currently is in compliance with paragraph 42 of the MOA that prohibits officers from discharging a firearm when their performance may be impaired.³⁴

- Deferring Officer Interviews (MOA ¶ 60)

Paragraph 60 of the MOA requires FIT to defer interviewing officers who are the subject of a criminal investigation resulting from a use of force. The purpose of this requirement is to avoid tainting a criminal investigation with a “compelled” interview.³⁵ Our review of the FIT II case files revealed no instance in which FIT compelled the interview of an officer who was the subject of a criminal investigation. The USAO did not chose to proceed criminally in any of the investigations we reviewed.

³³ Paragraph 42 of the MOA requires the Mayor of the District of Columbia to request an amendment to the District of Columbia Municipal Regulations whereby the Chief of Police may issue a policy prohibiting MPD officers from carrying and/or using a firearm in situations where the officer’s performance may be impaired. While this paragraph does not specifically address use of force investigations, MPD is required to assess the propriety of all officer conduct during its use of force investigations (see MOA at ¶ 42), and an inquiry into whether the officer was impaired during the use of force is therefore relevant to the OIM’s evaluation of the quality and completeness of the investigation (see MOA at ¶¶ 171-172).

³⁴ As described in the assessment and analysis section below, MPD has taken steps to remedy this shortcoming of its FIT investigation reports.

³⁵ See *Garrity v. State of New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

- Investigative Techniques (MOA ¶ 81)

The MOA requires FIT investigators to follow certain specific investigative techniques during their investigations, including:

- Interviewing complainants and witnesses at sites and times convenient for them, including at their residences or places of business, whenever practical or appropriate;
- Not conducting group interviews;
- Notifying the supervisors of the involved officers of the investigation, as appropriate;
- Interviewing all appropriate MPD officers, including supervisors;
- Collecting, preserving, and analyzing all appropriate evidence, including canvassing the scene to locate witnesses and obtaining complainant medical records, where appropriate; and
- Identifying and reporting in writing all inconsistencies in officer and witness interview statements gathered during the investigation.

Based on our review, it appears that FIT investigators generally adhere to these requirements, although the documentation maintained by FIT in this area is less complete than it should be. In our First Quarterly Report, we reported that FIT I case files rarely contained documentation about witness canvasses, although we often could infer such canvasses from some of the information gathered by FIT. In the investigation files we reviewed this quarter, we found some improved documentation of witness canvasses. In four of the eleven files, there was specific mention of witness canvasses by FIT II investigators. In one of the investigations, the canvass produced witnesses not identified before the canvass.

As in our earlier reviews, while FIT II obtained numerous officer statements regarding each use of force, we often had to infer whether all appropriate MPD officers had been interviewed since there was no complete record of all officers who responded to the incident leading to

the use of force.³⁶ More problematic were three investigations (one completed and two not yet final) where there was no evidence that all identified officers were interviewed. In the completed investigation, thirteen officers were identified as present at the time the force was used, yet there is documentation in the file of the interview of only one officer. The two not yet final cases involve allegations of excessive force made by individuals, as opposed to use of force reported by officers.

In two of the eleven files we reviewed, we found deficiencies related to the MOA requirement for collecting, preserving, and analyzing all appropriate evidence.³⁷ Both are canine bite investigations, and both lack documentation that the scene was processed or that photos were taken of the injuries caused by the canine bites.

- Scope of Final Investigation Report (MOA ¶ 62)

Paragraph 62 of the MOA requires the following elements to be included in each final investigation report issued by FIT:

- Description of the use of force incident and any other uses of force identified during the investigation;
- Summary and analysis of all relevant evidence gathered during the investigation; and
- Proposed findings and analysis to support the findings, including:
 - A determination of whether the use of force was consistent with policy and training,
 - A determination of whether proper tactics were employed, and
 - A determination of whether lesser force alternatives were reasonably available.

³⁶ The FIT preliminary reports only list the supervisors who respond to the scene following the use of force.

³⁷ We do not include failure to process the scene of the incident in those cases where there was a significant delay in notification by the officer or supervisor to FIT or where the investigation was initiated after a subject made a complaint of excessive force several days after the date of the incident.

Each of the eleven FIT II reports we reviewed contained an adequate description of the use of force incident and, if applicable, any other uses of force identified during the investigation. FIT II's summaries and analyses of relevant information gathered during the investigation generally were complete and clearly presented. Unlike in our earlier review of investigations where police had discharged their firearms, reported in our First Quarterly Report, we found that the FIT II reports we reviewed this quarter maintained a neutral and objective tone.

The reports we reviewed varied in quality with respect to the proposed findings and analysis section. Once again, we found that some investigation reports contained extensive analysis of whether the use of force was consistent with policy and training, whether proper tactics were employed, and/or whether lesser force alternatives were reasonably available. In other reports, however, the investigator did not directly address these issues.

- Timing (MOA ¶ 62)

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") absent documented special circumstances. Five of the eleven investigations exceeded the ninety-day target for completion from the time the USAO declined to prosecute the subject officer. The delay in finalizing one of these investigations, which involves an allegation of excessive force, was attributed to the fact that the individual who made the allegation refused to cooperate with the FIT II investigators. The other four investigations reflected timeliness deficiencies.

(3) Other Use of Force Investigations

The OIM also reviewed use of force incidents investigated by the chain of command, rather than by FIT. Paragraph 64 of the MOA provides that

[c]hain of command district supervisors may investigate all use of force incidents except for those incidents involving a serious use of force, serious physical injury, or any use of force indicating potential criminal conduct by an officer.

For our preliminary review, we selected a sampling of the investigation reports, which encompassed use of force incidents within all MPD command districts. Our sample covered the period from June 13, 2001 through August 2002. We reviewed thirty-three reports, including both preliminary and final investigations. The reports encompassed a broad range of uses of force, including deployment of canines, ASP strikes, OC spray use, and combinations of the foregoing.

For the most part, our review of these investigations found them to be generally sufficient, complete, and consistent with professional standards applicable to such investigations. However, there were some elements of some investigations that failed to meet MOA requirements.

- Exclusivity of Investigation (MOA ¶ 64)

Paragraph 64 of the MOA provides that, among other things, no supervisor who was involved in the incident shall be responsible for the investigation of the incident. Our review revealed that, generally, the chain of command use of force investigations were conducted by a supervisor other than the one who had participated in the incident. Only one investigation report did not comply with this element. In this particular case, a supervisor authorized another officer to use OC spray on an individual. This same supervisor then conducted the use of force investigation and recommended that the incident be ruled “justified.” Although this review by an involved supervisor was anomalous in the context of the cases we reviewed, the investigation nevertheless was not questioned by MPD command staff.

- Supervisory Notification (MOA ¶ 53)

Paragraph 53 of the MOA requires officers to notify their supervisors *immediately* following any use of force. Our review revealed that many reports lacked information sufficient to identify when a supervisor was notified that a use of force incident had occurred. Consequently, in many cases, we could not determine the promptness of the arrival of the supervisors at the scene. In a few cases, supervisors conducted preliminary and final investigations of the use of force incident; thus, it could be inferred that they were on the scene, but it was unclear as to when they were notified.

- Prompt Medical Attention (MOA ¶ 40)

Our review revealed that medical attention was provided promptly where warranted. In one OC spray case, an officer used bottled water

prior to the arrival of medical assistance in an effort to expedite the decontamination of an in-custody individual.

- Officer Impairment (MOA ¶ 42)

Our review did not reveal any indication that officers using force were impaired. However, there also were no data indicating that the MPD chain of command sought to determine if an officer's ability was impaired while using force. The documents did not show if the question was asked of any officer or if any test was given to determine possible impairment.³⁸

- Investigative Techniques (MOA ¶¶ 65, 81)

The MOA requires chain of command supervisors to investigate all assigned use of force incidents using the specific investigative techniques outlined previously in this report at Section II.B.1.b(2) in the context of FIT investigations. Our review revealed that chain of command supervisors generally applied these techniques to their use of force investigations. However, in many cases, there was no indication that the scenes were canvassed.

The interviews conducted by the investigating officers focused mainly on the officer using force, other MPD officers who were on the scene, and the person on whom the force was used. On rare occasions, non-participants also were interviewed. It appears that most officers prepared their statements as part of completing the standard MPD incident forms. It is unclear whether these interviews were conducted in a group or individually.

- Scope of the Investigation (MOA ¶ 65)

The MOA requires chain of command investigators to include in their final investigation report several specific elements:

- Description of the use of force incident and any other uses of force identified during the course of the investigation;
- Summary and analysis of all relevant evidence gathered during the investigation; and

³⁸ MPD has apprised the OIM that it has taken steps to remedy this omission in its investigation reports.

- Proposed findings and analysis supporting the proposed findings, including:
 - A determination as to whether the use of force is consistent with MPD policy and training,
 - A determination as to whether proper tactics were employed, and
 - A determination as to whether lesser force alternatives were reasonably available.

All of the chain of command use of force investigations we reviewed contained a description of the use of force incident. Only a few, however, identified whether lesser force alternatives reasonably were available to the officer involved. We could infer from the investigators' analysis and summary and their findings of "justified" that proper tactics were used according to MPD's policy and training, but this important issue should be explicitly addressed in such reports.

- Timing (MOA ¶ 65)

Our review revealed that the chain of command use of force investigation reports generally were completed within the ninety-day time limit required by the MOA. However, we did identify four case reports out of the thirty-three files that were significantly delinquent. These reports had only the preliminary report in the file jacket with no further documentation outlining any special circumstances that would justify the delinquency of the investigation. These four use of force incidents occurred on August 5, 2001, September 3, 2001 (two), and January 25, 2002.

(4) Use of Force Review Board

As of the cutoff date for this report, MPD was reviewing DOJ's comments to the Use of Force Review Board General Order.³⁹ When the new policy is approved, we will monitor its implementation.

³⁹ Compliance Monitoring Team Completion Matrix (updated September 30, 2002), at 20.

c. Assessment and Analysis

In our First Quarterly Report, we commented that “the quality of the post-FIT investigations is significantly better than the quality of the pre-FIT investigations.”⁴⁰ In addition to praising the quality of FIT’s use of force investigations, we also recommended “that FIT modify its current practices to ensure that [certain] information is reflected in all future FIT reports.”⁴¹ In the MPD October 2002 Progress Report, MPD stated that it has “implemented some immediate protocol changes” in response to the OIM’s recommendations. Specifically, MPD stated that FIT reports now will include:

- Information related to officer impairment and
- A supervisory involvement timeline.⁴²

The inclusion of this information in all use of force investigation reports will enhance the quality of MPD’s investigations and will facilitate the ability of the OIM to review those investigations as required by the MOA. While insufficient time has elapsed to monitor the consistency with which this new protocol is being applied, we did review a recent FIT preliminary investigation report (relating to the use of OC spray by an officer on a suspect who subsequently died in police custody) and noted that both elements (information regarding impairment and a supervisory involvement timeline) had been incorporated into that report. We commend MPD for its prompt response to our observations and recommendations.

The MPD October 2002 Progress Report describes other improvements to the manner in which FIT manages and reports its investigations. For example, FIT states that it has implemented a new file record protocol and has created an “AUSA [Assistant United States Attorney] Notification Log.”⁴³ We will review these and other FIT improvements in the next quarter.

⁴⁰ First Quarterly Report at 23.

⁴¹ *Id.* at 24.

⁴² MPD October 2002 Progress Report at 11.

⁴³ MPD October 2002 Progress Report at 11-12.

Beyond the foregoing protocol enhancements, our review suggests that additional benefits could be achieved if the following information were included in future FIT reports:

- Description of the witness canvass and the investigator's findings as a result of the canvass;
- List of all officers who responded to the initial event leading to the use of force and, for those officers not interviewed as part of the investigation, an explanation as to why an interview was unnecessary;
- Statements identifying who conducted the interview, who was present during the interview, and where the interview took place; and
- Topic headings and explicit findings addressing:
 - Whether the use of force was consistent with MPD policy and training,
 - Whether proper tactics were employed, and
 - Whether lesser force alternatives were reasonably available.

Including this information in investigation reports will provide advantages beyond those already achieved through MPD's recent enhancements to the FIT investigation process.

The OIM believes that the recommendations regarding FIT use of force investigations also apply to chain of command use of force investigations because the MOA imposes similar requirements on both types of investigations.

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

a. Requirements

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

- Allegations for which an officer has been arrested or charged criminally;

- Allegations where an officer has been named as a party in a civil lawsuit
 - 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.⁴⁴

With respect to allegations in the above categories that are criminal, MPD's Office of Professional Responsibility ("OPR") is required to conduct the investigation rather than chain of command supervisors in MPD's districts. In these categories of cases, MPD is required to notify the USAO within twenty-four hours of the receipt of such allegations, and MPD and the USAO are required, in the absence of extraordinary circumstances, to consult with each other following such notification.⁴⁵ In addition to criminal allegations, the MOA requires that MPD assign for investigation outside the chain of command allegations involving:

⁴⁴ 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.

⁴⁵ 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;⁴⁶
- 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;⁴⁷
- 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

The MOA Modification significantly revised the MOA timeline relating to investigations of misconduct allegations. Among other things, MPD currently is required to implement its Serious Misconduct Investigations General Order within fourteen days of DOJ approval,⁴⁸ submit its new Misconduct Investigation Manual to DOJ by the week of October 20, 2002, and implement its investigator training program

⁴⁶ See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

⁴⁷ In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

⁴⁸ MPD was incorporating DOJ's changes into the draft General Order when the quarter ended. Compliance Monitoring Team Completion Matrix (updated September 30, 2002), at 21.

within 180 days of DOJ approval of the lesson plan. We will monitor MPD's compliance with these new deadlines over the course of the next quarter.

During this quarter, we had intended to begin reviewing investigations that fell within the misconduct investigation provisions of the MOA. To conduct this review, however, we needed to obtain a list of the cases that MPD has investigated for each category encompassed by paragraph 72 of the MOA. This list would have permitted us to identify the appropriate sample size for review, as well as the specific cases that needed to be reviewed.

We met with MPD on August 6, 2002 to explain the nature of our request. At that time, we were informed that MPD's Performance Assessment Management Systems ("PAMS") database (MPD's interim solution to PPMS) could be queried and a list developed indicating the investigations that *potentially* fell within each category.⁴⁹ On August 7, 2002, we received a memorandum from MPD listing the number of investigations that MPD had conducted for some of the misconduct investigation categories, but the memorandum did not provide a list of the case numbers for the investigations. The memorandum also did not provide data on several of the misconduct investigation categories listed above.

We again met with MPD and explained the problems with the data we had received. MPD then provided a second memorandum on August 22, 2002. While this memorandum included a list of the cases that fell within some of the misconduct investigation categories listed above, the data conflicted with the August 7, 2002 memorandum. For example, the August 7, 2002 memorandum stated that, between June 13, 2001 and August 7, 2002, 837 use of force allegations were referred to the chain of command for investigation. The August 22, 2002 memorandum, however, listed the case numbers for only approximately 311 investigations. The August 22, 2002 memorandum also failed to include any data for some of the misconduct investigation categories.

On September 4, 2002, we sent MPD a list of the discrepancies between the August 7 and August 22 memoranda, as well as a list of the

⁴⁹ MPD explained it would not be possible to create a list that specifically referred to each category as the data in its PAMS database were not always categorized in the same manner.

missing data. MPD responded with new data on September 16, 2002. These new data were often different from the data provided in either of the two earlier memoranda. While MPD provided some explanations for the discrepancies in the data, we still are concerned about the accuracy of the information.

c. Assessment and Analysis

We intend to have further discussions with MPD about the data and to test the accuracy of the data during the next quarter.

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 ("CCRB").

- The provision of adequate funding and resources for OCCR to carry out its responsibilities as defined both by the MOA and the law creating OCCR;⁵⁰
- 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 time lines and investigative templates;
- The development and implementation of an effective program to inform citizens of their right to lodge complaints against MPD officers, which must include, among other things, the distribution of complaint forms, facts sheets, informational posters, and public service announcements, in English, Spanish, and any other languages appropriate for particular areas, which describe MPD and OCCR complaint processes;
- The broad availability of complaint forms and informational materials at OCCR, MPD headquarters, and various other MPD locations; through the Internet; and to community groups and community centers; and
- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.⁵¹

⁵⁰ District of Columbia Law 12-208.

⁵¹ 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.

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

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

In addition, the MOA sets forth a series of requirements for evaluating and resolving allegations of misconduct against MPD officers. These include establishing that a preponderance of the evidence standard should be applied in such investigations; that all relevant evidence should be considered and weighed, including the credibility of various witnesses;⁵² 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.”⁵³ 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,

⁵² 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.

⁵³ 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.

and the Unit Commanders shall implement any appropriate non-disciplinary actions.

B. Status

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

Paragraph 85 of the MOA requires the development of a “written plan” that facilitates the sharing of information, the coordination of training, and the effective and timely review of complaints of misconduct against MPD officers. On September 28, 2002, MPD and OCCR executed a Memorandum of Understanding (“MOU”) designed to do just that.⁵⁴ We have reviewed the MOU and find that it complies generally with the requirements of paragraph 85 of the MOA.⁵⁵ There are a few areas, however, where the MOU falls short of total compliance. We examine each requirement separately below.

- Timeliness

The MOA initially required that MPD and the City develop a written plan within sixty days from the effective date of the MOA. As of August 13, 2001, the initial deadline, however, neither MPD nor the City had developed such a plan. The MOA Modification revised the initial due date to September 30, 2002. The MOU was executed on September 28, 2002. Thus, the MOU meets the timeliness requirement set forth in the MOA Modification.

- Written Plan

Paragraph 85 of the MOA requires a “written plan.” Because the MOA Modification (executed by all parties to the MOA) identifies the MOU as the item that will address this requirement, we have no reason to question the use of an MOU to serve as MPD’s and the City’s “written plan.”

⁵⁴ MOU at ¶ 1.

⁵⁵ Unlike other MOA paragraphs, paragraph 85 does not contemplate DOJ “approval.” Rather, paragraph 85 requires that the “written plan” to be implemented by the City and MPD be developed “in timely consultation with DOJ.”

- Complaint Referrals

Section 3.B of the MOU provides that OPR shall notify OCCR within ten business days of any complaint alleging harassment; use of unnecessary or excessive use of force; use of insulting, demeaning, or humiliating language; retaliation; or discriminatory treatment. This provision is contrary to the MOA, which requires that notification be given to OCCR *within twenty-four hours or the next business day*.⁵⁶ This section does not fulfill the requirements of the MOA.

- Exchange of Information

The MOA requires that the MPD/OCCR written plan specify “how, when and in what fashion the agencies shall exchange information” regarding citizen complaints.⁵⁷ The MOU described a process designed to facilitate the timely exchange of information between the two agencies.

- Community Outreach and Education (MOA ¶ 85)

The MOA requires that the MPD/OCCR written plan outline each agency’s responsibility for conducting community outreach and education regarding citizen complaints. The MOU incorporates one community outreach and education clause. Section 3.F of the MOU sets forth the two agencies’ general responsibilities with respect to “public information.” The MOU does not provide any additional detail in this regard. We will discuss this issue further in the Public Information and Outreach section below.

- Role and Responsibility of MPD Official on CCRB (MOA ¶ 85)

This MOU does not address the role and responsibility of the MPD official on the CCRB; thus, it does not fulfill this requirement of the MOA.

2. OCCR Staffing and Funding (¶ 86)

Paragraph 86 of the MOA requires the City to provide OCCR “sufficient qualified staff, funds, and resources to perform the functions required” by the MOA. While we have not undertaken an in-depth analysis of OCCR’s current level of staffing or funding, in the course of

⁵⁶ MOA at ¶ 94.

⁵⁷ MOA at ¶ 85.

our monitoring, we have become aware that at least one element of OCCR's budget appears to be underfunded -- the toll-free citizen complaint hotline. The MOA Modification, executed by MPD, the City, and DOJ on September 30, 2002, established a hotline deadline of September 30, 2002. To date, as described below, the City has not implemented the hotline. According to OCCR, the reason for this delay relates to funding. We plan to pursue this matter further with the City in the very near future.

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

At the request of MPD, DOJ approved a revised public information and outreach schedule.⁵⁸ MPD has committed to begin its implementation during the week of October 27, 2002.⁵⁹ Our next report will give an account of MPD's implementation activities, including, among other things, the timeliness of the implementation, the quality of the materials, the scope of the circulation, the effectiveness of the roll-out, and the quality of any related training on its new public information program.

The public information materials that we have seen thus far appear to be of high quality. They are easy to read and to understand. Moreover, due to the renegotiation of the timelines set forth in the MOA, MPD is no longer outside the deadlines established with respect to this element of the MOA. To remain in compliance with the MOA, MPD now must ensure that its public information and outreach campaign is implemented in a timely fashion.

4. Receipt of Complaints (§§ 92-95)

The MOA Modification significantly revised the due dates relating to the Receipt of Complaints section of the MOA. As a result of this schedule revision, MPD was to have made it possible for persons to initiate complaints via all modes (e.g., telephone, facsimile, TDD, etc.) by September 22, 2002; the City was to have instituted the 24-hour toll-free telephone hotline by September 30, 2002; and MPD immediately was to have vested OPR with the responsibility for receiving all complaints filed with MPD. We plan to undertake monitoring activities in the next quarter designed to test various aspects of the MPD and OCCR citizen

⁵⁸ See MOA at § 88.

⁵⁹ MOA Modification.

complaint process. In the meantime, it should be noted that the City currently is not in compliance with the hotline provisions of the MOA (as modified by the MOA Modification). Specifically, as noted above, the revised MOA obligated the City to institute a toll-free citizen complaint hotline on or before September 30, 2002. As of the publication of this report to MPD and DOJ, the City still had not met this contractual requirement. Thus, with respect to paragraph 93 of the MOA, the City is not in compliance with this provision.

5. OCCR Training (§ 96)

The MOA Modification gave MPD and the City until September 30, 2002 to develop and implement a plan “to ensure that the investigative staff of OCCR receive adequate training to enable them to carry out their duties.”⁶⁰ With the approval of DOJ, MPD has incorporated this plan into the MOU executed between MPD and OCCR on September 28, 2002. Thus, MPD and the City have complied with this MOA requirement in a timely fashion. We will monitor the implementation of this plan over the course of the next quarter.

6. OCCR Complaint Investigation Manual (§ 97)

Paragraph 97 of the MOA requires the City to develop an OCCR complaint investigation manual. Pursuant to the MOA Modification, this manual now is due to be completed on or before the week of November 3, 2002. We will monitor the City’s compliance with this requirement during the next quarter.

C. Assessment and Analysis

Although the City is not in compliance with the requirement to institute a toll-free citizen complaint hotline, MPD and OCCR have made significant strides in creating the processes to meet the substantive requirements of the MOA as they relate to citizen complaints. The OIM plans to monitor the implementation of these processes during the next quarter.

⁶⁰ MOA Modification; *see also* MOA at § 96.

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.⁶¹ 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

On September 30, 2002, MPD and DOJ modified the due date for MPD's new disciplinary policy from October 13, 2001 to the week of November 17, 2002, bringing MPD out of a non-compliant status with respect to this item. MPD has not yet submitted a revised policy to DOJ. Once the new policy is submitted, and if it is approved by DOJ, MPD will have fourteen days to effect implementation. We will monitor the development and implementation of the new policy over the course of the next quarter.

C. Assessment and Analysis

We have nothing to report in this area beyond the information in the status section above.

⁶¹ MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

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

A. Requirements

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

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

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

- 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 discharge, whether on or off duty, and all other lethal uses of force;
- All reviews of use of force, including all decisions on whether the use of force was within MPD policy;
- All vehicle pursuits and traffic collisions;
- All complaints regarding MPD officers, whether made to MPD or OCCR;

- Chronologies and results of investigations, adjudications, and discipline relating to any of these matters;
- All commendations received by MPD about an officer's performance;
- All criminal, civil, and administrative proceedings initiated on the basis of MPD operations and the actions of MPD personnel; and
- With respect to each MPD officer, that officer's:
 - Educational history,
 - Military service and discharge status,
 - Assignment and rank history,
 - Training history,
 - All management and supervisory actions taken pursuant to review of PPMS information, and
 - All instances in which a prosecution declination or a motion to suppress was based upon concerns about the officer's credibility or on evidence of a Constitutional violation by the officer.

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

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

Related to, but separate from, the development of PPMS, MPD is required to enhance its new Performance Evaluation System. This enhancement must ensure that each sworn MPD employee's performance be evaluated, at a minimum, according to certain specified criteria.

These criteria include civil rights integrity and community policing; adherence to law, including civil rights laws and laws designed to protect the rights of suspects; and the performance of supervisors in identifying at-risk behavior among their subordinates.

B. Status

While MPD, the City, and DOJ were able to negotiate 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 explicitly provides that “MPD’s compliance with MOA provisions related to the Personnel Performance Management System (MOA paragraphs 106-117) is expressly excepted from this modification.”⁶² Thus, as we noted in our First Quarterly Report, MPD still technically is out of compliance with respect to the PPMS provisions of the MOA.

During this past quarter, we continued our review of MPD’s interim PAMS system. Our prior PAMS review focused on whether the database collected the types of data required by the MOA for PPMS, the system’s search capabilities, the timeliness of the data entry, and the overall security of the system. We also reviewed other PPMS-related MOA provisions, including the requirement for a data input plan and protocols for using the system, the development and implementation schedule for PPMS, and OPR’s duties with respect to the system.⁶³ That initial review did not test the sufficiency or quality of the data in PAMS, leaving such testing for a future quarter.

Since last quarter, we have undertaken a review of PAMS for this purpose. To understand the review conducted, it is necessary to describe the process by which information is entered into PAMS. When an incident occurs or a complaint is made, information related to the incident or complaint is documented on a form that is forwarded to OPR. OPR then transfers that information to an internal OPR form that it uses to log and track the incident or complaint. OPR supplements the data on its internal form by adding information, such as a tracking number (CS#), the date OPR received the form, and whether the form was an

⁶² MOA Modification at ¶ 5.

⁶³ Our prior PAMS review revealed that, while PAMS is an improvement over past systems, it falls far short of meeting the PPMS requirements of the MOA. See First Quarterly Report at 41-50.

intake by OPR or a referral to another unit to investigate. The information on OPR's internal form is the information that OPR enters into PAMS. The information requested on the form, and thus the information available to be entered into a database, has changed over time. To determine the quality and sufficiency of the information in PAMS, we compared the information in PAMS with the information on OPR's internal form designed to collect this information.

To identify the files to be reviewed, PricewaterhouseCoopers randomly selected tracking numbers from the 6,155 files in PAMS for us to review to obtain a statistically significant sample of 72 files. Two files could not be reviewed because the internal form or PAMS file was missing. Also, older forms were in storage, and we did not think it was necessary to pull those forms in order to conduct the review. Based on the list supplied by PwC, other files were substituted until 72 files were reviewed.

In comparing the data, we focused only on data entry problems that resulted in material information being omitted or entered incorrectly. These data entry problems are most likely to result in misinformation, incomplete information, or the inability to locate specific information through a search of the database. Of the files reviewed, half of them had one or more problems that we deemed material.

The history of PAMS, and the predecessor systems, provides context for some of the problems detected in our review. As discussed in greater depth in our First Quarterly Report, OPR's responsibility for tracking complaints has evolved over time. In 1998, OPR first became responsible for administering MPD's complaint tracking system ("CS"), but reportedly was not given resources to input information. As a result, OPR did not have personnel dedicated to inputting information until mid-1999. As a result, OPR staff would enter information when other responsibilities permitted and much information ended up being entered on a delayed basis. Consequently, in the earlier files we reviewed, the information entered was limited to only the most crucial information.

In 2002, OPR became responsible for the "EWTS" system, an early warning tracking system designed in 1992 to identify MPD officers who may be in need of additional oversight. The CS and EWTS systems recently were merged into PAMS. Thus, the recent changes of having one entity and dedicated personnel responsible for data entry should improve the quality of the system's data.

In general, our review revealed the following data entry problems:

- Incorrect CS#. One file had an incorrect CS#. An incorrect CS# clearly presents a problem because that number is the primary information used to retrieve a file from the database and to track a complaint or incident.
- Incorrect date and/or time of the incident. We identified six instances where an incident date mistakenly was listed as the date the complaint was received. An incorrect date or time of an incident may hinder an investigation and/or prevent the incident from being included in a date-specific database query.
- Missing information regarding the allegations. The files omitted information regarding the allegations. Some of the older files did not include any summary of the allegations, presumably because of the time and resource problems associated with inputting historical data. Other entries did not include all relevant information. A complete description of the allegations is important to understanding the incident or complaint, conducting the subsequent investigation, and identifying the appropriate files in response to database queries.
- Missing names of officers who were the subject of the complaint or potentially involved in the incident. Six files omitted an officer's name. If an officer's name is omitted, then the incident will not be identified with that officer. That omission may impede the investigation because it will not include the officer, will cause the officer's history to be incomplete, and will prevent the file from being identified through a database query.
- Missing or incorrect complainant. This problem included no complainant being listed in PAMS, the notifying officer being listed instead of the complainant, or the police district being listed instead of the individual notifying officer. In thirteen cases, the specific source of the information, either the complainant or the particular reporting or notifying officer, was not included in PAMS. This information is important in conducting investigations, keeping the complainant informed, and identifying PAMS files through database searches.

- Incorrect date as to when OPR received notice of the incident or complaint.⁶⁴ Four files listed incorrect dates as to when OPR was notified, and eighteen files omitted the dates. Listing the date is important because many of the deadlines relating to an investigation are calculated from this date. Some of the files that omitted the dates were early files and might have been entered retrospectively after the investigations were completed, making the dates slightly less important.

As noted for each type of problem, these data entry errors caused the most concern because such incorrect or omitted information might prevent a complaint or incident from being identified, an officer from being identified with a particular incident, or MPD from having information important to an investigation.

C. Assessment and Analysis

The data entry problems discussed above need to be corrected to improve the reliability and comprehensiveness of the PAMS files. Some of the problems can be reduced or eliminated with a standard protocol covering what information must be entered and where in the file it should be done. For example, a number of files did not list the complainant or listed the police district as the complainant. Simply remedying that one problem would reduce by ten the number of reviewed files with an error. Other problems, such as omitting the names of officers from the files, will be reduced only with greater attention to data entry.

Significantly, the quantity of information entered into PAMS has improved over time. The later PAMS files, particularly those entered in 2002 when MPD increased its efforts to comply with the MOA, included comprehensive information about the complainant, complaint, and review process. Those files had more detailed information and had more fields completed. OPR should continue to provide such comprehensive information and try to establish protocols so that information is entered in the same manner (e.g., the type of allegation consistently is entered in the summary, the OCCR or other reference numbers in the investigator space, etc.).

⁶⁴ A discrepancy of one day was allowed without the PAMS file being deemed to have a data entry problem.

While our review compared only the information on OPR's internal form to the information in PAMS, it did highlight several areas where MPD could improve the information in, and the utility of, PAMS generally. The following suggestions focus on the information that PAMS is capable of including, regardless of what information PAMS needs to include to comply with the MOA (as discussed in the First Quarterly Report):

- Answer all questions on the incident and complaint forms and include the relevant information on OPR's internal form, rather than cross-referencing to the incident and complaint forms. In several instances, information in PAMS could not be verified because OPR's internal form only referred to MPD's internal complaint form, PD-99, or some other form.
- Identify the alleged misconduct in a consistent location in PAMS. Many, but not all, of the files included the misconduct information in the beginning of the summary of the allegations.
- Consistently include information about the complainant's characteristics. Most files only included limited or no information about the complainant's characteristics. We recognize that OPR's earlier internal form did not ask for complainant characteristics information.
- Identify the allegations, disposition, and any action taken on the "Charges" page. These fields appear to link with the "History" page and, if the data are not on the "Charges" page, an incident may not appear in an officer's history or another file may need to be accessed to gather the information. Also, if action was taken, the file should state somewhere what the action was. Such information was not consistently included.
- Indicate when the complaint is received, when the review is due, and when final disposition occurs. Many files did not include information about these important dates.
- Continue the recent practice of including information as to where the complaint is referred for investigation, as well as any corresponding identifying tracking numbers, such as OCCR or OIA case numbers. This information provides a more comprehensive picture of the investigation and helps track the incident or complaint.

- Update files to show when an investigation is closed. Many files listed the investigation as pending. Sometimes the complaint was listed as pending even when a disposition or disposition date was entered elsewhere in the file, indicating that the status of the investigation was not updated. In other files, there was no indication that the complaint was resolved even when the due date had passed.
- MPD should establish protocols to ensure the reliability of any information that is added to PAMS. PAMS sometimes had more information than was included on OPR's internal form. For example, a few files listed more officers than were identified on OPR's internal form.

While the MOA does not require all of the foregoing, we believe these suggestions will improve the quantity and quality of information in PAMS. In particular, these suggestions will provide more information about the review process. The improved information and consistency in data entry also likely will improve the chance that specific information will be retrieved when searches are conducted, although the result will also depend on PAMS searching capabilities.⁶⁵

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 have centrally coordinated the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.⁶⁶

⁶⁵ As discussed in Section II.B.2.b of this report, there have been difficulties in ensuring that accurate data are obtained from PAMS. While these problems likely resulted from more than data entry errors, the accuracy and completeness of data entry will assist in obtaining useful data from any queries.

⁶⁶ 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.

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;⁶⁷ and
- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

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

⁶⁷ The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

include training in cultural diversity and community policing. More specifically with respect to use of force training, MPD's use of force training must contain training on the following elements:

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

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

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

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

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

3. Instructors

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

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

4. Firearms Training

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

5. Canine Training

The MOA requires MPD to develop and implement a comprehensive canine training curriculum, which includes the identification of the mission, goals, and objectives of the Canine Unit. MPD was required to have all its canines certified in the "new handler controlled alert

methodology” and to ensure that the canines are re-certified on an annual basis and receive refresher training. MPD must monitor and oversee its canine handlers to ensure they are capable of implementing the canine policies that have been adopted by MPD.

B. Status

1. Substantive Training Generally

The MOA Modification significantly revises the training implementation schedule set forth in the original MOA. Among other changes, the MOA now requires MPD to implement its new lesson plans within twenty days following DOJ approval of those plans. The lesson plans MPD has submitted to DOJ thus far are set forth in Appendix C of this report. As of the circulation of the draft of this report, DOJ had not yet approved (or rejected) any of the lesson plans. We plan to monitor closely the implementation of the lesson plans throughout the next quarter.⁶⁸

2. Firearms Training

During the quarter covered by this report, we monitored MPD’s firearms training program. We undertook this monitoring activity at this time because the MOA makes clear that many of MPD’s obligations with respect to firearms training do not depend upon DOJ approval of a forthcoming lesson plan.⁶⁹

In August and September 2002, we attended firearms re-qualification courses required by paragraph 140 of the MOA. Our review revealed both strengths and weaknesses in the training. The actual shooting exercises and qualification courses we reviewed were extremely comprehensive and provided MPD ample opportunity to evaluate the students’ shooting skills and firearms competency. In that

⁶⁸ As of the circulation of the draft of this report, DOJ and MPD disagreed regarding the comprehensiveness of the lesson plans submitted by MPD. DOJ requested that we note that several of the lesson plans submitted by MPD were incomplete and, consequently, DOJ had to delay its experts’ review. MPD disagreed and noted that DOJ had not indicated to it that any lesson plans were incomplete. Our role regarding the review of written lesson plans arises only after DOJ approval and at the time the lesson plans are incorporated into training.

⁶⁹ See, e.g., MOA at ¶ 140.

respect, the instructional staff appeared to be extremely knowledgeable in all areas of firearms instruction, including tactical considerations and weaponry manipulation. Range operations were conducted in a safe and controlled manner, and the instructor-to-student ratio was sufficient to ensure overall range safety as required by paragraph 141 of the MOA.

We did observe, however, the need for improvements in classroom instruction as it relates to the use of force continuum and the use of force reporting requirements of paragraphs 37, 53 and 127 of the MOA. Our review also revealed the need to enhance the instructional staff's knowledge and understanding of the MOA, in general, and the paragraphs relating to the use of force training, in particular.

- Curriculum (MOA ¶¶ 126-128)

The MOA requires that re-certification consist of shooting a passing score and satisfactorily completing all re-qualification courses. Additionally, as discussed in paragraphs 127 and 128 of the MOA, firearms training must include and address the following:

- MPD use of force continuum;
- MPD use of force reporting requirements;
- The Fourth Amendment and other constitutional requirements; and
- Examples of use of force and ethical dilemmas faced by MPD officers and, where practicable, given the location, type, and duration of the training, interactive exercises for resolving use of force dilemmas shall be utilized.

During the firearms course we audited in August, the classroom instruction on the use of force continuum lasted only seven minutes and the instructor provided training that deviated from the lesson plan. The instructor referred to the "One Plus" theory, which DOJ previously had suggested be removed from the lesson plan, to describe the escalation of force rather than focus on the use of force continuum.⁷⁰ Also, during

⁷⁰ The "One Plus" theory asserts that an officer can use one level of force above that offered by a suspect. For example, if a suspect pulls a knife, the officer can respond by using his/her firearm. The difficulty with this theory is that it is too rigid and categorical and does not take into account other options, such as the

this class there was no instruction provided on the use of force reporting requirements, nor were there any references made to either the MPD general order on use of force reporting or paragraph 37 or 53 of the MOA. We brought these issues promptly to the attention of MPD.

Our review of an additional training course in September suggests that the comments we provided to MPD in August were forwarded to Institute of Police Science (“IPS”) staff and that appropriate changes were quickly made. The September classroom instruction lasted twenty minutes and covered the use of force continuum in more detail without any reference to the “One Plus” theory. Nonetheless, the instruction on the use of force reporting in both courses fell short of acceptable. For example, only after a student attending the class in September posed a question regarding paragraph 53 of the MOA, which requires an officer to report whenever he or she points a weapon at, or in the direction of, another person, did the topic surface. Even then, the instructor failed to provide a clear, direct answer to the question. In fact, his response only added to the student’s confusion.

Specifically, the student asked whether or not officers are required to report whenever they remove their firearms from the holster -- even to a “low-ready position.”⁷¹ The instructor appropriately advised the student that paragraph 53 of the MOA does not require the reporting of the removal of the firearm from the holster. However, the instructor was uncertain as to whether the MOA requirement was an actual MPD policy and advised the students that paragraph 53 of the MOA was under negotiation between MPD and DOJ.

- Meaningful Dialogue (MOA ¶ 130)

Paragraph 130 of the MOA requires MPD to ensure that training instructors engage students in meaningful dialogue regarding “real-life” experiences involving use of force and applicable laws and MPD policy when conducting force-related training. Training instructors shall encourage opportunities to explain MPD’s Use of Force Policy, reporting requirements, and force-related laws throughout all use of force training.

Footnote continued from previous page

ability to use less lethal weaponry if the knife wielding suspect is several yards away from any other person.

⁷¹ The low-ready position involves basically removing the firearm from the holster with the arm alongside of the leg and the firearm pointing toward the ground.

During the shooting exercises and the Range 2000 and Role Play scenarios, the instructors encouraged meaningful dialogue with the students. Moreover, the instructors referred to MPD policy and force-related laws during student critiques. This was not the case during the classroom portion of the course, however. Classroom instruction was primarily presented in a lecture format with very little dialogue or student participation. The instructors did not utilize adult learning principles to stimulate class discussion or sustain student interest. It appeared that several students lost interest and a few students even fell asleep, primarily because the lecture was dry and presented too fast and partly because the classroom environment was not conducive to a positive learning environment. The classroom was hot, stuffy, and poorly ventilated, and distracting noise emitted from a fan positioned at the front of the classroom.

- Training Time (MOA ¶ 131)

Paragraph 131 of the MOA requires that MPD ensure that training time is used in an efficient and productive manner and take efforts to eliminate “down time” of student officers during recruit and in-service training by providing a variety of use of force training activities for students awaiting required one-to-one student-teacher training.

Our review revealed extended down time between shooting relays and the Range 2000 and Role Play exercises. The average down time between shooting relays was approximately twenty minutes. The down time of officers waiting to participate in both Range 2000 and Role Play exercises was as high as thirty minutes. MPD should provide additional training activities to make better use of this time.

For example, MPD could provide copies of the MOA and general orders on use of force and handling service weapons for student review and even testing between shooting relays. As officers wait to participate in the Range 2000 and Role Play exercises, MPD could provide training videos that review tactics, decision making, the use of force continuum, and the MOA, or the instructor could allow students to observe their fellow officers during the Range 2000 and Role Play exercises. During the August course, students were allowed to observe, as a group, their fellow students in the Role Play exercises, but not the Range 2000 exercises. Conversely, during the September course, students were allowed to observe, as a group, their fellow officers during the Range 2000 exercises, but not the Role Play exercises. Whatever activity MPD decides to use, it should be utilized consistently to ensure training

continuity and should be designed to provide training value, not just consume time.

- Role Play and Range 2000 (MOA ¶¶ 132 & 142)

As part of the firearms re-qualification course, MPD provided Role Play and Range 2000 training. Each student was allowed sufficient time to participate in more than one role play. MPD also provided a balance of shoot/don't shoot scenarios and engaged students in a one-to-one critique of their decision making, judgment, tactical considerations, and overall performance. We recognized, however, at least one instance where an instructor was somewhat timid in the evaluation of an unjustifiable shooting.

In this simulation scenario the suspect ran out of a building where shots were heard. The suspect ran past the officer, unarmed. The suspect did not turn toward the officer or make any threatening movements. Nevertheless, the officer shot the suspect in the back. The instructor asked the officer why he shot the unarmed suspect. The officer stated he believed the suspect may have shot someone inside of the building, thus he was a fleeing felon. The instructor then asked the officer what made him believe the suspect was a fleeing felon. The officer responded by stating he heard the gunshot before the suspect ran out of the building. The instructor did not pursue any further questioning nor provide the officer with a review of the general order on use of force or the use of force continuum. The instructor's silence at this point appeared to constitute acceptance of the officer's reasoning for his use of deadly force.

Even though the instructor failed the officer on that specific scenario, the officer passed the re-qualification course. The instructor advised us that students only have to pass one of the two or three Range 2000 scenarios provided. Paragraph 142 of the MOA requires MPD to create a checklist identifying evaluation criteria to determine satisfactory completion of firearms training, to include exercising sound judgment and decision making skills in Range 2000 and Role Plays. The aforementioned officer's actions did not display sound judgment and were so egregious that even the failure of one scenario should have required additional training. At a minimum, the officer should have been provided remedial training in the use of force continuum and required to go through additional scenarios.

Our review also revealed that MPD did not videotape students in order to replay their decisions and actions during the critique portion of the course, as required by paragraph 132.b of the MOA.

- Firearms Re-Certification (MOA ¶ 140)

Paragraph 140 of the MOA requires MPD to ensure its officers complete the mandatory semi-annual firearms re-qualification training. One required element of the re-qualification training is that all sworn officers attend MPD's pistol re-qualification course on a semi-annual basis. On June 27, 2002, we requested a list of the MPD sworn officers who attended and failed to attend the pistol re-qualification training in the second phase of 2001 and the first phase of 2002.⁷² MPD provided these lists on September 9, 2002. It took over two months to receive MPD's data regarding the officers who attended and failed to attend the pistol re-qualification training. While this delay is partially understandable for the training in the first phase of 2002, which did not end until June 30, 2002, it is unclear what caused the delay in obtaining the data for the second phase of 2001.

A preliminary review of the pistol re-qualification data indicates there were some sworn officers who failed to attend the required pistol re-qualification training. During the next quarter, we will test and report on the accuracy of the data. We also will review whether MPD is following the appropriate disciplinary procedures, as required by paragraph 140 of the MOA, for officers who fail to attend the training.

Pursuant to the MOA Modification, MPD is working toward reviewing and revising its force-related training materials and submitting the documents to DOJ for approval. MPD already has reviewed and/or revised many lesson plans and provided this material to DOJ for approval. This was well within the deadline provided in the MOA Modification. We will continue to track the progress of these lesson plans, as well as the other training material MPD must provide to DOJ by October 28, 2002.

⁷² The second phase of 2001 refers to the time period from July 2001 to December 2001. The first phase of 2002 refers to the time period from January 2002 to June 2002.

- Safe Gun Handling (MOA ¶ 141)

As stated earlier, MPD provided a sufficient number of instructors to critically observe students and provide corrective instruction regarding deficient firearms techniques and the failure to utilize safe gun handling procedures. No more than eight officers were allowed on the firing line at any one time and no less than four instructors were present, three instructors on the firing line and one instructor in the control booth. Instructors took the time needed to provide one-to-one corrective training. At some points, the instructors even halted the entire firing line to provide remedial training.

- Firearm Checklist (MOA ¶ 142)

MPD used a checklist to evaluate, in part, students' qualifications. The checklist contains all conditions outlined in paragraph 142 of the MOA, which are:

- maintains finger off trigger unless justified and ready to fire;
- exercises sound judgment and engages in decision making skills in Range 2000 and Role Plays; and
- maintains proper hold of firearm and proper stance.

3. Consultation with Glock Inc. (MOA ¶ 144)

The MOA requires that MPD consult with Glock Inc., the manufacturer of the Glock firearm, "regarding cleaning, maintenance and marksmanship," and other issues, "at a minimum every 3 months." On August 21, 2002, MPD implemented a standard operating procedure ("SOP") designed to ensure compliance with this requirement. The SOP requires the MPD armorer to contact MPD's various weapons' manufacturers (Glock, SigArms, Remington, and Heckler & Koch) on a quarterly basis. In the MPD October 2002 Progress Report, MPD represents that it is in compliance with paragraph 144 of the MOA. To assess MPD's compliance, we spoke to the relevant field manager at Glock Inc. The field manager confirmed that he consults with MPD regularly. He confirmed further that these consultations cover a range of issues, including cleaning, maintenance, and marksmanship. MPD currently is in compliance with paragraph 144 of the MOA.

4. Canine Training

The MOA Modification has given MPD until October 5, 2002 to develop and implement the comprehensive canine training curriculum and lesson plan required by paragraph 145 of the MOA.⁷³ As the due date for this activity fell outside the time period covered by this quarterly report, we will monitor and report on MPD's compliance with this requirement in the next quarter. Our monitoring activities will include, among other things, an assessment of whether MPD's canines are "professionally bred," whether they are certified in the "new handler-controlled alert methodology," and whether all "in-house canine trainers are certified canine instructors."⁷⁴

In August, we met with members of the MPD canine unit, received a briefing on the canine program, and took a tour of the kennels and training facility. Although we did not conduct a comprehensive audit to determine MOA compliance, our review provided useful insight into MPD's canine program. We found the staff to be professional and knowledgeable. We also were impressed with the improvements in the canine program since the beginning of the MOA. To date, it appears that all but seven of the canines are new, professionally bred animals as prescribed by paragraph 146 of the MOA. MPD has advised us that the remaining seven have been re-trained in the new handler-alert methodology. We reviewed two in-house trainers' files, which contained certification documentation from the United States Police Canine Association, as well as monthly training and re-certification documentation. MPD confirmed that all canines and handlers are required to receive monthly training and re-certification in accordance with paragraph 147 of the MOA. Since our monitoring in this area to date has been only of an information-gathering nature, we make no assessment at this time as to whether MPD is or is not in compliance with the MOA's canine training requirements. As noted above, we will monitor this area over the course of the next quarter.

5. MPD Training Management System

Paragraph 125 of the MOA requires MPD to "maintain training records regarding every MPD officer which reliably indicate the training received by each officer." MPD has made substantial progress toward

⁷³ MOA Modification at 4.

⁷⁴ See MOA at ¶¶ 145-148.

meeting this requirement. Much of this progress is due to the purchase of an off-the-shelf Training Management Software (“TMS”) system that will record and centrally maintain all training offered by MPD, as well as all training provided to each MPD officer.

TMS went “on-line” on June 12, 2002 and is currently operational. Our review suggests that TMS will be an extremely effective program that will not only record training but also assist IPS with the scheduling of courses and training management in general. TMS also will record officer attendance at the firearms re-certification course and notify IPS staff whenever a sworn officer does not attend the course as required by paragraph 140 of the MOA. At the same time, the TMS system will provide a list of upcoming firearms re-certification courses and prompt IPS staff to schedule the noncompliant officer for the next available course in order to bring the officer into immediate compliance.

Although TMS currently is operational, it does not contain historical data as required by paragraphs 107.m, 108, and 125 of the MOA. According to MPD, IPS (the MPD training division) is developing a plan for inputting historical data into TMS. However, the entry of data regarding current training is given precedence over the entry of historical data. It appears that, at this time, MPD lacks the resources to input all available historical data into TMS.

According to paragraph 108 of the MOA, MPD is required to implement a Data Input Plan, subject to the approval of DOJ, to input historical data into PPMS. Even though paragraph 108 specifically lists PPMS, paragraph 107.m identifies “training history” as a required field in PPMS. Also, paragraph 115 of the MOA allows MPD to utilize existing databases, information, and documents to meet the requirements listed in paragraph 107 until PPMS is operational. At this time, MPD should use the TMS system to supplement the existing PAMS system to comply with paragraph 107 of the MOA. Thus, as noted in our First Quarterly Report, it is important that MPD enhance its internal communication between the CMT and the IPS to ensure compliance not only with paragraph 108, which covers PPMS, but also with paragraphs 107.m and 125 of the MOA, which now encompass TMS.

6. MOA Training

Paragraph 133 of the MOA requires, among other things, that MPD provide all its officers and employees with -- and explain the terms of -- the MOA. In our First Quarterly Report, we noted that, on June 17, 2002, MPD represented that it circulated a copy of the MOA along with a

brief “Questions and Answers” brochure created by the OIM to every officer within MPD. While we have not yet conducted a formal test with respect to the effectiveness of MPD’s MOA distribution process, we continue to conduct informal tests by engaging MPD officers in the field in discussions relating to the MOA. To date, these informal tests have suggested that additional training is needed to ensure that MPD rank and file understand the existence and importance of the MOA.

Over the course of the next quarter we will continue to explore whether MPD’s internal compliance activities have addressed some of the misunderstandings and lack of familiarity with the terms of the MOA reflected in our contacts with MPD personnel. We also will assess whether MPD is continuing to provide the MOA to new and lateral recruits.

C. Assessment and Analysis

Timely, accurate, and effective training is an essential element of the MOA. Over the course of this quarter, MPD has made great strides in developing new training curricula that purport to embody the many significant substantive requirements of the MOA. On October 14, 2002, MPD will begin relying on these new curricula to conduct in-service training. We plan to monitor these new training sessions closely.

During the next quarter, the OIM will test and report on the accuracy of the pistol re-qualification data, as well as on whether MPD is following the disciplinary procedures prescribed by paragraph 140 of the MOA for officers who fail to attend the training.

As noted previously in this section, MPD has made significant progress relating to training records. Whereas PPMS has been delayed as a result of procurement processes, TMS is a relatively low-cost, off-the-shelf software program, which provides MPD the ability to comply not only with the MOA requirements relating to training records, but also to accomplish this undertaking in both an effective and efficient manner.

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

MPD submitted a draft Specialized Mission Unit Policy to DOJ on October 4, 2002, after the close of this reporting period. We will monitor

MPD's implementation of the Specialized Mission Unit Policy following DOJ's approval.

C. Assessment and Analysis

The MOA defines a specialized mission unit as a unit "in which officers engage in significant patrol-related activities on a routine basis including contacts, stops, frisks, and searches" ⁷⁵ We previously attempted to perform limited monitoring activities relating to specialized mission units in areas where the MOA imposed upon MPD requirements that were not dependent upon the approval of the new policy. Our attempts were hampered by MPD's inability to identify the various specialized mission units operating within MPD beyond the Mobile Force Unit, which is used in the MOA as an example. ⁷⁶

VIII. Public Information (MOA ¶ 160)

A. Requirements

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

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

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

⁷⁵ MOA at ¶ 149.

⁷⁶ MPD's recently-submitted Specialized Mission Unit Policy now identifies MPD's Specialized Mission Units.

B. Status

Since MPD's quarterly use of force statistics were scheduled to be posted in October 2002, outside of the period covered by this report, we will discuss the status of MPD's efforts in this regard in our next quarterly report.

C. Assessment and Analysis

As noted in our First Quarterly Report, MPD's decision to publish use of force statistics on its Web site was a positive step toward MOA compliance. MPD, however, should take steps to render the Use of Force Report more accessible by making it easier to identify on its Web site. Currently, a reader must know that the report is identified only in the "Newsroom" section of the MPD Web site in order to access the report.

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**1. Compliance Monitoring Team**

We are pleased with the efforts of MPD's CMT to comply with the requirements of the MOA. Over the course of the last quarter, the CMT has overseen the preparation of ten revised policies, fifteen new training curricula, and a useful quarterly report. The CMT also has met with the OIM on several occasions and responded to numerous OIM information and document requests. The CMT, led by Inspector Joshua Ederheimer, clearly meets the requirements of paragraphs 173 and 174 of the MOA.

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

While MPD was unable to respond to certain information and document requests made by the OIM during the past quarter, MPD generally has made its staff, facilities, and files available to the OIM without hesitation or question. We are pleased with MPD's continued efforts to provide the OIM with full and unrestricted access to all necessary resources.

3. MPD Quarterly MOA Progress Reports

MPD issued its most recent MOA Progress Report on October 4, 2002. The report reflects the status of MPD's MOA compliance activities from July 15, 2002 through September 30, 2002. At the request of the OIM, MPD issued its report ahead of schedule in order to facilitate its use in the creation of this report. MPD has agreed in the future to publish it at the end of the time period covered in our quarterly report.

Like the report that preceded it, the MPD October 2002 Progress Report is a very useful document. It identifies the orders and policies approved by DOJ during the quarter as well as the orders and policies awaiting DOJ approval. The MPD October 2002 Progress Report also discussed MPD's public outreach activities, FIT's investigation activities, IPS's training activities, and more. In prior reports, we discussed MPD's failure to include in its quarterly report all of the detail required by the

MOA.⁷⁷ With the MPD October 2002 Progress Report, MPD included a matrix that details its status on all the MOA requirements.

C. Assessment and Analysis

MPD has come a long way from its problematic initial compliance efforts. It seems now to have an impressive compliance infrastructure in place that is producing materials required by the MOA (e.g., new policies, training curricula, and the like) of a generally high quality. We have found MPD's CMT to be knowledgeable and, for the most part, quite responsive to our many requests. We look forward to continuing to work with the entire CMT team.

⁷⁷ Paragraph 175 of the MOA provides as follows: "Between 90 and 120 days following the effective date of this Agreement, and every three months thereafter until this agreement is terminated, MPD and the City shall file with DOJ and the Monitor a status report delineating all steps taken during the reporting period to comply with each provision of this agreement." (Emphasis added.)

Conclusion

As the result of successfully renegotiating the timelines set forth in the MOA, the City and MPD no longer are out of compliance with respect to *most* requirements of the MOA, but MPD's and the City's movement toward full MOA compliance is due to more than a revised implementation schedule. Over the past quarter year, MPD has undertaken significant compliance-related activities that have produced significant results. The positive consequences of these activities are demonstrated in the many new or revised policies and procedures that were approved by DOJ prior to the end of this quarter. We are hopeful that this level of energy will continue into the future and that it will be translated into full and conscientious implementation.

The next quarter, during which MPD sets out to implement (and to train its officers regarding) its new policies and procedures, is a critical juncture in the implementation of the MOA. Revised policies and procedures do little to implement positive change if they are not properly implemented. MPD has committed to begin implementation immediately. We will monitor the effectiveness of this effort over the course of the next quarter.



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Fried, Frank, Harris, Shriver & Jacobson

October 29, 2002

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Appendix A

Acronyms

ASP	Armament Systems and Procedures
AUSA	Assistant United States Attorney
CCRB	Citizen Complaint Review Board
CDS	Curriculum Development Specialist
CMT	Compliance Monitoring Team
CS	complaint tracking system
DOJ	Department of Justice
EWTS	early warning tracking system
FIT	Force Investigation Team
IPS	Institute of Police Science
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding
MPD	Metropolitan Police Department
OC	Oleoresin Capsicum
OCCR	Office of Citizen Complaint Review
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
SOP	standard operating procedure
TMS	Training Management Software
UFIR	Use of Force Incident Report
UFRB	Use of Force Review Board
USAO	United States Attorney's Office

Appendix B

**Joint Modification No. 1 to June 13,
2001 Memorandum of Agreement**

JOINT MODIFICATION NO. 1

TO

JUNE 13, 2001

MEMORANDUM OF AGREEMENT

Between the United States Department of Justice

and the

District of Columbia and

the District of Columbia Metropolitan Police Department,

September 30, 2002

JOINT MODIFICATION NO. 1
TO
JUNE 13, 2001
MEMORANDUM OF AGREEMENT

Between the United States Department of Justice
and the
District of Columbia and
the District of Columbia Metropolitan Police Department,

1. BACKGROUND

1. Pursuant to provision 194 of the June 13, 2001, Memorandum of Agreement (MOA) between the United States Department of Justice (DOJ), the District of Columbia, and the District of Columbia Metropolitan Police Department (MPD), the Parties hereby enter into this Modification.

2. The Parties agree that MPD has failed to meet the timelines identified in the MOA. DOJ acknowledges, however, that MPD has made significant strides to satisfy many of its obligations under the MOA - consistently improving both the quality and the timeliness of its deliverables in the last several months. Indeed, in September 2002, the Department of Justice has approved the following revised General Orders (GOs) and related documents: Use of Force, Use of Force Investigations, Use of Force Incident Report, Canine Teams, Oleoresin Capsicum Spray, and

Handling of Service Weapons. In light of this renewed commitment the Parties to the MOA have agreed to modify the MOA.

3. Upon execution of this Modification, MPD and the City shall be discharged from their current status of breach related to timelines, except as provided in paragraph 5, infra.

II. SCOPE OF MODIFICATION

4. This Modification modifies the implementation and deliverable dates outlined in the MOA. This Modification does not alter the substantive provisions of the MOA.

5. MPD's compliance with MOA provisions related to the Personnel Performance Management System (MOA paragraphs 106-117) is expressly excepted from this modification.

III. REVISED IMPLEMENTATION SCHEDULE

6. MPD shall implement all DOJ approved policies and procedures within 14 business days of approval. The following provisions are accordingly modified:

- a. MOA paragraph 51¹;
- b. MOA paragraphs 57-58;
- c. MOA paragraphs 60-62;
- d. MOA paragraph 67;
- e. MOA paragraph 68;
- f. MOA paragraph 72; and
- g. MOA paragraphs 73 (a) and (b).

IV. REVISED DELIVERABLE SCHEDULE

7. With respect to deliverables, MPD shall produce the policies and procedures, or other documentation, as appropriate, required by the MOA to the DOJ according to the agreed upon deadlines on the attached Joint DOJ/MPD MOA Modification Chart. The following provisions

¹ MPD and DOJ have agreed that the General Orders referenced in MOA paragraph 51 will be issued the week of October 6, 2002.

are modified:

- a. MOA paragraph 53;
- b. MOA paragraph 57;
- c. MOA paragraph 63;
- d. MOA paragraph 68;
- e. MOA paragraphs 73 (a) and (b);
- f. MOA paragraphs 83-85;
- g. MOA paragraphs 88-89;
- h. MOA paragraphs 92-94;
- i. MOA paragraphs 96-98;
- j. MOA paragraph 105;
- k. MOA paragraphs 118-119;
- l. MOA paragraph 121(f);
- m. MOA paragraph 122;
- n. MOA paragraph 129;
- o. MOA paragraphs 132 (a) and (b);
- p. MOA paragraphs 133-137;
- q. MOA paragraphs 145-146;
- r. MOA paragraph 148; and
- s. MOA paragraphs 150-159.

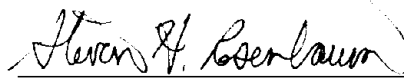
V. COMPLIANCE

8. The implementation schedule and the revised deadlines for deliverables contained in this Modification are firm. Nonetheless, the parties agree that if MPD is unable to complete a deliverable on schedule due to articulable, unforeseen emergency circumstances, MPD shall contact DOJ and seek a revised mutually acceptable deliverable date.

VI. MISCELLANEOUS

9. The signatories below represent by their signatures that they are authorized to enter into this Modification and are signing on behalf of their party and the original signatories to the MOA.

For the United States Department of Justice:

A handwritten signature in black ink, reading "Steven H. Rosenbaum", is written over a horizontal line.

STEVEN H. ROSENBAUM

Chief

Special Litigation Section

Civil Rights Division

SHANETTA Y. BROWN CUTLAR

TAMMIE M. GREGG

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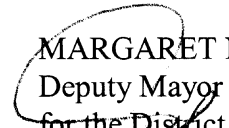
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For the District of Columbia and the Metropolitan Police Department:

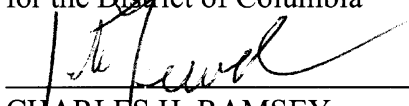


ANTHONY WILLIAMS
Mayor of the District of Columbia

for


MARGARET NEDELKOFF KELLEMS
Deputy Mayor of Public Safety and Justice
for the District of Columbia

For




CHARLES H. RAMSEY
Chief of Police
District of Columbia
Metropolitan Police Department

MICHAEL J. FITZGERALD
Executive Assistant Chief of Police
District of Columbia
Metropolitan Police Department

PETER J. NEWSHAM
Assistant Chief
Office of Professional Responsibility
District of Columbia
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JOSHUA A. EDERHEIMER
Inspector
Office of Professional Responsibility
District of Columbia
Metropolitan Police Department



TERRANCE D. RYAN
General Counsel
District of Columbia
Metropolitan Police Department

Joint DOJ/MPD MOA Modification Chart

MOA Provision (Para. #)	Description of MOA Provision	Anticipated Date of Implementation
53	Use of Force Reporting Policy and UFIR Form (hard copy version)	Week of 10-6-02
	Use of automated UFIR form (deadline for implementation of automated approvals to be determined)	Week of 12-29-02
*57	FIT Manual	10-27-02
63	Train FIT Investigators on new policies developed under MOA	Within 30-calendar days of implementation of the GOs
*68	Implement the Serious Misconduct Investigations GO	Within 14-business days of DOJ approval
	Personnel Allocation Plan to Designate sufficient personnel for OPR to investigate criminal misconduct allegations	12-31-02 (pursuant to MOA Para. 78 deadline)
*73(a), (b)	Memorandum outlining MPD's compliance with requirement that MPD investigators outside chain of command be assigned for circumstances specified in MOA para. 73(a), (b).	Week of 9-29-02
83	Misconduct administrative investigation manual	Week of 10-20-02

Joint DOJ/MPD MOA Modification Chart

84	FIT Training Plan; Instructor Training Plan; and FY 2003 In-Service Lesson Plans Specialized training for investigators who investigate shootings	Week of 9-22-02 Training to occur within 180 days of approval of plan by DOJ
85	Coordination plan between MPD/OCCR delineating responsibilities regarding citizen complaints - embodied in MOU between OCCR and City	9-30-02
88	Develop and implement comprehensive complaint program: MPD promotional materials, communication plan, PSA, and News Release	Week of 10-27-02
89	Institute public information outreach regarding complaint program	Week of 10-27-02
92	Initiate capability to accept complaints via all communication modes, including TDD	Week of 9-22-02
93	Institute toll-free hotline for reporting of citizen complaints	9-30-02
94	Transfer responsibility to OPR for receiving complaints filed directly with MPD - embodied in Citizen Complaint GO	Week of 9-29-02
96	Implement plan to ensure OCCR investigators receive training - embodied in MOU between OCCR and City	9-30-02
97	OCCR investigation manual	Week of 11-3-02

Joint DOJ/MPD MOA Modification Chart

98	Implement policy and training on preponderance of evidence standard - embodies in Preponderance of Evidence Lesson Plan	Week of 9-22-02
105	Update Disciplinary GO	Week of 11-17-02
118	Plan to enhance Performance Evaluation System	Week of 11-03-02
119	Centrally coordinate and review all Use of force training among components - revised lesson plans	Within 20-business days of DOJ approval
121(f)	Enhanced Field Training Protocol	Week of 12-01-02
122	Review/revise all current force related training materials (including curricula and lesson plans)	Within 20-business days of DOJ approval
129	Provide supervisory training lesson plans: instructor training plan and FY 2003 in-service plan	Week of 9-22-02
132(a)	Implement Role Play and Range 2000	Within 20-business days of DOJ approval
132(b)	Initiate video-taping of Role Plays	Week of 9-29-02

Joint DOJ/MPD MOA Modification Chart

133	Disseminate MOA to officers and conduct in-service training regarding revised policies and procedures	MPD will provide status report on inclusion of the topics for recruit and lateral training: Week of 9-29-02
134	Plan to ensure sufficient training academy staffing	Week of 9-29-02
135	Eligibility and selection criteria for all Academy, Field Training positions	Week of 9-29-02
136	Implement instructor certification program	Within 20-business days of DOJ approval of current materials or, if a new ICP training vendor is selected, within 20-business days of DOJ approval of the new materials. Date for selection of new vendor 12-31-02
137	Implement formal instructor training course	Within 20-business days of DOJ approval of current materials or, if a new ICP training vendor is selected, within 20-business days of DOJ approval of the new materials. Date for selection of new vendor 12-31-02
145	Implement comprehensive canine training curriculum and lesson plan	Week of 9-29-02

Joint DOJ/MPD MOA Modification Chart

146	Ensure all MPD canines are trained, certified or re-certified in handler controlled alert methodology	Documentation regarding certification: Week of 9-29-02
148	Ensure certification of canine trainers as canine instructors	11-24-02 (lesson plans) Within 20-business days of DOJ approval of lesson plans and related curricula
150	Continue to implement pre-screening mechanism for specialized mission personnel	Week of 9-29-02 (specialized unit mission GO)
151	Screening mechanism for prospective special unit candidates	Week of 9-29-02 (specialized unit mission GO)
152	Provide sufficient advance notice of participating officers to all special units leadership	Week of 9-29-02 (specialized unit mission GO)
153	Establish protocol for disqualifying officers from special missions that uses questionable force or who generates numerous complaints re same	Week of 9-29-02 (specialized unit mission GO)
154	Ensure adequate supervision for special units	Week of 9-29-02 (specialized unit mission GO)
155	Provide instructions to supervisory officers volunteering or assigned to a special unit that they maintain supervisory responsibilities	Week of 9-29-02 (specialized unit mission GO)
156	Provide pre-service training to special mission units re Constitutional requirements	Week of 9-29-02 (specialized unit mission GO)

Joint DOJ/MPD MOA Modification Chart

157	Monitor activities of specialized mission units	Week of 9-29-02 (specialized unit mission GO)
158	Procedure for informing special mission supervisors about complaints involving their officers and monitoring the same	Week of 9-29-02 (specialized unit mission GO)
159	Plan to limit officer overtime work schedule	Week of 11-24-02
	* MOA paragraphs with a (*) indicate that both a deliverable and a 14-day deadline exist for the MOA requirement	

Appendix C

Lesson Plans Submitted to DOJ

- Command Accountability and Responsibility
- Supervisor and Employee Communication and Interpersonal Relationship Skills
- Use of Force Review Board
- Use of Force/Use of Force Continuum
- Use of Force Incident Reporting Form
- Administrative and Misconduct Investigation Using the Preponderance of Evidence Standard
- Bias-Related Hate Crimes
- Cultural Diversity and Sensitivity Awareness
- Arrest, Custody, and Restraint Procedures
- Protecting the Crime Scene
- Verbal Judo
- Controlled F.O.R.C.E.
- Handcuffing
- O.C. Spray
- A.S.P. Tactical Baton Training Program
- KRAVA/MAGA
- Officer Street Survival
- Close Quarter Combat
- Science of Officer Defense and Criminal Submission (Ground Fighting)
- Pistol Qualification
- Canine Policies and Procedures
- Crime Scene Preservation
- Defensive Tactics
- Ethics, Integrity, and Professionalism
- Theories of Motivational Leadership